

**BOARD BOOK  
OF  
November 10, 2021**



**Leo Vasquez III, Chair  
Paul Braden, Vice-Chair  
Sharon Thomason, Member  
Ajay Thomas, Member  
Brandon Batch, Member  
Kenny Marchant, Member**

## Texas Department of Housing and Community Affairs

### PROGRAMMATIC IMPACT\*\*

Fiscal Year 2021 (September 1, 2020, through August 31, 2021)

#### Owner Financing and Down Payment

- 30-year, fixed interest rate mortgage loans
- Mortgage credit certificates
- Down payment, closing cost assistance
- Homebuyer education

*Programs:*

- Single Family Homeownership

Expended Funds:	\$2,441,964,228
Total Households Served:	12,253

#### Energy Related Assistance

- Utility bill payment assistance
- Energy consumption education
- Weatherization for energy efficiency

*Programs:*

- Comprehensive Energy Assistance Program (CEAP)
  - Weatherization Assistance Program (WAP) , Expended Funds:

	\$169,004,773
Total Households Served:	189,728

#### Multifamily New Construction

- Affordable rental units financed and developed

*Programs:*

- 9% Housing Tax Credits (HTC)
- 4% Housing Tax Credits (HTC)
- Multifamily Bonds
- Multifamily Direct Loan Program\*

Expended Funds:	\$146,034,415
Total Households Served:	7,950

#### Homelessness Services

- Shelter building rehabilitation, conversion, operations
- Essential services e.g., health services, transportation, job training, employment services

*Programs:*

- Emergency Solutions Grant Program (ESG)
- Homeless Housing and Services Program (HHSP)

Expended Funds:	\$38,053,940
Total Individuals Served:	58,165

#### Multifamily Rehab Construction

- Affordable rental units financed and rehabilitated

*Programs:*

- 9% Housing Tax Credits (HTC)
- 4% Housing Tax Credits (HTC)
- Multifamily Bonds

Expended Funds:	\$145,469,775
Total Households Served:	5,014

#### Supportive Services

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

*Program:*

- Community Services Block Grant Program (CSBG)

Expended Funds:	\$68,214,082
Total Individuals Served:	460,743

#### Owner Rehabilitation Assistance

- Home rehabilitation, reconstruction
- Manufactured housing unit replacement
- Accessibility modifications e.g., ramp, grab bar installation

*Programs:*

- Homeowner Reconstruction Assistance Program (HRA)\*
- Amy Young Barrier Removal Program

Expended Funds:	\$12,626,844
Total Households Served:	211

#### Rental Assistance

- Short, long term rent payment help
- Assistance linked with services, Transitional assistance
- Security, utility deposits

*Programs:*

- Tenant-Based Rental Assistance (TBRA)\*
- Section 8 Housing Choice Vouchers
- Section 811

Expended Funds:	\$26,014,486
Total Households Served:	4,821

#### Single Family Development

- Single family development, reconstruction, rehabilitation
- NSP, Do-it-yourself, "sweat equity" construction (bootstrap), rehabilitation, Contract for Deed refinance

*Programs:*

- Single Family Development Program (SFD)\*
- Contract for Deed (CFD)

Expended Funds:	\$2,234,286
Total Households Served:	49

**Total Expended Funds: 3,070,372,721**

**Total Households Served: 741,982**

All FY2021 data as reported in TDHCA's 2021 performance measures.

*Note: Some households may have been served by more than one TDHCA program. For some programs, allocation is used as a proxy for expenditures. Because of timing of funds request, the funds expended for the quarter may be readjusted substantially by year end.*

\* Administered through the federally funded HOME Investment Partnerships Program

\*\* Does not include federal pandemic response funds

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

**A G E N D A  
9:00 AM  
November 10, 2021**

**John H. Regan Building, JHR 140  
1400 Congress Ave  
Austin, Texas 78701**

**CALL TO ORDER**

**ROLL CALL**

**Leo Vasquez, 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 summary for October 14, 2021

**Beau Eccles**  
Board  
Secretary

**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

93040	Garden Gate Apartments-Fort Worth	Fort Worth
93041	Garden Gate Apartments-Plano	Plano
93101	The Meadows	Garland
94067	Canterbury Crossing Apartments	Abilene

**BOND FINANCE**

- c) Presentation, discussion, and possible action on Inducement Resolution No. 22-008 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing an Application for Private Activity Bond Authority for The Standard at Royal Lane (#21631) in Dallas

**Teresa Morales**  
Director of  
Multifamily Bonds

**RULES**

This will be an open, public meeting conducted under Tex. Gov't Code, chapter 551, without COVID-19 emergency waivers. There will not be a remote online or telephone option for public participation. The meeting, however, will be streamed online for public viewing. Masks will be available for members of the public who wish to attend this public meeting.

**Brooke Boston**  
Deputy Director of  
Programs

- d) Presentation, discussion, and possible action on an order adopting the repeal, and new rule, for 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review and Advisory Committee, §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), and an order directing their adoption for submission to the Texas Register
- e) Presentation, discussion, and possible action on an order adopting the repeal, and new rule, for 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds; §1.401 Definitions; §1.402 Cost Principles and Administrative Requirements; §1.403 Single Audit Requirements; §1.404 Purchase and Procurement Standards; §1.407 Inventory Report; and §1.411 Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code and an order directing their adoption for submission to the Texas Register
- f) Presentation, discussion, and possible action on an order adopting amendments to 10 TAC, Chapter 10, Subchapter G, §10.801, Affirmative Marketing Requirements, and directing their submission for adoption to the Texas Register

**Michael De Young**  
Director of  
Community Affairs

- g) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 6, Community Affairs Programs; an order adopting new 10 TAC Chapter 6, Community Affairs Programs; and directing that they be published for adoption in the Texas Register
- h) 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

**Teresa Morales**  
Director of  
Multifamily Bonds

**HOUSING STABILIZATION SERVICES**

- i) Presentation, Discussion and Possible Approval of an Award of Emergency Rental Assistance Funds to the Texas Homeless Network for Housing Stabilization Services

**Brooke Boston**  
Deputy Director of  
Programs

**MULTIFAMILY FINANCE**

- j) Presentation, discussion, and possible action to revise prior Board action related to requests for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Applications Awarded Competitive (9%) Housing Tax Credits in Prior Application Rounds

**Cody Campbell**  
Director of Multifamily  
Programs

**COMMUNITY AFFAIRS**

- k) Presentation, Discussion, and Possible Action on the 2022 Section 8 Payment Standards for the Housing Choice Voucher Program (HCVP)

**Michael De Young**  
Director of  
Community Affairs

**LEGAL**

- l) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Harmon Elliott Senior Citizens Complex (HTF 355007 / CMTS 2642)
- m) Presentation, discussion, and possible action regarding the adoption of Agreed Final Orders concerning related properties Second North Apartments (HTC 94001 / CMTS 1201) and Second Adams Apartments (HTC 94018 / CMTS 1217)
- n) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning South Texas Development Council (CSBG Contract 61190003061)

**Jeff Pender**  
Deputy General  
Counsel

**CONSENT AGENDA REPORT ITEMS**

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

- a) Media Analysis and Outreach Report (September 2021)

**Michael Lyttle**



- b) Report on Activities Related to the Department’s Response to COVID-19 Pandemic
- c) Report on the Department’s 4th Quarter Investment Report in accordance with the Public Funds Investment Act
- d) Report on the Department’s 4th Quarter Investment Report relating to funds held under Bond Trust Indentures

Director of External Affairs  
**Brooke Boston**  
 Deputy Director of Programs  
**Joe Guevara**  
 Director of Financial Administration  
**Monica Galuski**  
 Director of Bond Finance

**ACTION ITEMS**

Executive Session: the Chair may call an Executive Session at this point in the agenda in accordance with the below-cited provisions<sup>1</sup>

**Leo Vasquez**  
 Chair

**ITEM 3: EXECUTIVE**

Executive Director’s Report

**Bobby Wilkinson**  
 Executive Director, TDHCA

**ITEM 4: BOND FINANCE**

- a) Presentation, discussion, and possible action regarding the Issuance of Multifamily Housing Revenue Bonds (Meadowbrook Apartments) Series 2021 Resolution No. 22-009 and a Determination Notice of Housing Tax Credits
- b) Presentation, discussion, and possible action regarding the Issuance of a Governmental Note (Fiji Lofts) Resolution No. 22-010 and a Determination Notice of Housing Tax Credits

**Teresa Morales**  
 Director of Multifamily Bonds

**ITEM 5: RULES**

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

**Brooke Boston**  
 Deputy Director of Programs

**ITEM 6: MULTIFAMILY FINANCE**

- a) Presentation, discussion, and possible action on Awards of Multifamily Direct Loan Funds from the 2021-3 Multifamily Direct Loan Notice of Funding Availability
- b) Presentation, discussion and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Application 18235 Memorial Apartments in McAllen
- c) Presentation, discussion, and possible action regarding the issuance of a Determination Notice for Torrey Chase Apartments (#21463) in the Houston ETJ

**Charlotte Flickinger**  
 Multifamily Direct Loan Manager  
**Cody Campbell**  
 Director of Multifamily Programs

**Teresa Morales**  
 Director of Multifamily Bonds

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

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;

<sup>1</sup> Note: the Chair is not restricted by this item, and may call for an Executive Session at any time during the posted meeting.

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 Nancy Dennis, 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 Kathleen Vale Castillo, 512-475-4144, 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 Kathleen Vale Castillo, al siguiente número 512-475-4144 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

# CONSENT AGENDA

1a

**BOARD ACTION REQUEST**

**BOARD SECRETARY**

**NOVEMBER 10, 2021**

Presentation, discussion, and possible action on the Board meeting minutes summary for October 14, 2021

**RECOMMENDED ACTION**

Approve the Board meeting minutes summary for October 14, 2021

**RESOLVED**, that the Board meeting minutes summary for October 14, 2021, is hereby approved as presented.

**Texas Department of Housing and Community Affairs Governing Board  
Board Meeting Minutes Summary  
October 14, 2021**

On Thursday, the fourteenth day of October 2021, at 9:11 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 JHR 140 of the John H. Reagan Building, 1400 Congress Avenue, Austin, Texas.

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

- Leo Vasquez, Chair
- Paul Braden, Vice Chair
- Kenny Marchant
- Ajay Thomas

Leo Vasquez served as Chair, and James “Beau” Eccles, TDHCA General Counsel, served as Secretary.

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

2) Action Item 3 -- Executive Director’s Report – was presented by Bobby Wilkinson, TDHCA Executive Director, with additional information from Brooke Boston, TDHCA Deputy Executive Director for Programs. The Board heard the report and took no action.

3) Action Item 4 – Presentation, discussion, and possible action regarding the Issuance of Multifamily Housing Revenue Bonds (The Park at Kirkstall) Series 2021 Resolution No. 22-007, and a Determination Notice of Housing Tax Credits – was presented by Teresa Morales, TDHCA Director of Multifamily Bonds. The Board unanimously approved issuance of the bonds and the determination notice of 4% housing tax credits and for the existing LURA granted a limited waiver of 10 TAC §49.7(e)(3)(E) of the 2002 QAP regarding accessibility requirements for one-10 bedroom units, as expressed and subject to the conditions of the Board action item.

4) Action Item 5(a) – Presentation, discussion, and possible action regarding a waiver of 10 TAC §23.32(a)(19) relating to submission of Reservations to assist owners of housing under the disaster relief set-aside – was presented by Abigail Versyp, TDHCA Director of Single Family and Homeless Programs. The Board unanimously approved the limited waiver requested as expressed in the Board action item.

5) Action Item 5(b) – Presentation, discussion, and possible action to authorize the issuance of the 2022 HOME Investment Partnerships Program Single Family General Set-Aside Notice of Funding Availability and publication of the NOFA in the *Texas Register* – was presented by Chad Landry, TDHCA Manager of the HOME Program. The Board unanimously approved the

authorization of the executive director and his designees to post and publish a 2022 HOME single family general set-aside NOFA for funding, as expressed and conditioned in the Board action item.

6) Action Item 5(c) – Presentation, discussion, and possible action to authorize the issuance of the 2022 HOME Investment Partnerships Program Single Family Persons with Disabilities Set-Aside Notice of Funding Availability and publication of the NOFA in the *Texas Register* – was presented by Mr. Landry. The Board unanimously approved the authorization of the executive director and his designees to post and publish a 2022 HOME single family persons with disabilities set-aside NOFA for funding, as expressed and conditioned in the Board action item.

7) Action Item 5(d) – Presentation, discussion, and possible action to authorize the issuance of the 2022 HOME Investment Partnerships Program Single Family Contract for Deed Set-Aside Notice of Funding Availability and publication of the NOFA in the *Texas Register* – was presented by Mr. Landry. The Board unanimously approved the authorization of the executive director and his designees to post and publish a 2022 HOME single family contract for deed set-aside NOFA for funding, as expressed and conditioned in the Board action item.

8) Action Item 6(a) – Presentation, discussion, and possible action on the proposed repeal of 10 TAC Chapter 13, Multifamily Direct Loan Rule, the proposed new 10 TAC Chapter 13, Multifamily Direct Loan Rule, and directing their publication for public comment in the *Texas Register* – was presented by Charlotte Flickinger, TDHCA Manager of the Multifamily Direct Loan Program. The Board unanimously approved the proposed repeal and proposed new 10 TAC Chapter 13, Multifamily Direct Loan Rule for publication in the *Texas Register* for public comment, as expressed in the Board action item.

9) Action Item 6(b) – 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 Rosalio Banuelos, TDHCA Director of Asset Management. The Board unanimously approved the proposed repeal and proposed New 10 TAC Chapter 10, Subchapter E, Post Award and Asset Management Requirements for publication in the *Texas Register* for public comment, as expressed in the Board action item.

10) Action Item 7(a) – Presentation, discussion, and possible action to amend the 2021-3 Multifamily Direct Loan Notice of Funding Availability – was presented by Ms. Flickinger. The Board unanimously approved the authorization of the executive director and his designees to amend the 2021-3 NOFA, extend its availability date to November 11, allow funds awarded under the NOFA to be reserved for applications proposing FHA-insured permanent debt, and post the amended note, all as expressed and conditioned in the Board action item.

11) Action Item 7(b) – Presentation, discussion, and possible action regarding awards from the Multifamily Direct Loan (MFDL) 2021-3 Notice of Funding Availability (NOFA), as amended –

was presented by Ms. Flickinger with additional information from Mr. Eccles. The Board unanimously approved the award recommendations as expressed and conditioned in the Board action item, with the amendment to the recommended amount in Palladium Fain Street Apartments and the clarification that the award to Arbor Park is National Housing Trust Fund and not HOME, as expressed by Ms. Flickinger.

12) Action Item 7(c) – 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 Applications Awarded Competitive (9%) Housing Tax Credits in Prior Application Rounds – was presented by Cody Campbell, TDHCA Director of Multifamily Finance. The Board unanimously approved the requested return and reallocation of tax credits under the force majeure rule for the listed developments, as expressed and conditioned in the Board action item.

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 10:20 a.m. The next meeting is set for Wednesday, November 10, 2021.

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Secretary

Approved:

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Chair



1b

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**NOVEMBER 10, 2021**

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for Garden Gate Apartments-Fort Worth (HTC #93040)

**RECOMMENDED ACTION**

**WHEREAS**, Garden Gate Apartments-Fort Worth (the Development) received a 9% Housing Tax Credit (HTC) award in 1993 to construct 240 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 90-day ROFR period, and this provision is reflected in the Land Use Restriction Agreement (LURA) for the Development;

**WHEREAS**, in 2015, the 84<sup>th</sup> 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**, AOF Garden Gate FW, LLC (the Development Owner or Owner) requests to amend the 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 Garden Gate Apartments-Fort Worth 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**

Garden Gate Apartments-Fort Worth received a 9% HTC award in 1993 to construct 240 multifamily units, all of which are set aside for residents at or below 60% of AMI, in Fort Worth, Tarrant County. In a letter dated September 21, 2021, Philip J. Kennedy, representative for the Development Owner, requested approval to amend the HTC LURA related to the ROFR provision.

In 1993, the Housing Tax Credit application allotted one point to the Development Owner in exchange for a 90-day ROFR period. Upon completion of the Development, the Owner entered into a Declaration of Land Use Restrictive Covenants for Low-Income Housing Credits recorded in Tarrant County on April 26, 1996.

The additional use restrictions in the current HTC LURA require, among other things, a 90-day ROFR to sell the Development to a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)) or to a tenant organization, 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 27<sup>th</sup> year of the 30-year Extended Use Period. 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 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 as amended, an entity controlled by an entity described by, §42(i)(7)(A) of the Internal Revenue Code of 1986. The Department's 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 dual public hearing via Zoom for both Garden Gate Apartments-Fort Worth and Garden Gate Apartments-Plano. There were two attendees, both of which were from Garden Gate Apartments-Plano. No residents from Garden Gate Apartments-Fort Worth attended the meeting. While questions were asked, no public comment was received regarding the requested amendment.

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

**AOF GARDEN GATE FW, LLC**  
1000 Parkwood Circle SE, Suite 320  
Atlanta, GA 30339

September 21, 2021

**VIA HAND DELIVERY**

Mr. Mark Fugina  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701-2410

Re: TDHCA File No. 93040; Garden Gate Apartments (the "**Property**")

Dear Mr. Fugina:

The undersigned, being the Sole Member (herein so called) of AOF Garden Gate FW, LLC, a Texas limited liability company (the "**Company**") and the current owner of the Property. This letter constitutes request for a material LURA amendment in order to modify the 90-day 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 Right of First Refusal ("**ROFR**") period. Currently, the LURA for this Property requires a 90-day 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 Sole Member, acting on behalf of the Company, requests a LURA amendment to eliminate the 90-day ROFR period and replace it with the 180-day ROFR period.

**LURA Amendment**

In accordance with Section 10.405(b) of the Rules, the Company, is delivering a fee in the amount of \$2,500. In addition, the Company commits to hold a public hearing, as required by the Rules, and to notify all residents, investors, lenders, and appropriate elected officials as to these proposed amendments. The Company 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 Company 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,

**AOF GARDEN GATE FW, LLC,**  
a Texas limited liability company

By: AOF/Houston Affordable Housing Corp.,  
a Texas non-profit corporation,  
its sole member

By:



Philip J. Kennedy, President

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**NOVEMBER 10, 2021**

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for Garden Gate Apartments-Plano (HTC #93041)

**RECOMMENDED ACTION**

**WHEREAS**, Garden Gate Apartments-Plano (the Development) received a 9% Housing Tax Credit (HTC) award in 1993 to construct 240 multifamily units in Plano, Collin 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 90-day ROFR period, and this provision is reflected in the Land Use Restriction Agreement (LURA) for the Development;

**WHEREAS**, in 2015, the 84<sup>th</sup> 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**, AOF Garden Gate Plano, LLC (the Development Owner or Owner) requests to amend the 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 Garden Gate Apartments-Plano 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**

Garden Gate Apartments-Plano received a 9% HTC award in 1993 to construct 240 multifamily units, all of which are set aside for residents at or below 60% of AMI, in Plano, Collin County. In a letter dated September 21, 2021, Philip J. Kennedy, representative for the Development Owner, requested approval to amend the HTC LURA related to the ROFR provision.

In 1993, the Housing Tax Credit application allotted one point to the Development Owner in exchange for a 90-day ROFR period. Upon completion of the Development, the Owner entered into a Declaration of Land Use Restrictive Covenants for Low-Income Housing Credits recorded in Collin County on April 25, 1996.

The additional use restrictions in the current HTC LURA require, among other things, a 90-day ROFR to sell the Development to a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)) or to a tenant organization, 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 27<sup>th</sup> year of the 30-year Extended Use Period. 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 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 as amended, an entity controlled by an entity described by, §42(i)(7)(A) of the Internal Revenue Code of 1986. The Department's 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 dual public hearing via Zoom for both Garden Gate Apartments-Plano and Garden Gate Apartments-Fort Worth. There were two attendees, both of which were from Garden Gate Apartments-Plano. Those in attendance asked about the amendment, and concerns about a potential future sale of the Development were raised. However, residents were informed that this amendment would not impact their leases and that any buyer would have to comply with the LURA.

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

**AOF GARDEN GATE PLANO, LLC**  
1000 Parkwood Circle SE, Suite 320  
Atlanta, GA 30339

September 21, 2021

**VIA HAND DELIVERY**

Mr. Mark Fugina  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701-2410

Re: TDHCA File No. 93041; Garden Gate Apartments (the "**Property**")

Dear Mr. Fugina:

The undersigned, being the Sole Member (herein so called) of AOF Garden Gate Plano, LLC, a Texas limited liability company (the "**Company**") and the current owner of the Property. This letter constitutes request for a material LURA amendment in order to modify the 90-day 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 Right of First Refusal ("**ROFR**") period. Currently, the LURA for this Property requires a 90-day 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 Sole Member, acting on behalf of the Company, requests a LURA amendment to eliminate the 90-day ROFR period and replace it with the 180-day ROFR period.

**LURA Amendment**

In accordance with Section 10.405(b) of the Rules, the Company, is delivering a fee in the amount of \$2,500. In addition, the Company commits to hold a public hearing, as required by the Rules, and to notify all residents, investors, lenders, and appropriate elected officials as to these proposed amendments. The Company 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 Company 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,

**AOF GARDEN GATE FW, LLC,**  
a Texas limited liability company

By: AOF/Houston Affordable Housing Corp.,  
a Texas non-profit corporation,  
its sole member

By:



Philip J. Kennedy, President

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**NOVEMBER 10, 2021**

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for The Meadows (HTC #93101)

**RECOMMENDED ACTION**

**WHEREAS**, The Meadows (the Development) received a 9% Housing Tax Credit (HTC) award in 1993 for the new construction of 152 multifamily units in Garland, 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 90-day ROFR period, and this provision is reflected in the Land Use Restriction Agreement (LURA) for the Development;

**WHEREAS**, in 2015, the 84<sup>th</sup> 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**, Garland Meadows, Ltd. (the Development Owner or Owner) requests to amend the 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 The Meadows 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**

The Meadows received a 9% HTC award in 1993 for the new construction of 152 multifamily units in Garland, Dallas County. In a letter received October 15, 2021, Peter Stoughton, representative for the Development Owner, requested approval to amend the HTC LURA related to the ROFR provision.

In 1993, the Housing Tax Credit application allotted one point to the Development Owner in exchange for a 90-day 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 Credits recorded in Dallas County on December 29, 1995, which was later amended and recorded on August 13, 1996.

The additional use restrictions in the current HTC LURA require, among other things, a 90-day ROFR to sell the Development to a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)) or to a tenant organization, 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 26<sup>th</sup> year of the 30-year Extended Use Period. 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 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 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 telephonic public hearing on the matter on October 21, 2021. No residents attended the public hearing, and no public comment was received regarding the requested amendment.

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

**GARLAND MEADOWS, LTD.**  
3826 Easton Meadows Road  
Garland, Texas 75043

October \_\_, 2021

**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. 93101; The Meadows Apartments (the "**Property**")

Dear Ms. Chance:

The undersigned, being the General Partner (herein so called) of Garland Meadows, Ltd., a Texas limited partnership (the "**Partnership**") and the current owner of the Property. This letter constitutes request for a material LURA amendment in order to modify the 90-day 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 Right of First Refusal ("**ROFR**") period. Currently, the LURA for this Property requires a 90-day 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 90-day 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. In addition, the Partnership commits to hold a public hearing, as required by the Rules, and to notify all residents, investors, lenders, and appropriate elected officials as to these proposed amendments. 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,

**GARLAND MEADOWS, LTD.,**  
a Texas limited partnership

By: AH SUBGP 245 Garland, LLC,  
a Delaware limited liability company,  
its general partner

By: SAFG Retirement Services, Inc.,  
a Delaware limited liability company,  
its sole member

By: **Peter**  
**Stoughton**  
Peter Stoughton, Senior Vice-President

Digitally signed by Peter Stoughton  
Date: 2021.10.15 10:08:31 -07'00'

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**NOVEMBER 10, 2021**

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for Canterbury Crossing Apartments (HTC #94067)

**RECOMMENDED ACTION**

**WHEREAS**, Canterbury Crossing Apartments (the Development) received a 9% Housing Tax Credit (HTC) award in 1994 for the new construction of 304 multifamily units in the City of Abilene, Taylor 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 90-day ROFR period, and this provision is reflected in the Land Use Restriction Agreement (LURA) for the Development;

**WHEREAS**, in 2015, the 84<sup>th</sup> 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**, Canterbury Crossing, Ltd. (the Development Owner or Owner) requests to amend the 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 Canterbury Crossing 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**

Canterbury Crossing Apartments received a 9% HTC award in 1994 for the new construction of 304 multifamily units in Abilene, Taylor County. In a letter dated September 1, 2021, Thomas Mangum, representative for the Development Owner, requested approval to amend the HTC LURA related to the ROFR provision.

In 1994, the Housing Tax Credit Qualified Allocation Plan and Rules allotted one point to the Owner in exchange for a 90-day 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 Taylor County on January 8, 1997.

The additional use restrictions in the current HTC LURA would require, among other things, a 90-day ROFR to sell the Development to a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)) or a tenant organization, 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 25<sup>th</sup> year of the 30-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 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 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 telephonic public hearing on the matter on October 11 2021. No residents attended the public hearing, and no public comment was received regarding the requested amendment.

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

**Canterbury Crossing, LTD**  
**515 S. Capital of Texas Hwy, ste 100**  
**Austin, TX 78746**

September 1, 2021

VIA Email  
Karen Treadwell  
Asset Manager  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78711-3941

Subject: Canterbury Crossing (CMTS ID 1236)  
Request for LURA Amendment  
Conversion from a 90-day ROFR to 180-day ROFR

Re: TDHCA File No. 94067; Canterbury Crossing Apartments (the “**Property**”)

Dear Ms. Treadwell:

The undersigned, being the General Partner (herein so called) of Canterbury Crossing, LTD (the “**Partnership**”) and the current owner of the Property. This letter constitutes request for a material LURA amendment in order to modify the 90-day 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 90-day 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 90-day 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 \$2500. In addition, the Partnership commits to hold a public hearing, as required by the Rules, and to notify all residents, investors, and lenders as to these proposed amendments. 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.

This request is being submitted for consideration by TDHCA’s Governing Board at its upcoming meeting October 14, 2021 or the following meeting scheduled for November 10, 2021. The hearing will be held at least 15 business days prior to the scheduled Board meeting.



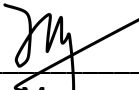
Additionally, the owner's agent will process a wire transfer in the amount of \$2500 as the payable fee to TDHCA for processing this request, today, September 1, 2021.

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

Sincerely,

Owner: Canterbury Crossing, Ltd.

By: ATHA Canterbury Crossing GP, Inc., its General Partner

By:   
\_\_\_\_\_

Thomas Mangum, its Secretary

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**BOARD ACTION REQUEST**  
**BOND FINANCE DIVISION**  
**NOVEMBER 10, 2021**

Presentation, discussion, and possible action on Inducement Resolution No. 22-008 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority for The Standard at Royal Lane (#21631) in Dallas

**RECOMMENDED ACTION**

**WHEREAS**, a bond pre-application, as further detailed below, was submitted to the Department for consideration of an inducement resolution;

**WHEREAS**, Board approval of the inducement resolution is the first step in the application process for a multifamily bond issuance by the Department; and

**WHEREAS**, approval of the inducement will allow staff to submit an application to the Bond Review Board (BRB) for the issuance of a Certificate of Reservation associated with the Development;

**NOW, therefore, it is hereby**

**RESOLVED**, that based on the foregoing, Inducement Resolution No. 22-008 to proceed with the application submission to the BRB for possible receipt of State Volume Cap issuance authority under the Private Activity Bond Program for the pre-applications listed herein, is hereby approved in the form presented to this meeting.

**BACKGROUND**

**General Information:** The BRB administers the annual private activity bond authority for the State of Texas. The Department is an issuer of Private Activity Bonds and is required to induce an application for bonds prior to the submission to the BRB. Approval of the inducement resolution does not constitute approval of the development but merely allows the Applicant the opportunity to move into the full application phase of the process. Once the application receives a Certificate of Reservation, the Applicant has 180 days to close on the private activity bonds.

During the 180-day process, the Department will review the complete application for compliance with the Department's Rules, including, but not limited to, site eligibility and threshold, as well as previous participation as it relates to developments previously funded through the Department. During the review of the full application, staff will also underwrite the transaction and determine financial feasibility in accordance with the Real Estate Analysis Rules. The Department will schedule and conduct a public hearing, and the complete application, including a transcript from the hearing, will then be presented to

the Board for a decision on the issuance of bonds as well as a determination on the amount of housing tax credits anticipated to be allocated to the development.

This inducement resolution would reserve approximately \$50M in private activity bond volume cap. Staff notes that the Department's set-aside for the 2021 program year was \$169,558,383 and was reserved with applications submitted as part of the 2021 Lottery or applications subsequently added to the Department's waiting list. The Department's set-aside for 2022 has not been announced, but is anticipated to be approximately \$175M. It is expected that applications submitted as part of the 2022 Lottery will consume all of the Department's set-aside for the 2022 program year. The pre-application listed below will not be participating in the Lottery, but will be added to the Department's waiting list for a bond reservation under the 2022 program year.

**21631 – The Standard at Royal Lane**

New construction of 300 units is proposed for this multifamily development to be located at 2737 Royal Lane in Dallas, Dallas County. This transaction is proposed to be Priority 3, and will serve the general population. The development proposed 300 units, 270 of which will be rent and income restricted at 60% of Area Median Family Income (AMFI), and the remaining thirty units will market rate. The Department has received no letters of support or opposition for the proposed development.

Bond Inducement Amount: \$50,000,000

## RESOLUTION NO. 22-008

RESOLUTION DECLARING INTENT TO ISSUE MULTIFAMILY REVENUE BONDS OR NOTES WITH RESPECT TO RESIDENTIAL RENTAL DEVELOPMENTS; AUTHORIZING THE FILING OF ONE OR MORE APPLICATIONS FOR ALLOCATION OF PRIVATE ACTIVITY BONDS WITH THE TEXAS BOND REVIEW BOARD; AND AUTHORIZING OTHER ACTION RELATED THERETO

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended, (the "Act") for the purpose, among others, of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe, and affordable living environments for persons and families of low, very low and extremely low income and families of moderate income (all as defined in the Act); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the "State") intended to be occupied by persons and families of low, very low and extremely low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds or notes for the purpose, among others, of obtaining funds to make such loans and provide financing, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds or notes; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such multifamily residential rental development loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds or notes; and

WHEREAS, it is proposed that the Department issue its revenue bonds or notes in one or more series for the purpose of providing financing for the multifamily residential rental developments (the "Developments") more fully described in Exhibit A attached hereto. The ownership of the Developments as more fully described in Exhibit A will consist of the applicable ownership entity and its principals or a related person (the "Owners") within the meaning of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the Owners have made not more than 60 days prior to the date hereof, payments with respect to the acquisition, construction, reconstruction or renovation of the Developments and expect to make additional payments in the future and desire that they be reimbursed for such payments and other costs associated with the Developments from the proceeds of tax-exempt and taxable, as applicable, obligations to be issued by the Department subsequent to the date hereof; and

WHEREAS, the Owners have indicated their willingness to enter into contractual arrangements with the Department providing assurance satisfactory to the Department that the requirements of the Act and the Department will be satisfied and that the Developments will satisfy State law, Section 142(d) and other applicable Sections of the Code and Treasury Regulations; and

WHEREAS, the Department desires to reimburse the Owners for some or all of the costs associated with the Developments listed on Exhibit A attached hereto, but solely from and to the extent, if any, of the proceeds of tax-exempt and taxable, as applicable, obligations to be issued in one or more series to be issued subsequent to the date hereof; and

WHEREAS, at the request of the Owners, the Department reasonably expects to incur debt in the form of tax-exempt and taxable, as applicable, obligations for purposes of paying the costs of the Developments described on Exhibit A attached hereto; and

WHEREAS, in connection with the proposed issuance of the Bonds (defined below), the Department, as issuer of the Bonds, is required to submit for the Developments one or more Applications for Allocation of Private Activity Bonds or Applications for Carryforward for Private Activity Bonds (the "Application") with the Texas Bond Review Board (the "Bond Review Board") with respect to the tax-exempt Bonds to qualify for the Bond Review Board's Allocation Program in connection with the Bond Review Board's authority to administer the allocation of the authority of the State to issue private activity bonds; and

WHEREAS, the Governing Board of the Department (the "Board") has determined to declare its intent to issue its multifamily revenue bonds or notes for the purpose of providing funds to the Owners to finance the Developments on the terms and conditions hereinafter set forth; NOW, THEREFORE,

BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

#### ARTICLE 1

##### OFFICIAL INTENT; APPROVAL OF CERTAIN ACTIONS

Section 1.1. Authorization of Issue. The Department declares its intent to issue its Multifamily Housing Revenue Bonds or Notes (the "Bonds") in one or more series and in amounts estimated to be sufficient to (a) fund a loan or loans to the Owners to provide financing for the respective Developments in an aggregate principal amount not to exceed those amounts, corresponding to the Developments, set forth in Exhibit A; (b) fund a reserve fund with respect to the Bonds if needed; and (c) pay certain costs incurred in connection with the issuance of the Bonds. Such Bonds will be issued as qualified residential rental development bonds. Final approval of the Department to issue the Bonds shall be subject to: (i) the review by the Department's credit underwriters for financial feasibility; (ii) review by the Department's staff and legal counsel of compliance with federal income tax regulations and State law requirements

regarding tenancy in the respective Development; (iii) approval by the Bond Review Board, if required; (iv) approval by the Attorney General of the State of Texas (the "Attorney General"); (v) satisfaction of the Board that the respective Development meets the Department's public policy criteria; and (vi) the ability of the Department to issue such Bonds in compliance with all federal and State laws applicable to the issuance of such Bonds.

Section 1.2. Terms of Bonds. The proposed Bonds shall be issuable only as fully registered bonds or notes in authorized denominations to be determined by the Department; shall bear interest at a rate or rates to be determined by the Department; shall mature at a time to be determined by the Department but in no event later than 40 years after the date of issuance; and shall be subject to prior redemption upon such terms and conditions as may be determined by the Department.

Section 1.3. Reimbursement. The Department reasonably expects to reimburse the Owners for all or a portion of the costs that have been or will be paid subsequent to the date that is 60 days prior to the date hereof in connection with the acquisition of real property and construction, reconstruction or renovation, as applicable, of its Development and listed on Exhibit A attached hereto ("Costs of the Developments") from the proceeds of the Bonds, in an amount which is reasonably estimated to be sufficient: (a) to fund a loan to provide financing for the acquisition and construction or rehabilitation and equipping of its Development, including reimbursing the applicable Owner for all costs that have been or will be paid subsequent to the date that is 60 days prior to the date hereof in connection with the acquisition and construction or rehabilitation of the Developments; (b) to fund certain reserves that may be required for the benefit of the holders of the Bonds; and (c) to pay certain costs incurred in connection with the issuance of the Bonds.

Section 1.4. Principal Amount. Based on representations of the Owners, the Department reasonably expects that the maximum aggregate principal amount of debt issued to reimburse the Owners for the Costs of the Developments will not exceed the amount set forth in Exhibit A which corresponds to the applicable Development.

Section 1.5. Limited Obligations. The Owners may commence with the acquisition and construction or rehabilitation of the Developments, which Developments will be in furtherance of the public purposes of the Department as aforesaid. On or prior to the issuance of the Bonds, each Owner will enter into a loan agreement, on terms agreed to by the parties, on an installment payment basis with the Department under which the Department will make a loan to the applicable Owner for the purpose of reimbursing the Owner for the Costs of the Development and the Owner will make installment payments sufficient to pay the principal of and any premium and interest on the applicable Bonds. The proposed Bonds shall be special, limited obligations of the Department payable solely by the Department from or in connection with its loan or loans to the Owner to provide financing for its Development, and from such other revenues, receipts and resources of the Department as may be expressly pledged by the Department to secure the payment of the Bonds.

Section 1.6. The Developments. Substantially all of the proceeds of the Bonds shall be used to finance the Developments, which are to be occupied entirely by Eligible Tenants, as determined by the Department, and which are to be occupied partially by persons and families of low income such that the requirements of Section 142(d) of the Code are met for the period required by the Code.

Section 1.7. Payment of Bonds. The payment of the principal of and any premium and interest on the Bonds shall be made solely from moneys realized from the loan of the proceeds of the Bonds to reimburse the Owners for costs of its Development.

Section 1.8. Costs of Developments. The Costs of the Developments may include any cost of acquiring, constructing, rehabilitating, or reconstructing, as applicable, improving, equipping, installing and expanding the Developments. Without limiting the generality of the foregoing, the Costs of the Developments shall specifically include the cost of the acquisition of all land, rights-of-way, property rights, easements and interests, the cost of all machinery and equipment, financing charges, inventory, raw materials and other supplies, research and development costs, interest prior to and during construction and for one year after completion of construction whether or not capitalized, necessary reserve funds, the cost of estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility and practicability of acquiring, constructing, reconstructing, improving and expanding the Developments, administrative expenses and such other expenses as may be necessary or incident to the acquisition, construction, reconstruction, improvement and expansion of the Developments, the placing of the Developments in operation and that satisfy the Code and the Act. The Owners shall be responsible for and pay any costs of its Development incurred by it prior to issuance of the Bonds and will pay all costs of its Development which are not or cannot be paid or reimbursed from the proceeds of the Bonds.

Section 1.9. No Commitment to Issue Bonds. Neither the Owners nor any other party is entitled to rely on this Resolution as a commitment to issue the Bonds and to loan funds, and the Department reserves the right not to issue the Bonds either with or without cause and with or without notice, and in such event the Department shall not be subject to any liability or damages of any nature. Neither the Owners nor any one claiming by, through or under the Owners shall have any claim against the Department whatsoever as a result of any decision by the Department not to issue the Bonds.

Section 1.10. Conditions Precedent. The issuance of the Bonds following final approval by the Board shall be further subject to, among other things: (a) the execution by the Owners and the Department of contractual arrangements, on terms agreed to by the parties, providing assurance satisfactory to the Department that all requirements of the Act will be satisfied and that the Development will satisfy the requirements of Section 142(d) of the Code (except for portions to be financed with taxable bonds or notes); (b) the receipt of an opinion from Bracewell LLP or other nationally recognized bond counsel acceptable to the Department (“Bond Counsel”), substantially to the effect that the interest on the tax-exempt Bonds is excludable



from gross income for federal income tax purposes under existing law; and (c) receipt of the approval of the Bond Review Board, if required, and the Attorney General.

Section 1.11. Authorization to Proceed. The Board hereby authorizes staff, Bond Counsel and other consultants to proceed with preparation of the Developments' necessary review and legal documentation for the filing of one or more Applications and the issuance of the Bonds, subject to satisfaction of the conditions specified in this Resolution. The Board further authorizes staff, Bond Counsel and other consultants to re-submit an Application that was withdrawn by an Owner.

Section 1.12. Related Persons. The Department acknowledges that financing of all or any part of the Developments may be undertaken by any company or partnership that is a "related person" to the respective Owner within the meaning of the Code and applicable regulations promulgated pursuant thereto, including any entity controlled by or affiliated with the Owners.

Section 1.13. Declaration of Official Intent. This Resolution constitutes the Department's official intent for expenditures on Costs of the Developments which will be reimbursed out of the issuance of the Bonds within the meaning of Sections 1.142-4(b) and 1.150-2, Title 26, Code of Federal Regulations, as amended, and applicable rulings of the Internal Revenue Service thereunder, to the end that the Bonds issued to reimburse Costs of the Developments may qualify for the exemption provisions of Section 142 of the Code, and that the interest on the Bonds (except for any taxable Bonds) will therefore be excludable from the gross incomes of the holders thereof under the provisions of Section 103(a)(1) of the Code.

Section 1.14. Execution and Delivery of Documents. The Authorized Representatives named in this Resolution are each hereby authorized to execute and deliver all Applications, certificates, documents, instruments, letters, notices, written requests and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.15. Authorized Representatives. The following persons are hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Board, the Executive Director of the Department, the Director of Administration of the Department, the Director of Bond Finance and Chief Investment Officer of the Department, the Director of Multifamily Bonds, the Director of Texas Homeownership of the Department and the Secretary or any Assistant Secretary to the Board. Such persons are referred to herein collectively as the "Authorized Representatives." Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

ARTICLE 2

CERTAIN FINDINGS AND DETERMINATIONS

Section 2.1. Certain Findings Regarding Developments and Owners. The Board finds that:

- (a) the Developments are necessary to provide decent, safe and sanitary housing at rentals that individuals or families of low and very low income and families of moderate income can afford;
- (b) the Owners will supply, in their Development, well-planned and well-designed housing for individuals or families of low and very low income and families of moderate income;
- (c) the Owners are financially responsible;
- (d) the financing of the Developments is a public purpose and will provide a public benefit; and
- (e) the Developments will be undertaken within the authority granted by the Act to the Department and the Owners.

Section 2.2. No Indebtedness of Certain Entities. The Board hereby finds, determines, recites and declares that the Bonds shall not constitute an indebtedness, liability, general, special or moral obligation or pledge or loan of the faith or credit or taxing power of the State, the Department or any other political subdivision or municipal or political corporation or governmental unit, nor shall the Bonds ever be deemed to be an obligation or agreement of any officer, director, agent or employee of the Department in his or her individual capacity, and none of such persons shall be subject to any personal liability by reason of the issuance of the Bonds. The Bonds will be a special limited obligation of the Department payable solely from amounts pledged for that purpose under the financing documents.

Section 2.3. Certain Findings with Respect to the Bonds. The Board hereby finds, determines, recites and declares that the issuance of the Bonds to provide financing for the Developments will promote the public purposes set forth in the Act, including, without limitation, assisting persons and families of low and very low income and families of moderate income to obtain decent, safe and sanitary housing at rentals they can afford.

ARTICLE 3

GENERAL PROVISIONS

Section 3.1. Books and Records. The Board hereby directs this Resolution to be made a part of the Department's books and records that are available for inspection by the general public.

Section 3.2. Notice of Meeting. This Resolution was considered and adopted at a meeting of the Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Board.

Section 3.3. Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

PASSED AND APPROVED this 10<sup>th</sup> day of November, 2021.

## EXHIBIT "A"

### Descriptions of the Owner and the Development

Project Name	Owner	Principals	Amount Not to Exceed
The Standard at Royal Lane	LDG The Standard at Royal Lane, LP, a Texas limited partnership	General Partner: LDG The Standard at Royal Lane GP, LLC, a Texas limited liability company	\$50,000,000
Costs: Acquisition/construction of a 300-unit affordable, multifamily housing development to be known as The Standard at Royal Lane, to be located at 2737 Royal Lane, Dallas, Dallas County, Texas 75229			

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**BOARD ACTION REQUEST**

**PROGRAMS DIVISION**

**NOVEMBER 10, 2021**

Presentation, discussion, and possible action on an order adopting the repeal, and new rule, for 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review and Advisory Committee, §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), and an order directing their adoption for submission to the *Texas Register*

**RECOMMENDED ACTION**

**WHEREAS**, the current rule relating to previous participation reviews and the process for the Executive Award Review and Advisory Committee (EARAC), at 10 TAC Chapter 1, Subchapter C, is in need of revisions to reflect changes put in place by the Comptroller of Public Accounts for the Texas Grant Management Standards (TxGMS), previously the Uniform Grant Management Standards, to reflect the implementation of Senate Bill 2046, and to address changes related to the evaluation and process related to certain 4% Housing Tax Credit Applications approved by the Board in April, 2021;

**WHEREAS**, such revisions are being made through the repeal of the current rule and a simultaneous new rule to be adopted in its place;

**WHEREAS**, such rulemaking was published in the *Texas Register* for public comment from September 17, 2021, through October 18, 2021, and no comment was received; and

**WHEREAS**, this item is now being returned to the Board for final adoption with no changes;

**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 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 any requested revisions to the preambles.

**BACKGROUND**

10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review and Advisory Committee, has been identified by staff as needing revisions in several sections as described below:

- In multiple locations, reflecting changes put in place by the Comptroller of Public Accounts for the Texas Grant Management Standards (TxGMS), previously the Uniform Grant Management Standards;
- In §1.301, to reflect minor edits to implement Senate Bill 2046, which requires that compliance reports provided to the Board may not include any instance of noncompliance associated with a project if the applicant has submitted documentation demonstrating that the responsibility for project compliance was delegated to another participant in the project. TDHCA's rule already provided for this, but wording is being revised to more closely mirror the bill; and
- In §1.301, to reflect policy changes for compliance recommendations as it relates to the evaluation and processing of certain 4% Housing Tax Credit Applications.

**Preamble, including required analysis, for adoption of the repeal of 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review and Advisory Committee, §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 Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review and Advisory Committee, §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 repeal is to clarify requirements relating to recommendations from Compliance on certain awards, to implement Senate Bill 2046, and to implement changes related to the Texas Grant Management Standards (previously Uniform Grant Management Standards).

Tex. Gov't Code §2001.0045(b) does not apply to the rule being adopted 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.**

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to changes to existing guidance for program subrecipients.
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 workload to a degree that eliminates any existing employee positions.
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 they are being replaced by new rule simultaneously to provide for revisions.
6. The repeal will not expand, limit, or repeal an existing regulation.
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 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 repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.



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

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 rules as to their possible effects on local economies and has determined that for the first five years the repeal will 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.

Tex. 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 rules pertain to all Subrecipients throughout the state, regardless of location, there are no "probable" effects of the revised rules on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has also determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal 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 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 COMMENT. The public comment period was held from September 17, 2021, to October 18, 2021, to receive input on the proposed repealed chapter. No comments on the repeal were received.

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 repeal affects 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)

**Preamble, including required analysis, for adoption of new 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review and Advisory Committee, §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 Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review and Advisory Committee, §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 rule is to clarify requirements relating to recommendations from Compliance on certain awards, to implement Senate Bill 2046, and to implement changes related to the Texas Grant Management Standards (previously Uniform Grant Management Standards).

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.**

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new sections would be in effect:

1. The new sections do not create or eliminate a government program but relate to changes to existing regulations applicable to Department subrecipients.
2. The 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 new sections do not require additional future legislative appropriations.
4. The 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 new sections are not creating a new regulation, except that they are replacing sections being repealed simultaneously to provide for revisions.
6. The new sections will not expand, limit, or repeal an existing regulation.
7. The new sections will not increase or decrease the number of individuals subject to the rule's applicability.
8. The new sections 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.**The Department, has evaluated the

new sections and determined that the actions 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 new sections do 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 new sections as to their possible effects on local economies and has determined that for the first five years the new sections will 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 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 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.

SUMMARY OF PUBLIC COMMENT. The public comment period was held from September 17, 2021, to October 18, 2021, to receive input on the proposed new sections. No comment was received.

STATUTORY AUTHORITY. The new sections are 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.

## **10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review and Advisory Committee**

### **§1.301. Definitions and 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 the Department to comply with Tex. Gov't Code §§2306.057, and 2306.6713 which require 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), Uniform Grant Management Standards (UGMS), and Texas Grant Management Standards (TxGMS), where applicable.

(b) Definitions. The following definitions apply only as used in this 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.

(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, an onsite or desk file monitoring review, an Affirmative Marketing Plan review, or a Written Policies and Procedures Review. UPCS inspections include inspections completed by Department staff, Department contractors and inspectors from the Real Estate Assessment Center through federal alignment efforts.

(2) 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 §11.1 of this Title (relating to General items relating to Pre-Application, Definitions, Threshold Requirements and Competitive Scoring). For Applications for Multifamily Direct Grants/Loans and 811 PRA, or for Ownership Transfers of Multifamily Properties containing Multifamily Direct Grants/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 and 2 CFR Part 2424.

(3) Applicant--In addition to the definition of applicant in §11.1 of this Title, in this Subchapter, the term applicant includes Persons requesting approval to acquire a Department monitored Development.

(4) Combined Portfolio--Actively Monitored 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) Corrective Action Period--The timeframe during which an Owner may correct an Event of Noncompliance, as permitted in §10.602 or §10.803 of this Title (relating to Notice to Owners and Corrective Action Periods and Compliance and Events of Noncompliance, respectively), including any permitted extension or deficiency period.

(6) Events of Noncompliance--Any event for which an Actively Monitored Development may be found to be in noncompliance for monitoring purposes as further provided for in §10.803 of this Title or in the table provided at §10.625 of this Title (relating to Events of Noncompliance).

(7) 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) Person--"Person" is as defined in 10 TAC Chapter 11 (relating Qualified Allocation Plan (QAP)). For Applications for Multifamily Direct Grants/Loans and 811 PRA, or for Ownership Transfers of Multifamily Properties containing Multifamily Direct Grants/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 and includes Principal as required by 2 CFR Part 180 and 2 CFR Part 2424.

(9) Single Audit--As used in this rule, the term relates specifically to an audit required by 2 CFR §200.501 or the Texas Single Audit Circular.

(c) Items Not Considered. When conducting a previous participation review the items in Paragraphs (1) through (11) of this subsection will not be taken into consideration:

(1) Events of Noncompliance, Findings, Concerns, and Deficiencies (as described in, 10 TAC §6.2, 10 TAC §7.2, 10 TAC §10.625, 10 TAC §10.803 and 10 TAC §20.3) that were corrected over three years from the date the Event is closed;

(2) Events of Noncompliance with an "out of compliance date" prior to the Applicant'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 period of Control if the event(s) is currently uncorrected and the Applicant has had Control for less than one year, 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 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 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;

(9) 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 (e)(2)(C) and (e)(3)(C) of this Section;

(10) Events of Noncompliance precluded from consideration by Tex. Gov't Code §2306.6719(e); and

(11) Except for Applications for Multifamily Direct Grants/Loans and 811 PRA, or for Ownership Transfers of Multifamily Properties containing Multifamily Direct Grants/Loans or 811 PRA, Events of Noncompliance associated with a Development that has submitted documentation, using the appropriate Department form, that the responsibility for the Development's compliance has been delegated to another participant in the project (defined as a member of the Development Team), and 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 may require additional information to support the Control Form including but not limited to partnership agreements or other legal documents.

(d) Applicant Process. Persons affiliated with an Application or an Ownership Transfer 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. For an Ownership Transfer request, a recommendation will be delayed until the required forms or responsive information is provided.

(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.

(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 totals at least three but is less than 50% of the number of Actively Monitored Developments 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 Actively Monitored Developments in the Combined Portfolio. Corrective action uploaded to the Department's Compliance Monitoring and Tracking System (CMTS) or submitted during the seven day period referenced in Subsection (f) of this Section 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 to a Monitoring Event; however, the number of times is less than 25% of the number of Actively Monitoring Developments in the Combined Portfolio; or

(D) The Applicant is required to have a Single Audit and a relevant issue was identified in the Single Audit (e.g. Notes to the Financial Statements), or the required Single Audit is past due.

(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 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 in the Combined Portfolio. Corrective action uploaded to CMTS or submitted during the seven day period referenced in Subsection (f) of this Section 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 to a Monitoring Event and the number of times is equal to or greater than 25% of the number of Actively Monitored Developments in the Combined Portfolio;

(D) Any Development Controlled by the Applicant has been the subject of an 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 Controlled by the Applicant or that was Controlled by the Applicant at the time the payment was due 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 provided evidence that the Owner has maintained required insurance on any collateral for any loan held by the Department related to any Development Controlled by the Applicant;

(H) 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 related to any Development Controlled by the Applicant;

(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. The Compliance Division will notify Applicants of their compliance status from the categories identified in Paragraphs (1) to (4) of this Subsection.

(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 (relating to Executive Award and Review Advisory Committee (EARAC))) such conditions have not been violated, and no new Events of Noncompliance 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. For 4% Housing Tax Credit Applications (without other Department resources), where it has been determined by staff that the Determination Notice can be issued administratively, and for which the Board previously approved a set of conditions associated with a prior Application of the Applicant's, and those same conditions are to be applied to the new 4% Application by Program or Compliance, or if an Application only has underwriting conditions, then the new 4% Application does not need to be approved by EARAC and is not required to be presented to the Board.

(2) Category 1. The compliance history of Category 1 applications will be deemed acceptable (for Compliance purposes only) without further review or discussion.

(3) Category 2 and Category 3. Category 2 and 3 Applicants will be informed by the Compliance Division that the Application is 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.

(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.

(g) Compliance Recommendation to EARAC for Awards.

(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.

(4) In the case of 4% Housing Tax Credit Applications where it has been determined by staff that the Determination Notice can be issued administratively, Category 2 and 3 applications being approved with



conditions that are specifically listed in §1.303 of this Subchapter and that have been previously approved by the Board for the Applicant, do not require approval of EARAC or the Board unless the Applicant is requesting to Dispute the Compliance Recommendation.

(h) Compliance Recommendation for Ownership Transfers. 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).

**§1.302. Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter.**

(a) Purpose and applicability. This Section applies to program awards not covered by §1.301 of this Subchapter (relating to Previous Participation Reviews for Multifamily Awards and Ownership Transfers). 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 Subchapter 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. 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 the Texas Single Audit Act.

(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 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 only required by the State Single Audit Act and not by a federal requirement, a copy of the State Single Audit must be submitted to the Department;

(5) 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) 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 Applicant will be notified of 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, 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) 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) For CSBG funds required to be distributed to Eligible Entities by formula, the recommendation of the Compliance Division will only take into consideration Subsection (i) of this Section.

(l) Previous Participation reviews will not be conducted for Contract Amendments that staff is authorized to approve, although federal and state requirements will still be affirmed, including but not limited to Single Audit, debarment and suspension, litigation disclosures, and §1.21 of this Chapter (relating to Action by the Department if Outstanding Balances Exist).

### **§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), UGMS, and TxGMS, 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 email to make recommendations on awards, discuss deficiencies needed to make recommendations, discuss Disputes, and address 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 has not identified a rule or statutory-based impediment 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 conditions. 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 will be notified and informed of their right to dispute the negative EARAC recommendation as described in Subsection (g) of this Section, regarding EARAC Disputes.

(5) Applications for 4% credits that do not include other resources from TDHCA and that are only being issued a Determination Notice are not considered awards for purposes of this rule and do not require approval by EARAC prior to issuance of such Notice, even if being presented to the Board in relation to public comment or possible requests for waivers.

(d) Conditions to an award may be placed on a single Development, a Combined Portfolio, or a portion of a Combined Portfolio 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 Developments, Persons or dates for meeting conditions. Category 2 or Category 3 Applications may be awarded with the imposition of one or more of the conditions listed in Subsection (e) of this Section.

(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 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 (or other Department required system), 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 Paragraph (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) 2012 Supportive Services Webinar Video;

(iii) Income Eligibility Presentation Video;

(iv) 2013 Annual Owner's Compliance Report (AOCR) Webinar Video;

(v) Most current Tenant Selection Criteria Presentation;

(vi) Most current Affirmative Marketing Requirements Presentation;

(vii) 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 provide all documentation relating to 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 §10.404 of this Title (relating to Replacement Reserves).

(19) In the case of a Development being funded with direct Grant funds (where an ongoing compliance agreement is a requirement) or 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 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 debarment.

(g) Dispute of EARAC Recommendations or Compliance Recommendations for 4% Applications Eligible for Administrative Approval.

(1) 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 Compliance (as applicable) may be presented to the Board without further EARAC or Compliance 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 Compliance; or

(C) A negative recommendation by EARAC or Compliance.

(3) Prior to the Board meeting at which the EARAC recommendation is scheduled to be made, or within seven days of the notification of Compliance Conditions for 4% Application Eligible for Administrative Approval an Applicant or potential Subrecipient may submit to the Department (to the attention of the Chair of EARAC or Compliance staff), their Dispute detailing:

(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 or Compliance'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 or Compliance.

(4) An Applicant must file a written Dispute not later than the seventh calendar day after notice recommendation of denial or award with conditions has been provided. The Dispute must include any materials that the Applicant wishes EARAC and/or the Board to consider. An Applicant may request to meet with EARAC and EARAC is not obligated to meet with the Applicant.

(5) EARAC is not required to consider a Dispute prior to making its recommendation to the Board.

(6) 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 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 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 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.

(h) Board Discretion. Subject to limitations in federal statute or regulation or in UGMS, or in TxGMS, 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.

1e



**BOARD ACTION REQUEST**

**PROGRAMS DIVISION**

**NOVEMBER 10, 2021**

Presentation, discussion, and possible action on an order adopting the repeal, and new rule, for 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds; §1.401 Definitions; §1.402 Cost Principles and Administrative Requirements; §1.403 Single Audit Requirements; §1.404 Purchase and Procurement Standards; §1.407 Inventory Report; and §1.411 Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code and an order directing their adoption for submission to the *Texas Register*

**RECOMMENDED ACTION**

**WHEREAS**, the current rule relating to uniform guidance for recipients of federal and state funds from the Department, at 10 TAC Chapter 1, Subchapter D, is in need of revisions, and such revisions are being proposed through the repeal of the current rule and a simultaneous new rule to be proposed in its place;

**WHEREAS**, such rulemaking was published in the *Texas Register* for public comment from September 17, 2021, through October 18, 2021, and no comment was received; and

**WHEREAS**, this item is now being returned to the Board for final adoption with no changes except for non-substantive requirements of the Texas Register;

**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 actions herein in the form presented to this meeting, to be submitted for adoption to the *Texas Register*, 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**

Staff has identified 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, as needing revisions in several sections as described below:

- In multiple locations, updating to reflect revisions and a title change to Texas' Grant Management Standards made by the Texas Comptroller for Public Accounts;
- §1.401 Definitions: makes minor changes to several definitions;
- §1.402 Cost Principles and Administrative Requirements: revises to allow the Department to offer administrators of State Housing Trust Fund programs the ability to receive a fixed amount of administration in accordance with existing rules governing administration of these programs;

- §1.403 Single Audit Requirements: clarifies to address changes made to the Texas' Grant Management Standards;
- §1.404 Purchase and Procurement Standards: clarifies to address changes made to the Texas' Grant Management Standards;
- §1.407 Inventory Report: clarifies to address changes made to the Texas' Grant Management Standards; and
- §1.411 Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code: revisions to the process that provides a client the ability to dispute a denial of assistance.

**Attachment 1: Preamble, including required analysis, for repeal of 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.401 Definitions, §1.402 Cost Principles and Administrative Requirements, §1.403 Single Audit Requirements, §1.404 Purchase and Procurement Standards, §1.407 Inventory Report and §1.411 Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code**

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.401 Definitions; §1.402 Cost Principles and Administrative Requirements; §1.403 Single Audit Requirements; §1.404 Purchase and Procurement Standards; §1.407 Inventory Report; and §1.411 Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code.

The purpose of the repeal is to clarify requirements for participants of the Department's program; to implement changes related to Texas' Grant Management Standards; and to permit subrecipients of the certain programs to receive a reasonable fee for their administration of certain programs under the State Housing Trust Fund rather than reimbursement based on documentation of incurred administrative expenses.

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.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to changes to existing guidance for program subrecipients. These amendments implement changes related to Texas' Grant Management Standards and provide regulatory authority to permit subrecipients of the certain programs to receive a reasonable fee for their administration of certain programs under the State Housing Trust Fund rather than reimbursement based on documentation of incurred administrative expenses.
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 eliminates any existing employee positions.
3. The repeal does not require additional future legislative appropriations.
4. The 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 repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The repeal will not expand, limit, or repeal an existing regulation.
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 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 repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities. The Department has evaluated the rules and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

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 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. Tex. 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 rules pertain to all Subrecipients throughout the state, regardless of location, there are no "probable" effects of the revised rules 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 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 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 COMMENT. The public comment period was held from September 17, 2021, to October 18, 2021, to receive input on the proposed repealed chapter. No comments on the repeal were received.

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.

§1.401 Definitions

§1.402 Cost Principles and Administrative Requirements

§1.403 Single Audit Requirements

§1.404 Purchase and Procurement Standards

§1.407 Inventory Report

§1.411 Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code

**Attachment 2: Preamble, including required analysis, for adoption of new 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.401 Definitions; §1.402 Cost Principles and Administrative Requirements; §1.403 Single Audit Requirements; §1.404 Purchase and Procurement Standards; §1.407 Inventory Report; and §1.411 Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code**

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, which includes new §1.401 Definitions; §1.402 Cost Principles and Administrative Requirements; §1.403 Single Audit Requirements; §1.404 Purchase and Procurement Standards; §1.407 Inventory Report; and §1.411 Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code.

The purpose of the new sections is to clarify requirements for participants of the Department's program; to implement changes related to Texas' Grant Management Standards; and to permit subrecipients of the certain programs to receive a reasonable fee for their administration of certain programs under the State Housing Trust Fund rather than reimbursement based on documentation of incurred administrative expenses.

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.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new sections would be in effect:

1. The new sections do not create or eliminate a government program but relates to changes to existing regulations applicable to Department subrecipients.
2. The 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 new sections do not require additional future legislative appropriations.
4. The 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 new sections are not creating a new regulation, except that they are replacing sections being repealed simultaneously to provide for revisions.
6. The new sections will not expand, limit, or repeal an existing regulation.
7. The new sections will not increase or decrease the number of individuals subject to the rule's applicability.
8. The new sections 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.

The Department has evaluated the new sections and determined that the actions will not create an economic effect on small or micro-businesses or rural communities. The Department has evaluated the rules and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new sections do 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 new sections as to their possible effects on local economies and has determined that for the first five years the 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. Tex. 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 rules pertain to all Subrecipients throughout the state, regardless of location, there are no "probable" effects of the new rules 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 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 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.

SUMMARY OF PUBLIC COMMENT. The public comment period was held from September 17, 2021, to October 18, 2021, to receive input on the proposed new sections. No comment was received.

STATUTORY AUTHORITY. The new sections are made 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.

## 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds

### §1.401. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Capitalized words used 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 law.

(1) Affiliate--Shall have the meaning assigned by the specific program or programs described in this Part-Title.

(2) Department--The Texas Department of Housing and Community Affairs.

(3) Equipment--tangible personal property having a useful life of more than one year or a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by entity for financial statement purposes, or \$5,000.

(4) Executive Award Review and Advisory Committee (EARAC)--the Committee established in Tex. Gov't Code chapter 2306, that recommends the award or allocation of any Department funds or resources.

(5) Professional services--for a unit of government is as defined by state law. For Private Nonprofit Organizations it means services:

(A) within the scope of the practice, as defined by state law, of:

- (i) accounting;
- (ii) architecture;
- (iii) landscape architecture;
- (iv) land surveying;
- (v) medicine;
- (vi) optometry;
- (vii) professional engineering;
- (viii) real estate appraising;
- (ix) professional nursing; or
- (x) legal services; or

(B) provided in connection with the professional employment or practice of a person who is licensed or registered as:

- (i) a certified public accountant;
- (ii) an architect;
- (iii) a landscape architect;
- (iv) a land surveyor;
- (v) a physician, including a surgeon;
- (vi) an optometrist;
- (vii) a professional engineer;
- (viii) a state certified or state licensed real estate appraiser;
- (ix) attorney; or
- (x) a registered nurse.

(6) Single Audit--The audit required by Office of Management and Budget (OMB), 2 CFR Part 200, Subpart F, or Tex. Gov't Code, chapter 783, Uniform Grant and Contract Management, as reflected in an audit report.

(7) Single Audit Certification Form--A form that lists the source(s) and amount(s) of Federal funds and/or State funds expended by the Subrecipient during their fiscal year along with the outstanding balance of

any loans made with federal or state funds if there are continuing compliance requirements other than repayment of the loan.

(8) Subrecipient--Includes an entity receiving or applying for federal or state funds from the Department under Chapters 6, 7, or 20, or as identified by Contract or in this subchapter. Except as otherwise noted in this subchapter or by Contract, the definition does not include Applicants/Owners who have applied for and/or received funds under a program administered by the Multifamily Finance Division, except for CHDO Operating funds, a grant made to a unit of government or nonprofit organization, or Affiliate, or TCAP-RF grants or loans when made to a unit of government or nonprofit organization or Affiliate. A Subrecipient may also be referred to as Administrator.

(9) Supplies--means tangible personal property other than "Equipment" in this section.

(10) Texas Grant Management Standards (TxGMS)--The standardized set of financial management procedures and definitions established by Tex. Gov't Code, chapter 783 regarding Uniform Grant and Contract Management to promote the efficient use of public funds by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. State agencies are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state. This includes all Public Organizations including public housing and housing finance agencies. In addition, Tex. Gov't Code Chapter 2105, regarding Administration of Block Grants, subjects subrecipients of federal block grants (as defined therein) to TxGMS.

(11) Uniform Grant Management Standards (UGMS)--the standardized set of financial management procedures used by the Department in Contracts that began before January 1, 2022.

#### **§1.402. Cost Principles and Administrative Requirements.**

(a) Subrecipients shall comply with the cost principles and uniform administrative requirements set forth as applicable in TxGMS or UGMS provided, however, that all references therein to "local government" shall be construed to mean Subrecipient. A Subrecipient that is administering a housing Program under Chapters 24 or 26 of this ~~Part~~Title, may receive a fixed amount of administrative funds. Private Nonprofit Subrecipients of Emergency Solutions Grant (ESG), HOME Investments Partnership Program (HOME), Neighborhood Stabilization Program (NSP), National Housing Trust Fund (NHTF), Low Income Household Water and Wastewater Program (LIHWAP) and Department of Energy Weatherization Assistance Program (DOE WAP) do not have to comply with TxGMS unless otherwise required by Notice of Funding Availability (NOFA) or Contract. For federal funds, Subrecipients will also follow 2 CFR Part 200, as interpreted by the federal funding agency.

(b) In order to maintain adequate separation of duties, the Subrecipient shall ensure that no individual has the ability to perform more than one of the functions described in paragraphs (1) - (5) that might result in a release of funds without appropriate controls:

- (1) Requisition authorization;
- (2) Encumbrance into software;
- (3) Check creation and/or automated payment disbursement;
- (4) Authorized signature/electronic signature; and
- (5) Distribution of paper check.

(c) For Subrecipients with fewer than five paid employees, demonstration of sufficient controls to similarly satisfy the separation of duties required by subsection (b) of this section, must be provided at the time that funds are applied for.



(d) Subrecipient will sign a Contract with the applicable Assurances in Appendix 6 of TxGMS as required by and in the form and substance acceptable to the Department's Legal Division.

### **§1.403. Single Audit Requirements.**

(a) For this section, the word Subrecipient also includes Multifamily Development Owners who have applied for or received Direct Loan Funds, grants or 811 PRA funds from the Department who are or have an Affiliate that is required to submit a Single Audit, i.e. units of government, nonprofit organizations.

(b) Procurement of a Single Auditor. A Subrecipient or Affiliate must procure their single auditor in the following manner unless subject to a different requirement in the Local Government Code:

(1) Competitive Proposal procedures whereby competitors' qualifications are evaluated and a contract awarded to the most qualified competitor. Proposals should be advertised broadly, which may include going outside the entity's service area, and solicited from an adequate number (usually two or more) of qualified sources. Procurements must be conducted in a manner that prohibits the use of in-state or local geographical preferences in the evaluation of bids or proposals;

(2) A Subrecipient may not use the sealed bid method for procurement of the Single Auditor. There is no requirement that the selected audit firm be geographically located near the Subrecipient. If a Subrecipient does not receive proposals from firms with appropriate experience or responses with a price that is not reasonable compared to the cost price analysis, the submissions must be rejected and procurement must be re-performed.

(c) A Subrecipient or Affiliate must confirm that it is contracting with an audit firm that is properly licensed to perform the Single Audit and is not on a limited scope status or under any other sanction, reprimand or violation with the Texas State Board of Public Accountancy. The Subrecipient must ensure that the Single Audit is performed in accordance with the limitations on the auditor's license.

(d) A Subrecipient is required to submit a Single Audit Certification form within two (2) months after the end of its fiscal year indicating the amount they expended in Federal and State funds during the fiscal year and the outstanding balance of any loans made with federal funds if there are continuing compliance requirements other than repayment of the loan.

(e) Subrecipients that expend \$750,000 or more in federal and/or state awards or have an outstanding loan balance associated with a federal or state resource of \$750,000 or more with continuing compliance requirements, or a combination thereof must have a Single Audit or program-specific audit conducted. If the Subrecipient's Single Audit is required by 2 CFR 200, subpart F, the report must be submitted to the Federal Audit Clearinghouse the earlier of 30 days after receipt of the auditor's report or nine (9) months after the end of its respective fiscal year. If a Single Audit is required but not under 2 CFR Part 200, subpart F, the report must be submitted to the Department the earlier of 30 days after receipt of the auditor's report or nine months after the end of its respective fiscal year.

(f) Subrecipients are required to submit a notification to the Department within five business days of submission to the Federal Audit Clearinghouse. Along with the notice, the Subrecipient must indicate if

the auditor issued a management letter. If a management letter was issued by the auditor, a copy must be sent to the Department.

(g) The Department will review the Single Audit and issue a management decision letter for audit findings pertaining to the Federal award provided to the Subrecipient from the Department. If the Single Audit results in disallowed costs, those amounts must be repaid or an acceptable repayment plan must be entered into with the Department in accordance with 10 TAC §1.21, Action by Department if Outstanding Balances Exist.

(h) In evaluating a Single Audit, the Department will consider both audit findings and management responses in its review. The Department will notify Subrecipients and Affiliates (if applicable) of any Deficiencies or Findings from within the Single Audit for which the Department requires additional information or clarification and will provide a deadline by which that resolution must occur.

(i) All findings identified in the most recent Single Audit will be reported to EARAC through the Previous Participation review process described in Subchapter C of this Chapter. The Subrecipient may submit written comments for consideration within five business days of the Department's management decision letter.

(j) If the Subrecipient disagrees with the auditors finding(s), and the issue is related to administration of one of the Department's programs, an appeal process is available to provide an opportunity for the auditee to explain its disagreement to the Department. This is not an appeal of audit findings themselves. The Subrecipient may submit a letter of appeal and documentation to support the appeal. The Department will take the documentation and written appeal into consideration prior to issuing a management decision letter. If the Subrecipient does not disagree with the auditor's finding, no appeal to the Department is available.

(k) In accordance with 2 CFR Part 200 and the State of Texas Single Audit Circular §.225, with the exception of nondiscretionary CSBG funds except as otherwise required by federal laws or regulations, the Department may suspend and cease payments under all active Contracts, or refrain from executing a new Contract for any Board awarded contracts, until the Single Audit is received. In addition, the Department may elect not to renew an entity in accordance with Section 1.411 of this Chapter (relating to Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code), or not amend or enter into a new Contract with a Subrecipient until receipt of the required Single Audit Certification form or the submission requirements detailed in subparagraph (e) of this section.

(l) In accordance with Subchapter C of this Chapter (relating to Previous Participation Reviews), if a Subrecipient applies for funding or an award from the Department, findings noted in the Single Audit and the failure to timely submit a Single Audit Certification Form or Single Audit will be reported to EARAC.

#### **§1.404. Purchase and Procurement Standards.**

(a) The procurement of all goods and services shall be conducted, to the maximum extent practical, in a manner providing full and open competition consistent with the standards of 2 CFR Part 200, UGMS, and TxGMS, as applicable.

(b) Subrecipients shall establish, and require its subrecipients/Subcontractors (as applicable by program regulations) to establish, written procurement procedures that when followed, result in procurements that comply with federal, state and local standards, and grant award contracts. Procedures must:

(1) include a cost or price analysis that provides for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Where appropriate, analyzing lease versus purchase alternatives, performing the proposed service in-house, and performing any other appropriate analysis to determine the most economical approach;

(2) require that solicitations for goods and services provide for a clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition, but must contain requirements that the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals. A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards. The specific features of "brand name or equal value" that bidders are required to meet must be listed in the solicitation; and

(3) include a method for conducting technical evaluations of the proposals received and for selecting awardees.

(c) Documentation of procurement processes, to include but not be limited to the items in paragraphs (1) to (9) of this subsection, must be maintained by the Subrecipient in accordance with the record retention requirements of the applicable program:

(1) rationale for the type of procurement,

(2) cost or price analysis,

(3) procurement package,

(4) advertising,

(5) responses,

(6) selection process,

(7) contractor selection or rejection,

(8) certification of conflict of interest requirements being satisfied, and

(9) evidence that the awardee is not an excluded entity in the System for Award Management (SAM).

(d) In accordance with 34 Texas Administrative Code, Part 1, Chapter 20, Subchapter D, Division 1, each Subrecipient shall make a good faith effort to utilize the state's Historically Underutilized Business Program in contracts for construction, services (including consulting and Professional Services) and commodities purchases.

(e) The State of Texas conducts procurement for many materials, goods, and appliances. Use of the State of Texas Co-Op Purchasing Program does not satisfy the requirements of 2 CFR Part 200. For more detail about how to purchase from the state contract, please contact: State of Texas Co-Op Purchasing Program, Texas Comptroller of Public Accounts. If Subrecipients choose to use the Cooperative Purchasing Program, documentation of annual fee payment is required.

(f) All vehicles considered for purchase with state or federal funds must be pre-approved by the Department via written correspondence from the Department. Procurement procedures must include

provisions for free and open competition. Any vehicle purchased without approval may result in disallowed costs.

(g) For procurement transactions not subject to UGMS or TxGMS, the Department has adopted a \$10,000 micropurchase and \$250,000 simplified acquisition threshold. For procurement transactions subject to UGMS or TxGMS, Subrecipient must follow a \$3,000 micropurchase threshold and a \$250,000 Texas Acquisition Threshold (which is tied to the federal simplified acquisition threshold). If the simplified acquisition threshold changes, as a result of 2 CFR §200.88, or if it is temporarily raised because of a federal disaster declaration, the Department will publish the new amount on its website.

#### **§1.407. Inventory Report.**

(a) The Department requires the submission of an inventory report for all Contracts to be submitted to the Department, no later than 45 days after the end of the Contract Term, or a more frequent period as reflected in the Contract. Real Property and Equipment must be inventoried and reported on the Department's required form. The form and instructions are found on the Department's website.

(b) Real property and Equipment purchased with funds under a Contract with the Department must be inventoried and reported to the Department during the Contract Term.

(c) Aggregate Supplies of over \$5,000 must be reported to the Department at the end of the Contract Term using federal form SF-428, which is a standard form to collect information related to tangible personal property or other form required by the federal fund source.

#### **§1.411. Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code.**

(a) Purpose. The purpose of this section is to inform compliance with Tex. Gov't Code Ch. 2105, Administration of Block Grants.

(b) Applicability. This rule applies to all funds administered by the Department that are subject to Tex. Gov't Code Ch. 2105. The activities administered by the Department that are currently subject to Tex. Gov't Code Chapter 2105 are those funded by the Community Services Block Grant (CSBG) funds that are required to be distributed to Eligible Entities, the Low Income Home Energy Assistance Program (LIHEAP) funds that are distributed to Subrecipients, and the funds that the Department administers and distributes to Subrecipients from the annual allocation from the Community Development Block Grant (CDBG) Program. If additional block grant funds that would be subject to Tex. Gov't Code Ch. 2105 by its terms are assigned to the Department, they too would be subject to this rule. Capitalized terms used in this section are defined in the applicable Rules or chapters of this [Part-Title](#) or as assigned by federal or state law.

(c) Hearings required to be held by Subrecipients. Consistent with Tex. Gov't Code §2105.058, Subrecipients that receive more than \$5,000 from one or more of the programs noted in subsection (b) of this section must annually submit evidence to the Department that a public meeting or hearing was held solely to seek public comment on the needs or uses of block grant funds received by the Subrecipient. This meeting or hearing may be held in conjunction with another meeting or hearing if the

meeting or hearing is clearly noted as being for the consideration of the applicable block grant funds under this subsection.

(d) Complaints. The Department will notify a Subrecipient of any complaint received concerning the Subrecipient services. As authorized by Tex. Gov't Code §2105.104, the Department shall consider the history of complaints, for the preceding three year period, regarding a Subrecipient in determining whether to award, increase, or renew a Contract with a Subrecipient. The Department will not consider complaints in determining whether to award, increase, or renew a Contract with a Subrecipient that the Department has determined in accordance with 10 TAC §1.2 (relating to Department Complaint System to the Department) it has no authority to resolve, or that are not corroborated.

(e) Requests for Reconsideration. Subrecipient must establish written procedures for the handling of denials of service when the denial involves a household inquiring or applying for services/assistance. This procedure must include, at a minimum:

(1) A written denial of assistance notice being provided to the affected person within 10 calendar days of the determination. Such a determination is defined as a denial of assistance, but does not include a level of assistance lower than the possible program limits or a reduction in assistance, as long as such process is in accordance with the written policy. This notification shall include written notice of the right of a hearing or secondary review of income documentation, as applicable, the timeframe the affected person has to respond to the decision, and specific reasons for the denial of assistance. The Subrecipient may adopt a policy limiting the time period during which a request for a hearing will be accepted and the format for the request, but the Subrecipient must provide the affected person with at least 10 calendar days to request a hearing or secondary review.

(2) If requested by the affected person, Subrecipient shall hold a private, recorded hearing (unless otherwise required by law) either virtually, by phone, or in person in an accessible location within 15 calendar days after the Subrecipient received the hearing request from the affected person and must provide the affected person notice in writing of the time/location of the hearing at least seven calendar days before the hearing.

(3) The hearing shall allow time for a statement by the Subrecipient's staff with knowledge of the case.

(4) The hearing shall allow the affected person at least equal time, if requested, to present relevant information contesting the decision.

(5) If a denial is based solely on income eligibility, the provisions described in paragraphs (2) - (4) of this subsection do not apply, however the affected person may request a secondary review of income eligibility based on initial documentation provided at the time of the original request for assistance. Such a secondary review must include an analysis of the initial calculation based on the documentation received with the initial request for services and will be performed by an individual other than the person who performed the initial determination. If the secondary review upholds the denial based on income eligibility documents provided at the initial request, the affected person must be notified in writing.

(6) If the affected person is not satisfied with the Subrecipient's determination at a hearing or as concluded based on a secondary income eligibility review, the affected person may request a subsequent review of the decision by the Department if the affected person requests a further review in writing within 10 calendar days of notification of an adverse decision. If applicable, Subrecipient's should hold funds aside in the amount needed to provide the services requested by the affected person until the Department completes its decision.

(7) Affected persons who allege that the Subrecipient has denied all or part of a service or benefit in a manner that is unjust, violates discrimination laws, or without reasonable basis in law or fact, may request a contested hearing under Tex. Gov't Code, Chapter 2001.

(8) The hearing under subsection (e)(7) of this section shall be conducted by the State Office of Administrative Hearings on behalf of the Department in the locality served by the Subrecipient, for which the procedures are further described in §1.13 of this ~~part~~-Title (relating to Contested Case Hearing Procedures).

(f) Nonrenewal or Reduction of Block Grant Funds to a Specific Subrecipient.

(1) As required by Tex. Gov't Code §2105.202(a), this section defines "good cause" for nonrenewal of a Subrecipient contract or a reduction of funding. Good cause may include any one or more of the following:

(A) Consistent and repeated corroborated complaints about a Subrecipient's failure to follow substantive program requirements, as provided for in subsection (d) of this section;

(B) Lack of compliance with 10 TAC §1.403 (relating to Single Audit Requirements);

(C) Statute, rule, or contract violations that have not been timely corrected and have prompted the Department to initiate proceedings under 10 TAC Chapter 2, (relating to Enforcement), and have resulted in a final order confirming such violation(s);

(D) Disallowed costs in excess of \$10,000 that have not been timely repaid;

(E) Failure by Subrecipient to select an option as provided for in §1.410 of this ~~Part~~-Title (relating to Determination of Alien Status for Program Beneficiaries) by the deadline;

(F) The ineffective rendition of services to clients, which may include a Subrecipient's failure to perform on a Contract, and which may include materially failing to expend funds;

(G) A failure to address an identified material lack of cost efficiency of programs;

(H) A material failure of the services of the Subrecipient to meet the needs of groups or classes of individuals who are poor or underprivileged or have a disability;

(I) Providing services that are adequately addressed by other programs in that area;

(J) The extent to which clients and program recipients are involved in the Subrecipient's decision making;

(K) Providing services in a manner that unlawfully discriminates on the basis of protected class status;

or

(L) Providing services outside of the designated geographic scope of the Subrecipient.

(2) Notification of Reduction, Termination, or Nonrenewal of a Contract and Opportunity for a Hearing. As required by Tex. Gov't Code §2105.203 and §2105.301, the Department will send a Subrecipient a written statement specifying the reason for the reduction, termination, or nonrenewal of funds no later than the 30th day before the date on which block grant funds are to be reduced, terminated, or not renewed, unless excepted for by paragraph (4) of this subsection. After receipt of such notice for reduction or nonrenewal, a Subrecipient may request an administrative hearing under Tex. Gov't Code Ch. 2001 if the Subrecipient is alleging that the reduction is not based on good cause as identified in subsection (f)(1) of this section or is without reasonable basis in fact or law. If a Subrecipient requests a hearing, the Department may, at its election, enter into an interim contract with either the Subrecipient or another provider for the services formerly provided by the provider while administrative or judicial proceedings are pending.

(3) Notification of Reduction of Block Grant funds for a Geographical Area. If required by Tex. Gov't Code §2105.251 and §2105.252, the Department will send a Subrecipient a written statement specifying

the reason for the reduction of funds no later than the 30th day before the date on which block grant funds are to be reduced.

(4) Exceptions. As authorized by Tex. Gov't Code §2105.201(b), the notification and hearing requirements for reduction or nonrenewal of funding provided for in paragraphs (2) and (3) of this subsection do not apply if a Subrecipient's block grant funding becomes subject to the Department's competitive bidding rules. The Department will require such competitive bidding for awarding block grant funding subject to Tex. Gov't Code Ch. 2105 for Subrecipients and in the Department's procuring of Subrecipients or contractors to administer or assist in administering such block grant funds, which includes the competitive release of Notices of Funding Availability and competitive Requests for Subrecipients or Providers. The criteria for evaluation of competitive responses shall be set forth in the applicable notices of funds availability, requests, or other procurement invitation document.

(5) Nothing in this section supersedes or is intended to conflict with the rights and responsibilities outlined in §2.203 of this ~~Part~~Title (relating to Termination and Reduction of Funding for CSBG Eligible Entities).

1f



**BOARD ACTION REQUEST**

**FAIR HOUSING, DATA MANAGEMENT AND REPORTING**

**NOVEMBER 10, 2021**

Presentation, discussion, and possible action on an order adopting amendments to 10 TAC, Chapter 10, Subchapter G, §10.801, Affirmative Marketing Requirements, 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**, the Department has promulgated rules at 10 TAC Chapter 10, Subchapter G, §10.801, that set forth requirements for Affirmative Marketing Plans and related activities for multifamily properties in the Department's portfolio;

**WHEREAS**, clarifications are needed in this rule to address the applicability of marketing to veterans, to provide a sample for the Fair Housing logo, and to clarify when marketing should begin;

**WHEREAS**, such rulemaking was published in the *Texas Register* for public comment from September 17, 2021, through October 18, 2021, and one comment was received, which is summarized and responded to in the attached preambles; and

**WHEREAS**, this item is now being returned to the Board for final adoption with changes;

**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 action herein in the form presented to this meeting, to be submitted for adoption to the *Texas Register*, 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 preamble.

## **BACKGROUND**

Multifamily properties in the Department's portfolio with five or more total units are required to affirmatively market their units to promote equal housing choice for prospective tenants, regardless of race, color, religion, sex, national origin, familial status, or disability. These properties must also develop and carry out an Affirmative Marketing Plan to provide for marketing strategies and documentation of outreach efforts to prospective applicants identified as "least likely to apply." In general, "least likely to apply" means that there is an identifiable presence of a specific demographic group (i.e. race, color, religion, sex, national origin, familial status, or disability) in a property's service area, but members of that group are not likely to apply for housing at the property in the absence of special marketing or outreach efforts.

In the review of Affirmative Marketing plans, staff has identified that clarification on the requirements of general marketing to veterans is needed. Outside of Affirmative Marketing requirements, Developments may have separate general requirements in their LURA to market units to veterans. However, the Affirmative Marketing requirement that a property market to those least likely to apply populations has been listed jointly with the general marketing requirements to veterans in many of the Department systems, causing confusion among Developments and Department staff. The proposed amendments seek to resolve any confusion between the two separate and distinct marketing requirements. As part of staff's effort to clarify this issue, efforts are also under way to clarify language in other documents and systems of the Department - such as in the property management system (CMTS) and in the Annual Owner's Compliance Report (AOCR).

Additionally, over the last year, staff has received questions about which logo is required to be used on affirmative marketing materials. Currently, the rule at 10 TAC §10.801(d)(2)(A) simply states that Developments must use the Fair Housing logo. This amendment proposes to add a sample image of the logo.

Finally, language has been revised to accurately reflect when a property must market prior to the building being ready for occupancy. The term "placed in service" is used by the Internal Revenue Service (IRS) and only applies to Housing Tax Credit properties, but not to other Multifamily Direct Loan (MFDL) funded properties in the TDCHA portfolio. This term has been removed from the rule at 10 TAC §10.801(g) and the replaced language mirrors language at 10 TAC §10.801(e).

**Attachment A: Preamble for adoption of amendments to 10 TAC Subchapter G, §10.801, Affirmative Marketing Requirements.**

The Texas Department of Housing and Community Affairs (the Department) adopts amendments to 10 TAC, Subchapter G, Affirmative Marketing Requirements and Written Policies and Procedures, §10.801, Affirmative Marketing Requirements. The purpose of the amendments is to provide clarification on marketing requirement to veterans, the timeframe when marketing must begin, and to provide a sample of the Fair Housing logo which is required on all affirmative marketing materials.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no changes to the rule generate costs to the properties in the Department's multifamily portfolio, 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.

Bobby Wilkinson, Executive Director, has determined that, for the first five years the amendments would be in effect:

1. The amendments do not create or eliminate a government program but more clearly describes the Fair Housing requirements relating to Affirmative Marketing to veterans for Multifamily properties in the Department's portfolio, the timeframe when marketing must begin, and provides a sample of the Fair Housing logo that is required on all affirmative marketing materials.
2. The amendments 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 amendments do not require additional future legislative appropriations.
4. The amendments will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The amendments are not creating a new regulation.
6. The amendments will not expand, limit, or repeal an existing regulation.
7. The amendments will not increase or decrease the number of individuals subject to the rule's applicability; and
8. The amendments 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. The Department, in drafting these amendments, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.053.

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

2. To the extent that multifamily properties in the Department's portfolio are considered small or micro-businesses, the economic impact of the rule on them is projected to be \$0 as the revisions being adopted are minor and add no costs to the property's operations. There are no rural communities subject to the rule as these properties are not owned directly by municipalities; therefore the economic impact of the rule on rural communities is projected to be \$0.

3. The Department has determined that because the amendments apply to existing multifamily developments, 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 amendments do 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 amendments have no economic effect on local employment because the rules relate only to a process which has already been in effect for existing multifamily properties in the Department's portfolio; 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 amendments are in effect, the public benefit anticipated as a result of the amendments will be a clarification of existing affirmative marketing requirements. There will not be economic costs to individuals required to comply with the amendment 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 amendments are in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments because this rule has already been in effect elsewhere in rule.

SUMMARY OF PUBLIC COMMENT. The public comment period was held from September 17, 2021, to October 18, 2021, to receive input on the proposed amendments. One comment was received from (1) Patricia Murphy; a summary of the comments, as well as the Department's reasoned response are noted below:

**§10.801(b), General (Commenter 1)**

COMMENT SUMMARY: While Commenter 1 agrees that marketing to Veterans does not constitute affirmative marketing, they felt that owners that combine the requirements to

perform outreach to Veterans and those least likely to apply should not be found in noncompliance.

STAFF RESPONSE: Staff concurs that technical assistance is one way to address this issue, but the rule also needs to have the plans follow federal regulations for affirmative marketing. A responsive revision has been made to the rule.

**§10.801(e)(2), Updating of Plan (Commenter 1)**

COMMENT SUMMARY: Commenter 1 recommends a change to this section to more closely align the Department's rules with the HUD 4350.3. The commenter cites Par. 4-12F of the HUD 4350.3 as the basis for this recommended change and provided suggested language for the revision.

STAFF RESPONSE: Staff concurs and a responsive revision has been made to the rule.

STATUTORY AUTHORITY. The proposed amendments are 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.

## §10.801 Affirmative Marketing Requirements

(a) Applicability. Compliance with this section is required for all Developments with five or more total units to further the objectives of Title VIII of the Civil Rights Act of 1968 and Executive Order 13166.

(b) General. A Development Owner with five or more total Units must affirmatively market the Units to promote equal housing choice for prospective tenants, regardless of race, color, religion, sex, national origin, familial status, or disability and must develop and carry out an Affirmative Fair Housing Marketing Plan (or Affirmative Marketing Plan) to provide for marketing strategies and documentation of outreach efforts to prospective applicants identified as "least likely to apply." To determine the "least likely to apply" populations, a Development Owner is encouraged to use Worksheet 1 of HUD Form 935.2A, but at a minimum the Owner must document that they have compared the demographic composition of the Development to the market area to determine the populations least likely to apply. All Affirmative Marketing Plans must provide for affirmative marketing to Persons with Disabilities. Although not related to Affirmative Marketing requirements in this section, some Developments may be required by their LURAs to market units specifically to veterans or other populations as part of their regular marketing activities. If a Development has included veterans in the Development's Affirmative Marketing Plan it will not be cited as noncompliance the first time the Development's Affirmative Marketing Plan is reviewed, but the Development will be directed to revise the Affirmative Marketing Plan to not include this subpopulation in the plan.

(c) Plan format. A Development Owner must prepare, have in its onsite records, and submit to the Department upon request, a written Affirmative Marketing Plan. Owners are encouraged to use any version of HUD Form 935.2A to meet Affirmative Marketing requirements. An Owner participating in a HUD funded program administered by the Department must use the version utilized by the program.

(d) Marketing and Outreach.

(1) The plan must include special outreach efforts to the "least likely to apply" populations through specific media, organizations, or community contacts that work with least likely to apply populations or work in areas where least likely to apply populations live. The outreach efforts identified in the Affirmative Marketing Plan must be performed by the Development at least once per calendar year.

(2) To the extent that advertisements and/or marketing materials are utilized for the Development, those materials must contain:



(A) The Fair Housing logo. Attached Graphic: (Sample logo) ;

(B) The contact information for the individual who can assist if reasonable accommodations

are needed in order to complete the application process; and

(C) Property contact information must be provided in both English and Spanish, and may be required to be provided in other languages in accordance with Limited English Proficiency Requirements.

(e) Timeframes.

(1) An Owner must begin its affirmative marketing efforts for each of the identified populations least likely to apply at least six months prior to the anticipated date the first building is to be available for occupancy.

(2) Once every five years, Owners must determine if there have been any changes to the “least likely to apply” populations by completing Worksheet 1 of HUD Form 935.2A or a written process with equivalent information. In addition, owners must determine if current advertising sources still exist, and if the outreach that has been performed is still the most applicable. If the Owner determines that the plan does not need to be updated, the backup used to complete Worksheet 1 or its equivalent must be dated and maintained and may be reviewed by Department staff during reviews of the Affirmative Marketing Plan. If there have been changes to the least likely to apply populations or if the community contacts and advertising outlets no longer exist, the plan must be updated. Developments funded by HUD or USDA must also update their plans in accordance with HUD or USDA requirements that apply. An Owner must update its Affirmative Marketing Plan and populations that are least likely to apply every five years from the effective date of the current plan or, for HUD-funded or USDA properties, as otherwise required by HUD or USDA.

(f) Recordkeeping. Owners must maintain records of each Affirmative Marketing Plan and specific outreach efforts completed for the greater of three years or the recordkeeping requirement identified in the LURA.

(g) Exception to Affirmative Marketing. If the Development has closed its waitlist, Affirmative Marketing is not required. Affirmative Marketing is required as long as the Owner is accepting applications, has an open waitlist, or is marketing prior to the building being ready for occupancy as required under subsection (e)(1) of this section.

## Brooke Boston

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**From:** Patricia Murphy <patricia@murphyhtc.com>  
**Sent:** Monday, October 11, 2021 7:16 AM  
**To:** Brooke Boston  
**Subject:** Public Comment on the AFHMP rule

Hi Brooke!

Thank you for the opportunity to provide public comment on the proposed amendments to the Affirmative Fair Housing Marketing Rule.

I recommend that the following be added to §10.801(b):

*“However, including Veterans in the Development’s Affirmative Marketing Plan activities will not be cited as noncompliance.”*

Although I agree that marketing to Veterans does not constitute “Affirmative Marketing”, owners that combine the requirements to perform outreach to Veterans and those least likely to apply should not be found in noncompliance.

I also recommend that §10.801(e)(2) be amended from:

*“(2) An Owner must update its Affirmative Marketing Plan and populations that are least likely to apply every five years from the effective date of the current plan or, for HUD funded or USDA properties, as otherwise required by HUD or USDA. “*

To

*“(2) Once every five years, Owners must determine if there have been any changes to the “least likely to apply” populations by completing Worksheet 1 of HUD Form 935.2A or something equivalent. In addition, owners must determine if current advertising sources still exist, and if the outreach that has been performed is still the most applicable. If the Owner determines that the plan does not need to be updated, the backup used to complete Worksheet 1 or its equivalent must be maintained and may be reviewed by Department staff during reviews of the Affirmative Marketing Plan. If there have been changes to the least likely to apply populations or if the community contacts and advertising outlets no longer exist, the plan must be updated. Developments funded by HUD or USDA must also update their plans in accordance with HUD or USDA requirements that apply.”*

I am recommending this change to more closely align the Department’s rules with the HUD 4350.3. Please see Par. 4-12F of the HUD 4350.3 which is the basis for this recommended change. If you or your staff can find a shorter way to restate the requirements of that paragraph than what I have recommended above or if you find any typos in my comment, you have my permission to make changes that do not change the intent.

Thank you for your consideration. I hope things are good with you!

Patricia



1g

**BOARD ACTION REQUEST**  
**COMMUNITY AFFAIRS DIVISION**  
**NOVEMBER 10, 2021**

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 6, Community Affairs Programs; an order adopting new 10 TAC Chapter 6, Community Affairs Programs; and directing that they be published for adoption in 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 6 required revisions to improve clarity, to add the new Low Income Household Water Assistance Program (LIHWAP) as a program subject to requirements in the LIHWAP State Plan and subrecipient contracts, to reorganize subdivisions within the rules, and to correct identified areas of concern; and

**WHEREAS**, at the Board meeting of September 2, 2021, the Board approved the draft of these rules for public comment, comment has been received, and the Department has taken into consideration the comment and provided a reasoned response in the rules now being presented for 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 adoption of the actions herein in the form presented to this meeting, to be published in the *Texas Register* for adoption, and in connection therewith, make such non-substantive technical corrections, including changes to the preambles, as they may deem necessary to effectuate the foregoing.

**BACKGROUND**

At the Board meeting of September 2, 2021, the Board approved proposed revisions to 10 TAC Chapter 6 which would improve clarity, reorganize subdivisions within the rules, include Low Income Household Water Assistance Program (LIHWAP) as a program subject to requirements described in the LIHWAP State Plan and subrecipient contracts, and correct identified areas of concern. It is staff's goal that readers of the revised rules will find them easier to follow and understand.

LIHWAP is a new pandemic-response program funded by the U.S. Department of Health and Human Services (USHHS) and administered through the Department's Community Affairs (CA) Division, and is designed to use the existing CA systems and reporting tools. The subrecipients selected for LIHWAP are the same ones used for the Comprehensive Energy Assistance Program (CEAP). Because of its temporary nature, Subchapter E has been added to establish the LIHWAP State Plan and subrecipient contracts as this new program's requirements in addition to the specific revisions in parts of Subpart A.

The proposed rules were published for public comment in the *Texas Register* on September 17, 2021. Public comment was accepted from September 17, 2021, through October 18, 2021. In keeping with the requirements of the Administrative Procedures Act, staff has reviewed all comments received and has provided a reasoned response to those comments within the preamble to the adoption of the rule that follows below. Comment was received from two organizations.

To the extent these new rules may require the state to submit an amendment to its CSBG, LIHEAP, DOE or LIHWAP State Plan, staff will submit the revisions to reflect this rulemaking without further public comment, and post the revisions on its website.

The full set of rules being repealed and adopted, including the *Texas Register* preambles, are provided in Attachments 1 and 2. Behind the adoption preamble, the rule is provided in blackline form reflecting the changes being recommended since the time of publication for public comment.

## **Attachment 1: Preamble, including required analysis, for adopting the repeal of 10 TAC Chapter 6 Community Affairs Programs**

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of Chapter 6, Community Affairs Programs, including Subchapter A, General Provisions; Subchapter B, Community Services Block Grant; Subchapter C, Comprehensive Energy Assistance Program; and Subchapter D, Weatherization Assistance Program. The purpose of the repeal is to eliminate outdated rules that warrant revision while adopting new updated rules 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.**

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous re-adoption making a change to an existing activity, the administration of Community Affairs programs.
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 workload 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 they are being replaced by new rules simultaneously to provide for revisions.
6. The action will repeal existing regulations, but is associated with a simultaneous re-adoption making changes to the rules governing the administration of Community Affairs programs.
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 the repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

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

2. The rules relate to the Department's administration of all Community Affairs programs which include the Community Services Block Grant (CSBG), the Low Income Home Energy Assistance Program (LIHEAP) which can be further divided into the Comprehensive Energy Assistance Program and LIHEAP Weatherization Assistance Program (WAP), and the Department of Energy WAP (DOE WAP). Other than a Subrecipient of funds for any of these programs who may consider itself a small or micro-business, which would not generally be the case, no small or micro-businesses are subject to the rules. However, if a Subrecipient considers itself a small or micro-business, the rule changes provide greater clarity.

3. The Department has determined that because the rules apply only to existing Subrecipients, 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 rules as to their possible effects on local economies and has determined that for the first five years the repeal will be in effect there would be no economic effect on local employment because the rules relate only to regulations which have already been in effect for existing Subrecipients; therefore, no local employment impact statement is required to be prepared for the rules.

Tex. 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 rules pertain to all Subrecipients throughout the state, regardless of location, there are no "probable" effects of the revised rules on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has also 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 chapter would be an updated, more streamlined, and clearer version of the rules governing Community Affairs programs. There will not be economic costs to individuals required to comply with the repealed chapter.

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.

g. SUMMARY OF PUBLIC COMMENT. The Department accepted public comment September 17, 2021, to October 18, 2021. There were no comments submitted regarding the repeal of 10 TAC Chapter 6.

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 repeal affects no other code, article, or statute.

### **10 TAC Chapter 6 Community Affairs Programs.**

Subchapter A., General Provisions.

§6.1. Purpose and Goals.

§6.2. Definitions.

§6.3. Subrecipient Contract.

§6.4. Income Determination.

§6.5. Documentation and Frequency of Determining Customer Eligibility.

§6.6. Subrecipient Contact Information and Required Notifications.

§6.7. Subrecipient Reporting Requirements.

§6.8. Potential Applicant/Applicant/Customer Denials and Appeal Rights.

§6.9. Training Funds for Conferences.

§6.10. Compliance Monitoring.

Subchapter B., Community Services Block Grant.

§6.201. Background and Definitions.

§6.202. Purpose and Goals.

§6.203. Formula for Distribution of CSBG Funds.

§6.204. Use of Funds.

§6.205. Limitations on Use of Funds.

§6.206. CSBG Community Assessment, Community Action Plan, and Strategic Plan.

§6.207. Subrecipient Requirements.

§6.208. Designation and Re-designation of Eligible Entities in Unserved Areas.

§6.209. CSBG Requirements for Tripartite Board of Directors.

§6.210. Board Structure.

§6.211. Board Administrative Requirements.

§6.212. Board Size.

§6.213. Board Responsibility.

§6.214. Board Meeting Requirements.

Subchapter C. Comprehensive Energy Assistance Program.

§6.301. Background and Definitions.

§6.302. Purpose and Goals.

§6.303. Distribution of CEAP Funds.

§6.304. Deobligation and Reobligation of CEAP Funds.

§6.305. Subrecipient Eligibility.

§6.306. Service Delivery Plan.

- §6.307. Subrecipient Requirements for Customer Eligibility Criteria, Provision of Services, and Establishing Priority for Eligible Households.
- §6.308. Allowable Subrecipient Administrative and Program Services Costs.
- §6.309. Types of Assistance and Benefit Levels.
- §6.310. Crisis Assistance Component.
- §6.311. Utility Assistance Component.
- §6.312. Payments to Subcontractors and Vendors.
- §6.313. Outreach, Accessibility, and Coordination.

#### Subchapter D. Weatherization Assistance Program.

- §6.401. Background.
- §6.402. Purpose and Goals.
- §6.403. Definitions.
- §6.404. Distribution of WAP Funds.
- §6.405. Deobligation and Reobligation of Awarded Funds.
- §6.406. Subrecipient Requirements for Establishing Priority for Eligible Households and Customer Eligibility Criteria.
- §6.407. Program Requirements.
- §6.408. Department of Energy Weatherization Requirements.
- §6.409. LIHEAP Weatherization Requirements.
- §6.410. Liability Insurance and Warranty Requirement.
- §6.411 Customer Education.
- §6.412. Mold-like Substances.
- §6.413. Lead Safe Practices.
- §6.414. Eligibility for Multifamily Dwelling Units and Shelters.
- §6.415. Health and Safety and Unit Deferral.
- §6.416. Whole House Assessment.
- §6.417. Blower Door Standards.

## **Attachment 2: Preamble for adopting new 10 TAC Chapter 6 Community Affairs Programs**

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 6 Community Affairs Programs including Subchapter A, General Provisions, §§6.1 - 6.11; Subchapter B, Community Services Block Grant, §§6.201 - 6.214; Subchapter C, Comprehensive Energy Assistance Program, §§6.301 - 6.313; and Subchapter D, Weatherization Assistance Program, §§6.401 - 6.417, and new Subchapter E, Low Income Household Water Assistance Program, §§6.501 - 6.503. The purpose of the new chapter is to update the rules to provide greater clarity for Subrecipients while administering Community Affairs programs (i.e., CSBG, LIHEAP, DOE WAP, and LIHWAP). This new chapter is adopted, with changes, to the proposed text as published in the September 17, 2021, issue of the Texas Register (Volume 46 Number 38). The rules will be republished.

Tex. Gov't Code §2001.0045(b) does not apply to the new rules because it is exempt under §2001.0045(c)(4), which exempts rule changes necessary to receive a source of federal funds or to comply with federal law. The revisions update, streamline, and make clearer the rules governing the administration of Community Affairs programs. The Department does not anticipate any costs associated with this rule action. Compliance with the new rules are intended to ensure adherence to federal statute while operating federal grants.

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 rules would be in effect:

1. The new rules do not create or eliminate a government program, but relate to the repeal, and simultaneous adoption relating to the administration of Community Affairs programs.
2. The new rules do not require a change in work that would require the creation of new employee positions, nor are the new rules significant enough to reduce workload to a degree that eliminates any existing employee positions.
3. The new rules do not require additional future legislative appropriations.
4. The new rules 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 rules are not creating new regulations, except that they are replacing rules being repealed simultaneously to provide for revisions.
6. The new rules will not expand, limit, or repeal existing regulations.



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

8. The new rules 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, in drafting the new rules, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306, Subchapter E.

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

2. The new rules relate to the Department's administration of all Community Affairs programs which include the Community Services Block Grant (CSBG), the Low Income Household Water Assistance Program (LIHWAP), the Low Income Home Energy Assistance Program (LIHEAP) which can be further divided into the Comprehensive Energy Assistance Program and LIHEAP Weatherization Assistance Program (WAP), and the Department of Energy WAP (DOE WAP). Other than a Subrecipient of funds for any of these programs who may consider itself a small or micro-business, which would not generally be the case, no small or micro-businesses are subject to the rules. However, if a Subrecipient considers itself a small or micro-business, the rule changes provide greater clarity.

3. The Department has determined that because the new rules apply only to existing Subrecipients, 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 rules do 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 new rules as to their possible effect on local economies and has determined that for the first five years the new rules will be in effect there would be no economic effect on local employment because the rules relate only to a process which has already been in effect for existing Subrecipients; therefore, no local employment impact statement is required to be prepared for the new rules.

Tex. 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 new rules pertain to all Subrecipients throughout the state, regardless of location, there are no "probable" effects of the new rules on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has also determined that, for each year of the first five years the new chapter is in effect, the public benefit anticipated as a result of the new chapter would be an updated, more streamlined,

and clearer version of the rules governing Community Affairs programs. There will not be economic costs to individuals required to comply with the new chapter because the rules have already been in place through the rules found at the chapter being repealed.

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 chapter is in effect, enforcing or administering the new chapter does not have any foreseeable implications related to costs or revenues of the state or local governments.

g. SUMMARY OF PUBLIC COMMENT AND REASONED RESPONSE. The Department accepted public comment from September 17, 2021, to October 18, 2021. Comments regarding the new rules were accepted in writing from: (1) Dennis Chapman, CEAP Grant Specialist, Travis County Health and Human Services and (2) Doris Bass, CEAP Division Program Manager, Dallas County Health and Human Services.

### **1. Chapter 6, Subchapter A, §6.2(b)(35)(B)**

COMMENT SUMMARY (1): Commenter recommends that the income threshold for CEAP be raised from 150% to 200% of Federal Poverty Income Guidelines to serve more Texans.

STAFF RESPONSE: Section 2605 of the Low Income Home Energy Assistance Act of 1981 (42 U.S.C. § 8624(b)(2)) limits states to making payments to households with incomes which do not exceed the greater of (i) an amount equal to 150% of the poverty level for such State; or (ii) an amount equal to 60% of the State Median Income. The Department does not have the authority to raise the threshold above 150%, and has determined that the 150% threshold serves more Texans than the 60% of State Median Income threshold. If in the future, the LIHEAP Act allows states to use a higher percentage of FPIG, the Department will consider such limits.

### **2. Chapter 6, Subchapter A, §6.4(d)**

COMMENT SUMMARY (1): Commenter recommends that Adoption Assistance payments be added to the list of excluded income in §6.4(d) as outlined in the Texas Works Handbook, Section 1300, Income A-1324, published by the Texas Health and Human Services. Commenter believes this addition would be consistent with other excluded income.

STAFF RESPONSE: The list of excluded income found in §6.4(d) is established at the federal level by the Department of Energy or by other federal law. Alternatively, Adoption Assistance payments are determined at the state level by Texas Health and Human Services. Because LIHEAP, LIHWAP, DOE, and CSBG are federal programs, income eligibility should follow federal rules to ensure consistency where possible; therefore the Department must include Adoption Assistance payments as a form of income. The Department appreciates the recommendation, but proposes no change to the rules as a result.

### **3. Chapter 6, Subchapter C, §6.307(b)**

COMMENT SUMMARY (1): Commenter recommends that Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), Women, Infants and Children (WIC) and Texas Medicaid be added to the definition of Categorical Eligibility to serve more Texans.

STAFF RESPONSE: Only Supplemental Security Income and Means-tested Veterans programs are determined at the federal level, and therefore automatically meet the requirements of LIHEAP for categorical eligibility. Alternatively, in Texas, TANF, SNAP, WIC, and Texas Medicaid eligibility are determined at the state level using different income eligibility requirements (e.g., included and excluded income). These state level programs use different eligibility standards than LIHEAP and there may be households that qualify for TANF, SNAP, WIC and Texas Medicaid that would not be income eligible for LIHEAP. Therefore, the Department cannot use state level program eligibility to determine LIHEAP eligibility. As a result, staff proposes no changes to the rules in response to this recommendation; however, through this comment it was noticed that TANF was not listed as excluded income in §6.4(d) for LIHWAP and has been added to the list of excluded income at §6.4(d)(45). Other parts of §6.4 have also been clarified for LIHWAP in §6.4(g).

#### **4. Chapter 6, Subchapter C, §6.307(i)**

COMMENT SUMMARY (2): Commenter recommends this rule not be added due to shortages in staff and an organization's capacity to adhere to written policies and timelines, especially when relying on utility providers to provide client billing histories and current bills. Commenter adds that although vendor agreements have been established between a Community Action Agency and the utility vendor, timeframes are not always reasonable.

STAFF RESPONSE: While the Department understands the difficulties of providing timely assistance during this extraordinary pandemic and the barriers that must be overcome when working with utility vendors to achieve timely assistance, it is important that reasonable timeframe standards are established and displayed so the clientele can clearly understand the responsibilities of the agency with which they applied and to know when to expect assistance. The only time requirements for assistance written into the rules are in §6.310(a) for crisis situations. All other timeline requirements for assistance are at the discretion of the subrecipient. These timeline requirements should be reasonable considering local conditions and can be changed on occasion to fit any changes in the conditions. The Department appreciates the comment but will make no change.

h. STATUTORY AUTHORITY. The new rules are 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.

*[Note that these rules are shown in blackline form below, reflecting the changes being recommended since the time of publication for public comment, for the purpose of the posting of Board materials but will be shown as clean proposed new language when submitted to the Texas Register for adoption.]*

**TITLE 10 COMMUNITY DEVELOPMENT  
PART 1 TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
CHAPTER 6 COMMUNITY AFFAIRS PROGRAMS**

**SUBCHAPTER A. GENERAL PROVISIONS**

*§6.1. Purpose and Goals.*

(a) The rules established herein are for CSBG, LIHEAP, and DOE-WAP. This Subchapter does not apply to LIHWAP, except as specifically incorporated through this rule and the Contract. Additional program specific requirements are contained within each program Subchapter and Chapters 1 and 2 of this title (relating to Administration and Enforcement, respectively).

(b) Programs administered by the Community Affairs (CA) Division of the Texas Department of Housing and Community Affairs (the Department) support the Department's statutorily assigned mission.

(c) The Department accomplishes its mission chiefly by acting as a conduit for federal grant funds and other assistance for housing and community affairs programs. Ensuring program compliance with the state and federal laws that govern the CA programs is another important part of the Department's mission. Oversight and program mandates ensure state and federal resources are expended in an efficient and effective manner.

(d) In instances of a disaster, the Department may pursue waivers or explore flexibilities as addressed in HHS Information Memorandum (IM) 154 (and any other subsequent guidance or similar guidance for LIHEAP, LIHWAP, or DOE WAP) through HHS or DOE within the CA programs in order to serve low income Texans. Non-annual federal allocations to any of these programs made to address disaster response (including but not limited to pandemic response) are also subject to these rules unless federal or state law require different terms and conditions or provisions of these rules are waived following the procedures in this title and reflected in the Contract.

*§6.2. Definitions.*

(a) To ensure a clear understanding of the terminology used in the context of the CSBG, LIHEAP, and DOE-WAP programs of the Community Affairs Division, a list of terms and definitions has been compiled as a reference. Any capitalized terms not specifically defined in this section or any section referenced in this chapter shall have the meaning as defined in Chapter 2306 of the Tex. Gov't Code, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), or applicable federal regulations.

(b) The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise. Refer to Subchapters B, C, and D of this chapter for program specific definitions.

(1) Affiliate--An entity related to an Applicant that controls by contract or by operation of law the Applicant or has the power to control the Applicant or a third entity that controls, or has the power to control both the Applicant and the entity. Examples include but are not limited to entities submitting under a common application, or instrumentalities of a unit of government. This term also includes any entity that is required to be reported as a component entity under Generally Accepted Accounting Standards, is required to be part of the same Single Audit as the Applicant, is reported on the same IRS Form 990, or is using the same federally approved indirect cost rate.

(2) Awarded Funds--The amount of funds or proportional share of funds committed by the Department's Board to a Subrecipient or Service Area.

(3) Categorical Eligible/Eligibility--A method where a Subrecipient must deem a Household to be eligible for LIHEAP or DOE benefits if that Household includes at least one member that receives assistance under specific federal programs as identified in this chapter or by Contract.

(4) Child--Household member not exceeding 18 years of age.

(5) Code of Federal Regulations (CFR)--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the *Federal Register*.

(6) Community Action Agencies (CAAs)--Private Nonprofit Organizations and Public Organizations that carry out the Community Action Program, which was established by the 1964 Economic Opportunity Act to fight poverty by empowering the poor in the United States.

(7) Community Services Block Grant (CSBG)--An HHS-funded program which provides funding for CAAs and other Eligible Entities that seek to address poverty at the community level.

(8) Comprehensive Energy Assistance Program (CEAP)--A LIHEAP-funded program to assist low-income Households, in meeting their immediate home energy needs.

(9) Concern--A policy, practice or procedure that has not yet resulted in a Finding or Deficiency, but if not changed will or may result in a Finding or Deficiency.

(10) Contract--The executed written agreement between the Department and a Subrecipient performing an activity related to a program that describes performance requirements and responsibilities assigned by the document, for which the first day of the Contract Term is the point at which program funds may be considered by a Subrecipient for Expenditure, unless otherwise directed in writing by the Department.

(11) Contract System--A web-based data collection platform which allows Subrecipients of Community Services programs to sign and view Contracts and submit performance and financial reports online.

(12) Contract Term--The period of Expenditure under a Contract.

(13) Contracted Funds--The gross amount of funds Obligated by the Department to a Subrecipient as reflected in a Contract.

(14) Cost Reimbursement--A Contract sanction whereby reimbursement of costs incurred by the Subrecipient is made only after the Department has conducted such review as it deems appropriate, which may be complete or limited, such as on a sampling basis, and approved backup documentation provided by the Subrecipient to support such costs. Such a review and approval does not serve as a final approval and all uses of advanced funds remain subject to review in connection with future or pending reviews, monitoring, or audits.

(15) Declaration of Income Statement (DIS)--A Department-approved form used only when it is not possible for an applicant to obtain third party or firsthand verification of income.

(16) Deficiency--Consistent with the CSBG Act, a Deficiency exists when an Eligible Entity has failed to comply with the terms of an agreement or a State plan, or to meet a State requirement. The Department's determination of a Deficiency may be based on the Eligible Entity's failure to provide CSBG services, or to meet appropriate standards, goals, and other requirements established by the State, including performance objectives, or as provided for in §2.203(b) of this title (relating to Termination and Reduction of Funding for CSBG Eligible Entities). A Finding, Observation, or Concern that is not corrected, or is repeated, may become a Deficiency.

(17) Deobligate/Deobligation--The partial or full removal of Contracted Funds from a Subrecipient. Partial Deobligation is the removal of some portion of the full Contracted Funds from a Subrecipient, leaving some remaining balance of Contracted Funds to be administered by the Subrecipient. Full Deobligation is the removal of the full amount of Contracted Funds from a Subrecipient. This definition does not apply to CSBG non-Discretionary funds.

(18) Department of Energy (DOE)--Federal department that provides funding for a weatherization assistance program.

(19) Department of Health and Human Services (HHS)--Federal department that provides funding for CSBG and LIHEAP energy assistance and weatherization.

(20) Discretionary Funds--CSBG funds, excluding the 90% of the state's annual allocation that is designated for statewide allocation to CSBG Eligible Entities under §6.203 of this subchapter (relating to Formula for Distribution of CSBG Funds) and state administrative funds, maintained by the Department, at its discretion, for CSBG allowable uses as authorized by the CSBG Act.

(21) Dwelling Unit--A house, including a stationary mobile home, an apartment, a group of rooms, or a single room occupied as separate living quarters.

(22) Elderly Person--

(A) For CSBG, a person who is 55 years of age or older; and

(B) For CEAP and WAP, a person who is 60 years of age or older.

(23) Eligible Entity--Those local organizations in existence and designated by the federal and state government to administer programs created under the Federal Economic Opportunity Act of 1964. This includes CAAs, limited-purpose agencies, and units of local government. The CSBG Act defines an Eligible Entity as an organization that was an Eligible Entity on the day before the enactment of the Coats Human Services Reauthorization Act of 1998 (October 27, 1998), or is designated by the Governor to serve a given area of the state and that has a tripartite board or other mechanism specified by the state for local governance.

(24) Emergency--defined as:

(A) A Natural Disaster;

(B) A significant home energy supply shortage or disruption;

(C) Significant increase in the cost of home energy, as determined by the Secretary of HHS;

(D) A significant increase in home energy disconnections reported by a utility, a state regulatory agency, or another agency with necessary data;

(E) A significant increase in participation in a public benefit program such as the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. §§2011, et seq.), the national program to provide supplemental security income carried out under Title XVI of the Social Security Act (42 U.S.C. §§1381, et seq.) or the state temporary assistance for needy families program carried out under Part A of Title IV of the Social Security Act (42 U.S.C. §§601, et seq.), as determined by the head of the appropriate federal agency;

(F) A significant increase in unemployment, layoffs, or the number of Households with an individual applying for unemployment benefits, as determined by the Secretary of Labor; or

(G) An event meeting such criteria as the Secretary of HHS, at the discretion of the Secretary of HHS, may determine to be appropriate.

(25) Expenditure--Funds that have been accrued or remitted for purposes of the award.

(26) Extended Foster Care--The Texas Department of Family Services program as identified in 40 TAC §700.346 or successor regulation.

(27) Families with Young Children--A Household that includes a Child age five or younger. For LIHEAP-WAP only, a Family with Young Children also includes a Household that has a pregnant woman.

(28) Federal Poverty Income Guidelines--The official poverty income guidelines as issued by HHS annually.

(29) Finding--A Subrecipient's material failure to comply with rules, regulations, the terms of the Contract or to provide services under each program to meet appropriate standards, goals, and other requirements established by the Department or funding source (including performance objectives). A Finding impacts the organization's ability to achieve the goals of the program and jeopardizes continued operations of the Subrecipient. Findings include the identification of an action or failure to act that results or may result in disallowed costs.

(30) Gross Annual Income--Defined as the total amount of non-excluded income earned annually before taxes or any deductions for all Household members 18 years of age and older.

(31) High Energy Burden--A Household whose energy burden exceeds 11% of their Gross Annual Income, determined by dividing a Household's annual home energy costs by the Household's Gross Annual Income.

(32) High Energy Consumption--A Household that is billed more than \$1000 annually for related fuel costs for heating and cooling their Dwelling Unit.

(33) Household--An individual or group of individuals, excluding unborn Children, who are living together as one economic unit. For DOE WAP this includes all persons living in the Dwelling Unit. For CSBG/LIHEAP it includes these persons customarily purchasing residential energy in common or making undesignated payments for energy. In CSBG/LIHEAP a live-in aide, or a Renter with a separate lease that includes a separate bill for utilities is not considered a Household member.

(34) Inverse Ratio of Population Density Factor--The number of square miles of a county divided by the number of poverty Households of that county.

(35) Low Income Household--Defined as:

(A) For DOE WAP, a Household whose total combined annual income is at or below 200% of the Federal Poverty Income guidelines, or a Household who is Categorically Eligible;

(B) For CEAP and LIHEAP-WAP, a Household whose total combined annual income is at or below 150% of the Federal Poverty Income guidelines, or a Household who is Categorically Eligible; and

(C) For CSBG, a Household whose total combined annual income is at or below 125% of the Federal Poverty Income guidelines.

(36) Low Income Home Energy Assistance Program (LIHEAP)--An HHS funded program which serves Low Income Households who seek assistance for their home energy bills and/or weatherization services.

(37) Low Income ~~Water and Wastewater~~ Household Water Assistance Program (LIHWAP)--An HHS funded temporary program.



(38) Means Tested Veterans Program--A program whereby applicants who meet certain Veterans Affairs requirements, including but not limited to income and net worth limits set by Congress, receive payments from the U.S. Department of Veterans Affairs.

(39) Mixed Status Household--A Household that contains one or more members that are U.S. Citizens, U.S. Nationals, or Qualified Aliens, and one or more members that are Unqualified Aliens.

(40) Monthly Performance and Expenditure Report--Two separate but linked reports indicating a Subrecipient's or Eligible Entity's performance and financial information, due to the Department on or before the fifteenth day of each month of the Contract Term following the reporting month. If the fifteenth falls on a weekend or holiday, the reports must still be entered on or before the fifteenth. The data the Department collects is subject to change based on changes required by DOE or HHS.

(41) Obligation--Funds become obligated upon approval of an award to Subrecipient by the Department's Governing Board, unless the Department does not receive sufficient funding from the cognizant federal entity.

(42) Observation--A notable policy, practice or procedure observed through the course of monitoring.

(43) Office of Management and Budget (OMB)--Office within the Executive Office of the President of the United States that oversees the performance of federal agencies and administers the federal budget.

(44) OMB Circulars--Instructions and information issued by OMB to Federal agencies that set forth principles and standards for determining costs for federal awards and establish consistency in the management of grants for federal funds. Uniform cost principles and administrative requirements for local governments and for nonprofit organizations, as well as audit standards for governmental organizations and other organizations expending federal funds are set forth in 2 CFR Part 200, unless different provisions are required by statute or approved by OMB.

(45) Outreach--The method used by a Subrecipient that attempts to identify customers who are in need of services, alerts these customers to service provisions and benefits, and helps them use the services that are available. Outreach is utilized to locate, contact and engage potential customers.

(46) Performance Statement--A document which identifies the services to be provided by a Subrecipient.

(47) Person with a Disability--Any individual who is:

(A) An individual described in 29 U.S.C. §701 or has a disability under 42 U.S.C. §§12131 - 12134;

- (B) Disabled as defined in 42 U.S.C. §1382(a)(3)(A), 42 U.S.C. §423, or in 42 U.S.C. §15001;
- (C) Receiving benefits under 38 U.S.C. Chapter 11 or 15; or
- (D) An individual with a disability as defined in §1.202(4).
- (48) Population Density--The number of persons residing within a given geographic area of the state.
- (49) Private Nonprofit Organization--An organization described in §501(c) of the Internal Revenue Code (the Code) of 1986 and which is exempt from taxation under subtitle A of the Code and that is not a Public Organization.
- (50) Production Schedule--The estimated monthly and quarterly performance targets and Expenditures for a Contract Term. The Production schedule must be signed by the applicable approved signatory and approved by the Department in writing.
- (51) Program Year--January 1 through December 31 of each calendar year for CSBG and LIHEAP; July 1 through June 30 of each calendar year for DOE WAP.
- (52) Public Organization--A unit of government, as established by the Legislature of the State of Texas. Includes, but may not be limited to, cities, counties, and councils of governments.
- (53) Qualified Alien--A person that is not a U.S. Citizen or a U.S. National and is described at 8 U.S.C. §1641(b) and (c).
- (54) Referral--The documented process of providing information to a customer Household about an agency, program, or professional person that can provide the service(s) needed by the customer.
- (55) Reobligate/Reobligation--The reallocation of Deobligated funds to other Subrecipients or back to the Department for allowable uses.
- (56) Service Area--The geographical area where a Subrecipient must provide services under a Contract.
- (57) Single Audit--The audit required by OMB, 2 CFR Part 200, Subpart F, or Tex. Gov't Code, Chapter 738, Uniform Grant and Contract Management, as reflected in an audit report.
- (58) State--The State of Texas or the Department, as indicated by context.
- (59) Subcontractor--A person or an organization with whom the Subrecipient contracts with to provide services.
- (60) Subrecipient--An organization that receives federal funds passed through the Department to operate the CSBG, CEAP, DOE WAP, and/or LIHEAP program(s).

(61) Supplemental Security Income (SSI)--A means tested program run by the Social Security Administration.

(62) System for Award Management (SAM)--Combined federal database that includes the Excluded Parties List System (EPLS).

(63) Systematic Alien Verification for Entitlements (SAVE)--Automated intergovernmental database that allows authorized users to verify the immigration status of applicants.

(64) Texas Administrative Code (TAC)--A compilation of all state agency rules in Texas.

(65) Texas Grant Management Standards (TxGMS) and Uniform Assurances--The standardized set of financial management procedures and Assurances established by Tex. Gov't Code Chapter 783 for Contracts executed on or after January 1, 2022, and as further described in Chapter 1 Subchapter D of this title (relating to Uniform Guidance for Recipients of Federal and State Funds). The term "Assurance" refers to a statement of compliance with federal or state law that is required of a local government as a condition for the receipt Contract funds to promote the efficient use of public funds in local government and in programs requiring cooperation among local, state, and Federal agencies. This includes all Public Organizations. In addition, Tex. Gov't Code Chapter 2105, subjects Subrecipients of federal block grants (as defined therein) to the Texas Grant Management Standards and Uniform Assurances.

(66) Uniform Grant Management Standards (UGMS)--The standardized set of financial management procedures and definitions established by Tex. Gov't Code Chapter 783 for Contracts executed before January 1, 2022, to promote the efficient use of public funds by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. State agencies are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state. This includes all Public Organizations. In addition, Tex. Gov't Code Chapter 2105, subjects Subrecipients of federal block grants (as defined therein) to the Uniform Grant and Contract Management Standards.

(67) United States Code (U.S.C.)--A consolidation and codification by subject matter of the general and permanent laws of the United States.

(68) Unqualified Alien--A person that is not a U.S. Citizen, U.S. National, or a Qualified Alien.

(69) Vendor Agreement--An agreement between the Subrecipient and energy vendors that contains assurances regarding fair billing practices, delivery procedures, and pricing for business transactions involving LIHEAP beneficiaries.

(70) Vulnerable Populations--Elderly persons, Persons with a Disability, and Households with a Child at or below the age of five.

(71) Weatherization Assistance Program (WAP)--DOE and LIHEAP funded program designed to reduce the energy cost burden of Low Income Households through the installation of energy efficient weatherization materials and education in energy use.

*§6.3.Subrecipient Contract.*

(a) Subject to prior Board approval, the Department and a Subrecipient shall enter into and execute a Contract for the disbursement of program funds. The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver authorized modifications and/or amendments to the contract, as allowed by state and federal laws and rules.

(b) The governing body of the Subrecipient must pass a resolution authorizing its Executive Director or his/her designee to have signature authority to enter into contracts, sign amendments, and review and approve reports. All Contract actions including extensions, amendments or revisions must be ratified by the governing body at a subsequent regularly scheduled meeting no later than 120 calendar days from the Contract action. Minutes relating to this resolution must be on file at the Subrecipient level.

(c) Within 45 calendar days following the conclusion of a Contract issued by the Department, the Subrecipient shall provide a final expenditure and final performance report regarding funds expended under the terms of the Contract.

(d) A Performance Statement and budget are attachments to the Contract between the Subrecipient and the Department. Execution of the Contract enables the Subrecipient to access funds through the Department's Contract System.

(e) Amendments and Extensions to Contracts.

(1) Except for quarterly amendments to non-Discretionary CSBG Contracts to add funds as they are received from HHS, and excluding amendments that move funds within budget categories but do not extend time or add funds, amendment and extension requests must be submitted in writing by the Subrecipient, and will not be granted if any of the following circumstances exist:

(A) If the award for the Contract was competitively awarded and the amendment would materially change the scope of Contract performance;

(B) If the Subrecipient is delinquent in the submission of their Single Audit or the Single Audit Certification form required by §1.403, (relating to Single Audit Requirements), in Chapter 1 of this title (relating to Administration);

(C) If the Subrecipient owes the Department disallowed amounts in excess of \$1,000 and a Department-approved repayment plan is not in place or has been violated;

(D) For amendments adding funds (not applicable to amendments for extending time) if the Department has cited the Subrecipient for violations within §6.11 of this subchapter (related to

Compliance Monitoring) and the corrective action period has expired without correction of the issue or a satisfactory plan for correction of the issue or has otherwise notified the Subrecipient in accordance with §1.411 of this title (relating to Administration of Block Grants) under Chapter 2105 of the Texas Government Code and corrective action has not been taken; or

(E) A member of the Subrecipient's board has been debarred and has not been removed.

(2) Within 30 calendar days of a Subrecipient's request for a Contract amendment or extension request the request will be processed or denied in writing. If denied, the applicable reason from this subsection or other applicable reason will be cited. The Subrecipient may appeal the decision to the Executive Director consistent with Chapter 1, §1.7, of this title, (relating to the Appeals Process).

#### *§6.4. Income Determination.*

(a) Eligibility for program assistance is determined under the Federal Poverty Income Guidelines and calculated as described herein (in some Programs certain forms of income may qualify the Household as Categorically Eligible for assistance; however, Categorical Eligibility does not determine the level of benefit, which is determined through the Income Determination process).

(b) Income means cash receipts earned and/or received by all Household members 18 years of age and older before taxes during applicable tax year(s), but not the excluded income listed in subsection (d) of this section. Income is to be based on the Gross Annual Income.

(c) Exceptions to the use of Gross Annual Income are forms of income:

(1) From non-farm or farm self-employment net receipts must be used (i.e., receipts from a person's own business or from an owned or rented farm after deductions for business or farm expenses); and

(2) From gambling or lottery winnings net income must be used.

(d) If an income source is not excluded in this subsection, it must be included when determining income eligibility. Excluded Income:

(1) Capital gains;

(2) Any assets drawn down as withdrawals from a bank;

(3) Balance of funds in a checking or savings account;

(4) Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002 (Pub. L. 107-110, 42 U.S.C. 604(h)(4));

(5) Proceeds from the sale of property, a house, or a car;

- (6) One-time payments from a welfare agency to a family or person who is in temporary financial difficulty;
- (7) Tax refunds, Earned Income Tax Credit refunds, the economic impact payments from the Internal Revenue Service under section 103 of the American Taxpayer Act;
- (8) Jury duty compensation;
- (9) Gifts, loans, and lump-sum inheritances;
- (10) One-time insurance payments, or compensation for injury;
- (11) Non-cash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits;
- (12) Reimbursements (for mileage, gas, lodging, meals, etc.);
- (13) Employee fringe benefits such as food or housing received in lieu of wages;
- (14) The value of food and fuel produced and consumed on farms;
- (15) The imputed value of rent from owner-occupied non-farm or farm housing;
- (16) Federal non-cash benefit programs such as Medicare, Medicaid, Supplemental Nutrition Assistance Program (SNAP); Women, Infants, and Children Supplemental Nutrition Program (WIC); ~~Supplemental Nutrition Program~~; school lunches; and housing assistance (Medicare deduction from Social Security Administration benefits should not be counted as income);
- (17) Combat zone pay to the military;
- (18) College scholarships, Pell and other grant sources, assistantships, fellowships and work study, VA Education Benefits (GI Bill), Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);
- (19) Child support payments received by the payee (amount paid by payor is included income);
- (20) Income of Household members under 18 years of age including payment to Children under the age of 18 made payable to a person over the age of 18;
- (21) Stipends from senior companion programs, such as Retired Senior Volunteer Program and Foster Grandparents Program;
- (22) AmeriCorps Program payments, allowances, earnings, and in-kind aid;
- (23) Depreciation for farm or business assets;
- (24) Reverse mortgages;

- (25) Payments for care of Foster Children. This includes payments to a host Household for individuals in Extended Foster Care;
- (26) Payments or allowances made under the Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));
- (27) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602(c));
- (28) Major disaster and emergency assistance received by individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (93, as amended) and comparable disaster assistance provided by States, local governments, and disaster assistance organizations (42 U.S.C. 5155(d));
- (29) Allowances, earnings, and payments to individuals participating in programs under the Workforce Innovation and Opportunity Act (29 U.S.C. 3101));
- (30) Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056(g));
- (31) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858(q));
- (32) Certain payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));
- (33) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459(e));
- (34) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (94, §6);
- (35) The first \$2,000 of per capita shares received from judgment funds awarded by the National Indian Gaming Commission or the U.S. Claims Court, the interests of individual Indians in trust or restricted lands, and the first \$2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407 - 1408). This exclusion does not include proceeds of gaming operations regulated by the Commission;
- (36) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund (101) or any other fund established pursuant to the settlement in In Re Agent Orange Liability Litigation, M.D.L. No. 381 (E.D.N.Y.);

(37) Payments received under the Maine Indian Claims Settlement Act of 1980 (96, 25 U.S.C. 1728);

(38) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (95);

(39) Any allowance paid under the provisions of 38 U.S.C. 1833(c) to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802 - 05), children of women Vietnam veterans born with certain birth defects (38 U.S.C. 1811 - 16), and children of certain Korean service veterans born with spina bifida (38 U.S.C. 1821);

(40) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b));

(41) Payments from any deferred U.S. Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts (42 U.S.C. §1437a(b)(4));

(42) A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled Elouise Cobell et al. v. Ken Salazar et al., 816 F.Supp.2d 10 (Oct. 5, 2011 D.D.C.), for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010 (Pub. L. 111-291);

(43) Per capita payments made from the proceeds of Indian Tribal Trust Cases as described in PIH Notice 2013-30 "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a));

(44) Payments of up to \$100,000 a year from an account established under the Achieving a Better Life Experience Act of 2014 or the ABLE Act of 2014 (P.L. 113-295) to a qualified beneficiary that are expended on qualified disability expenses; ~~and~~

(45) Temporary Assistance for Needy Families (LIHWAP only), and

(46) Any other items which are excluded by virtue of federal or state legislation or by adopted federal regulations that have taken effect. The Department will, from time to time, provide on its website updated links to such federal or state exclusions. Notwithstanding such information, a Subrecipient may rely on any adopted federal or state exclusion on and after the date on which it took effect.

(e) The requirements for determining whether an applicant Household is eligible for assistance require the Subrecipient to annualize the Household income based on verifiable documentation of income, within 30 days of the application date.

(f) The Subrecipient must document all sources of income, including excluded income, for 30 days prior to the date of application, for all household members 18 years of age or older.



(g) Identify all income sources, not on the excluded list, for income calculation.

(1) The Subrecipient must calculate projected annual income by annualizing current income. Income that may not last for a full 12 months should be calculated assuming current circumstances will last a full 12 months, unless it can be documented that employment is less than 12 months/year and pay is not prorated over the entire 12 month period. For incomes not able to be annualized over a 12 month period, the income shall be calculated on the total annual earning period (e.g., for a teacher paid only nine months a year, the annual income should be the income earned during those nine months). In limited cases where income is not paid hourly, weekly, bi-weekly, semi-monthly nor monthly, the Subrecipient may contact the Department to determine an alternate calculation method in unique circumstances on a case-by-case basis.

(2) For all customers including those with categorical eligibility, the Subrecipient must collect verifiable documentation of Household income received in the 30 days prior to the date of application.

(3) Once all sources of income are known, Subrecipient must convert reported income to an annual figure. (One-time employment income should be added to the total after the income has been annualized.) Convert periodic wages to annual income by multiplying:

(A) Hourly wages by the number of hours worked per year (2,080 hours for full-time employment with a 40-hour week and no overtime);

(B) Weekly wages by 52;

(C) Bi-weekly wages (paid every other week) by 26;

(D) Semi-monthly wages (paid twice each month) by 24; and

(E) Monthly wages by 12.

(h) If a federal or state requirement provides an updated definition of income or method for calculating income, the Department will provide written notice to Subrecipients about the implementation date for the new requirements.

(i) If proof of income is unobtainable, the applicant must complete and sign a Declaration of Income Statement (DIS).

(j) For CSBG, ~~and LIHEAP~~, ~~and LIHWAP~~, a live in aide or attendant is not considered part of the Household for purposes of determining Household income, but is considered for a benefit based on the size of the Household. Example: A Household applies for assistance. There are four people in the Household. One of the four people is a live-in aide. To determine if the Household is qualified, annualize the income of the other three Household members and compare it to the three person income limit. However, if the amount of benefit is based on

Household size (such as benefit level based on the number of people in the Household), then this is a four person Household.

(k) A Subrecipient shall not discourage anyone from applying for assistance. Subrecipient shall provide all potential customers with an opportunity to apply for programs.

*§6.5.Application Intake and Frequency of Determining Customer Eligibility.*

(a) Subrecipient shall:

(1) Accept applications at sites that are geographically accessible to all Households in their Service Area; and

(2) Provide a Household who has insufficient means to travel to an application intake site, are physically infirm, or are technically unable to submit applications electronically (e.g., computer illiterate, insufficient equipment, disability that prevents submitting the application) with an alternative means to submit an application.

(b) For CEAP and CSBG, income must be verified with a new application at least every twelve months.

(c) For WAP, income must be verified at the initial application. If the customer is on a wait-list for over 12 months since initial application, Household income must be updated within at least 12 months of the unit being initially inspected.

*§6.6.Subrecipient Contact Information and Required Notifications.*

(a) In accordance with §1.22 of this title (relating to Providing Contact Information to the Department), Subrecipient will notify the Department through the Contract System and provide contact information for key management staff (Executive Director, Chief Financial Officer, Program Director/Manager/Coordinator or any other person, regardless of title, generally performing such duties) vacancies and new hires within 30 days of such occurrence.

(b) For Eligible Entities, as vacancies exceed the 90 day threshold within the Eligible Entity's Board of Directors or for a Public Organization for the advisory board of directors, the Department will be notified of such vacancies and, if applicable, the sector the board member or advisory board member represented.

(c) Contact information for all members of the Board of Directors or advisory board of directors must be provided to the Department and shall include: each board member's name, the position they hold, their term, their mailing address (which must be different from the organization's mailing address), phone number (different from the organization's phone number), fax number (if applicable), and the direct e-mail address for the chair of the advisory board.

(d) The Department will rely solely on the contact information supplied by the Subrecipient in the Department's web-based Contract System. It is the Subrecipient's sole responsibility to ensure such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in the Contract System will be deemed delivered to the Subrecipient. Correspondence from the Department may be directly uploaded to the Subrecipient's CA contract account using a secure electronic document attachment system. Once uploaded, notification of the attachment will be sent electronically to the email address listed in the Contract System. The Department is not required to send a paper copy and if it does so it does as a voluntary and non-precedential courtesy only.

(e) Upon the hiring of a new program coordinator (e.g., the weatherization program coordinator) for an activity funded by non-discretionary CSBG, LIHEAP, or DOE-WAP the Subrecipient is required to contact the Department with written notification within 30 calendar days of the hiring, and to request training and technical assistance.

(f) Contact information for a primary and secondary contact are required to be provided to the Department and accurately maintained as it relates to the handling of disaster response and emergency services as provided for in §6.207(d) of this title (relating to Subrecipient Requirements).

#### *§6.7.Subrecipient Reporting Requirements.*

(a) Subrecipient must submit the Monthly Performance and Expenditure Report through the Contract System not later than the fifteenth day of each month following the reported month of the Contract Term or for LIHWAP only not later than the twentieth day of each month following the reported month of the Contract Term. Reports are required even if a fund reimbursement or advance is not being requested. It is the responsibility of the Subrecipient to upload information into the Department's designated database.

(b) Subrecipient shall reconcile their expenditures with their performance on at least a monthly basis before seeking a request for funds for the following month. If the Subrecipient is unable to reconcile on a month-to-month basis, the Subrecipient must provide at the request of the Department, a written explanation for the variance and take appropriate measures to reconcile the subsequent month. It is the responsibility of a Subrecipient to demonstrate the compliant use of all funds provided during the Contract Term.

(c) If the Department has provided funds to a Subrecipient in excess of the amount of reported Expenditures in the ensuing month's report, no additional funds will be released until those excess funds have been expended. For example, in January a Subrecipient requests and is advanced \$50,000. In February, if the Subrecipient reports \$10,000 in Expenditures and an anticipated need for \$30,000, no funds will be released.

(d) Subrecipient shall electronically submit to the Department, no later than 45 days after the end of the Subrecipient Contract Term, a final accounting of the Contract's expenditure or reimbursement utilizing the final Monthly Performance and Expenditure Report. If this or a later reconciliation results in funds owed to the Department, Subrecipient shall, within 10

calendar days, either send funds to the Department, or contact the Department to enter into a time-limited Department approved repayment plan.

(e) CSBG Annual Report and National Survey. Federal requirements mandate all states to participate in the preparation of an annual performance measurement report. To comply with the requirements of 42 U.S.C. §9917, all CSBG Eligible Entities and other organizations receiving CSBG funds are required to participate.

(f) The Subrecipient shall submit other reports, data, and information on the performance of the DOE and LIHEAP-WAP program activities as required by DOE pursuant to 10 CFR §440.25 or by the Department.

(g) Subrecipient shall submit other reports, data, and information on the performance of the federal program activities as required by the Department.

(h) A Subrecipient may refer a Contractor to the Department for Debarment consistent with §2.401 of this title, (relating to Debarment from Participation in Programs Administered by the Department).

#### *§6.8.Appeals, Denial of Service, and Complaints.*

(a) Appeals. LIHEAP Subrecipients and CSBG Eligible Entities must adhere to all of Chapter 1, Subchapter D, §1.411 of this title (relating to Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code). Entities that receive CSBG Discretionary only, LIHWAP, and DOE WAP must only follow §1.411(e)(1) - (6), relating to Requests for Reconsideration.

(b) Denial of Service. Subrecipient shall establish a written procedure for the handling of denials of service when the denial involves an individual inquiring or applying for services/assistance whom is communicating or behaving in a threatening or abusive manner.

(c) Complaints. Subrecipient shall establish a written procedure to address complaints of customer dissatisfaction. The procedure shall at a minimum include:

(1) An investigation, completed within 10 days of complaint receipt, by at least one individual of the Subrecipient not originally associated with the complaint; and

(2) If the customer is not satisfied with the investigation, a process wherein the Executive Director makes a final decision on whether to concur or disagree with the complaint.

#### *§6.9.Training Funds for Conferences.*

The Department may provide financial assistance to Subrecipients for training and technical activities for state sponsored, federally sponsored, and other relevant workshops and conferences. Subrecipients may use program training funds to attend conferences provided the conference agenda includes topics directly related to administering the program. Costs to attend the conference must be prorated by program for the appropriate portion. Only staff

billed to the specific program, directly or indirectly, may charge any training and travel costs to the program.

*§6.10. Board Approval.*

Subrecipient's Board of Directors must be notified of any action taken by the Subrecipient's staff to voluntarily relinquish funds or to not accept proposed awards from the Department.

*§6.11. Compliance Monitoring.*

(a) Purpose and Overview.

(1) This section provides the procedures that will be followed for monitoring for compliance with the programs in this chapter, 10 TAC Chapter 6, including LIHWAP.

(2) Any entity administering any or all of the programs detailed in this chapter, 10 TAC Chapter 6, is a Subrecipient. A Subrecipient may also administer other programs, including programs administered by other state or federal agencies and privately funded programs. If the Subrecipient has contracts for other programs through the Department, including but not limited to the Emergency Solutions Grants, Ending Homelessness Fund, Homeless Housing and Services Program, HOME Partnerships Program, the Neighborhood Stabilization Program, or the State Housing Trust Fund, the Department may, but is not required to and does not commit to, coordinate monitoring of those programs with monitoring of Community Affairs Division funds under this subchapter.

(3) Any entity administering any or all of the programs provided for in subsection (a) of this section as part of a Memorandum of Understanding (MOU), contract, or other legal agreement with a Subrecipient is a Subgrantee.

(b) Frequency of Reviews, Notification, and Information Collection.

(1) In general, a Subrecipient will be scheduled for monitoring based on state or federal monitoring requirements and/or a risk assessment. Factors to be included in the risk assessment include but are not limited to: the number of Contracts administered by the Subrecipient, the amount of funds awarded and expended, the length of time since the last monitoring, findings identified during previous monitoring, issues identified through the submission or lack of submission of a single audit, complaints received by the Department, and reports of fraud, waste and/or abuse. The risk assessment will also be used to determine which Subrecipients will have an onsite review and which may have a desk review.

(2) The Department will provide a Subrecipient with written notice of any upcoming onsite or desk monitoring review, and such notice will be given to the Subrecipient and Subgrantee by email to the Subrecipient's chief executive officer at the email address most recently provided to the Department by the Subrecipient. In general, a 30 day notice will be provided. However, if a credible complaint of fraud or other egregious noncompliance is received the Department reserves the right to conduct unannounced monitoring visits. It is the responsibility of the

Subrecipient to provide to the Department the current contact information for the organization and the Board in accordance with §6.6 of this chapter (relating to Subrecipient Contact Information and Required Notifications) and §1.22 of this title (relating to Providing Contact Information to the Department).

(3) Upon request, a Subrecipient must make available to the Department all books and records that the Department determines are reasonably relevant to the scope of the Department's review. Typically, these records may include (but are not limited to):

(A) Minutes of the governing board and any committees thereof, together with all supporting materials;

(B) Copies of all internal operating procedures or other documents governing the Subrecipient's operations;

(C) The Subrecipient's Board approved operating budget and reports on execution of that budget;

(D) The Subrecipient's strategic plan or comparable document if applicable and any reports on the achievement of that plan;

(E) Correspondence to or from any independent auditor;

(F) Contracts with any third parties for goods or services and files documenting compliance with any applicable procurement and property disposition requirements;

(G) All general ledgers and other records of financial operations (including copies of checks and other supporting documents);

(H) Applicable customer files with all required documentation;

(I) Applicable human resources records;

(J) Monitoring reports from other funding entities;

(K) Customer files regarding complaints, appeals and termination of services; and

(L) Documentation to substantiate compliance with any other applicable Department contract provisions and state or federal requirements including, but not limited to UGMS, TxGMS, 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, Audit Requirements for Federal Awards, Lead Based Paint, the Personal Responsibility and Work Opportunity Act, and limited English proficiency requirements.

(c) Post Monitoring Procedures.

(1) In general, within 30 calendar days of the last day of the monitoring visit, a written monitoring report will be prepared for the Subrecipient describing the monitoring assessment

and any corrective actions, if applicable. The monitoring report will be emailed to the Board Chair and the Subrecipient's Executive Director. For a Private Nonprofit Organization, all Department monitoring reports and Subrecipient responses to monitoring reports must be provided to the governing body of the Subrecipient within the next two regularly scheduled meetings. For a Public Organization all Department monitoring reports and Subrecipient responses to monitoring reports must be provided to the governing body of the Subrecipient, and for a CSBG Subrecipient to the advisory board within the next two regularly scheduled meetings. Issues of concern over which there is uncertainty or ambiguity may be discussed by the Department with the staff of cognizant agencies overseeing federal funding. Certain types of suspected or observed improper conduct may trigger requirements to make reports to other oversight authorities, state and federal, including but not limited to the State Auditor's Office and applicable Inspectors General.

(2) Subrecipient Response. If there are any findings of noncompliance requiring corrective action, the Subrecipient will be provided 30 calendar days, from the date of the email, to respond which may be extended by the Department for good cause. In order to receive an extension, the Subrecipient must submit a written request to the Director of Compliance within the corrective action period, stating the basis for good cause that justifies the extension. The Department will approve or deny the extension request within five calendar days.

(3) Monitoring Close Out. Within 45 calendar days after the end of the corrective action period, a close out letter will be issued to the Subrecipient. If the Subrecipient supplies evidence establishing continual compliance that negates the finding of noncompliance, the issue of noncompliance will be rescinded. If the Subrecipient's timely response satisfies all findings and concerns noted in the monitoring letter, the issue of noncompliance will be noted as corrected. In some circumstances, the Subrecipient may be unable to secure documentation to correct a finding. In those instances, if there are mitigating circumstances, the Department may note the finding is not corrected but close the issue with no further action required. If the Subrecipient's response does not correct all findings noted, the close out letter will identify the documentation that must be submitted to correct the issue.

(4) Options for Review. If, following the submission of corrective action documentation, Compliance staff continues to find the Subrecipient in noncompliance, and the Subrecipient disagrees, the Subrecipient may request or initiate review of the matter using the following options, where applicable:

(A) If the issue is related to a program requirement or prohibition of a federal program, the Subrecipient may contact the applicable federal program officer for guidance or request that the Department contact applicable federal program officer for guidance without identifying the Subrecipient.

(B) If the issue is related to application of a provision of the Contract or a requirement of the Texas Administrative Code, the Subrecipient may request to submit an appeal to the Executive Director consistent with §1.7 of this title (relating to Appeals Process).

(C) A Subrecipient may request Alternative Dispute Resolution (ADR). Subrecipient should send a proposal to the Department's Dispute Resolution Coordinator to initiate ADR pursuant to §1.17 of this title (relating to Alternative Dispute Resolution).

(5) If a Subrecipient does not respond to a monitoring letter or fail to provide acceptable evidence of compliance, the matter will be handled through the procedures described in Chapter 2 of this title (relating to Enforcement).

## **SUBCHAPTER B. COMMUNITY SERVICES BLOCK GRANT**

### *§6.201. Background and Definitions.*

(a) In addition to this subchapter, except where noted, the rules established in Subchapter A of this chapter (relating to General Provisions) and Chapters 1 and 2 (relating to Administration and Enforcement, respectively) of this title apply to the CSBG Program. The CSBG Act was amended by the "Community Services Block Grant Amendments of 1994" and the Coats Human Services Reauthorization Act of 1998. The Secretary is authorized to establish a community services block grant program and make grants available through the program to states to ameliorate the causes of poverty in communities within the states. Although Eligible Entities receive an allocation of CSBG funds, the CSBG program is not an entitlement program for eligible customers.

(b) The Texas Legislature designates the Department as the lead agency for the administration of the CSBG program pursuant to Tex. Gov't Code, §2306.092. CSBG funds are made available to Eligible Entities to carry out the purposes of the CSBG program.

(c) Except as otherwise noted herein all references in this subchapter to an Eligible Entity's board means both the governing board of the Private Nonprofit or the advisory board of the Public Organization.

(d) Definitions.

(1) Community Action Plan (CAP)--A plan required by the CSBG Act which describes the local Eligible Entity service delivery system, how coordination will be developed to fill identified gaps in services, how funds will be coordinated with other public and private resources, and how the local entity will use the funds to support innovative community and neighborhood based initiatives related to the grant.

(2) CSBG Act--The CSBG Act is a law passed by Congress authorizing the Community Services Block Grant. The CSBG Act was amended by the Community Services Block Grant Amendments of 1994 and the Coats Human Services Reauthorization Act of 1998 under 42 U.S.C. §§9901, et seq. The CSBG Act authorized establishing a community services block grant program to make grants available through the program to states to ameliorate the causes of poverty in communities within the states.



(3) Direct Customer Support--includes salaries and fringe benefits of case management staff as well as direct benefits provided to customers.

(4) National Performance Indicator (NPI)--A federally defined measure of performance within the Department's Contract System for measuring performance and results of Subrecipients of funds.

(5) Needs Assessment--An assessment of community needs in the areas to be served with CSBG funds.

(6) Quality Improvement Plan (QIP)--A plan developed by a CSBG Eligible Entity to correct Deficiencies identified by the Department as further described in §2.203 and §2.204 of this title (Termination and Reduction of Funding for CSBG Eligible Entities and Contents of a Quality Improvement Plan, respectively).

(7) Results Oriented Management and Accountability (ROMA)--ROMA provides a framework for continuous growth and improvement among Eligible Entities. ROMA implementation is a federal requirement for receiving federal CSBG funds, outlined in HHS IM 152.

(8) Strategic Plan--A planning document which takes into consideration the needs of the targeted community and identifies an organization's vision and mission; its strengths, weaknesses, opportunities, and threats; external and internal factors impacting the organization; and utilizes this information to set goals, objectives, strategies, and measure to meet over an identified period of time.

(9) Transitioned Out of Poverty (TOP)--A Household who was CSBG eligible and as a result of the delivery of CSBG-supported case management services attains an annual income in excess of 125% of the poverty guidelines for 90 calendar days.

(e) Use of certain terminology. In these rules and in the Department's administration of its programs, including the CSBG program, certain terminology is used that may not always align completely with the terminology employed in the CSBG Act. The term "monitoring" is used interchangeably with the CSBG Act term "review" as used in 42 U.S.C. §9915 of the CSBG Act. Similarly, the terms "findings," "concerns," and "violations" are used interchangeably with the term "deficiencies" as used in 42 U.S.C. §9915 of the CSBG Act although, in a given context, they may be assigned more specific, different, or more nuanced meanings, as appropriate.

#### *§6.202.Purpose and Goals.*

The Department passes through CSBG funds to Public Organizations and Private Nonprofits that are to comply with the purposes of the CSBG Act.

#### *§6.203.Formula for Distribution of CSBG Funds.*

(a) The CSBG Act requires that no less than 90% of the state's annual allocation be allocated to Eligible Entities. The Department currently utilizes a multi-factor fund distribution formula to

equitably provide CSBG funds throughout the state to the CSBG Eligible Entities. The formula is subject to adjustment from time to time when amended as part of the CSBG State Plan.

(b) The distribution formula incorporates the most current U.S. Census Bureau Decennial Census and data from the American Community Survey for information on persons not to exceed 125% of poverty. The formula is applied as follows:

(1) Each Eligible Entity receives a \$50,000 base award;

(2) Then, the factors of poverty population, weighted at 98% and inverse population density, weighted at 2%, are applied to the state's allocation required to be distributed among Eligible Entities;

(3) If the base combined with the calculation resulting from the weighted factors in paragraph (2) of this subsection do not reach a minimum floor of \$150,000, then a minimum floor of \$150,000 is reserved for each of those CSBG eligible entities, resulting in a proportional reduction in other funds available for formula-based distribution; and

(4) Then, the formula is re-applied to the balance of the 90% funds for distributing the remaining funds to the remaining CSBG Eligible Entities.

(c) Following the use of the decennial Census data, then on a biennial basis, the Department will use the most recent American Community Survey five year estimate data that is available. To the extent that there are significant reductions in CSBG funds received by the Department, the Department may revise the CSBG distribution formula through a rulemaking process.

(d) In years where permitted by the federal government, an Eligible Entity that does not obligate more than 20% of its base allocation in a Program Year (excluding any additional funds that may be distributed by the Department) by the end of the first quarter of the year following the allocation year for two consecutive years will have funding recaptured consistent with 42 U.S.C. §9907(a)(3). This recapture of funds does not trigger the procedures or protections of HHS IM 116. The Subrecipient of the funds will be provided a Contract for the average percentage of funds that they expended over the last two years. The Eligible Entity will be provided an opportunity to redistribute the funds through a competitive request for proposals to a Private Nonprofit Organization, located within the community served by the Eligible Entity. If the Eligible Entity selects this option it will be responsible for monitoring the Private Nonprofit Organization selected. If the Subrecipient does not provide them to an eligible Private Nonprofit Organization, located within the community served by the Subrecipient, the Department in accordance with HHS IM 42 shall redistribute the funds to another Eligible Entity to be used in accordance with the CSBG and Department rules.

(e) Five percent of the Department's annual allocation of CSBG funds may be expended on activities listed in 42 U.S.C. §9907(b)(A) - (H) and further described in the annual plan or by Board approval. The Department may also opt to distribute unexpended funds described in subsection (f) of this section for these activities.

(f) Up to 5% of the State's annual allocation of CSBG funds will be used for the Department's administrative purposes consistent with state and federal law.

*§6.204. Use of Funds.*

CSBG funds are contractually obligated to Eligible Entities, and accessed through the Department's web-based Contract System. Prior to executing a Contract for CSBG funds, the Department will verify that neither the entity, nor any member of the Eligible Entity's Board is federally debarred or excluded. Unless modified by Contract, the annual allocation has a beginning date of January 1 and an end date of December 31, regardless of the Eligible Entity's fiscal year. Eligible Entities may use the funds for administrative support and/or for direct services such as: education, employment, housing, health care, nutrition, transportation, linkages with other service providers, youth programs, emergency services, i.e., utilities, rent, food, Shelter, clothing, etc.

*§6.205. Limitations on Use of Funds.*

(a) Construction of Facilities. CSBG funds may not be used for the purchase, construction or improvement of land, or facilities as described in (42 U.S.C. §9918(a)).

(b) The CSBG Act prohibits the use of funds for partisan or nonpartisan political activity; any political activity associated with a candidate, contending faction, or group in an election for public or party office; transportation to the polls or similar assistance with an election; or voter registration activity (for example, contacting a congressional office to advocate for a change to any law is a prohibited activity).

(c) Utility and rent deposit refunds from vendors must be reimbursed to the Subrecipient and not the customer. Refunds must be treated as program income, and returned to the Department within 10 calendar days of receipt.

*§6.206. Strategic Plan, Community Assessment, and Community Action Plan.*

(a) In accordance with CSBG Organizational Standards, every five years each Eligible Entity shall complete a Strategic Plan using the full Results Oriented Management and Accountability (ROMA) cycle or a comparable system. The Strategic Plan shall, at a minimum, meet the requirements of CSBG Organizational Standards (specifically Organization Standards 4.3, 6.1 - 6.5, and 9.3) and any other requirements established by the Department as a result of federal law, regulation or guidance, or state law. The Strategic Plan must comply with Department requirements and be submitted on or before a date specified by the Department.

(b) In accordance with CSBG Organizational Standards, every three years each Eligible Entity shall complete a Community Assessment (may also be called "Community Needs Assessment" or CNA), upon which the annual Community Action Plan (CAP) will be based. The Community Assessment must comply with Department requirements and be submitted on or before a date specified by the Department. The Community Assessment will require, among other things, that the top five needs of the Service Area are identified.

(c) In accordance with CSBG Organizational Standards, each Eligible Entity must submit a CAP on an annual basis. The CAP must comply with Department requirements and be submitted on or before a date specified by the Department, for approval prior to execution of a Contract.

(d) If circumstances warrant amendments to the Community Assessment or the CAP, a Subrecipient must provide a written request to the Department identifying the specific requested change(s) to the document with a justification for each change. The Department will approve or deny amendment requests in writing.

(e) Hearing. In conjunction with the submission of the CAP, the Eligible Entity must annually submit to the Department a certification from its board that a public hearing was posted, and conducted on the proposed use of that year's funds.

(f) The Strategic Plan, Community Assessment, and CAP require Department approval; those that do not meet the Department's requirements as articulated in these rules, in federal guidance, in Subrecipient's Contract, and in Department guidance will be required to be revised until they meet the Department's satisfaction.

(g) Consistent with CSBG Organizational Standards relating to Data Analysis and Performance, the Eligible Entity must present to its governing board for review or action, at least every 12 months, an analysis of the agency's outcomes and any operational or strategic program adjustments and improvements identified as necessary; and the organization must submit its annual CSBG Information Survey data report which reflects customer demographics and organization-wide outcomes.

(h) Services to Poverty Population. An Eligible Entity administering services to customers in one or more counties in its CSBG Service Area shall ensure that such services are rendered reasonably and in an equitable manner to ensure fairness among all potential applicants eligible for services. Services rendered must reflect the poverty population ratios in the Service Area and services should be distributed based on the proportionate representation of the poverty population within a county. A variance of greater than plus or minus 20% may constitute a Deficiency. An Eligible Entity administering services to customers in one or more counties shall demonstrate marketing and outreach efforts to make available direct services to a reasonable percentage of the county's eligible population based on the most recent census or American Community Survey data, as directed by the Department. Services should also be distributed based on the proportionate representation of the poverty population within a county. Other CSBG-funded organizations shall ensure that services are rendered in accordance with requirements of the CSBG Contract.

(i) Each CSBG Subrecipient must develop a Performance Statement which identifies the services, programs, and activities to be administered by that organization.

#### *§6.207.Subrecipient Requirements.*

(a) An Eligible Entity shall submit information regarding the planned use of funds as part of the CAP as described in §6.206 of this subchapter (relating to Strategic Plan, Community Assessment, and Community Action Plan).

(b) HHS issues terms and conditions for receipt of funds under the CSBG. Subrecipient will comply with the requirements of the terms and conditions of the CSBG award.

(c) CSBG Eligible Entities, and other CSBG organizations where applicable, are required to coordinate CSBG funds and form partnerships and other linkages with other public and private resources and coordinate and establish linkages between governmental and other social service programs to assure the effective delivery of services and avoid duplication of services.

(d) CSBG Eligible Entities will provide, on an emergency basis, the provision of supplies and services, nutritious foods, and related services as may be necessary to counteract the conditions of starvation and malnutrition among low-income individuals. The nutritional needs may be met through a referral source that has resources available to meet the immediate needs.

(e) CSBG Eligible Entities and other CSBG organizations are required to coordinate for the provision of employment and training activities through local workforce investment systems under the Workforce Innovation and Opportunity Act, as applicable.

(f) CSBG Eligible Entities are required to inform custodial parents in single-parent families that participate in programs, activities, or services about the resources available through the Texas Attorney General's Office with respect to the collection of child support payments and refer eligible parents to the Texas Attorney General's Office of Child Support Services Division.

(g) Documentation of Services. Subrecipient must maintain a record of referrals and services provided.

(h) Intake Form. To fulfill the requirements of 42 U.S.C. §9917, CSBG Subrecipient must complete and maintain an intake form that screens for income, assesses customer needs, and captures the demographic and household characteristic data required for the Monthly Performance and Expenditure Report, referenced in Subchapter A of this chapter (relating to General Provisions), for all Households receiving a community action service. CSBG Subrecipients must complete and maintain a manual or electronic intake form for all customers at least every twelve months.

(i) Case Management.

(1) An Eligible Entity is required to provide integrated case management services. Subrecipient is required to identify and set goals for Households they serve through the case management process. Subrecipient is required to evaluate and assess the effect its case management system has on the short-term (less than three months) and long-term (greater than three months) impact on customers, such as enabling the customer to move from poverty to self-sufficiency, to maintain stability. CSBG funds may be used for short term case management to meet

immediate needs. In addition, CSBG funds may be used to provide long-term case management to persons working to transition out of poverty and achieve self-sufficiency.

(2) An Eligible Entity must have and maintain documentation of case management services provided.

(3) An Eligible Entity is assigned a minimum TOP goal by the Department. Eligible Entities must provide ongoing case management services for these TOP Households. The case management services must include the components described in subparagraphs (A) - (L) of this paragraph. Subrecipients must also provide case management clients with a Customer Satisfaction Survey, described in subparagraph (M) of this paragraph, for the client to complete anonymously. At least annually, Subrecipients must evaluate the effectiveness of their case management services, as described in subparagraph (N) of this paragraph. The forms or systems utilized for each component may be manual or electronic forms provided by the Department or manual or electronic forms created by the Eligible Entity that at minimum contain the same information as the Department-issued form:

(A) Self-Sufficiency Customer Questionnaire to assess a customer's status in the areas of employment, job skills, education, income, housing, food, utilities, Child care, Child and family development, transportation, healthcare, and health insurance;

(B) Self-Sufficiency Outcomes Matrix to assess the customer's status in the self-sufficiency domains noted in subparagraph (A) of this paragraph;

(C) Case Management Screening Questions to assess the customer's willingness to participate in case management services on an ongoing basis;

(D) For customers who are willing to engage in long term case management services, a Case Management Agreement between Subrecipient and customer;

(E) Release of Information Form;

(F) Case Management Service Plan to document planned goals agreed upon by the case manager and customer along with steps and timeline to achieve goals;

(G) Case management follow-up, which provides a system to document customer progress at completing steps and achieving goals. Case management follow-up should occur, at a minimum, every 30 days, either through a meeting, phone call or email. In person meetings should occur, at a minimum, once a quarter;

(H) A record of referral resources and documentation of the results;

(I) A system to document services received and to collect and report NPI data;

(J) A system to document case closure for persons that have exited case management;

(K) A system to document income for persons that have maintained an income level above 125% of the Federal Poverty Income Guidelines for 90 days;

(L) A system to document and notify customers of termination of case management services;

(M) Customer Satisfaction Survey; and

(N) On an annual basis, an Eligible Entity should determine the effectiveness of its case management services and identify strategies for improvement, including identification of reasons for customer terminations and strategies to limit their occurrence.

(j) Effective January 1, 2016, Eligible Entities shall meet the CSBG Organizational Standards as issued by HHS IM 138 (as revised), except that where the word bylaws is used the Department has modified the standards to read Certificate of Formation/Articles of Incorporation and bylaws; also, Eligible Entities must follow the requirements in UGMS or TxGMS (as applicable) including the State of Texas Single Audit Circular. Failure to meet the CSBG Organizational Standards as described in this subsection may result in HHS IM 116 proceedings as described in Chapter 2 of this title (relating to Enforcement).

*§6.208. Designation and Re-designation of Eligible Entities in Unserved Areas.*

If any geographic area of the state ceases to be served by an Eligible Entity, the requirements of 42 U.S.C. §9909 will be followed.

*§6.209. CSBG Requirements for Tripartite Board of Directors.*

(a) General Board Requirements.

(1) The Coats Human Services Reauthorization Act (Public Law 105-285) addresses the CSBG program and requires that Eligible Entities administer the CSBG program through a tripartite board. The Act requires that governing boards or a governing body be involved in the development, planning, implementation, and evaluation of the programs serving the low-income sector.

(2) Federal requirements for establishing a tripartite board require board oversight responsibilities for public entities, which differ from requirements for private organizations. Where differences occur between private and public organizations, requirements for each entity have been noted in related sections of the rule.

(b) Each CSBG Eligible Entity shall comply with the provisions of this rule and if necessary, the Eligible Entity's by-laws/Certificate of Formation/Articles of Incorporation shall be amended to reflect compliance with these requirements.

*§6.210. Board Structure.*

(a) Eligible Entities that are Private Nonprofit Organizations shall administer the CSBG program through a tripartite board that fully participates in the development, planning, implementation, and evaluation of the program to serve low-income communities. Records must be retained for all seated board members in relation to their elections to the board for the longer of the board member's term on the Board, or the federal record retention period. Some of the members of the board shall be selected by the Private Nonprofit Organization, and others through a democratic process; the board shall be composed so as to assure that the requirements of the CSBG Act are followed and are composed as:

(1) One-third of the members of the board shall be elected public officials, holding office on the date of the selection, or their representatives. In the event that there are not enough elected public officials reasonably available and willing to serve on the board, the entity may select appointive public officials to serve on the board. The public officials selected to serve on the board may each choose one permanent representative or designate an alternate to serve on the board. Appointive public officials or their representatives or alternates may be counted in meeting the 1/3 requirement.

(2) Not fewer than 1/3 of the members are persons chosen in accordance with the Eligible Entity's Board-approved written democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhood served; and each representative of low-income individuals and families selected to represent a specific neighborhood within a community resides in the neighborhood represented by the member.

(3) The remainder are members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served.

(b) For a Public Organization that is an Eligible Entity, the entity shall administer the CSBG grant through an advisory board that fully participates in the development, planning, implementation and evaluation of programs that serve low-income communities or through another mechanism specified by the state and that satisfies the requirements of a tripartite board in subsection (a) of this section. The advisory board is the only alternative mechanism for administration the Department has specified.

(c) An Eligible Entity administering the Head Start Program must comply with the Head Start Act (42 U.S.C. §9837) that requires the governing body membership to comply with the requirements of §642(c)(1) of the Head Start Act.

(d) Residence Requirement. Board members must follow any residency requirements outlined in 42 U.S. Code §9910, or federal regulations made pursuant to that section. Low income representatives must reside in the CSBG Service Area.

(e) Selection.

(1) Public Officials:



(A) Elected public officials or appointed public officials, selected to serve on the board, shall have either general governmental responsibilities or responsibilities which require them to deal with poverty-related issues.

(B) Permanent Representatives and Alternates. The public officials selected to serve on the board may each choose one permanent representative or designate an alternate to serve on the board.

(i) Permanent Representatives. The representative need not be a public official but shall have full authority to act for the public official at meetings of the board. Permanent representatives may hold an officer position on the board. If a permanent representative is not chosen, then an alternate may be designated by the public official selected to serve on the board. Alternates may not hold an officer position on the board.

(ii) Alternate Representatives. If the Private Nonprofit Entity or Public Organization advisory board chooses to allow alternates, the alternates for low-income representatives shall be elected at the same time and in the same manner as the board representative is elected to serve on the board. Alternates for representatives of private sector organizations may be designated to serve on the board and should be selected at the same time the board representative is selected. In the event that the board member or alternate ceases to be a member of the organization represented, he/she shall no longer be eligible to serve on the board. Alternates may not hold an officer position on the board.

(2) Low-Income Representatives:

(A) The CSBG Act and its amendments require representation of low-income individuals on boards. The CSBG statute requires that not fewer than one-third of the members shall be representatives of low-income individuals and families and that they shall be chosen in accordance with democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhoods served; and that each representative of low-income individuals and families selected to represent a specific neighborhood within a community resides in the neighborhood represented by the member.

(B) Board members representing low-income individuals and families must be selected in accordance with a democratic procedure. This procedure, as detailed in subparagraph (D) of this paragraph, may be either directly through election, public forum, or, if not possible, through a similar democratic process such as election to a position of responsibility in another significant service or community organization such as a school PTA, a faith-based organization leadership group; or an advisory board/governing council to another low-income service provider; For a Private Nonprofit Entity the democratic selection process must be detailed in the agency's Certificate of Formation/Articles of Incorporation or bylaws, but the method detailed in the bylaws (if so described) must not be inconsistent with any method of selection of Board members outlined in the Certificate of Formation/Articles of Incorporation; failure to comply could result in a default procedure that does not meet the CSBG requirements and potentially jeopardizes the Eligible Entity status of the organization as detailed in §6.213 of this subchapter (relating to Board Responsibility). For a Public Organization the democratic

procedure must be written in the advisory board's procedures, and approved at a board meeting.

(C) Every effort should be made by the Private Nonprofit Entity or Public Organization to assure that low-income representatives are truly representative of current residents of the CSBG Service Area, including racial and ethnic composition, as determined by periodic selection or reselection by the community. "Current" should be defined by the recent or annual demographic changes as documented in the needs/Community Assessment. This does not preclude extended service of low-income community representatives on boards, but it does suggest that continued board participation of longer term members be revalidated and kept current through some form of democratic process.

(D) The procedure used to select the low-income representative must be documented to demonstrate that a democratic selection process was used. Among the selection processes that may be utilized, either alone or in combination, are:

(i) selection and elections, either within neighborhoods or within the community as a whole; at a meeting or conference, to which all neighborhood residents, and especially those who are poor, are openly invited;

(ii) selection of representatives to a community-wide board by members of neighborhood or sub-area boards who are themselves selected by neighborhood or area residents;

(iii) selection, on a small area basis (such as a city block); or

(iv) selection of representatives by existing organizations whose membership is predominately composed of poor persons.

(E) A Public Organization must not adopt a democratic selection process that requires all of the low-income representatives to reside in the political boundaries of the Public Organization, or that excludes all residents not in the political boundaries of the Public Organization from all participation in the democratic selection of all of the low-income representatives.

(3) Representatives of Private Groups and Interests.

(A) The Private Nonprofit or Public Organization shall select the remainder of persons to represent the private sector on the board or it may select private sector organizations from which representatives of the private sector organization would be chosen to serve on the board.

(B) The individuals and/or organizations representing the private sector should be selected in such a manner as to assure that the board will benefit from broad community involvement. The board composition for the private sector shall draw from officials or members of business, industry, labor, religious, law enforcement, education, school districts, representatives of education districts and other major groups and interests in the community served.

(f) An Eligible Entity must have written procedures under which a low-income individual, community organization, religious organization, or representative of such may petition for adequate representation on the board of the Eligible Entity. Such petitions must be heard at a subsequent board meeting not more than 120 days after receiving the petition.

(g) Improperly Constituted Board. If the Department determines that a board of an Eligible Entity is improperly constituted, the Department shall prescribe the necessary remedial action, a timeline for implementation, and possible sanctions as described in §2.202 of this title (relating to Sanctions and Contract Closeout).

#### *§6.211. Board Administrative Requirements.*

(a) Compensation. Board members, including advisory board members, are not entitled to compensation for their service on the board. Reimbursement of reasonable and necessary expenses incurred by a board member in carrying out his/her duties is allowed.

(b) Conflict of Interest. Board members must follow the conflict of interest requirements in UGMS or TxGMS, as applicable, for both procurement and non-procurement transactions.

(c) Board Service. No employee of the local CSBG Subrecipient or of the Department may serve on the board.

(d) Interim Appointments. A seated board member is permitted to be appointed to serve in an interim executive capacity, such as an interim Executive Director, for up to 180 days so long as the Department is so notified, the board member did not participate in the vote that designated them for the position, the board member does not vote during the period for which they serve in the position, and the member is not considered a board member for purposes of quorum. In such cases, the board member seat is not considered vacated, and is available for that board member to return.

#### *§6.212. Board Size.*

(a) Board Service Limitations for Private Nonprofit Entities and Public Organizations. The Eligible Entity may establish term limits and/or procedures for the removal of board members.

(b) Vacancies/Removal of Board Members.

(1) Vacancies. Except as allowed under §6.211(d) of this subchapter (relating to Interim Appointments) the board shall not allow a public, private, or low-income sector board position to remain vacant for more than 90 days. An Eligible Entity shall report the number of board vacancies by sector in its Monthly Performance and Expenditure Report. Compliance with the CSBG Act requirements for board membership is a condition for Eligible Entities to receive CSBG funding. There is no provision for a waiver or exception to these requirements.

(2) Removal of Board Members/Private Nonprofit Entities. Public officials or their representatives, may be removed from the board either by the board or by the entity that

appointed them to serve on the board. Other members of the board may be removed by the board or pursuant to any procedure provided in the private nonprofit's Certificate of Formation/Articles of Incorporation or bylaws.

(3) Removal of Board Members/Public Organizations. Public officials or their representatives may be removed from the advisory board by the Public Organization, or by the advisory board if the board is so empowered by the Public Organization. The advisory board may petition the Public Organization to remove an advisory board member. All other board members may be removed by the advisory board.

(4) In order to meet the 1/3 requirement for the Public Official representation detailed in §6.210 of this subchapter (relating to Board Structure), board size shall be a number divisible by three.

*§6.213. Board Responsibility.*

(a) Tripartite boards have a fiduciary responsibility for the overall operation of the Eligible Entity. Members are expected to carry out their duties as any reasonably prudent person would do.

(b) At a minimum, board members are expected to:

(1) Maintain regular attendance of board and committee meetings;

(2) Develop thorough familiarity with core agency information as appropriate, such as the agency's bylaws, Certificate of Formation/Articles of Incorporation, sources of funding, agency goals and programs, federal and state CSBG statutes;

(3) Exercise careful review of materials provided to the board;

(4) Make decisions based on sufficient information;

(5) Ensure that proper fiscal systems and controls, as well as a legal compliance system, are in place;

(6) Maintain knowledge of all major actions taken by the agency; and

(7) Receive regular reports that include:

(A) Review and approval of all funding requests (including budgets);

(B) Review of reports on the organization's financial situation;

(C) Regular reports on the progress of goals specified in the Performance Statement or program proposal;

(D) Regular reports addressing the rate of expenditures as compared to those projected in the budget;

(E) Updated modifications to policies and procedures concerning employees and fiscal operations;

(F) Updated information on community conditions that affect the programs and services of the organization; and

(G) Reports on any monitoring correspondence transmitted by the Department.

(c) Individuals that agree to participate on a tripartite governing board, accept the responsibility to assure that the agency they represent continues to:

(1) Assess and respond to the causes and conditions of poverty in their community;

(2) Achieve anticipated family and community outcomes; and

(3) Remains administratively and fiscally sound.

(d) Excessive absenteeism of board members compromises the mission and intent of the program.

*§6.214. Board Meeting Requirements.*

a) A Board of an Eligible Entity must meet and have a quorum at least once per calendar quarter, and at a minimum five times per year and, must give each Board member a notice of meeting five calendar days in advance of the meeting.

(b) Tex. Gov't Code, Chapter 551, Texas Open Meetings Act, addresses specific requirements regarding meetings and meeting notices. Tex. Gov't Code, §551.001(3)(J), includes in the definition of a governmental body a nonprofit corporation that is eligible to receive funds under the federal CSBG program, and that is authorized by the state to serve a geographic area of the state. Thus, all Eligible Entities must follow the requirements of the Texas Open Meetings Act. As set forth in that law, there is the potential for individual criminal liability for violations.

(c) Tex. Gov't Code, §551.005 requires elected or appointed officials to receive training in Texas Open Government laws. The Department requires that all board members or advisory board members receive training in Texas Open Government laws, according to the requirements of §551.005.

(d) A copy of the attendance roster for all Board trainings shall be maintained at the Subrecipient level.

(e) The minimum number of members required to meet quorum is three unless the Subrecipient's Certification of Formation/Articles of Incorporation, bylaws, or the Texas Open Meetings Act requires a greater number.

## **SUBCHAPTER C. COMPREHENSIVE ENERGY ASSISTANCE PROGRAM**

### *§6.301. Background and Definitions.*

(a) The Comprehensive Energy Assistance Program (CEAP) is funded through the Low Income Home Energy Assistance Act of 1981 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, as amended). LIHEAP has been in existence since 1982. LIHEAP is a federally funded block grant program that is implemented to serve Low Income Households who seek assistance for their home energy bills. LIHEAP is not an entitlement program, and there are not sufficient funds to serve all eligible customers or to provide the maximum benefit for which a customer may qualify.

(b) Definitions.

(1) Crisis Assistance--A type of CEAP assistance limited to Households who meet the requirements related to Extreme Weather Conditions, Life Threatening Crisis, or a Disaster.

(2) Customer Obligations--Funds become obligated upon a Subrecipient's pledge of payment to a specific Household toward a service or form of assistance and it being recorded in Subrecipient's client tracking software.

(3) Disaster--An event declared by the President of the United States or the Governor of the State of Texas.

(4) Extreme Weather Conditions--For winter months (November, December, January, and February), extreme cold weather conditions exist when the temperature has been at least two degrees below the lowest winter month's temperature or below 32 degrees, for at least three days during the client's billing cycle. For summer months (June, July, August, and September), extreme hot weather conditions exist when the temperature is at least two degrees above the highest summer month's temperature for at least three days during the client's billing cycle. Extreme Weather Conditions will be based on either data for "1981-2010 Normals" temperatures recorded by National Centers for Environmental Information of the National Oceanic and Atmospheric Administration (NOAA) and available at <https://www.ncdc.noaa.gov/cdo-web/datatools/normals>, or on data determined by the Subrecipient, and approved by the Department in writing. Subrecipient must maintain documentation of local temperatures and reflect their standard for Extreme Weather Conditions in its Service Delivery Plan.

(5) Life Threatening Crisis--A Life Threatening Crisis exists when the life of at least one person in the applicant Household who is a U.S. Citizen, U.S. National, or a Qualified Alien would likely, in the opinion of a reasonable person, be endangered if utility assistance or heating and cooling assistance is not provided. Examples of life endangerment include, but are not limited to, a Household member who needs electricity for life-sustaining equipment (e.g., kidney dialysis machines, oxygen concentrators, medicinal refrigeration and cardiac monitors); a Household member whose medical professional has prescribed that the ambient air temperature be

maintained at a certain temperature; a Household member whose life is endangered if absence of heating or cooling were to continue; or the presence of noxious gases as a result of heating or cooling the Dwelling Unit. In cases concerning an applicant's medical condition or need for life-sustaining equipment, documentation must not be requested about the medical condition of the applicant but the applicant must affirm that such a device is required in the Dwelling Unit because of a life threatening illness or risk of death.

(6) Low on Fuel--A reference to propane tanks which are below 20% supply (according to customer).

(7) Natural Disaster--A Disaster that is primarily not of man-made origins.

(8) Vendor Refund--A sum of money refunded by a utility company or supplier due to a credit on the account or due to a deposit. See §6.312 of this subchapter (relating to Payments to Subcontractors and Vendors) for more information.

### *§6.302.Purpose and Goals.*

The purpose of CEAP is to assist low-income Households, particularly those with the lowest incomes, and High Energy Consumption Households to meet their immediate home energy needs. The LIHEAP Statute requires priority be given to those with the highest home energy needs, meaning Low Income Households with High Energy Consumption, a High Energy Burden and/or the presence of Vulnerable Population in the Household. CEAP services include: energy education, utility payment assistance, repair of existing heating and cooling units, and crisis-related purchase of portable heating and cooling units.

### *§6.303.Distribution of CEAP Funds.*

(a) The Department distributes funds to Subrecipients by an allocation formula.

(b) The formula allocates funds based on the number of low income Households in a Service Area and takes into account the special needs of individual Service Areas. The need for energy assistance in an area is addressed through a weather factor (based on heating and cooling degree days). The extra expense in delivering services in sparsely populated areas is addressed by an inverse population density factor. The lack of additional services available in very poor counties is addressed by a county median income factor. Finally, the Elderly are given priority by giving greater weight to this population. The five factors used in the formula are calculated as:

(1) County Non-Elderly Poverty Household Factor (weight of 40%)--Defined by the Department as the number of Non-Elderly Poverty Households in the county divided by the number of Non-Elderly Poverty Households in the State;

(2) County Elderly Poverty Household Factor (weight of 40%)--Defined by the Department as the number of Elderly Poverty Households in the county divided by the number of Elderly Poverty Households in the State;

(3) County Inverse Household Population Density Factor (weight of 5%)--Defined by the Department as:

(A) The number of square miles of the county divided by the number of Poverty Households of the county (equals the Inverse Poverty Household Population Density of the county); and

(B) Inverse Poverty Household Population Density of the county divided by the sum of Inverse Household Densities;

(4) County Median Income Variance Factor (weight of 5%)--Defined by the Department as:

(A) State Median Income minus the County Median Income (equals county variance); and

(B) County Variance divided by sum of the State County Variances; and

(5) County Weather Factor (weight of 10%)--Defined by the Department as:

(A) County heating degree days plus the county cooling degree days, multiplied by the poverty Households, divided by the sum of county heating degree days and county cooling degree days of counties (equals County Weather); and

(B) County Weather divided by the total sum of the State County Weather.

(c) All demographic factors are based on the most recent decennial U.S. Census for which Census Bureau published information is available.

(d) The total sum of subsection (b)(1) - (5) of this section, multiplied by total funds allocation, equals the county's allocation of funds. The sum of the county allocations within each Subrecipient Service Area equals the Subrecipient's total allocation of funds.

(e) The Department may, in the future, undertake to reprocur the entities that comprise the network of CEAP providers, in which case this allocation formula will be reassessed and, if material changes are needed, amended by rulemaking.

*§6.304. Deobligation and Reobligation of CEAP Funds.*

(a) A written "Notification of Possible Deobligation" will be sent to the Executive Director and the Board of Directors or other governing body of the Subrecipient by the Department in a timely manner when the Department identifies that a criterion listed in subsection (b) or (c) of this section is at risk of not being met.

(b) The Department may Deobligate funds from all budget categories from Subrecipients whose combined Direct Services Expenditures and Customer Obligations are less than 30% as of the April 15 Monthly Performance and Expenditure Report. Subrecipient may avoid Deobligation at this point if one of the following has occurred:



(1) On or before the first business day in April, the Subrecipient has submitted a written request for an exception due to extenuating circumstances with a plan to improve Direct Services Expenditures and Customer Obligations. The request and plan must be approved by the Department in writing; or

(2) On or before the first business day in April, the Subrecipient has submitted a written request for training and/or technical assistance. Once such assistance has been delivered, as determined by the Department, the Subrecipient must submit a clear specific plan, as outlined by the Department, for improving Direct Services Expenditures and Customer Obligations, and that plan must be approved by the Department in writing.

(c) The Department may Deobligate funds from all budget categories from Subrecipients whose combined Direct Services Expenditures and Customer Obligations are less than 50% as of the June 15 Monthly Performance and Expenditure Report, unless on or before the first business day in June the Subrecipient submits a written request for an exception due to extenuating circumstances with a plan to improve Direct Services Expenditures and Customer Obligations. The request and plan must be approved by the Department in writing.

(d) Funds Deobligated under this section, or additional funds should they become available, will be Reobligated proportionally by the formula described in §6.303 of this subchapter (relating to Distribution of CEAP Funds), or if six months or less remain for the Department to expend the funds another method approved by the Department's Board amongst all Subrecipients that did not have any funds Deobligated to ensure full utilization of funds.

(e) A Subrecipient which has had funds Deobligated under subsection (b) or (c) of this section that fully Expend the reduced amount of its Contract by January 31 of the following year as reported in the Monthly Performance and Expenditure Report due February 15, will have access to the full amount of the following Program Year CEAP allocation. A Subrecipient which has had funds Deobligated under subsection (b) or (c) of this section that fails to fully expend the reduced amount of its Contract will automatically have the following Program Year CEAP allocation Deobligated by the lesser of 24.99%, or the proportional amount that had been Deobligated from the prior year Contract.

(f) The cumulative balance of the funds made available through subsection (e) of this section will be allocated proportionally by the formula described in §6.303 of this subchapter to the Subrecipients not having funds reduced under that subsection.

(g) In no event will involuntary Deobligations that occur through subsection (b) or (c) of this section exceed 24.99% of the Subrecipient's Program Year CEAP Contracted Funds, without an opportunity for a hearing as required by Tex. Gov't Code, Chapter 2105.

(h) Failure by the Subrecipient to Expend 98% of a prior year Contract by the Monthly Performance and Expenditure Report due April 15th of the subsequent year for two consecutive original Contract Terms is good cause for nonrenewal of a Contract.

*§6.305.Subrecipient Eligibility.*

(a) The Department administers the program through the existing Subrecipients that have demonstrated that they are operating the program in accordance with their Contract, the Economic Opportunity Act of 1964, the Low-Income Home Energy Assistance Act of 1981, as amended (42 U.S.C. §§8621, et seq.), and the Department rules. If a Subrecipient is successfully administering the program, the Department may offer to renew the Contract.

(b) If the Department determines that a Subrecipient is not administering the program satisfactorily, the Subrecipient will be notified of such a Finding as provided for in §6.11 of this chapter (relating to Compliance Monitoring) or otherwise notify the Subrecipient in accordance with §1.411 of this title (relating to Administration of Block Grants under 2105 of the Texas Government Code), and the Subrecipient may be required to take corrective actions to remedy the problem. If Subrecipient fails to correct the Finding, or take other corrective actions, in order to ensure continuity of services, the Department may reassign up to 24.99% of the funds for the Service Area to one or more other existing Subrecipients.

(c) If the Subrecipient does not complete the corrective action within the required timeframe, the Department may conduct a solicitation for selection of an interim Subrecipient. The affected Subrecipient may request a hearing in accordance with the Tex. Gov't Code, §2105.204.

(d) If it is necessary to designate a new Subrecipient to administer CEAP, the Department shall give special consideration to Subrecipients receiving funds under LIHEAP or DOE WAP, in accordance with Assurance 6 of the Low Income Home Energy Assistance Act of 1981.

#### *§6.306.Service Delivery Plan.*

Prior to any Expenditure of funds, Subrecipient is required to submit on an annual basis a Service Delivery Plan (SDP), which includes information on how they plan to implement CEAP in their Service Area. The SDP must: establish a Subrecipient's priority rating sheet and priority Households; the alternate billing method; how customer education is being addressed; how the Subrecipient is determining the number of payments to be made and which types of Households are qualified for a given number of payments; the local standard to be used for Extreme Weather Conditions; and any other requirements imposed by federal or state law. The SDP must be submitted on or before a date specified by the Department.

#### *§6.307.Subrecipient Requirements for Customer Eligibility Criteria, Provision of Services, and Establishing Priority for Eligible Households.*

(a) The customer income eligibility level is at or below 150% of the federal poverty level in effect at the time the customer makes an application for services.

(b) Categorical Eligibility for CEAP benefits exists when at least one person in the Household receives assistance from:

(1) SSI payments from the Social Security Administration; or

(2) Means Tested Veterans Program payments. See paragraph (38) of §6.2 of this chapter (relating to Definitions).

(c) A complete application is required for all Households. Subrecipient shall determine customer income using the definition of income and process described in §6.4 of this chapter (relating to Income Determination). Household income documentation must be collected by the Subrecipient for the purposes of determining the Household's benefit level.

(d) Social security numbers are not required for applicants.

(e) Subrecipient must establish a written procedure to serve Households that have a Vulnerable Population Household member, Households with High Energy Burden, and Households with High Energy Consumption. High Energy Burden shall be the highest rated item in sliding scale priority determinations. The Subrecipient must maintain documentation of the use of the criteria.

(f) A Dwelling Unit cannot be served if the meter is utilized by another Household that is not a part of the application for assistance. In instances where separate structures share a meter and the applicant is otherwise eligible for assistance, Subrecipient must provide services if:

(1) The members of the separate structures that share a meter meet the definition of a Household per §6.2 of this chapter;

(2) The members of the separate structures that share a meter submit one application as one Household; and

(3) All persons and applicable income from each structure are counted when determining eligibility.

(g) United States Citizen, United States National, or Qualified Alien. Except for items described in 10 TAC §6.310(c)(4) and §6.310(d) (relating to Crisis Assistance Component), Unqualified Aliens are not eligible to receive CEAP benefits. Mixed Status Households shall not be denied CEAP assistance based solely on the presence of a non-qualified member, except if the member is the sole member of the Household. A Public Organization must verify U.S. Citizen, U.S. National, or Qualified Alien status of all household members using SAVE.

(h) Subrecipient must begin providing utility assistance services to customers upon receipt of Contract and throughout the Contract Term unless Subrecipient has expended its entire Contract.

(i) Subrecipient must develop and publicly display a written procedure addressing the timeframe within which applications are determined to be eligible or ineligible once the application is complete, processing of the application and assistance delivery, and notification to the applicant.

*§6.308.Allowable Subrecipient Administrative and Program Services Costs.*

(a) Funds available for Subrecipient administrative activities will be calculated by the Department as a percentage of direct services Expenditures. Administrative costs shall not exceed the maximum percentage of total direct services Expenditures, as indicated in the Contract. All other administrative costs, exclusive of administrative costs for program services, must be paid with nonfederal funds. Allowable administrative costs for administrative activities includes costs for general administration and coordination of CEAP, and all indirect (or overhead) costs, and activities as described in paragraphs (1) - (7) of this subsection:

(1) Salaries;

(2) Fringe benefits;

(3) Non-training travel;

(4) Equipment;

(5) Supplies;

(6) Audit (limited to percentage of the contract expenditures, excluding training/travel costs as indicated in the Contract); and

(7) Office space (limited to percentage of the contract expenditures, excluding training/travel costs as indicated in the Contract).

(b) Program Services costs shall not exceed the maximum percentage of total direct services Expenditures, as indicated in the Contract. Program Services costs are allowable when associated with providing customer direct services. Program services costs may include outreach activities and expenditures on the information technology and computerization needed for tracking or monitoring required by CEAP, and activities as described in paragraphs (1) - (9) of this subsection:

(1) Direct administrative cost associated with providing the customer direct service;

(2) Salaries and benefits cost for staff providing program services;

(3) Supplies;

(4) Equipment;

(5) Travel;

(6) Postage;

(7) Utilities;

(8) Rental of office space; and

(9) Staff time to provide energy conservation education, needs assessments, and referrals.

*§6.309.Types of Assistance and Benefit Levels.*

(a) Allowable CEAP Expenditures include customer education, utility payment assistance, repair of existing heating and cooling units, and crisis-related purchase of portable heating and cooling units.

(b) Total maximum possible annual Household benefit (all allowable benefits combined) shall not exceed \$12,300 during a Program Year.

(c) Benefit determinations are based on the Household's income (even if the Household is Categorically Eligible), the Household size, Vulnerable Populations in the Household, plus other priority status, whether a Household has one or more Unqualified Aliens for which calculation adjustments must be made as described in paragraphs (1) and (2) of this subsection, and the availability of funds.

(1) Count income for all Household members 18 years of age and older, including Unqualified Aliens; and

(2) Adjust the Household size for determining eligibility and benefit assistance level to exclude all Unqualified Aliens.

(d) For purposes of determining Categorical Eligibility or Vulnerable Populations (i.e. priority status), the Household is not considered to satisfy the definition of having Categorical Eligibility or Vulnerable Population if the only individual(s) in the Household with that Categorical Eligibility or Vulnerable Population status are Unqualified Aliens. For purposes of reporting, all individuals in the Households should be reported.

(e) Benefit determinations for the Utility Payment Assistance Component and the Crisis Assistance Component cannot exceed the sliding scale described in paragraphs (1) - (3) of this subsection:

(1) Households with Incomes of 0 to 50% of Federal Poverty Guidelines may receive an amount not to exceed \$2,400 per Component;

(2) Households with Incomes ~~from~~ more than 50% but at or below ~~to~~ 75% of Federal Poverty Guidelines may receive an amount not to exceed \$2,300 per Component; and

(3) Households with Incomes more than 75% ~~to~~ but at or below 150% of Federal Poverty Guidelines may receive an amount not to exceed \$2,200 per Component.

(f) Service and Repair of existing heating and cooling units. Households may receive up to \$7,500 for service and repair of existing heating and cooling units when the Household has an inoperable heating or cooling system based on requirements in §6.310 of this subchapter (relating to Crisis Assistance Component) for Non-Vulnerable Population Households and

§6.311 of this subchapter (relating to Utility Assistance Component) for Vulnerable Population Households.

(g) Assistance with service and repair or purchase of portable air conditioning/evaporative coolers and heating units cannot exceed \$7,500. Refer to §6.310(c)(9) of this subchapter for requirements relating to service and repair or purchase of portable air conditioning/evaporative coolers and heating units.

(h) Energy bills already paid may not be reimbursed by the program. Funds from CEAP shall not be used to weatherize dwelling units, for medicine, food, transportation assistance (e.g., vehicle fuel), income assistance, or to pay for penalties or fines assessed to customers. Subrecipient shall provide only the types of assistance described in this subsection with funds from CEAP:

(1) Payment to vendors and suppliers of fuel/utilities, goods, and other services, such as past due or current bills related to the procurement of energy for heating and cooling needs of the residence, not to include security lights and other items unrelated to energy assistance as follows:

(A) Subrecipient may make utility payments on behalf of Households based on the previous 12 month's home energy consumption history, including allowances for cost inflation. If a 12 month's home energy consumption history is unavailable, Subrecipient may base payments on current Program Year's bill or utilize a Department-approved alternative method. Subrecipient will note such exceptions in customer files. Benefit amounts exceeding the actual bill shall be treated as a credit for the customer with the utility company;

(B) Vulnerable Population Households can receive benefits to cover the remaining bills within the Program Year as long as the cost does not exceed the maximum annual benefit for the Utility Assistance Component. Bill payment may cover two separate fuel sources; and

(C) Non-Vulnerable Population Households can receive benefits to cover up to six remaining bills within the Program Year as long as the cost does not exceed the maximum annual benefit for the Utility Assistance Component. Bill payment may cover two separate fuel sources;

(2) Needs assessment and energy conservation tips, coordination of resources, and referrals to other programs;

(3) Payment of water, wastewater and solid waste charges are not an allowable LIHEAP expense even in cases where those charges are an inseparable part of a utility bill. Whenever possible, Subrecipient shall negotiate with the utility providers to pay only the "home energy" (heating and cooling) portion of the bill or utilize other funds to pay for the water related charges;

(4) Payment of reconnection fees in line with the registered tariff filed with the Public Utility Commission and/or Texas Railroad Commission. Payment cannot exceed that stated tariff cost. Subrecipient shall negotiate to reduce the costs to cover the actual labor and material and to ensure that the utility does not assess a penalty for delinquency in payments;

(5) Payment of security deposits only when state law requires such a payment, or if the Public Utility Commission or Texas Railroad Commission has listed such a payment as an approved cost, and where required by law, tariff, regulation, or a deferred payment agreement includes such a payment. Subrecipient shall not pay such security deposits that the energy provider will eventually return to the customer;

(6) While rates and repair charges may vary from vendor to vendor, Subrecipient shall negotiate for the lowest possible payment. Prior to making any payments to an energy vendor a Subrecipient shall have a signed vendor agreement on file from the energy vendor receiving direct CEAP payments from the Subrecipient;

(7) Subrecipient may make payments to landlords on behalf of eligible renters who pay their utility and/or fuel bills indirectly. Subrecipient shall notify each participating Household of the amount of assistance paid on its behalf. Subrecipient shall document this notification. Subrecipient shall maintain proof of utility or fuel bill payment. Subrecipient shall ensure that amount of assistance paid on behalf of customer is deducted from customer's rent; and

(8) In lieu of deposit required by an energy vendor, Subrecipient may make advance payments. The Department does not allow CEAP Expenditures to pay deposits, except as noted in paragraph (5) of this subsection. Advance payments may not exceed an estimated two months' billings.

*§6.310.Crisis Assistance Component.*

(a) Crisis Assistance can be provided to persons who have already lost service or are in immediate danger of losing service only under one of the conditions listed in paragraphs (1) - (3) of this subsection, and shall not exceed the caps as defined in §6.309 of this subchapter (relating to Types of Assistance and Benefit Levels):

(1) Extreme Weather Conditions, as defined in §6.301 of this subchapter (relating to Background and Definitions), with assistance provided within 48 hours;

(2) Disaster, as defined in §6.301 of this subchapter, with assistance provided within 48 hours;  
or

(3) Life Threatening Crisis, as defined in §6.301 of this subchapter, with assistance provided within 18 hours.

(b) In order to resolve the crisis, Subrecipient shall ensure that for customers assisted through Crisis Assistance services are provided within the timeframes as described in subsection (a) of this section. The time limit commences upon completion of the application process. The application process is considered complete when an agency representative accepts an application and completes the eligibility process. Subrecipient must maintain written documentation in customer files showing crises resolved within the appropriate timeframe. The Department may disallow improperly documented Expenditures.

(c) Low Income Households as defined in §6.2 of this chapter (relating to Definitions) may be eligible for any one or more of the types of assistance listed in paragraphs (1) to (8) of this subsection:

(1) Payment of utilities or fuel bills and utility bill deposits necessary to retain heating or cooling.

(2) Emergency deliveries of fuel up to 250 gallons per crisis per Household, at the prevailing price. This benefit may include coverage for tank pressure testing.

(3) Utility reconnection costs.

(4) Blankets, as tangible benefits to keep individuals warm.

(5) For Non-Vulnerable Populations meeting the conditions described in subsection (a) of this section, service and repair of existing heating and cooling units is allowed when the Household has an inoperable heating or cooling system or the system is not functioning according to its intended purpose. If a component(s) of the heating or cooling system cannot be repaired using parts, the Subrecipient can replace the component(s) in order to repair the heating or cooling system. When a heating or cooling system is nonexistent, purchase of heating or cooling, or heating and cooling units for up to \$7,500 is allowed.

(6) When a Household meets the definition of Life Threatening Crisis, purchase of portable heating and/or cooling units is allowable. Units must be Energy Star<sup>®</sup>. In cases where the type of unit is not Energy Star<sup>®</sup>, or if Energy Star<sup>®</sup> units are not available due to supply shortages, Subrecipient may purchase the highest rated unit available. Purchase of more than two portable heating and/or cooling units requires prior written approval from the Department.

(7) Purchase of fans. The number, type, size and cost of these items may not exceed the minimum needed to resolve the crisis.

(8) If necessary, the purchase of a generator is allowable when a Household meets the definition of Life Threatening Crisis.

(d) When Disasters result in energy supply shortages or other energy-related emergencies, CEAP will allow home energy related expenditures for:

(1) Temporary Shelter in the limited instances that supply of power to the Dwelling Unit is disrupted causing a temporary evacuation.

(2) Cost to temporary Shelter or house individuals in hotel, apartments or other living situations in which homes have been destroyed or damaged when health and safety is endangered by loss of access to heating and cooling.



(3) Costs for transportation (e.g., cars, shuttles, buses) to move the individuals away from the crisis area to Shelters when health and safety is endangered by loss of access to heating and cooling.

(e) Subrecipient may request a waiver from the Executive Director or designee for the 18 and 48-hour timeframes in the case of a Natural Disaster. The Executive Director or designee may grant a waiver if good cause is found.

(f) Benefit Level for Crisis Assistance:

(1) Crisis Assistance for one Household cannot exceed the maximum allowable benefit level in one Program Year as defined in §6.309 of this subchapter. If a Household's Crisis Assistance needs exceed that maximum allowable benefit, Subrecipient may pay up to the Crisis Assistance limit only if the remaining amount of Household need can be paid from other funds to resolve the crisis. If the Household's crisis requires more than the Household limit to resolve and no other funds are available, the crisis exceeds the scope of this component.

(2) Payments may not exceed Household's actual utility bill.

(3) Payments may not exceed the Maximum Household allowable assistance benefit level.

(4) Service and repair or purchase of heating or cooling, or heating and cooling units for up to \$7,500 will not be counted towards the total maximum Household allowable assistance under the utility assistance and crisis components.

(5) Temporary Shelter not to exceed the annual Household benefit limit for the duration of the Contract Term.

*§6.311. Utility Assistance Component.*

(a) A Subrecipient may use home energy payments to assist Low Income Households to reduce their home energy costs. Subrecipient shall combine home energy payments with energy conservation tips, participation by utilities, and coordination with other services in order to assist low income Households to reduce their home energy needs.

(b) Subrecipient must make payments directly to vendors and/or landlords on behalf of eligible Households.

(c) For Vulnerable Population Households, service and repair of existing heating and cooling units is allowed when the Household has an inoperable heating or cooling system or the system is not functioning according to its intended purpose. If a component(s) of the heating or cooling system cannot be repaired using parts, the Subrecipient can replace the component(s) in order to repair the heating or cooling system. If a heating or cooling system is nonexistent, purchase of heating or cooling, or heating and cooling units for up to \$7,500 is allowed. The cost shall not exceed \$7,500 and will not be counted towards the total maximum per Household allowable

under the Utility Assistance Component. Subrecipients may leverage this type of assistance with LIHEAP and/or DOE Weatherization.

*§6.312. Payments to Subcontractors and Vendors.*

(a) A bi-annual Vendor Agreement is required to be implemented by the Subrecipient and shall contain assurances as to fair billing practices, delivery procedures, and pricing procedures for business transactions involving CEAP beneficiaries. The Subrecipient must use the Department's current Vendor Agreement template, found on the CEAP Program Guidance page of the Department's website. These agreements are subject to monitoring procedures performed by the Department staff.

(b) Subrecipient shall maintain proof of payment to Subcontractors and vendors as required by Chapter 1, Subchapter D of this title (relating to Uniform Guidance for Recipients of Federal and State Funds).

(c) Subrecipient shall notify each participating Household of the amount of assistance to be paid on its behalf. Subrecipient shall document this notification.

(d) Subrecipients shall use the Vendor Payment method for CEAP components. Subrecipient shall not make cash payments directly to eligible Household for any of the CEAP components.

(e) Payments to vendors for which a valid Vendor Agreement is not in place may be subject to disallowed costs unless prior written approval is obtained from the Department.

(f) A Vendor Refund is program income and must be reimbursed to the Subrecipient, and not the customer. When a Vendor Refund is issued, Subrecipient shall determine which TDHCA Contract the payment(s) was charged to, the Household associated to the payment, and if the Contract remains open.

(1) If the Contract remains open, Subrecipient must enter the amount into the Contract System in the appropriate budget line item into the adjustment column in the next monthly report, and make the appropriate note in the system. This will credit back the Vendor Refund for the Subrecipient to expend on eligible expenses.

(2) If the Contract is closed, Subrecipient must return the Vendor Refund to the Department within ten calendar days of receipt. The payment must contain the Contract number and appropriate budget line item associated with the refund.

*§6.313. Outreach, Accessibility, and Coordination.*

(a) The Department may continue to develop interagency collaborations with other low-income program offices and energy providers to perform outreach to targeted groups.

(b) Subrecipient shall conduct outreach activities. Outreach activities may include:

- (1) Providing information through home visits, site visits, group meetings, or by telephone for disabled low-income persons;
  - (2) Distributing posters/flyers and other informational materials via websites and social media and at local and county social service agencies, offices of aging, Social Security offices, etc.;
  - (3) Providing information on the program and eligibility criteria in articles in local newspapers or broadcast media announcements;
  - (4) Coordinating with other low-income services to provide CEAP information in conjunction with other programs;
  - (5) Providing information on one-to-one basis for applicants in need of translation or interpretation assistance;
  - (6) Providing CEAP applications, forms, and energy education materials in English and Spanish (and other appropriate language(s));
  - (7) Working with energy vendors in identifying potential applicants;
  - (8) Assisting applicants to gather needed documentation; and
  - (9) Mailing information and applications.
- (c) Subrecipient shall handle Reasonable Accommodation requests, in accordance with §1.204 of this title (relating to Reasonable Accommodations).
- (d) Subrecipient shall coordinate with other social service agencies through cooperative agreements to provide services to customer Households. Cooperative agreements must clarify procedures, roles, and responsibilities of all involved entities.
- (e) Subrecipient shall coordinate with other energy related programs. Specifically, Subrecipient shall make documented referrals to the local WAP Subrecipient.
- (f) Subrecipient shall coordinate with local energy vendors to arrange for arrearage reduction, reasonably reduced payment schedules, or cost reductions.

#### **SUBCHAPTER D. WEATHERIZATION ASSISTANCE PROGRAM**

##### *§6.401. Background.*

The Weatherization Assistance Program was established by the Energy Conservation in Existing Buildings Act of 1976, as amended 42 U.S.C. §§6851, et seq. The Department funds the Weatherization Programs through the Department of Energy Weatherization Assistance Program (DOE-WAP) which is funded through the U.S. Department of Energy Weatherization Assistance Program for Low Income Persons grant and the Low Income Home Energy Assistance Program Weatherization Assistance Program (LIHEAP-WAP) which is funded through the U.S.

Department of Health and Human Services' Low-Income Home Energy Assistance Program (LIHEAP) grant.

*§6.402.Purpose and Goals.*

(a) DOE-WAP and LIHEAP-WAP offers awards to Private Nonprofit Organizations, and Public Organizations with targeted beneficiaries being Households with low incomes, with priority given to Vulnerable Populations, High Energy Burden, and Households with High Energy Consumption. In addition to meeting the income-eligibility criteria, the weatherization measures to be installed must meet specific energy-savings goals. Neither of these programs are entitlement programs and there are not sufficient funds to serve all customers that may be eligible.

(b) The programs fund the installation of weatherization materials and provide energy conservation education. The programs help control energy costs to ensure a healthy and safe living environment.

(c) Organizations administering a Department-funded weatherization program must administer both the DOE-WAP and the LIHEAP-WAP. Organizations that have one Weatherization program removed will have both program removed. If it is necessary to designate a new Subrecipient to administer WAP, the Department shall give special consideration to Subrecipients receiving funds under LIHEAP or DOE WAP, in accordance with Assurance 6 of the Low Income Home Energy Assistance Act of 1981.

(d) The Department shall administer and implement the DOE-WAP program in accordance with DOE rules (10 CFR Part 440), except that Categorical Eligibility will follow the eligibility reflected in the LIHEAP plan. The Department shall administer and implement the LIHEAP-WAP program in accordance with a combination of LIHEAP statute (42 U.S.C. §§6861, et seq.) and DOE rules. LIHEAP Weatherization measures may be leveraged with DOE Weatherization measures in which case all DOE rules and requirements as described in this title and in the Contract will apply.

*§6.403.Definitions.*

(a) Department of Housing and Urban Development (HUD)--Federal department that provides funding for certain housing and community development activities.

(b) Electric Base-Load Measure (EBL)--Weatherization measures which address the energy efficiency and energy usage of lighting and appliances.

(c) Energy Audit--The energy audit software and procedures used to determine the cost effectiveness of Weatherization measures to be installed in a Dwelling Unit. The Energy Audit shall be used for any Dwelling Unit weatherized utilizing DOE funds.

(d) Energy Repairs--Weatherization-related repairs necessary to protect or complete regular Weatherization energy efficiency measures.

- (e) Multifamily Dwelling Unit--A structure containing more than one Dwelling Unit.
- (f) Priority List--For LIHEAP-WAP only, a list developed by the Department, as may be updated from time to time, included in the Contract, and which provides the prescribed method to be used by Subrecipients when addressing weatherization measures.
- (g) Rental Unit--A Dwelling Unit occupied by a person who pays rent for the use of the Dwelling Unit.
- (h) Renter--A person who pays rent for the use of the Dwelling Unit.
- (i) Reweathering--If a Dwelling Unit has been damaged by fire, flood, or act of God and repair of the damage to Weatherization materials is not paid for by insurance; or if a Dwelling Unit has not been partially weatherized in the previous 15 years, the Dwelling Unit may receive further financial assistance for Reweathering.
- (j) Shelter--A Dwelling Unit or Units whose principal purpose is to house on a temporary basis individuals who may or may not be related to one another and who are not living in nursing homes, prisons, or similar institutional care facilities.
- (k) Significant Energy Savings--A Savings to Investment Ratio (SIR) of 1.0 or greater.
- (l) Single Family Dwelling Unit--A structure containing no more than one Dwelling Unit.
- (m) Weatherization Assistance Program Policy Advisory Council (WAP PAC)--The WAP PAC was established by the Department in accordance with 10 CFR §440.17 to provide advisory services in regards to the DOE WAP program.
- (n) Weatherization Material--The material listed in Appendix A of 10 CFR Part 440.
- (o) Weatherization--A program conducted to reduce heating and cooling demand of Dwelling Units that are energy inefficient.

*§6.404. Distribution of WAP Funds.*

- (a) Except for the Reobligation of Deobligated funds, the Department distributes funds to Subrecipients by an allocation formula.
- (b) The allocation formula allocates funds based on the number of Low Income Households in a Service Area and takes into account certain special needs of individual Service Areas, as set forth in this subsection. The need for energy assistance in an area is addressed through a weather factor (based on heating and cooling degree days). The extra expense in delivering services in sparsely populated areas is addressed by an inverse Population Density factor. The lack of additional services available in very poor counties is addressed by a county median income factor. Finally, the Elderly are given priority by giving greater weight to this population. The five factors used in the formula are calculated as follows:

(1) County Non-Elderly Poverty Household Factor--The number of Non-Elderly Poverty Households in the County divided by the number of Non-Elderly Poverty Households in the State;

(2) County Elderly Poverty Household Factor--The number of Elderly Poverty Households in the county divided by the number of Elderly Poverty Households in the State;

(3) County Inverse Household Population Density Factor--

(A) The number of square miles of the county divided by the number of Households of the county (equals the inverse Household population density of the county); and

(B) Inverse Household Population density of the county divided by the sum of inverse Household densities;

(4) County Median Income Variance Factor--

(A) State median income minus the county median income (equals county variance); and

(B) County variance divided by sum of the State county variances; and

(5) County Weather Factor--

(A) County heating degree days plus the county cooling degree days, multiplied by the poverty Households, divided by the sum of county heating and cooling degree days of counties (equals County Weather); and

(B) County Weather divided by the total sum of the State County Weather.

(c) The five factors carry the following weights in the allocation formula: number of Non-Elderly Poverty Households (40%), number of poverty Households with at least one member who is 60 years of age or older (40%), Household density as an inverse ratio (5%), the median income of the county (5%), and a weather factor based on heating degree days and cooling degree days (10%). All demographic factors are based on the most current decennial U.S. Census. The formula is as follows:

(1) County Non-Elderly Poverty Household Factor (0.40) plus;

(2) County Elderly Poverty Household Factor (0.40) plus;

(3) County Inverse Household Population Density Factor (0.05) plus;

(4) County Median Income Variance Factor (0.05) plus;

(5) County Weather Factor (0.10);

(6) Total sum of paragraphs (1) - (5) of this subsection is multiplied by the total funds allocation to generate the county's allocation of funds; and

(7) The sum of the county allocation within each Subrecipient Service Area equals the Subrecipient's total allocation of funds.

(d) In the event that a Subrecipient who has been awarded LIHEAP-WAP funds elects to voluntarily transfer some portion of their LIHEAP-WAP funds to the LIHEAP CEAP activity, a request to do so must be submitted prior to August 1 of the first year of the federal LIHEAP award period. The amount of funds being voluntarily transferred will be returned to the Department and redistributed among LIHEAP CEAP providers to ensure appropriate coverage among counties. This may mean the LIHEAP Awarded Funds to that same Subrecipient having made the request, but alternatively could mean that the Awarded funds may be to one or more other CEAP Subrecipients providing CEAP services in the counties for which the WAP funds were transferred. The Department will distribute the funds proportionally to the affected counties and CEAP Subrecipients in the Service Area using the allocation formula in §6.303 of this title (relating to Distribution of CEAP Funds).

(e) To the extent federal funding awarded to Texas is limited from one of the two WAP funding sources, possible allocations of funds to Subrecipients may be made in varying proportions from each source to maximize efficient program administration.

(f) The Department may, in the future, undertake to reprocur the entities that comprise the network of Weatherization providers, in which case this allocation formula will be reassessed and, if material changes are needed, amended by rulemaking.

*§6.405. Deobligation and Reobligation of Awarded Funds.*

(a) A Subrecipient that does not expend more than 20% of its Program Year formula allocation (excluding any additional funds that may be distributed by the Department and any funds voluntarily transferred to LIHEAP CEAP) by the end of the first quarter of the Contract Term following the Program Year for two consecutive years will have funding recaptured. A Subrecipient's Contract will be amended to reflect the average percentage of funds that expended over the last two years. LIHEAP-WAP funding recapture will be consistent with Tex. Gov't Code, Chapter 2105.

(b) The cumulative balance of the funds made available in subsection (a) of this section will be allocated proportionally by formula to Subrecipients that expended 90% of the prior year's Contract, excluding adjustments made in subsection (a) of this section, by the end of the original Contract Term.

(c) At any time that a Subrecipient believes they may be at risk of meeting one of the criteria noted in subsection (n) of this section relating to criteria for Deobligation of funds, notification must be provided to the Department.

(d) A written "Notification of Possible Deobligation" will be sent to the Executive Director and the Board of Directors or other governing body of the Subrecipient by the Department as soon as the Department identifies that a criterion listed in subsection (n) of this section is at risk of not being met. Written notice will be sent electronically and/or by mail. The notice will include an explanation of the criteria met. A Notification will not be sent, and the steps in this section not triggered, if an Amendment increasing funds has been provided to the Subrecipient in the prior 90 calendar days.

(e) Within 15 calendar days of the date of the "Notification of Possible Deobligation" referenced in subsection (d) of this section, a Mitigation Action Plan must be submitted to the Department by the Subrecipient in the format prescribed by the Department.

(f) A Mitigation Action Plan is not limited to but must include:

(1) Explanation of why the identified criteria under this section occurred setting out all fully relevant facts.

(2) Explanation of how the criteria will be immediately, permanently, and adequately mitigated such that funds are expended during the Contract Term. For example, if production or expenditures appear insufficient to complete the Contract timely, the explanation would need to address how production or expenditures will be increased in the short- and long-term to restore projected full Expenditure and timely execution of the contract.

(3) If applicable because of failure to produce Unit Production or Expenditure targets under the existing Production Schedule, a detailed narrative of how the Production Schedule will be adjusted, going forward, to assure achievement of sufficient, achievable Unit Production and Expenditures to ensure timely and compliant full utilization of all funds.

(4) An explanation of how the other criteria under this section will be mitigated. For example, if Unit Production criteria for a time period were not met, then the explanation will need to include how the other criteria will not be triggered.

(5) If relating to a Unit Production or Expenditure criteria, a description of activities currently being undertaken including an accurate description of the number of units in progress, broken down by number of units in each of these categories: units that have been qualified, audited, assessed, contracted, inspected, and invoiced and as reflected in an updated Production Schedule.

(6) Provide any request for a reduction in Contracted Funds, reasons for the request, desired Contracted Funds amount, and revised Production Schedule reflecting the reduced Contracted Funds.

(g) At any time after sending a Notification of Deobligation, the Department or a third-party assigned by the Department may monitor, conduct onsite visits, perform other assessments, or engage in any other oversight of the Subrecipient that is determined appropriate by the Department under the facts and circumstances.



(h) The Department or a third-party assigned by the Department will review the Mitigation Action Plan, and where applicable, assess the Subrecipient's ability to meet the revised Production Schedule or remedy other Concern.

(i) After the Department's receipt of the Mitigation Action Plan, the Department will provide the Subrecipient a written Corrective Action Notice which may include one or more of the criteria identified in this section (relating to Deobligation and other mitigating actions) or other acceptable solutions or remedies.

(j) The Subrecipient has seven calendar days from the date of the Corrective Action Notice to appeal the Corrective Action Notice to the Executive Director. Appeals may include:

(1) A request to retain the full Fund Award if Partial Deobligation was indicated;

(2) A request for only partial Deobligation of the full Contracted Fund if full Deobligation was indicated in the Corrective Action Notice; or

(3) Request for other lawful action consistent with the timely and full completion of the Contract and Production Schedule for all Contracted Funds.

(k) In the event that an appeal of a staff decision under this section is submitted to the Executive Director, the Executive Director may grant extensions or forbearance of targets included in the Production Schedule, may provide for continued operation of a Contract, may authorize Deobligation, or may take other lawful action that is designed to ensure the timely and full completion of the Contract for all Contracted Funds.

(l) In the event an appeal is not submitted within seven calendar days from the date of the Corrective Action Notice, the Corrective Action Notice will automatically become final without need of any further action or notice by the Department, and the Department will amend/terminate the Contract with the Subrecipient to effectuate the Corrective Action Notice.

(m) In the event the Executive Director denies an appeal of a staff decision under this section, the Subrecipient may appeal that decision in accordance with §1.7(f) of this title (relating to the Process for Filing an Appeal of the Executive Director's Decision to the Board).

(n) Any one or more of the criteria noted in this subsection may prompt the Deobligation process under this rule. If the criteria are met, then notification and ensuing processes discussed elsewhere in this subchapter will apply.

(1) Subrecipient fails to provide the Department with a Production Schedule for its current Contract within 30 calendar days of receipt of the draft Contract. The Production Schedule must be signed by the Subrecipient's Executive Director/Chief Executive Officer, and approved by the Department in writing;

(2) By the third program reporting deadline, Subrecipient must report at least one unit weatherized for each Weatherization Contract;

(3) By the fifth program reporting deadline, less than 25% of total expected unit production has occurred based on the Production Schedule, or less than 20% of total Awarded Funds have been expended;

(4) By the seventh program reporting deadline, less than 50% of total expected unit production has occurred based on the Production Schedule, or less than 50% of total Awarded Funds have been expended; or

(5) The Subrecipient fails to submit a required monthly report explaining any variances between the Production Schedule and actual results on Production Schedule criteria.

(o) A Subrecipient that has funds Deobligated under this section but that fully expends the reduced amount of its Contract, will have access to the full amount of the following Program Year WAP allocation. A Subrecipient which has had funds Deobligated under this section that fails to fully expend the reduced amount of its Contract will automatically have its following Program Year WAP allocation Deobligated by the lesser of 24.99% or the proportional amount that had been Deobligated in the prior year.

(p) Funds Deobligated under this section, funds voluntarily relinquished, or additional funds should they become available, will be Reobligated proportionally by the formula described in §6.404 of this subchapter (relating to Distribution of WAP Funds) or other method approved by the Department's Board amongst all Subrecipients that did not have any funds Deobligated during this evaluation period to ensure full utilization of funds within a limited timeframe including possible allocation of WAP funds to Subrecipients in varying populations from each funding source (DOE and LIHEAP), based on availability of the source.

*§6.406.Subrecipient Requirements for Establishing Household Eligibility and Priority Criteria.*

(a) The structure's design must allow for energy conservation retrofits and meet the definition of a Dwelling Unit per §6.2 of this chapter (relating to Definitions).

(b) A Dwelling Unit cannot be served if a single meter is utilized by another Dwelling Unit that is not a part of the application for assistance. In instances where separate structures share a meter and the applicant is otherwise eligible for assistance, Subrecipient must provide services if:

(1) The members of the separate structures that share a meter submit a separate Household application to include all persons and applicable income for each Dwelling Unit attached to the meter; and

(2) All Household Dwelling Units served by the meter are determined eligible to receive weatherization benefits.

(c) Subrecipient shall establish a written procedure to serve Households that have a Vulnerable Population Household member, Households with High Energy Burden, and Households with High Energy Consumption. High Energy Burden shall be the highest rated item in sliding scale priority determinations. The Subrecipient must maintain documentation of the use of the criteria.:-

(d) Subrecipient shall determine applicant income eligibility in compliance with §6.4 of this chapter (relating to Income Determination).

(e) Categorical Eligibility for DOE-WAP benefits exist when at least one person in the Household receives assistance payments under Title IV or XVI of the Social Security Act at any time during the 12-month period preceding the determination of eligibility. Categorical Eligibility for LIHEAP-WAP benefits are the same as those specified for CEAP benefits described in §6.307(b) of this chapter (relating to Subrecipient Requirements for Customer Eligibility Criteria, Provision of Services, and Establishing Priority for Eligible Households).

(f) Social Security numbers are not required for applicants.

(g) U.S. Citizen, U.S. National or Qualified Alien. Unqualified Aliens are not eligible to receive WAP benefits. Mixed Status Households shall not be denied WAP assistance based solely on the presence of a non-qualified member, except if the member is the sole member of the Household. Subrecipient must verify U.S. Citizen, U.S. National, or Qualified Alien status of all Household members using SAVE. Assistance shall be determined as follows:

(1) Count income for all Household members eighteen years of age and older, including Unqualified Aliens; and

(2) Adjust the Household size for determining eligibility and benefit assistance level to exclude all Unqualified Aliens.

(h) For purposes of determining Categorical Eligibility or Vulnerable Populations (e.g. priority status) the Household is not considered to satisfy the definition of having Categorical Eligibility or Vulnerable Population if the only individual(s) in the Household with Categorical Eligibility or Vulnerable Population status is an Unqualified Alien. For purposes of reporting, all individuals in the Household should be reported.

#### *§6.407. Program Requirements.*

(a) Each Dwelling Unit weatherized requires completion of a written whole house assessment. Subrecipient must perform the whole house assessment then let that assessment guide whether the Dwelling Unit is best served through DOE funds using the audit, through LIHEAP-WAP funds using the priority list, or a combination of DOE and LIHEAP funds.

(b) Any Dwelling Unit that is weatherized using DOE funds must use the State of Texas approved Energy Audit as a guide for installed measures. A Subrecipient combining DOE funds with

LIHEAP-WAP funds on an individual Dwelling Unit or building may not mix the use of the Energy Audit and the Priority List.

(c) Any Dwelling Unit that is weatherized using LIHEAP only must be completed using the Priority List as a guide for installed measures. Failure to complete a written whole house assessment as indicated in §6.416 of this subchapter (relating to Whole House Assessment) prior to Weatherization may lead to unit failure during quality control inspection.

(d) If a Subrecipient's Weatherization work does not consistently meet DOE Standard Work Specifications Weatherization standards, the Department may proceed with the removal of the programs from the Subrecipient.

*§6.408. Department of Energy Weatherization Requirements.*

(a) In addition to cost principles and administrative requirements listed in §1.402 in Chapter 1 of this title (relating to Cost Principles and Administrative Requirements), Subrecipients administering DOE programs must also adhere to 10 CFR Part 440, 10 CFR Part 600, and the applicable International Residential Code (IRC).

(b) WAP Policy Advisory Council. In accordance with Tex. Gov't Code, §2110.005 and 10 CFR §440.17, the Department shall establish the Weatherization Assistance Program Policy Advisory Council (WAP PAC), with which it will consult prior to the submission of the annual plan and award of funds to DOE.

(c) Adjusted Average Expenditure Per Dwelling Unit. Expenditures of financial assistance provided under DOE-WAP funding for the Weatherization services for labor, weatherization materials, and program support shall not exceed the DOE adjusted average expenditure limit for the current Program Year per Dwelling Unit as provided by DOE, and as cited in the Contract, without special agreement via an approved waiver from the Department.

(d) Electric Base Load Measures. DOE has approved the inclusion of selected Electric Base Load (EBL) measures as part of the Weatherization of eligible residential units. Refrigerators must be metered for a minimum of two hours when calculating the EBL and SIR.

(e) Subrecipient may not enter into vehicle lease agreements with WAP funds.

(f) Energy Audit Procedures.

(1) SIR for the Energy Audit procedures will determine the installation of allowable Weatherization measures. The Weatherization measures must result in energy cost savings over the lifetime of the measure(s), discounted to present value, that equal or exceed the cost of materials, and installation. An Energy Audit may consist of Incidental Repairs, Energy-Saving Measures (starting with Duct Sealing and Infiltration Reduction), and Health and Safety Measures. All Energy-Saving Measures must rank with an SIR of one or greater. The total Cumulative SIR, prior to Health and Safety measures, must be a one or greater in order to weatherize the dwelling unit.

(2) The Energy Audit has not been approved for multifamily buildings containing 25 or more units. A Subrecipient that proposes weatherizing a building containing 25 or more units must receive approval from the Department prior to beginning any Weatherization activity.

(3) Energy Auditors must use the established R-values for existing measures provided in the International Energy Conservation Code (IECC) when entering data into the Energy Audit. Subrecipient must follow minimum requirements set in the applicable IRC or jurisdictions authorized by state law to adopt later editions.

(4) A Subrecipient utilizing the Energy Audit must enter into the audit all materials and labor measures proposed to be installed.

*§6.409.LIHEAP Weatherization Requirements.*

(a) Allowable Expenditure per Dwelling Unit. Expenditures of financial assistance provided under LIHEAP-WAP funding for the weatherization services for labor, Weatherization materials, and program support shall not exceed the allowable figure as set forth in the current Contract, without prior written approval from the Department. The cumulative cost per unit (materials, labor and program support), shall not exceed the maximum allowable by the end of the Contract Term.

(b) Allowable Activities. Subrecipient is limited to Weatherization measures as detailed in the Priority List Exhibit to the Weatherization Contract. Measures must be addressed according to the instructions in the Exhibit.

(c) Outreach and Accessibility. Subrecipient shall conduct outreach activities, which may include but are not limited to:

(1) Providing information through home visits, site visits, group meetings, or by telephone for disabled low-income persons;

(2) Distributing posters/flyers and other informational materials at local and county social service agencies, offices of aging, social security offices, etc.;

(3) Providing information on the program and eligibility criteria in articles in local newspapers or broadcast media announcements;

(4) Coordinating with other low-income services to provide LIHEAP information in conjunction with other programs;

(5) Providing information on one-to-one basis for applicants in need of translation or interpretation assistance;

(6) Providing LIHEAP applications, forms, and energy education materials in English and Spanish (and other appropriate language);

(7) Working with energy vendors in identifying potential applicants;

(8) Assisting applicants to gather needed documentation; and

(9) Mailing information and applications.

(d) LIHEAP Subrecipient Eligibility.

(1) The Department administers the program through the existing Subrecipients that have demonstrated that they are operating the program in accordance with their Contract, the Economic Opportunity Act of 1964, the Low-Income Home Energy Assistance Act of 1981, as amended (42 U.S.C. §§8621, et seq.), and the Department rules. If a Subrecipient is successfully administering the program, the Department may offer to renew the Contract.

(2) If the Department determines that a Subrecipient is not administering the program satisfactorily, the Subrecipient will be required to take corrective actions to remedy the problem within the timeframe referenced in the issued monitoring report, unless it is a case of customer health or safety. If Subrecipient fails to correct the Deficiency or Finding, in order to ensure continuity of services, the Department may take an action in accordance with §1.411(f) of this title (relating to Nonrenewal or Reduction of Block Grant Funds to a Specific Subrecipient).

#### *§6.410.Liability Insurance and Warranty Requirement.*

Subrecipient Weatherization work shall be covered by general liability insurance for an amount not less than combined total of materials, labor, support and health and safety. The Department strongly recommends Pollution Occurrence Insurance to be part of or an addendum to Subrecipient's general liability insurance coverage. Subrecipient must ensure that each Subcontractor performing Weatherization activities maintain adequate insurance coverage for all units to be weatherized. Weatherization contractors must provide a one-year warranty on their work for parts and labor; the period for the warranty coverage shall begin at the completion of installation. If Subrecipient relinquishes its Weatherization program, Weatherization work completed within 12 months of the date of surrender of the program, must be covered by general liability insurance or contractor warranty. Public Organizations that have self insurance complying with Tex. Gov't Code Chapter 2259 covering weatherization work, may, but are not required to, purchase additional coverage.

#### *§6.411.Customer Education.*

Subrecipient shall provide customer education to each WAP customer on energy conservation practices. Subrecipient shall provide education to identify energy waste, manage Household energy use, and strategies to promote energy savings. Subrecipient is encouraged to use oral, written, and visual educational materials.

#### *§6.412.Mold-like Substances.*

(a) If the Subrecipient's energy auditor discovers the presence of mold-like substances that the Weatherization Subcontractor cannot adequately address, then the Dwelling Unit shall be referred to the Texas Department of Licensing and Regulation or its successor agency.

(b) The Subrecipient shall provide the applicant written notification that their home cannot, at this time, be weatherized and why. Subrecipient shall also inform the applicant in writing that they should contact the Texas Department of Licensing and Regulation, or successor agency, to report the presence of mold-like substances. The applicant should be advised that when the issue is resolved they may reapply for Weatherization. Should the applicant reapply for Weatherization, the Subrecipient must obtain written documentation of resolution of the issue from the applicant prior to proceeding with any Weatherization work.

(c) If the energy auditor determines that the mold-like substance is treatable and covers less than the 25 contiguous square feet limit allowed to be addressed by the Texas Department of Licensing and Regulation's, or successor agency's guidelines, the Subrecipient shall notify the applicant of the existence of the mold-like substance and potential health hazards, the proposed action to eliminate the mold-like substance, that no guarantee is offered that the mold-like substance will be eliminated, and that the mold-like substance may return. The energy auditor must obtain written approval from the applicant to proceed with the Weatherization work, and maintain the documentation in the customer file.

(d) Subrecipient shall be responsible for providing mold training to their employees and Weatherization Subcontractors.

#### *§6.413. Lead Safe Practices.*

Subrecipient are required to document that its Weatherization staff as well as all Subcontractors follow the Environmental Protection Agency's Renovation, Repair and Painting Program (RRP) Final Rule, 40 CFR Part 745 and HUD's Lead Based Housing Rule, 24 CFR Part 35, as applicable.

#### *§6.414. Eligibility for Multifamily Dwelling Units and Shelters.*

(a) Multifamily building and Shelter weatherization is not considered a federal public benefit and the activity is exempt from the requirements of §6.406(g) and (h) of this subchapter (relating to U.S. Citizen, U.S. National or Qualified Alien, and determining Categorical Eligibility or Vulnerable Populations, respectively).

(b) A Subrecipient may weatherize a building containing Rental Units if not less than 66% (50% for duplexes and four-unit buildings) of the Dwelling Units in the building are occupied by low income Households, or will become occupied by Low-income Households within 180 days under a Federal, State, or local government program for rehabilitating the building or making similar improvements to the building.

(c) In order to weatherize large multifamily buildings containing twenty-five or more Dwelling Units or those with shared central heating (e.g., boilers) and/or shared cooling plants (e.g.,

cooling towers that use water as the coolant) regardless of the number of Dwelling Units, Subrecipient shall submit in writing to the Department a request for approval along with evidence which clearly shows that an investment of funds would result in Significant Energy Savings because of upgrades to equipment, energy systems, common space, or the building shell. When necessary, the Department will seek approval from DOE. Approvals from the Department in writing must be received prior to the installation of any Weatherization measures in this type of structure.

(d) In order to weatherize Shelters, Subrecipient shall submit a written request for approval from the Department. Written approval from the Department must be received prior to the installation of any Weatherization measures. Income determination is not required to be done for residents of Shelters.

(e) If roof repair is to be considered as an eligible repair cost under the Weatherization process, the expenses must be shared equally by all eligible Dwelling Units weatherized under the same roof. If multiple storied buildings are weatherized, eligible ground floor units must be allocated a portion of the roof cost as well as the eligible top floor units. All Weatherization measures installed in multifamily units must meet the standards set in 10 CFR §440.18(d)(9) and (15), and Appendix A-Standards for Weatherization Materials.

(f) Subrecipient shall establish a multifamily master file for each multifamily project in addition to the applicable Dwelling Unit recordkeeping requirements found in the Contract. The multifamily master file must include, at a minimum, the forms (available on the Department's website) listed in paragraphs (1) - (6) of this subsection:

(1) Multifamily Project Preparation Checklist;

(2) Multifamily Project Completion Checklist;

(3) Landlord Permission to Perform Assessment and Inspections for Rental Units;

(4) Landlord Agreement;

(5) Landlord Financial Participation Form; and

(6) Multifamily Project Building Data Checklist.

(g) Subrecipient shall contact the Department for record keeping guidance if it wishes to weatherize a Shelter.

(h) For DOE WAP, if a public housing or assisted multi-family building has gone through the HUD Property Certification Procedure outlined in DOE Weatherization Program Notice 17-4 or is identified by the HUD and included on a list identified in Weatherization Program Notice 17-4 or successor notice as having already gone through the HUD Property Certification Procedure, that building meets income eligibility without the need for further evaluation or verification by Subrecipient. A public housing or assisted housing building that does not appear on the list



using HUD records may still qualify for the WAP. Income eligibility can be made on an individual basis by the Subrecipient based on information supplied by property owners and the Households in accordance with subsection (b) of this section.

(i) For any Dwelling Unit that is weatherized using funding provided under DOE WAP, all Weatherization measures installed must be entered into an approved Energy Audit. Weatherization measures installed shall begin with repair items, then continue with those measures having the greatest SIR and proceed in descending order to the measures with the smallest SIR or until the maximum allowable per Dwelling Unit expenditures are achieved, and finishing with Health and Safety measures.

*§6.415. Health and Safety and Unit Deferral.*

(a) Health and Safety expenditures at the end of the Contract Term for DOE WAP and LIHEAP WAP may not exceed the amount equal to the Health and Safety budget, divided by the sum of Materials/Program Support/Labor budget and the Health and Safety budget. The budget line items are identified in the Budget and Performance Statement of the DOE WAP and LIHEAP WAP Contracts.

(b) Subrecipient shall provide Weatherization services with the primary goal of energy efficiency. The Department considers establishing a healthy and safe home environment to be important to ensuring that energy savings result from Weatherization work.

(c) Subrecipient must test for high carbon monoxide (CO) levels and bring CO levels to acceptable levels before Weatherization work can start. The Department has defined maximum acceptable CO readings in its Standard Work Specifications.

(d) A Dwelling Unit shall not be weatherized when there is a potentially harmful situation that may adversely affect the occupants or the Subrecipient's Weatherization crew and staff, or when a Dwelling Unit is found to have structural concerns that render the Dwelling Unit unable to benefit from Weatherization. The Subrecipient must declare their intent to defer Weatherization on an eligible unit on the assessment form. The assessment form should include the customer's name and address, dates of the assessment, and the date on which the customer was informed of the issue in writing. The written notice to the customer must include a clear description of the problem, conditions under which Weatherization could continue, the responsibility of all parties involved, and any rights or options the customer has. A copy of the notice must be given to the customer, and a signed copy placed in the customer application file. Only after the issue has been corrected to the satisfaction of the Subrecipient shall Weatherization work begin.

(e) If structural concerns or health and safety issues identified (which would be exacerbated by any Weatherization work performed) on an individual Dwelling Unit cannot be abated within program rules or within the allowable WAP limits, the Dwelling Unit exceeds the scope of this program.

*§6.416. Whole House Assessment.*

(a) Subrecipient must conduct a whole house assessment on all eligible Dwelling Units. Whole house assessments must be used to determine whether the Priority List or an Energy Audit is most appropriate for the unit. Whole house assessments must include, but are not limited to, the items described in paragraphs (1) - (15) of this subsection:

- (1) Wall--Condition, type, orientation, and existing R-values;
- (2) Windows--Condition, type material, glazing type, leakiness, and solar screens;
- (3) Doors--Condition, type;
- (4) Attic--Type, condition, existing R-values, and ventilation;
- (5) Foundation--Condition, existing R-values, and floor height above ground level;
- (6) Heating System--For all systems: unit type, fuel source (primary or secondary), thermostat, and output; for combustion systems only: vented or unvented efficiency, CO-levels, complete fuel gas analysis, gas leaks, and combustion venting;
- (7) Cooling System--Unit type, condition, area cooled, size in BTU rating, Seasonal Energy Efficiency Rating (SEER) or Energy Efficiency Rating (EER), manufacture date, and thermostat;
- (8) Duct System--Condition, existing insulation level, evaluation of registers, duct infiltration, return air register size, and condition of plenum joints;
- (9) Water Heater--For all water heaters: condition, fuel type, energy factor, recovery efficiency, input and output ratings, size, existing insulation levels, existing pipe insulation; for combustion water heaters only: carbon monoxide levels, draft test, complete fuel gas analysis;
- (10) Refrigerator--Condition, manufacturer, manufacture date and make, model, and consumption reading (minutes and meter reading); customer refusal must be documented;
- (11) Lighting System--Quantity, watts, and estimated hours used per day;
- (12) Water Savers--Number of showerheads, estimated gallons per minute and estimated minutes used per day;
- (13) Health and Safety--For all units: smoke detectors, wiring, minimum air exchange, moisture problems, lead paint present, asbestos siding present, condition of chimney, plumbing problems, mold; for units with combustion appliances: unvented space heaters, carbon monoxide levels on all combustion appliances, carbon monoxide detectors;
- (14) Air Infiltration--To be determined from Blower Door testing; areas requiring air sealing will be noted; and

(15) Repairs--Measures needed to preserve or protect installed Weatherization measures may include lumber, shingles, flashing, siding, masonry supplies, minor window repair, gutters, downspouts, paint, stains, sealants, and underpinning.

(b) If using the Energy Audit, all allowable Weatherization measures needed must be entered. Measures will be performed in order of highest SIR to lowest depending on funds available. If using the Priority List, included Weatherization measures must be addressed according to the instructions in the Exhibit to the Weatherization Contract.

*§6.417. Blower Door Standards.*

Subrecipient is required to use the blower door/duct blower data form adopted by the Department and available on the Department's website (<http://www.tdhca.state.tx.us/community-affairs/wap/index.htm>).

**SUBCHAPTER E. LOW INCOME HOUSING-HOUSEHOLD WATER ASSISTANCE PROGRAM**

*§6.501. Background.*

The Low Income Household Water Assistance Program (LIHWAP) is funded through the Consolidated Appropriations Act, 2021 (Public Law 116-260) signed on December 27, 2020, and the American Rescue Plan Act of 2021 signed on March 11, 2021. LIHWAP is a federally funded temporary program that is implemented to serve Low Income Households who seek assistance for their water and wastewater bills. LIHWAP is not an entitlement program, and there are not sufficient funds to serve all eligible customers.

*§6.502. Requirements.*

Due to LIHWAP's temporary nature, LIHWAP requirements are described in the LIHWAP State Plan and Subrecipient Contracts. The LIHWAP Plan can be found on the Department's website.

*§6.503. Deobligation and Reobligation of LIHWAP Funds.*

The Department may Deobligate funds from Subrecipients who do not meet contract or expenditure benchmarks as described in the Contract, and Reobligate those funds to other entities in the Service Area, in the State, or keep the funding for other eligible purposes in its sole discretion.

1h

**BOARD ACTION REQUEST**  
**BOND FINANCE DIVISION**  
**NOVEMBER 10, 2021**

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*

**RECOMMENDED ACTION**

**WHEREAS**, the Texas Department of Housing and Community Affairs (the Department) is authorized to issue multifamily housing revenue bonds for the State of Texas;

**WHEREAS**, the Department developed the Multifamily Housing Revenue Bond Rules to establish the procedures and requirements relating to the issuance of bonds;

**WHEREAS**, the proposed repeal and new 10 TAC Chapter 12 were published in the September 17, 2021, issue of the *Texas Register* for public comment; and

**WHEREAS**, the public comment period ended October 8, 2021, and only one comment was received relating to this rule;

**NOW, therefore, it is hereby**

**RESOLVED**, that the final order adopting the repeal and new 10 TAC Chapter 12 regarding the Multifamily Housing Revenue Bond Rules, together with the preamble presented to this meeting, are approved 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 amendments to the Multifamily Housing Revenue Bond Rules, together with the preamble in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make non-substantive technical corrections as they may deem necessary to effectuate the foregoing, and to make any associated changes as needed for consistency with 10 TAC Chapter 11, Qualified Allocation Plan.

**BACKGROUND**

The Board approved the proposed changes to Chapter 12 regarding the 2022 Multifamily Housing Revenue Bond Rules (the Bond Rules) at the Board meeting of September 2, 2021, to be published in the *Texas Register* for public comment. The Department received comment from only one commenter

relating to the Bond Rules whose comment is summarized in the following preamble. Staff is recommending the Bond Rules be adopted with changes as reflected herein. Staff notes that should there be changes made to the 2022 QAP by the Board that would affect the Bond Rules, staff will make those changes required for consistency.

## **Attachment 1: Preamble, including required analysis, for repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules**

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules (the Bond Rules). 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 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.**

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 readoption making changes to an existing activity, the issuance of Private Activity Bonds (PAB).
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 or 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 an existing activity, the issuance of PABs.
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 nor authorize a takings 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 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 repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule for administering the issuance of PAB. 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.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between September 17, 2021, and October 8, 2021 with no comment received.

The Board adopted the final order adopting the repeal on November 10, 2021.

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 TAC Chapter 12, Multifamily Housing Revenue Bond Rule**

### **§12.1. General.**

### **§12.2. Definitions.**

### **§12.3. Bond Rating and Investment Letter.**

### **§12.4. Pre-Application Process and Evaluation.**

### **§12.5. Pre-Application Threshold Requirements.**

### **§12.6. Pre-Application Scoring Criteria.**

### **§12.7. Full Application Process.**

### **§12.8. Refunding Application Process**

### **§12.9. Occupancy Requirements.**

### **§12.10. Fees.**



**Attachment 2: Preamble, including required analysis, for adopting new 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules**

The Texas Department of Housing and Community Affairs (the Department) adopts, with changes from the published draft, new 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules (Bond Rules). The purpose of the new section is to provide compliance with Tex. Gov't Code §2306.359 and to update the rule to make changes to the scoring criteria to reflect the competitive nature of the Private Activity Bond program. Moreover, the changes reflect minor administrative revisions, and revisions to ensure that the rule is reflective of changes made in the Department's Qualified Allocation Plan where applicable.

Tex. Gov't Code §2001.0045(b) does not apply to the action on this rule pursuant to item (9), which excepts rule changes necessary to implement legislation. The rule provides compliance with Tex. Gov't Code §2306.359, which requires the Department to provide for specific scoring criteria and underwriting considerations for multifamily private activity bond activities.

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 rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, the issuance of Private Activity Bonds ("PAB").
2. The rule 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 rule does not require additional future legislative appropriations.
4. The rule changes will not result in an increase in fees paid to the Department, but may, under certain circumstances, result in a decrease in fees paid to the Department regarding Tax-Exempt Bond Developments.
5. The 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 rule does not increase or decrease the number of individuals subject to the rule's applicability.
8. The 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. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.359. Although these rules mostly pertain to the filing of a bond pre-application, some stakeholders have reported that their average cost of filing a full Application is between \$50,000 and \$60,000; which may vary depending on the specific type of Application, location of the Development Site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average result in an increased cost of filing an application as compared to the existing program rules.

1. The Department has evaluated this rule and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.
2. This rule relates to the procedures in place for entities applying for multifamily PAB. Only those small or micro-businesses that participate in this program are subject to this rule. There are approximately 100 to 150 businesses, which could possibly be considered small or micro-businesses, subject to the rule for which the economic impact of the rule would be a flat fee of \$8,500 which includes the filing fees associated with submitting a bond pre-application.

The Department bases this estimate on the potential number of Applicants and their related parties who may submit applications to TDHCA for PAB (and accompanying housing tax credits). There could be additional costs associated with pre-applications depending on whether the small or micro-businesses outsource how the application materials are compiled. The filing fees associated with a full application for PAB which is layered with LIHTC may range from \$480 to \$3,600 which is based on \$30 per unit, and all Applicants are required to propose constructing, at a minimum, 16 Units.

These Application Fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing. Nor does this estimate include fees from the Department for Applications that successfully attain an award.

There are approximately 1,300 rural communities potentially subject to the new rule for which the economic impact of the rule is projected to be \$0. 10 TAC Chapter 12 places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. In an average year the volume of applications for PAB that are located in rural areas is not more than 20% of all PAB applications received. In those cases, a rural community securing a PAB Development will experience an economic benefit, not least among which is the potential increased property tax revenue from a large multifamily Development.

3. The Department has determined that because there are rural PAB awardees, this program helps promote construction activities and long term tax base in rural areas of Texas. Aside from the fees and costs associated with submitting an Application, there is a probable positive economic effect on small or micro-businesses or rural communities that receive PAB awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The 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 rule may provide a possible positive economic effect on local employment in association with this rule since PAB Developments, layered with housing tax credits, often involve a total input of, typically at a minimum, \$5 million in capital, but often an input of \$10 million - \$30 million. Such a capital investment has concrete direct, indirect, and induced effects on the local and regional economies and local employment. However, because the exact location of where program funds or developments are directed is not determined in rule, and is driven by real estate demand, there is no way to determine during rulemaking where the positive effects may occur. Furthermore, while the Department knows that any and all impacts are positive, that impact is not able to be quantified for any given community until PABs and LIHTCs are actually awarded to a proposed Development, given the unique characteristics of each proposed multifamily Development.

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 significant construction activity is associated with any PAB Development layered with LIHTC and each apartment community significantly increases the property value of the land being developed, there are no probable negative effects of the rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive PAB awards.

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 section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule for administering the issuance of PABs and corresponding allocation of housing tax credits. There is no change to the economic cost to any individuals required to comply with the new section because the same processes described by the rule have already been in place through the rule found at this section being repealed. The average cost of filing a pre-application and application remain unchanged based on these rule changes. The rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

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 because the same processes described by the rule have already been in place through the rule found at this section being repealed.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comments between September 17, 2021 and October 8, 2021. Only one comment was received.

#### SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS

Public comments were accepted between September 17, 2021 and October 8, 2021, with comments received from one organization: (1) Dominionium.

### **§§12.4(d)(1) & 12.6(12-13) – Pre-Application Process and Evaluation; Scoring and Ranking & Pre-Application Scoring Criteria; Waiting List and Tax-Exempt Bond 50% Test (1)**

#### **COMMENT SUMMARY:**

Commenter (1) supports the inclusion of new tiebreakers that give preference to those applications that have been on the Department's waiting list the longest and use the lowest amount of bonds, however, commenter (1) requests that the Department predicate the bond utilization sliding scale on the federal minimum, as opposed to basing it on the current 50% test. Commenter (1) proposed using a sliding scale of within 10-15% of the federal minimum which they believe would be applicable to both current and future federal law.

#### **STAFF RESPONSE:**

Staff agrees that a consideration to federal legislative changes could be addressed in the rule considering the recurring discussion around the requirement. Staff proposes adding the following statement to this scoring item to address the comment:

(13) Tax-Exempt Bond 50% Test. (5 points) A pre-application may receive points under this item based on the amount of the Development financed with Tax-Exempt Bond proceeds relative to the amount necessary to meet the 50% Test. The 50% Test is calculated by dividing the Tax-Exempt Bond proceeds by the aggregate basis of the Development and shall be based on such amounts as reflected in the pre-application once staff's review is complete and all Administrative Deficiencies have been resolved. Normal rounding shall apply. Should there be changes to this federal requirement, the percentage ranges noted below shall be modified accordingly by the same range.

### **§12.4(e) – Pre-Application Process and Evaluation; Inducement Resolution (1)**

#### **COMMENT SUMMARY:**

Commenter (1) suggests striking the first “or” in the following sentence, “Notwithstanding the foregoing, Department staff may, but is not required to, recommend or that an inducement resolution be approved despite the presence of neighborhood risk factors, undesirable site features, or requirements that may necessitate a waiver, that have not fully been evaluated by staff at pre-application.”

**STAFF RESPONSE:**

The version that was published in the *Texas Register* did not include the “or” the commenter recommended be removed. Staff recommends no change based on this comment.

**§12.5(4) – Pre-Application Threshold Requirements; Site Control (1)**

**COMMENT SUMMARY:**

Due to the increase in competition for Private Activity Bond volume cap and possibility of not securing a bond reservation until November, Commenter (1) urges TDHCA to consider whether site control effective through March 1<sup>st</sup> will be sufficient in future years.

**STAFF RESPONSE:**

Staff recognizes that applications that participate in the TDHCA Lottery may not receive a bond reservation as a result of the lottery process and may end up waiting until much later in the year for a reservation. Historically, it has been Bond Review Board practice that if volume cap becomes available after the March 1 date, they confirm current site control prior to issuing a reservation. Staff believes this is acceptable and defers to Bond Review Board in confirming whether an applicant has the ability to compel title at the time a reservation is issued, whenever that occurs. Staff recommends no change based on this comment.

**§12.6(5) – Pre-Application Scoring Criteria; Unit and Development Construction Features (1)**

**COMMENT SUMMARY:**

Commenter (1) expressed support for the scoring increase for rehabilitation developments.

**STAFF RESPONSE:**

Staff appreciates the support.

**§12.6(5) – Pre-Application Scoring Criteria; Unit and Development Construction Features (1)**

**COMMENT SUMMARY:**

Commenter (1) stated that the inclusion of “may” and “must” in the following sentence makes the meaning unclear, “A pre-application may qualify for minimum of nine (9) points must be selected, as certified in the pre-application, for providing specific amenity and quality features in every Unit at no extra charge to the tenant.”

**STAFF RESPONSE:**

The version that was published in the *Texas Register* only included use of the word “may” in the stated sentence and staff believes that is the correct use of the word. Staff recommends no change based on this comment.

The Board adopted the final order adopting the new rule on November 10, 2021.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government 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.

### **§12.1. General.**

**(a) Authority.** The rules in this chapter apply to the issuance of multifamily housing revenue bonds (Bonds) by the Texas Department of Housing and Community Affairs (Department). The Department is authorized to issue Bonds pursuant to Tex. Gov't Code, Chapter 2306. Notwithstanding anything in this chapter to the contrary, Bonds which are issued to finance the Development of multifamily rental housing are subject to the requirements of the laws of the State of Texas, including but not limited to Tex. Gov't Code, Chapters 1372 and 2306, and federal law pursuant to the requirements of Internal Revenue Code (Code), §142.

**(b) General.** The purpose of this chapter is to state the Department's requirements for issuing Bonds, the procedures for applying for Bonds and the regulatory and land use restrictions imposed upon Bond financed Developments. The provisions contained in this chapter are separate from the rules relating to the Department's administration of the Housing Tax Credit program. Applicants seeking a Housing Tax Credit Allocation should consult Chapter 11 of this part (relating to the Housing Tax Credit Program Qualified Allocation Plan) for the current program year. In general, the Applicant will be required to satisfy the eligibility and threshold requirements of the Qualified Allocation Plan (QAP) in effect at the time the Certificate of Reservation is issued by the Texas Bond Review Board (TBRB). If the applicable QAP contradicts rules set forth in this chapter, the applicable QAP will take precedence over the rules in this chapter except in an instance of a conflicting statutory requirement, which shall always take precedence. To the extent applicable to each specific Bond issuance, the Department's conduit multifamily Bond transactions will be processed in accordance with 34 TAC Part 9, Chapter 181, Subchapter A (relating to Bond Review Board Rules) and Tex. Gov't Code, Chapter 1372.

**(c) Costs of Issuance.** The Applicant shall be responsible for payment of all costs related to the preparation and submission of the pre-application and Application, including but not limited to, costs associated with the publication and posting of required public notices and all costs and expenses associated with the issuance of the Bonds, regardless of whether the Application is ultimately approved or whether Bonds are ultimately issued. At any point during the process, the Applicant is solely responsible for determining whether to proceed with the Application and the

Department disclaims any and all responsibility and liability in this regard.

**(d) Taxable Bonds.** The Department may issue taxable Bonds and the requirements associated with such Bonds, including occupancy requirements, shall be determined by the Department on a case by case basis. Taxable bonds will not be eligible for an allocation of tax credits.

**(e) Waivers and Appeals.** Requests for any permitted waivers of program rules must be made in accordance with §11.207 of this part (relating to Waiver of Rules). The process for appeals and grounds for appeals may be found under §1.7 of this part (relating to Appeals Process).

## **§12.2. Definitions.**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Tex. Gov't Code, Chapter 2306, §§141, 142, and 145 of the Internal Revenue Code, and Chapter 11 of this part (relating to Housing Tax Credit Program Qualified Allocation Plan).

(1) Institutional Buyer--Shall have the meaning prescribed under 17 CFR §230.501(a), but excluding any natural person or any director or executive officer of the Department (17 CFR §230.501(a)(4) - (6)), or as defined by 17 CFR §230.144(a), promulgated under the Securities Act of 1933, as amended.

(2) Persons with Special Needs--Shall have the meaning prescribed under Tex. Gov't Code, §2306.511.

(3) Bond Trustee--A financial institution, usually a trust company or the trust department in a commercial bank, that holds collateral for the benefit of the holders of municipal securities. The Bond Trustee's obligations and responsibilities are set forth in the Indenture.

## **§12.3. Bond Rating and Investment Letter.**

**(a) Bond Ratings.** All publicly offered Bonds issued by the Department to finance Developments shall have a debt rating the equivalent of at least an "A" rating assigned to long-term obligations by Standard & Poor's Ratings Services, or Moody's Investors Service, Inc. If such rating is based upon credit enhancement provided by an institution other than the Applicant or Development Owner, the form and substance of such credit enhancement shall be subject to approval by the Board, evidenced by a resolution authorizing the issuance of the credit enhanced Bonds.

**(b) Investment Letters.** Bonds rated less than "A" or Bonds which are unrated must be placed with one or more Institutional Buyers and must be accompanied by an investor letter acceptable to the Department. Subsequent purchasers of such Bonds must also be qualified as Institutional Buyers and must execute and deliver to the Department an investor letter in a form satisfactory to the Department. Bonds rated less than "A" and Bonds which are unrated shall be issued in physical form, in minimum denominations of one hundred thousand dollars (\$100,000), and must carry a legend requiring any purchasers of the Bonds to be Institutional Buyers and sign and

deliver to the Department an investor letter in a form acceptable to the Department.

#### **§12.4. Pre-Application Process and Evaluation.**

**(a) Pre-Inducement Questionnaire.** Prior to the filing of a pre-application, the Applicant shall submit the Pre-Inducement Questionnaire, in the form prescribed by the Department, so the Department can have a preliminary understanding of the proposed Development plan before a pre-application and corresponding fees are submitted. After reviewing the pre-inducement questionnaire, Department staff will follow-up with the Applicant to discuss the next steps in the process and may schedule a pre-inducement conference call or meeting. Prior to the submission of a pre-application, it is essential that the Department and Applicant communicate regarding the Department's objectives and policies in the development of affordable housing throughout the State using Bond financing. The acceptance of the questionnaire by the Department does not constitute a pre-application or Application and does not bind the Department to any formal action regarding an inducement resolution.

**(b) Neighborhood Risk Factors.** If the Development Site has any of the characteristics described in §11.101(a)(3)(B) of this part (relating to Neighborhood Risk Factors), the Applicant must disclose the presence of such characteristics to the Department. Disclosure may be done at time of pre-application and handled in connection with the inducement or it can be addressed at the time of Application submission. The Applicant understands that any determination made by staff or the Board at the time of bond inducement regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the Neighborhood Risk Factors become available while the Tax-Exempt Bond Development Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board. The Application may be subject to termination should staff conclude that the Development Site has any characteristics found in §11.101(a)(3)(B) of this part (relating to Neighborhood Risk Factors) and the Applicant failed to disclose.

**(c) Pre-Application Process.** An Applicant who intends to pursue Bond financing from the Department shall submit a pre-application by the corresponding pre-application submission deadline, as set forth by the Department. The required pre-application fee as described in §12.10 of this chapter (relating to Fees) must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Department review at the time of the pre-application is limited and not all issues of eligibility, fulfillment of threshold requirements in connection with the full Application, and documentation submission requirements pursuant to Chapter 11 of this part (relating to Housing Tax Credit Program Qualified Allocation Plan) are reviewed. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or other deficiencies at the time of pre-application. If the Development meets the criteria as described in §12.5 of this chapter (relating to Pre-Application Threshold Requirements), the pre-application will be scored and ranked according to the selection criteria as described in §12.6 of this chapter (relating to Pre-Application Scoring Criteria).



**(d) Scoring and Ranking.** The Department will rank the pre-application according to score within each priority defined by Tex. Gov't Code, §1372.0321. All Priority 1 pre-applications will be ranked above all Priority 2 pre-applications which will be ranked above all Priority 3 pre-applications. This priority ranking will be used throughout the calendar year. The selection criteria, as further described in §12.6 of this chapter, reflect a structure which gives priority consideration to specific criteria as outlined in Tex. Gov't Code, §2306.359.

**(1) Tie Breakers.** Should two or more pre-applications within the same priority receive the same score, the Department will utilize the factors in this section, which will be considered in the order they are presented herein, to determine which pre-application will receive preference in consideration of a Certificate of Reservation:

(i) To the pre-application that was on the waiting list with the TBRB but did not have an active Certificate of Reservation at the time of the TBRB lottery and achieved points under §12.6(12) of this chapter (relating to Waiting List); and

(ii) To the pre-application with the highest number of points achieved under §12.6(13) of this chapter (relating to Tax-Exempt Bond 50% Test).

**(e) Inducement Resolution.** After the pre-applications have been scored and ranked, the pre-application will be presented to the Department's Board for consideration of an inducement resolution declaring the Department's initial intent to issue Bonds with respect to the Development. Approval of the inducement resolution does not guarantee final Board approval of the Bond Application. Department staff may recommend that the Board not approve an inducement resolution for a pre-application. Notwithstanding the foregoing, Department staff may, but is not required to, recommend that an inducement resolution be approved despite the presence of neighborhood risk factors, undesirable site features, or requirements that may necessitate a waiver, that have not fully been evaluated by staff at pre-application. The Applicant recognizes the risk involved in moving forward should this be the case and the Department assumes no responsibility or liability in that regard. Each Development is unique, and therefore, making the final determination to issue Bonds is often dependent on the issues presented at the time the full Application is considered by the Board.

#### **§12.5. Pre-Application Threshold Requirements.**

The threshold requirements of a pre-application include the criteria listed in paragraphs (1) - (8) of this section. As the Department reviews the pre-application the assumptions as reflected in Chapter 11, Subchapter D of this part (relating to Underwriting and Loan Policy) will be utilized even if not reflected by the Applicant in the pre-application. The threshold requirements of a pre-application include:

(1) Submission of the required tabs of the Uniform Application as prescribed by the Department in the Multifamily Bond Pre-Application Procedures Manual;

(2) Submission of the completed Bond Pre-Application Supplement in the form prescribed by the Department;

(3) Completed Bond Review Board Residential Rental Attachment for the current program year;

(4) Site Control, evidenced by the documentation required under §11.204(10) of this part (relating to Required Documentation for Application Submission). The Site Control must be valid through the date of both the Board meeting at which the inducement resolution is considered and subsequent submission of the application to the TBRB. For Lottery applications, Site Control must have the option to extend through March 1 of the current program year.

(5) Boundary survey or plat clearly identifying the location and boundaries of the subject Property;

(6) Organizational Chart showing the structure of the Development Owner and of any Developer and Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner, Developer and Guarantor, as applicable, and completed List of Organizations form, as provided in the pre-application. The List of Organizations form must include all Persons identified on the organizational charts, and further identify which of those Persons listed exercise Control of the Development;

(7) Evidence of Entity Registration or Reservation with the Texas Office of the Secretary of State; and

(8) A certification, as provided in the pre-application, that the Applicant met the requirements and deadlines for public notifications as identified in §11.203 of this part (relating to Public Notifications (§2306.6705(9))). In general, notifications should not be older than three months prior to the date of Application submission. Re-notification will be required by Applicants who have submitted a change from pre-application to Application that reflects a total Unit increase of greater than 10% or a 5% increase in density (calculated as Units per acre) as a result of a change in the size of the Development Site. In addition, should the jurisdiction of the official holding any position or role described in §11.203 of this part change between the submission of a pre-application and the submission of an Application, Applicants are required to notify the new entity no later than the Full Application Delivery Date.

#### **§12.6. Pre-Application Scoring Criteria.**

This section identifies the scoring criteria used in evaluating and ranking pre-applications. The criteria identified below include those items required under Tex. Gov't Code, §2306.359 and other criteria considered important by the Department. Any scoring items that require supplemental information to substantiate points must be submitted in the pre-application, as further outlined in the Multifamily Bond Pre-Application Procedures Manual. Applicants proposing multiple sites will be required to submit a separate pre-application for each Development Site, unless staff determines that one pre-application is more appropriate based on

the specifics of the transaction. Each individual pre-application will be scored on its own merits and the final score will be determined based on an average of all of the individual scores. Ongoing requirements, as selected in the pre-application, will be reflected in the Bond Regulatory and Land Use Restriction Agreement and must be maintained throughout the State Restrictive Period, unless otherwise stated or required in such Agreement.

(1) Income and Rent Levels of the Tenants. Pre-applications may qualify for up to ten (10 points) for this item.

(A) Priority 1 designation includes one of clauses (i) - (iii) of this subparagraph. (10 points)

(i) set aside 50% of Units rent capped at 50% AMGI and the remaining 50% of Units rent capped at 60% AMGI; or

(ii) set aside 15% of Units rent capped at 30% AMGI and the remaining 85% of Units rent capped at 60% AMGI; or

(iii) set aside 100% of Units rent capped at 60% AMGI for Developments located in a census tract with a median income that is higher than the median income of the county, MSA, or PMSA in which the census tract is located.

(B) Priority 2 designation requires the set aside of at least 80% of the Units rent capped at 60% AMGI (7 points).

(C) Priority 3 designation. Includes any qualified residential rental development. Market rate Units can be included under this priority (5 points).

(2) Cost of Development per Square Foot. (1 point) For this item, costs shall be defined as the Building Cost as represented in the Development Cost Schedule, as originally provided in the pre-application. This calculation does not include indirect construction costs or site work. Pre-applications that do not exceed \$95 per square foot of Net Rentable Area will receive one (1) point. Rehabilitation Developments will automatically receive one (1) point.

(3) Unit Sizes. (6 points) The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction).

(A) Five-hundred-fifty (550) square feet for an Efficiency Unit;

(B) Six-hundred-fifty (650) square feet for a one Bedroom Unit;

(C) Eight-hundred-fifty (850) square feet for a two Bedroom Unit;

(D) One-thousand-fifty (1,050) square feet for a three Bedroom Unit; and

(E) One-thousand, two-hundred-fifty (1,250) square feet for a four Bedroom Unit.

(4) Extended Affordability. A pre-application may qualify for up to three (3) points under this item.

(A) Development Owners that agree to extend the State Restrictive Period for a Development to a total of 40 years (3 points).

(B) Development Owners that agree to extend the State Restrictive Period for a Development to a total of 35 years (2 points).

(5) Unit and Development Construction Features. A pre-application may qualify for nine (9) points, as certified in the pre-application, for providing specific amenity and quality features in every Unit at no extra charge to the tenant. The amenities and corresponding point structure is provided in §11.101(b)(6)(B) of this part (relating to Unit, Development Construction, and Energy and Water Efficiency Features), which includes a minimum number of points that must come from Energy and Water Efficiency Features. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of (5 points).

(6) Common Amenities. All Developments must provide at least the minimum threshold of points for common amenities based on the total number of Units in the Development as provided in subparagraphs (A) - (F) of this paragraph. An Applicant may choose to exceed the minimum number of points necessary based on Development size; however, the maximum number of points under this item which a Development may be awarded under this section shall not exceed 25 points. The common amenities include those listed in §11.101(b)(5) of this part and must meet the requirements as stated therein. The Owner may change, from time to time, the amenities offered; however, the overall points as selected at Application must remain the same.

- (A) Developments with 16 to 40 Units must qualify for (4 points);
- (B) Developments with 41 to 76 Units must qualify for (7 points);
- (C) Developments with 77 to 99 Units must qualify for (10 points);
- (D) Developments with 100 to 149 Units must qualify for (14 points);
- (E) Developments with 150 to 199 Units must qualify for (18 points); or
- (F) Developments with 200 or more Units must qualify for (22 points).

(7) Resident Supportive Services. A pre-application may qualify for up to ten (10) points for this item. By electing points, the Applicant certifies that the Development will provide supportive services, which are listed in §11.101(b)(7) of this part, appropriate for the residents and that there will be adequate space for the intended services. The Owner may change, from time to time, the services offered; however, the overall points as selected at pre-application must remain the same. Should the QAP in subsequent years provide different services than those listed in §11.101(b)(7)(A) – (E), the Development Owner may be allowed to select services as listed therein upon written consent from the Department and any services selected must be of similar value to the service it is intending to replace. The Development Owner will be required to substantiate such service(s) at the time of compliance monitoring, if requested by staff. The services provided should be those that will directly benefit the Target Population of the Development and be accessible to all. No fees may be charged to the residents for any of the services. Services must be provided on-site or transportation to those off-site services identified

on the list must be provided. The same service may not be used for more than one scoring item. These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider. Where applicable, the services must be documented by a written agreement with the provider.

(A) The Development Owner shall provide resident services sufficient to substantiate ten (10) points; or

(B) The Development Owner shall provide resident services sufficient to substantiate eight (8) points.

(8) Underserved Area. An Application may qualify to receive up to two (2) points if the Development Site meets the criteria described in §11.9(c)(5)(A) - (H) of this part. The pre-application must include evidence that the Development Site meets this requirement.

(9) Development Support/Opposition. (Maximum +24 to -24 points) Each letter will receive a maximum of +3 to -3 points and must be received 10 business days prior to the Board's consideration of the pre-application. Letters must clearly state support or opposition to the specific Development. State Representatives or Senators as well as local elected officials must be in office when the pre-application is submitted and represent the district containing the proposed Development Site. Letters of support from State or local elected officials that do not represent the district containing the proposed Development Site will not qualify for points. Neutral letters that do not specifically refer to the Development or do not explicitly state support will receive (zero points). A letter that does not directly express support but expresses it indirectly by inference (i.e., "the local jurisdiction supports the Development and I support the local jurisdiction") counts as a neutral letter except in the case of State elected officials. A letter from a State elected official that does not directly indicate support by the official, but expresses support on behalf of the official's constituents or community (i.e., "My constituents support the Development and I am relaying their support") counts as a support letter.

(A) State Senator and State Representative of the districts whose boundaries include the proposed Development Site;

(B) Mayor of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);

(C) All elected members of the Governing Body of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);

(D) Presiding officer of the Governing Body of the county in which the Development Site is located;

(E) All elected members of the Governing Body of the county in which the Development Site is located;

(F) Superintendent of the school district in which the Development Site is located; and

(G) Presiding officer of the board of trustees of the school district in which the

Development Site is located.

(10) Preservation Initiative. (10 points) Preservation Developments, including Rehabilitation proposals on Properties which are nearing expiration of an existing affordability requirement within the next two years or for which there has been a rent restriction requirement in the past 10 years may qualify for points under this item. Evidence must be submitted in the pre-application.

(11) Declared Disaster Areas. (7 points) A pre-application may receive points if the Development Site is located in an area declared a disaster area under Tex. Gov't Code §418.014 at the time of submission, or at any time within the two-year period preceding the date of submission.

(12) Waiting List. (5 points) A pre-application that is on the Department's waiting list with the TBRB and does not have an active Certificate of Reservation at the time of the Private Activity Bond Lottery may have five (5) points added to their pre-application score if participating in the Lottery for the upcoming program year. These points will be added by staff once all of the scores for Lottery applications have been finalized.

(13) Tax-Exempt Bond 50% Test. (5 points) A pre-application may receive points under this item based on the amount of the Development financed with Tax-Exempt Bond proceeds relative to the amount necessary to meet the 50% Test. The 50% Test is calculated by dividing the Tax-Exempt Bond proceeds by the aggregate basis of the Development and shall be based on such amounts as reflected in the pre-application once staff's review is complete and all Administrative Deficiencies have been resolved. Normal rounding shall apply. [Should there be changes to this federal requirement, the percentage ranges noted below shall be modified accordingly by the same range.](#)

(A) The pre-application reflects a 50% Test amount that is greater than or equal to 55.0% and less than 60% (5 points); or

(B) The pre-application reflects a 50% Test amount that is greater than or equal to 60% and less than or equal to 64% (3 points).

#### **§12.7. Full Application Process.**

**(a) Application Submission.** Once the inducement resolution has been approved by the Board, an Applicant who elects to proceed with submitting a full Application to the Department must submit the complete tax credit Application pursuant to §11.201 of this part (relating to Procedural Requirements for Application Submission). While a Certificate of Reservation is required under §11.201 of this part (relating to Procedural Requirements for Application Submission) prior to submission of the complete tax credit Application, staff may allow the Application to be submitted prior to the issuance of a Certificate of Reservation depending on circumstances associated with the Development Site, structure of the transaction, volume cap environment, or other factors in the Department's sole discretion.

**(b) Eligibility Criteria.** The Department will evaluate the Application for eligibility and threshold at the time of full Application pursuant to Chapter 11 of this part (relating to Housing Tax Credit Program Qualified Allocation Plan). If there are changes to the Application at any point prior to closing that have an adverse effect on the score and ranking order and that would have resulted in the pre-application being placed below another pre-application in the ranking, the Department will terminate the Application and withdraw the Certificate of Reservation from the Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). The Development and the Applicant must satisfy the requirements set forth in Chapter 11 of this part in addition to Tex. Gov't Code, Chapter 1372, the applicable requirements of Tex. Gov't Code Chapter 2306, and the Code. The Applicant will also be required to select a Bond Trustee from the Department's approved list as published on its website.

**(c) Bond Documents.** Once the Application has been submitted and the Applicant has deposited funds to pay initial costs, the Department's bond counsel shall draft Bond documents.

**(d) Public Hearings.** The Department will hold a public hearing to receive comments pertaining to the Development and the issuance of the Bonds. A representative of the Applicant or member of the Development Team must be present at the public hearing and will be responsible for conducting a brief presentation on the proposed Development and providing handouts at the hearing that should include at minimum, a description of the Development, maximum rents and income restrictions. If the proposed Development is Rehabilitation, the presentation should include the proposed scope of work that is planned for the Development. The handouts must be submitted to the Department for review at least two days prior to the public hearing. Publication of all notices required for the public hearing shall be at the sole expense of the Applicant, as well as any facility rental fees or required deposits.

**(e) Approval of the Bonds.** Subject to the timely receipt and approval of commitments for financing, an acceptable evaluation for eligibility, financial feasibility, the satisfactory negotiation of Bond documents, and the completion of a public hearing, the Board will consider the approval of the final Bond resolution relating to the issuance, substantially final Bond documents and in the instance of privately placed Bonds, the pricing, terms and interest rate of the Bonds. For Applications that include local funding, Department staff may choose to delay Board consideration of the Bond issuance until such time it has been confirmed that the amount or terms associated with such local funding will not change and remain consistent with what was represented in the Department's underwriting analysis.

**(f) Local Permits.** Prior to closing on the Bond financing, all necessary approvals, including building permits from local municipalities, counties, or other jurisdictions with authority over the Development Site must have been obtained or evidence that the permits are obtainable subject only to payment of certain fees. For Rehabilitation Developments, in instances where such permits will be not received prior to bond closing, the Department may, on a limited and case-by-case basis allow for the closing to occur, subject to receipt of confirmation, acceptable to the Department, by the lender and/or equity investor that they are comfortable proceeding with closing.

## **§12.8. Refunding Application Process.**

**(a) Application Submission.** Owners who wish to refund or modify tax-exempt bonds that were previously issued by the Department must submit to the Department a summary of the proposed refunding plan or modifications. To the extent such modifications constitute a re-issuance under state law the Applicant shall then be required to submit a refunding Application in the form prescribed by the Department pursuant to the Bond Refunding Application Procedures Manual.

**(b) Bond Documents.** Once the Department has received the refunding Application and the Applicant has deposited funds to pay initial costs, the Department's bond counsel will draft the necessary Bond documents.

**(c) Public Hearings.** Depending on the proposed modifications to existing Bond covenants a public hearing may be required. Such hearing must take place prior to obtaining Board approval and must meet the requirements pursuant to §12.7(d) of this chapter (relating to Full Application Process) regarding the presence of a member of the Development Team and providing a summary of proposed Development changes.

**(d) Rule Applicability.** Refunding Applications must meet the applicable requirements pursuant to Chapter 11 of this part (relating to Housing Tax Credit Program Qualified Allocation Plan). At the time of the original award the Application would have been subject to eligibility and threshold requirements under the QAP in effect the year the Application was awarded. Therefore, it is anticipated the Refunding Application would not be subject to the site and development requirements and restrictions pursuant to §11.101 of this part (relating to Site and Development Requirements and Restrictions). The circumstances surrounding a refunding Application are unique to each Development; therefore, upon evaluation of the refunding Application, the Department is authorized to utilize its discretion in the applicability of the Department's rules as it deems appropriate.

## **§12.9. Occupancy Requirements.**

**(a) Filing and Term of Regulatory Agreement.** A Bond Regulatory and Land Use Restriction Agreement will be filed in the property records of the county in which the Development is located for each Development financed from the proceeds of Bonds issued by the Department. Such Regulatory and Land Use Restriction Agreement shall include provisions relating to the Qualified Project Period, the State Restrictive Period, along with points claimed for other provisions that will be required to be monitored throughout the State Restrictive Period, and shall also include provisions relating to Persons with Special Needs. The minimum term of the Regulatory Agreement will be based on the criteria as described in paragraphs (1) - (3) of this subsection, as applicable:

- (1) 30 years, or such longer period as elected under §12.6(4) of this chapter (relating to Extended Affordability), from the date the Development Owner takes legal possession of the Development;



(2) The end of the remaining term of the existing federal government assistance pursuant to Tex. Gov't Code, §2306.185; or

(3) The period required by the Code.

**(b) Federal Set Aside Requirements.**

(1) Developments which are financed from the proceeds of Private Activity Bonds must be restricted under one of the two minimum set-asides as described in subparagraphs (A) and (B) of this paragraph. Regardless of an election that may be made under Section 42 of the Code relating to income averaging, a Development will be required under the Bond Regulatory and Land Use Restriction Agreement to meet one of the two minimum set-asides described in subparagraphs (A) and (B) of this paragraph. Any proposed market rate Units shall be limited to 140% of the area median income and be considered restricted units under the Bond Regulatory and Land Use Restriction Agreement for purposes of using Bond proceeds to construct such Units.

(A) At least 20% of the Units within the Development shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 50% of the area median income; or

(B) At least 40% of the Units within the Development shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 60% of the area median income.

(2) The Development Owner must, at the time of Application, indicate which of the two federal set-asides will apply to the Development and must also designate the selected priority for the Development in accordance with Tex. Gov't Code, §1372.0321. Units intended to satisfy set-aside requirements must be distributed equally throughout the Development, and must include a reasonably proportionate amount of each type of Unit available in the Development.

(3) No tenant qualifying under either of the minimum federal set-asides shall be denied continued occupancy of a Unit in the Development because, after commencement of such occupancy, such tenant's income increases to exceed the qualifying limit. However, should a tenant's income, as of the most recent determination thereof, exceed 140% of the applicable federal set-aside income limit and such tenant constitutes a portion of the set-aside requirement of this section, then such tenant shall only continue to qualify for so long as no Unit of comparable or smaller size is rented to a tenant that does not qualify as a Low-Income Tenant.

**§12.10. Fees.**

**(a) Pre-Application Fees.** The Applicant is required to submit, at the time of pre-application, a pre-application fee of \$1,000, along with the fees noted on the Schedule of Fees posted on the Department's website specific to the Department's bond counsel and the Texas Bond Review Board (TBRB) pursuant to Tex. Gov't Code, §1372.006(a)). These fees cover the costs of pre-

application review by the Department and its bond counsel and filing fees associated with application submission for the Certificate of Reservation to the TBRB.

**(b) Application Fees.** At the time of Application the Applicant is required to submit a tax credit application fee of \$30 per Unit based on the total number of Units and a bond application fee of \$20 per Unit based on the total number of Units, unless otherwise modified by a specific program NOFA. Such fees cover the costs associated with Application review and the Department's expenses in connection with providing financing for a Development. For Developments proposed to be structured as a portfolio the bond application fees may be reduced on a case by case basis at the discretion of Department staff.

**(c) Closing Fees.** The closing fee for Bonds, other than refunding Bonds, is equal to 50 basis points (0.005%) of the issued principal amount of the Bonds, unless otherwise modified by a program NOFA. The Applicant will also be required to pay at closing of the Bonds the first two years of the administration fee equal to 20 basis points (0.002%) of the issued principal amount of the Bonds, with the first year prorated based on the actual closing date, and a Bond compliance fee equal to \$25/Unit (excludes market rate Units). Such compliance fee shall be applied to the third year following closing.

**(d) Application and Issuance Fees for Refunding Applications.** For refunding an Application the application fee will be \$10,000 unless the refunding is not required to have a public hearing, in which case the fee will be \$5,000. The closing fee for refunding Bonds is equal to 25 basis points (0.0025%) of the issued principal amount of the refunding Bonds. If applicable, administration and compliance fees due at closing may be prorated based on the current billing period of such fees. If additional volume cap is being requested other fees may be required as further described in the Bond Refunding Applications Procedures Manual. Transactions previously issued that involved a financing structure that would constitute a re-issuance under state law, but do not fit under §12.8, will be required to pay a closing fee that shall not exceed 25 basis points (0.0025%) of the re-issued principal amount of the bonds which may be reduced in the sole determination of the Department as commensurate with the review by staff in obtaining Board approval at the time of conversion.

**(e) Administration Fee.** The annual administration fee is equal to 10 basis points (0.001%) of the outstanding bond amount at the inception of each payment period and is paid as long as the Bonds are outstanding, unless otherwise modified by a specific program NOFA.

**(f) Bond Compliance Fee.** The Bond compliance monitoring fee is equal to \$25/Unit (excludes market rate Units), and is paid for the duration of the State Restrictive Period under the Regulatory Agreement, regardless of whether the Bonds have been paid off and are no longer outstanding. For Developments for which (1) the Department's Bonds are no longer outstanding and (2) new bonds or notes have been issued and delivered, the bond compliance monitoring fee may be reduced on a case by case basis upon a written request to, and at the discretion, of Department staff.

1i

**BOARD ACTION REQUEST**

**EXECUTIVE DIVISION**

**NOVEMBER 10, 2021**

Presentation, Discussion and Possible Approval of an Award of Emergency Rental Assistance Funds to the Texas Homeless Network for Housing Stabilization Services

**RECOMMENDED ACTION**

**WHEREAS**, in May 2021, the Department accepted a second allocation of Emergency Rental Assistance (ERA2) funds totaling \$1,079,786,857 from the U.S. Treasury Department authorized under the American Rescue Plan Act (ARPA), to be used to provide emergency rental and utility assistance and housing stability services;

**WHEREAS**, the enabling legislation provides that up to 10% of the funds may be utilized for housing stabilization services that enable eligible households to maintain or obtain housing;

**WHEREAS**, also awarded to the Department under ARPA were 798 Emergency Housing Vouchers (EHV) which are required by HUD to be coordinated with the homelessness Continuum of Care collaboratives, and for which the Board authorized staff to coordinate in large part with the Balance of State Continuum of Care (BoS CoC) so that vouchers could be used in rural and smaller metropolitan areas not otherwise receiving EHV from local housing authorities;

**WHEREAS**, the Texas Homeless Network (THN) is the established lead support agency for the BoS CoC;

**WHEREAS**, the EHV vouchers will serve to provide a critical housing stability service and other financial assistance to eligible households and supporting the issuance of the vouchers, and assisting voucher holders in locating units, is a housing stability service;

**WHEREAS**, the EHV Program does not provide sufficient funds for broad geographic administration of EHV or for services and other financial assistance as robust as may be needed, and therefore staff is recommending that an ERA2 Housing Stability Services contract be authorized for THN so that the EHV vouchers and the housing stability services made available to the voucher holders can be leveraged together and assistance maximized; and

**WHEREAS**, staff is recommending that the Board authorize the Executive Director to enter into an agreement with THN to enable them to provide housing stability services and other financial assistance, and to promptly perform administrative services associated with the EHV in a contract amount to be determined, but not to exceed \$750,000 of ERA2, and conditioned on a final recommendation of approval or approval with conditions from the

Compliance Division if such recommendation has not been provided before this Board Meeting;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Executive Director, his designees, and each of them be and they hereby are authorized, empowered, and directed, for and on behalf of the Department, to take any and all such actions as they or any of them may deem necessary or advisable to enter into an agreement with THN to enable THN to promptly provide housing stability services, other financial assistance, and administrative services associated with the EHV program, in a contract amount to be determined, but not to exceed \$750,000, pending the Executive Award Review and Advisory Committee (EARAC) review and approval or approval with conditions (unless such approval has occurred before this Board Meeting).

**BACKGROUND**

In May 2021, the Department accepted Emergency Rental Assistance (ERA 1.0) funds totaling \$1,308,110,629 from the U.S. Treasury Department authorized under the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260. More recently, the American Rescue Plan Act (ARPA) authorized another tranche of ERA funds (ERA 2.0) for \$1,079,786,857.

Under these grants, up to 10% of the funds may be used for housing stabilization services (HSS). Housing Stabilization services may include, but are not limited to: housing counseling, fair housing counseling, case management related to housing stability, housing related services for survivors of domestic abuse or human trafficking, attorney's fees related to eviction proceedings, and specialized services for individuals with disabilities or seniors that supports their ability to access or maintain housing.

Also under ARPA the Department was issued 798 Emergency Housing Vouchers (EHV) from the US Department of Housing and Urban Development (HUD). The EHV Program was designed by HUD to allow local PHAs to collaborate and work closely with their local homeless Continuum of Care (CoC) in issuing the vouchers and providing services. CoCs are a collaborative approach to planning and funding for services related to homelessness. The term "Continuum of Care" refers to a specific HUD program, but also the geographical location covered by a CoC program, and the body of people that participate in homeless services within that geographic area, including service providers, advocates, local government officials, and community. While most CoCs are established to plan services in metropolitan areas, or a small grouping of counties, the BoS CoC covers the areas of the state that do not have the resources to establish their own CoC. The Texas BoS CoC is the largest of the 11 CoCs in Texas and covers 215 of Texas' 254 counties. The BoS CoC selected the Texas Homeless Network (THN) to serve as their lead support agency.

For the EHV Program, HUD requires that the voucher issuance be coordinated with the local CoC, and the Board authorized staff to coordinate in large part with the Balance of State Continuum of Care (BoS CoC) so that the Department's EHV vouchers could be used in rural and smaller metropolitan areas not

otherwise receiving EHV from local housing authorities. The challenge with EHV for a PHA with breadth like TDHCA and a CoC that comprises such a large part of the state is that services and administration are not readily delivered in just one locale. The amount of funds provided by the EHV program is insufficient to enable the BoS CoC to establish the framework and administrative supports needed to identify eligible households, and provide them with housing search assistance and other stability services.

Therefore, staff is recommending that some of the more flexible HSS funds be provided to THN to enable them to aid in the issuance of approximately 470 EHV vouchers to BoS eligible households. Staff is recommending the contract be for no more than \$750,000. Having access to the ERA funds will allow THN to provide critical housing stability services and other financial assistance to households, and assist voucher holders in locating units.

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**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**NOVEMBER 10, 2021**

Presentation, discussion, and possible action to revise prior Board action related to requests for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Applications Awarded Competitive (9%) Housing Tax Credits in Prior Application Rounds

19077	Telephone Road Elderly Apartments	Houston
20018	The Park Tower	Fort Worth
20042	Commons at St. Anthony	Amarillo
20075	New Hope Housing Savoy	Houston
20077	Lockwood South Apartments	Houston
20082	Connect South Apartments	Houston
20083	Lakeview Preserve	Irving
20190	Nuestra Señora	El Paso
20192	Arbor Park	Austin
20204	Heritage Senior Residences	Houston
20205	Ella Grand	Houston
20212	Vernon Pioneer Crossing	Vernon
20272	Westwind of Dumas	Dumas
20344	Merritt Sunset	Midland

**RECOMMENDED ACTION**

**WHEREAS**, awards of Competitive (9%) Housing Tax Credits were approved by the Board for the Developments listed above;

**WHEREAS**, the Department received requests to extend the placement in service deadlines from the Development Owners, which were granted by the Board under 10 TAC §11.6(5) related to credit returns resulting from force majeure events during the September 2021 and October 2021 Board meetings; and

**WHEREAS**, the resolutions for those Board requests required that the 2021 Qualified Allocation Plan would be applicable to the developments upon the Board’s approval, which was later determined by staff to be administratively impractical.

**NOW, therefore, it is hereby**



**RESOLVED**, the previous Board approvals related to application of the force majeure rule for the above listed developments are approved as presented to this meeting to be revised to allow for the Qualified Allocation Plans from the year of initial tax credit award (to the extent allowable by federal or state law) to be applicable to the developments for the purposes of the force majeure event and the Executive Director and his designees are hereby, authorized, empowered, and directed to take all necessary action to effectuate the foregoing; and

**FURTHER RESOLVED**, the prior Board actions remain otherwise unchanged.

### **BACKGROUND**

10 TAC §11.6(5) of the Qualified Allocation Plan (QAP), related to Credits Returns Resulting from Force Majeure Events, allows a Development Owner to return issued credits within three years of award, and have those credits re-allocated to the Development outside of the usual regional allocation system if all of the requirements of the subsection are met. The Board determination must indicate the year of the Multifamily Rules to be applied to the Development. During the September 2021 and October 2021 meetings, the Board heard and ultimately granted approval to 14 developments for treatment under this provision of the QAP. The Board resolutions, written by staff, included the requirement that the 2021 Qualified Allocation Plan and Uniform Multifamily Rules be applicable to the developments.

Interpreting a previously-awarded application under the current year's QAP is administratively impractical and can prove to be infeasible. While allowable under the rules, requiring developments that are approved for treatment under the force majeure rule to follow the current-year QAP and Uniform Multifamily Rules represents a departure from established Department practice. Staff has reviewed similar previously-approved requests and was not able to identify any instances where the subject development became subject to the current QAP upon approval. However, it has happened that required accessibility or energy efficiency standards have been updated due to a change in federal or state law.

The Board's action in approving this revision will allow Department staff to proceed with these applications following the QAP and Rules under which they initially applied and have been reviewed, subject to potential incorporation of relevant statutes or regulations as are required. However, the 2021 Program Calendar will remain applicable to the developments. If the Board denies this request, a full analysis of each application will be necessary, and applicants will be required to take appropriate action to bring the subject developments into compliance with the 2021 QAP and Rules.

Staff recommends the Board approve this request to revise previous action taken.

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**TO BE POSTED  
NOT LATER THAN  
THE THIRD DAY  
BEFORE THE  
DATE OF THE  
MEETING**

11

**BOARD ACTION REQUEST**

**LEGAL DIVISION**

**NOVEMBER 10, 2021**

Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Harmon Elliott Senior Citizens Complex (HTF 355007 / CMTS 2642)

**RECOMMENDED ACTION**

**WHEREAS**, Harmon Elliott Senior Citizens Complex, owned by the Housing Authority of the City of Muleshoe (Owner), has one uncorrected compliance finding relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

**WHEREAS**, representatives of Owner have attended multiple informal conferences and signed prior Agreed Final Orders in 2015 and 2019;

**WHEREAS**, the 2015 Agreed Final Order included the following violations: one household income violation for a household that was not fully screened at initial occupancy, failure to submit the 2014 Annual Owner's Compliance Report, two Uniform Physical Condition Standards violations, failure to affirmatively market, and failure to submit compliant written policies and procedures;

**WHEREAS**, administrative penalties totaling \$1,000 came due under the 2015 Agreed Final Order as a result of owner's failure to remedy the above violations as stipulated, and the full penalty was paid;

**WHEREAS**, the 2019 Agreed Final Order included the following violations: one household income violation for a household that was not fully screened at initial occupancy, failure to implement an updated utility allowance, failure to affirmatively market, and failure to submit compliant written policies and procedures;

**WHEREAS**, a \$1,000 administrative penalty was paid when the 2019 Agreed Final Order was signed, and an additional \$1,000 administrative penalty was forgiven when violations were remedied as stipulated;

**WHEREAS**, TDHCA attempted to perform a new regularly scheduled desk file monitoring review in 2020, but Owner was nonresponsive and was referred for an administrative penalty twice, first for failure to allow monitoring, then for failure to implement an updated utility allowance;

**WHEREAS**, on October 12, 2021, Owner's representatives participated in an informal conference with the Enforcement Committee and agreed, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of \$4,000, with \$1,500 to be paid within 30 days of signature and the remaining \$2,500 to be forgiven if all violations are resolved as specified in the Agreed Final Order on or before December 10, 2021;

**WHEREAS**, there is currently one unresolved compliance finding for failure to implement an updated utility allowance; and

**WHEREAS**, staff has based its recommendations for an Agreed Final Order on the Department's rules for administrative penalties and an assessment of each and all of the statutory factors to be considered in assessing such penalties, applied specifically to the facts and circumstances present in this case.

**NOW, therefore, it is hereby**

**RESOLVED**, that an Agreed Final Order assessing an administrative penalty of \$4,000, subject to partial forgiveness as outlined above, for noncompliance at Harmon Elliott, substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as the order of this Board.

## BACKGROUND

Housing Authority of the City of Muleshoe (“Owner”) is the owner of Harmon Elliott Senior Citizens Complex (“Property”), a low income apartment complex composed of 16 units, located in Muleshoe, Bailey County. Raquel Posadas Kirven is the Executive Director, and CMTS lists her as the primary contact for Owner. The Property is self-managed and Ms. Kirven is the only staff person.

The Property is subject to a Land Use Restriction Agreement (LURA) signed in 1996 in consideration for a Housing Trust Fund (HTF) loan in the amount of \$219,229 to build and operate the Property. The LURA will expire on January 21, 2028. Loan payments are current.

Owner was previously referred for an administrative penalty for reporting violations, file monitoring violations, and UPCS violations. A first Agreed Final Order was signed in 2015, including a \$1,000 administrative penalty, with \$250 paid at signing and the remaining \$750 to be forgiven provided that complete corrections were submitted as required by the Agreed Final Order. That order was violated and the full penalty was paid. A second Agreed Final Order was signed in 2019, including a \$2,000 administrative penalty, with \$1,000 paid at signing and the remaining amount to be forgiven provided that complete corrections were submitted as required by the Agreed Final Order. The terms of the second Agreed Final Order were met and the remaining \$1,000 was forgiven.

A new desk file monitoring review was scheduled for October 6, 2020, but Owner did not submit pre-on-site review documentation despite multiple extensions and reminders by the Compliance Division. Pre-on-site documentation was not submitted until April 12, 2021, after the Enforcement Committee Secretary made contact regarding an administrative penalty referral for failure to allow monitoring. Once the pre-on-site documentation was submitted, Compliance Division staff and Committee Secretary placed the penalty referral on hold but did not close it due to Owner’s history; the Compliance Division then resumed the remainder of its file monitoring review process, setting a deadline of May 12, 2021, to submit tenant files. Files were submitted timely, and a 90-day corrective action period was set to address new findings of noncompliance that were identified. All of the new findings were then timely resolved, with the exception of Owner’s failure to implement an updated utility allowance, which was referred for an administrative penalty on September 27, 2021. To correct the utility allowance finding, Owner must update the Unit Status Report to reflect a utility allowance of \$76 for each one-bedroom unit; the report originally included an allowance of \$62, and was recently updated to an allowance of \$72. This utility allowance finding is not expected to cause overcharged rents.

The following compliance violations relating to the 2020/2021 desk file monitoring review were referred for an administrative penalty and have been resolved:

1. Failure to allow monitoring. This was considered for an administrative penalty due to Owner’s extensive history of past noncompliance, and two past Agreed Final Orders.

The following compliance violations relating to the 2020/2021 desk file monitoring review were referred for an administrative penalty and are unresolved:

1. Failure to implement an updated utility allowance.

An Owner representative participated in an informal conference with the Enforcement Committee on October 12, 2021, and Owner's Board has agreed to an Agreed Final Order with the following terms:

1. A \$4,000 administrative penalty, subject to partial forgiveness as indicated below;
2. Owner must submit \$1,500 portion of the administrative penalty on or before December 10, 2021;
3. Owner must correct the utility allowance violation as indicated in the Agreed Final Order on or before December 10, 2021;
4. If Owner complies with all requirements and addresses all violations as required, the remaining administrative penalty in the amount of \$2,500 will be forgiven; and
5. If Owner violates any provision of the Agreed Final Order, the full administrative penalty will immediately come due and payable.

During the 2021 informal conference, Raquel Posadas Kirven shared more personal perspective than she had during past conferences. She started with the housing authority as a secretary and became executive director. She has repeatedly tried to hire other staff, but has been the only regular employee since 2010, and is currently the only employee. Muleshoe is a small town in a rural area, so there is a limited local workforce; those who do apply are typically unskilled and frequently only stay for a few weeks. There are no other TDHCA properties in the area. Covid has also been a factor in attracting and retaining employees, and Covid illnesses have directly impacted this property, causing some of the response delays. Ms. Kirven has attended TDHCA training and the quality of her corrective submissions have improved since 2015, but responsiveness remains a concern, with little improvement shown. This does not appear to be an issue of willful noncompliance, but instead relates to staffing, education, and momentum. The housing authority's board is not very involved and Ms. Kirven has stayed with the housing authority due to her family's history as migrant farm workers who helped to set up Harmon Elliott. Additionally, she does not have sufficient educational background or experience to accurately complete some of the TDHCA requirements, such as financial reporting and bookkeeping. She also struggles with differentiating between requirements by TDHCA, USDA, and HUD, which combined, restrict a total of 52 units owned by the housing authority. She admitted that she is overwhelmed by her duties and does not fully understand TDHCA's requirements, but said she is committed to complying. She understands that she must calendar deadlines and respond to TDHCA regularly. Committee members recommended that she discuss the above problems with the housing authority's board to try hiring additional staff, and to have board members provide more regular oversight and management directives. They also put her in contact with South Plans Association of Governments for assistance by their local government services section for things like reporting and bookkeeping. Committee members recognize that continued compliance problems are likely, but hope that the recommended penalty structure will be enough to prompt improvements and deter future violations, while balancing the competing priorities of keeping Ms. Kirven at the organization. If she were to leave the organization, they are concerned about possible abandonment of the property.

Consistent with direction from the Department's Enforcement Committee, a probated and, upon successful completion of probation, partially forgivable administrative penalty in the amount of \$4,000 is recommended. This will be a reportable item of consideration under previous participation for any new award to the principals of the Owner.



ENFORCEMENT ACTION AGAINST HOUSING	§	BEFORE THE
AUTHORITY OF THE CITY OF MULESHOE	§	TEXAS DEPARTMENT OF
WITH RESPECT TO HARMON ELLIOTT	§	HOUSING AND COMMUNITY
SENIOR CITIZENS COMPLEX	§	AFFAIRS
(HTF FILE # 355007 / CMTS # 2642)	§	

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 10<sup>th</sup> day of November, 2021, the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or Department) considered the matter of whether enforcement action should be taken against **HOUSING AUTHORITY OF THE CITY OF MULESHOE**, a public housing authority (Respondent).

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act (APA), Tex. Gov't Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondent agree to resolve this matter by this Agreed Final Order. The Respondent agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the findings of fact and conclusions of law set out in this Order.

Upon recommendation of the Enforcement Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

**WAIVER**

Respondent acknowledges the existence of their right to request a hearing as provided by Tex. Gov't Code §2306.044, and to seek judicial review, in the District Court of Travis County, Texas, of any order as provided by Tex. Gov't Code §2306.047. Pursuant to this compromise and settlement, the Respondent waives those rights and acknowledges the jurisdiction of the Board over Respondent.

**FINDINGS OF FACT (FOF)**

**Jurisdiction:**

1. During 1996, Respondent received a Housing Trust Fund ("HTF") loan in the amount of \$219,229 to build and operate Harmon Elliott Senior Citizens Complex ("Property") (HTF No. 355007 / CMTS No. 2642 / LDLD No. 360).

2. Respondent signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective January 22, 1996, and filed of record at Volume 193, Page 198 of the Official Public Records of Real Property of Bailey County, Texas (“Records”).
3. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations<sup>1</sup>:

4. Property has a history of violations and previously signed Agreed Final Orders in 2015 and 2019:
  - a. 2015 Agreed Final Order included a \$1,000 Administrative Penalty, of which \$250 was paid at signing and the remaining \$750 was to be forgivable provided that Respondent submitted complete corrections as required. This Order was violated and the full penalty was paid.
  - b. 2019 Agreed Final Order included a \$2,000 Administrative Penalty, of which \$1,000 was paid at signing and the remaining \$1,000 was to be forgivable provided that Respondent submitted complete corrections as required. The terms of this Order were met.
5. A desk file monitoring review was attempted on October 6, 2020, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. Multiple extensions and reminders were issued by the TDHCA Compliance Division, but Respondent failed to submit corrective documentation. Notification of noncompliance was sent and a March 9, 2021, corrective action deadline was set. No corrections were received and Respondent was referred for an administrative penalty for failure to allow monitoring, a violation of 10 TAC §10.618, which requires Owners to provide records for review.
6. Respondent provided records after the Enforcement Committee made contact, enabling the Compliance Division to resume its monitoring review, which was ultimately completed in May and June of 2021. Violations of the LURA and TDHCA rules were identified, notifications of noncompliance were sent, and a September 20, 2021, corrective action deadline was set. Corrections were timely received, but the following violations were not resolved before the corrective action deadline:
  - a. Respondent failed to establish an updated utility allowance, a violation of 10 TAC §10.614 (Utility Allowances), which requires all developments to establish a utility allowance. The utility allowance during the monitoring review was \$62, but should be \$76. It has since been updated to \$72, but the finding remains unresolved.

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<sup>1</sup> Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TAC Chapter 10 refers to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

7. The following violations remain outstanding at the time of this order:
  - a. Utility allowance violation described in FOF #6.a.;

### **CONCLUSIONS OF LAW**

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TAC Chapter 2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Respondent violated 10 TAC §10.618 in 2020 by failing to allow a monitoring review.
4. Respondent violated 10 TAC §10.614 in 2021 by failing to establish an updated utility allowance.
5. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to Tex. Gov't Code §2306.041 and §2306.267.
6. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
7. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code §2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.
8. An administrative penalty of \$4,000 is an appropriate penalty in accordance with 10 TAC Chapter 2.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the Governing Board of the Texas Department of Housing and Community Affairs orders the following:

**IT IS HEREBY ORDERED** that Respondent is assessed an administrative penalty in the amount of \$4,000, subject to partial deferral as further ordered below.

**IT IS FURTHER ORDERED** that Respondent shall pay and is hereby directed to pay a \$1,500 portion of the assessed administrative penalty by cashier’s check payable to the “Texas Department of Housing and Community Affairs” on or before December 10, 2021.

**IT IS FURTHER ORDERED** that Respondent shall fully correct the file monitoring violations as indicated at Exhibit 1 and submit full documentation of the corrections to TDHCA on or before December 10, 2021.

**IT IS FURTHER ORDERED** that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, the satisfactory performance under this order will be accepted in lieu of the remaining assessed administrative penalty and the remaining \$2,500 of the administrative penalty will be deferred and forgiven.

**IT IS FURTHER ORDERED** that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the remaining administrative penalty in the amount of \$2,500 shall be immediately due and payable to the Department. Such payment shall be made by cashier’s check payable to the “Texas Department of Housing and Community Affairs” upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order, or (2) the property closing date if sold before the terms and conditions of this Agreed Final Order have been fully satisfied.

**IT IS FURTHER ORDERED** that corrective documentation must be uploaded to the Compliance Monitoring and Tracking System (CMTS) by following the instructions at this link: <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>. After the upload is complete, an email must be sent to Ysella Kaseman at [ysella.kaseman@tdhca.state.tx.us](mailto:ysella.kaseman@tdhca.state.tx.us) to inform her that the documentation is ready for review. Any penalty payments must be submitted to the following address:

<b>If via overnight mail (FedEx, UPS):</b>	<b>If via USPS:</b>
TDHCA Attn: Ysella Kaseman 221 E 11 <sup>th</sup> St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

**IT IS FURTHER ORDERED** that Respondent shall follow the requirements of 10 TAC §10.406, a copy of which is included at Exhibit 2, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

**IT IS FURTHER ORDERED** that the terms of this Agreed Final Order shall be published on the TDHCA website.



STATE OF TEXAS §  
§  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, \_\_\_\_\_ (*notary name*), a notary public in and for the State of Texas, on this day personally appeared \_\_\_\_\_ (*person signing document*), known to me or proven to me through circle one: personally known / driver's license / passport to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he/she) executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is \_\_\_\_\_, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of \_\_\_\_\_ for Respondent. I am the authorized representative of Respondent, owner of the Property, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Governing Board of the Texas Department of Housing and Community Affairs."

**RESPONDENT:**

**HOUSING AUTHORITY OF THE CITY OF MULESHOE,**  
a public housing authority

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

## Exhibit 1

### **File Monitoring Violation Resources and Instructions**

#### **Resources:**

1. Refer to the following link for the utility allowance rule at 10 TAC §10.614.  
[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y)
2. Technical support and training presentations are available at the following links:  
Utility Allowance: <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>  
FAQ's: <http://www.tdhca.state.tx.us/pmcomp/compFaqs.htm>

#### **Instructions:**

3. **All corrections must be submitted via CMTS:** <https://pox.tdhca.state.tx.us/aims2/pox>.
4. **Utility Allowance** – At the time of the monitoring review, the utility allowance was incorrectly entered as \$62 on the Unit Status Report / Quarterly Vacancy Report, but the most current utility allowance for a one bedroom unit is \$76. An updated Unit Status Report was submitted on October 18, 2021, but it included a utility allowance of \$72, which is also incorrect. To correct, you must perform the following no later than December 10, 2021:
  - a. Update the Unit Status Report in CMTS to reflect a utility allowance of \$76 for all units, per the Utility Allowance schedule that was effective as of 12/1/2020; - OR -
  - b. In the event that a new utility allowance becomes effective before December 10, 2021:
    - i. Update the Unit Status Report in CMTS to reflect that new amount for all units; and
    - ii. Upload new utility allowance schedule and associated documentation to the CMTS attachments section.

**Exhibit 2:**  
**Texas Administrative Code**

TITLE 10	COMMUNITY DEVELOPMENT
PART 1	TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 10	UNIFORM MULTIFAMILY RULES
SUBCHAPTER E	POST AWARD AND ASSET MANAGEMENT REQUIREMENTS
RULE §10.406	Ownership Transfers (§2306.6713)

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(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 and Executive Award Review and Advisory Committee).

(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 and Executive Award Review and Advisory Committee), 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. 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 and Executive Award Review and Advisory Committee), 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 Requirements 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).

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**Source Note:** The provisions of this §10.406 adopted to be effective February 5, 2020, 45 TexReg 722

1m

**BOARD ACTION REQUEST**

**LEGAL DIVISION**

**NOVEMBER 10, 2021**

Presentation, discussion, and possible action regarding the adoption of Agreed Final Orders concerning related properties Second North Apartments (HTC 94001 / CMTS 1201) and Second Adams Apartments (HTC 94018 / CMTS 1217)

**RECOMMENDED ACTION**

**WHEREAS**, Second Adams Apartments and Second North Apartments (collectively, the Properties), both owned by Adrian Duenez (Owner), have uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

**WHEREAS**, both properties have a history of prior administrative penalty referrals under prior owner, Donnie Thompson, with an Agreed Final Order for each property signed in 2016 and violated in 2017, and a total administrative penalty of \$1,000 paid;

**WHEREAS**, current Owner resolved the noncompliance associated with the 2016 Agreed Final Orders after purchasing the properties in 2017;

**WHEREAS**, TDHCA identified findings of noncompliance during its regularly scheduled 2021 desk monitoring review and referred them for an administrative penalty when they were not timely corrected;

**WHEREAS**, on September 23, 2021, Owner participated in an informal conference with the Enforcement Committee and agreed, subject to Board approval, to enter into an Agreed Final Order for each property;

**WHEREAS**, the Agreed Final Order for Second North assesses an administrative penalty of \$1,000, to be fully forgiven if all violations are resolved as specified in the Agreed Final Order on or before January 9, 2022, representing sixty days from the date of Board approval;

**WHEREAS**, the Agreed Final Order for Second Adams assesses an administrative penalty of \$1,600, to be fully forgiven if all violations are resolved as specified in the Agreed Final Order on or before February 8, 2022, representing ninety days from the date of Board approval;

**WHEREAS**, unresolved compliance findings for Second North include failure to implement an updated utility allowance, and five household income findings relating to households that were not properly screened for occupancy;

**WHEREAS**, unresolved compliance findings for Second Adams include failure to implement an updated utility allowance, and five household income findings relating to households that were not properly screened for occupancy; and

**WHEREAS**, staff has based its recommendations for an Agreed Final Order on the Department's rules for administrative penalties and an assessment of each and all of the

statutory factors to be considered in assessing such penalties, applied specifically to the facts and circumstances present in this case.

**NOW, therefore, it is hereby**

**RESOLVED**, that Agreed Final Orders assessing an administrative penalties of \$1,000 for noncompliance at Second North and \$1,600 for noncompliance at Second Adams, subject to partial forgiveness as outlined above, substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, are hereby adopted as the order of this Board.

## BACKGROUND

Adrian Duenez (Owner) is the owner of Second North Apartments and Second Adams Apartments (collectively, the Properties). Both are low income apartment complexes located in Harlingen, Cameron County, with Second North composed of 10 units, and Second Adams composed of 16 units. The property is self-managed.

Second North is subject to a Land Use Restriction Agreement (“Second North LURA”) signed by a prior owner in 1994 in consideration for a housing tax credit allocation in the amount of \$18,368 to build and operate the Property. Second Adams is subject to a Land Use Restriction Agreement (“Second Adams LURA”) signed by a prior owner in 1995 in consideration for a housing tax credit allocation in the amount of \$41,356 to build and operate the Property. Both LURA terms will expire December 31, 2024.

The Properties have a history of administrative penalty referrals for file monitoring findings, with prior owner, Donnie Thompson, signing Agreed Final Orders for each property in 2016. Findings for those Orders included failure to submit an entrance interview questionnaire, failure to maintain written tenant selection criteria, failure to affirmatively market, and three household income findings relating to failure to properly screen the households to establish eligibility. Both Orders were violated and a total administrative penalty of \$1000 was paid in 2017. The properties were then sold to the current owner, Mr. Duenez, who corrected all past noncompliance. Mr. Duenez did not receive Department approval for the purchase, but the LURAs remain in effect per Section 2 of the LURAs, which stipulate that their restrictions run with the land.

Both properties were referred for an administrative penalty in 2021 for failure to allow monitoring when Mr. Duenez did not respond to a desk monitoring review with a corrective action deadline of April 4, 2021. A response was received on April 22, 2021, after the Committee Secretary made contact, and the administrative penalty referral was closed. The Compliance Division then requested tenant files to complete its monitoring review, and set a new corrective action deadline of August 23, 2021 for new noncompliance that was identified. Corrections were timely submitted by that deadline, but were incomplete.

The following compliance violations relating to the 2021 desk file monitoring review were referred for an administrative penalty during the first phase of the review, and have been resolved:

1. Failure to allow monitoring. This was not considered for an administrative penalty because Mr. Duenez has not previously attended an informal conference and he submitted corrections shortly after the Committee Secretary made contact about this referral.

The following compliance violations relating to the 2021 desk file monitoring review were referred for an administrative penalty during the second phase of the review, and are unresolved:

1. Failure to implement an updated utility allowance. Mr. Duenez submitted a utility allowance schedule, but did not implement it by updating the Unit Status Report to prove that rents are appropriately restricted. This finding remains unresolved.
2. Program unit not leased to Low-Income household / household income above income limit upon initial occupancy. Mr. Duenez submitted tenant files, but they were incomplete for five units at each property, with each file missing various required forms. All files were missing required verifications to prove eligibility. This finding remains unresolved for all ten units.

Mr. Duenez participated in an informal conference with the Enforcement Committee on September 23, 2021, and has agreed to sign two separate Agreed Final Orders with the following terms:

1. A \$1,000 administrative penalty for Second North, to be fully forgiven if all violations are addressed as indicated in the Agreed Final Order on or before January 9, 2022, representing sixty days from the date of Board approval;
2. A \$1,600 administrative penalty for Second Adams, to be fully forgiven if all violations are addressed as indicated in the Agreed Final Order on or before February 8, 2022, representing ninety days from the date of Board approval;
3. Mr. Duenez must attend the following courses and submit completion certificates on or before February 8, 2022:
  - a. Income Determination Training; and
  - b. Housing Tax Credit Compliance Training.
4. If Owner complies with all requirements and addresses all violations as required by the Agreed Final Order, the administrative penalty will be forgiven;
5. If Owner violates any provision of the Agreed Final Order, the full administrative penalty will immediately come due and payable.

During the informal conference, Committee members agreed that the household income violations were serious since Mr. Duenez is not collecting eligibility documentation. The utility allowance violation could also be serious if it caused gross rents to be overcharged, but the Compliance Division indicated they did not think this was likely. Mr. Duenez stated that he is willing to comply, will attend training, and is looking to hire a property manager since he has realized he cannot do it alone. He did not collect eligibility documentation because, in his opinion, everyone in the area is very low income. In addition, he felt that the units, which are older and very small, self-select residents at a lower income level; Second North is composed of two bedroom units with a total of 450 square feet, and Second Adams is composed of three bedroom units with a total of 625 square feet. He also indicated that many of the households are self-employed and have no bank accounts, which confused him when trying to establish eligibility during the monitoring review. No households receive Section 8 vouchers, so he was not able to establish eligibility via the housing authority. Overall, it was apparent that Mr. Duenez needs to attend training before submitting any further documentation for Department review. He repeatedly talked about how confused and overwhelmed he was, and how he was receiving TDHCA letters, but had no idea where to start, even after receiving extensive technical support from Compliance Staff and the Committee Secretary. Committee members also thought it was likely that Mr. Duenez did not realize how bad his files were until he was monitored in 2021; it was his first monitoring review since purchasing the property. Additionally, Committee members considered the fact that Mr. Duenez corrected the prior owner's noncompliance after he purchased the property, showing that he is willing to comply. Committee members included a training requirement in the proposed Agreed Final Order, are recommending that Mr. Duenez submit a test file prior to submitting further corrections for review, and they purposely set an earlier deadline for one of the Agreed Final Orders as a trial run.

Consistent with direction from the Department's Enforcement Committee, a probated and, upon successful completion of probation, fully forgivable administrative penalty in the amount of \$1,000 for Second North and \$1,600 for Second Adams are recommended. These will be reportable items of consideration under previous participation for any new award to the principals of the Owner.

ENFORCEMENT ACTION AGAINST ADRIAN	§	BEFORE THE
DUENEZ WITH RESPECT TO SECOND NORTH	§	TEXAS DEPARTMENT OF HOUSING
APARTMENTS	§	AND COMMUNITY AFFAIRS
(HTC FILE # 94001 / CMTS # 1201)	§	
	§	
	§	

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 10<sup>th</sup> day of November, 2021, the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or Department) considered the matter of whether enforcement action should be taken against **ADRIAN DUENEZ** (Respondent).

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act (APA), Tex. Gov't Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondent agree to resolve this matter by this Agreed Final Order. The Respondent agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the findings of fact and conclusions of law set out in this Order.

Upon recommendation of the Enforcement Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

**WAIVER**

Respondent acknowledges the existence of their right to request a hearing as provided by Tex. Gov't Code §2306.044, and to seek judicial review, in the District Court of Travis County, Texas, of any order as provided by Tex. Gov't Code §2306.047. Pursuant to this compromise and settlement, the Respondent waives those rights and acknowledges the jurisdiction of the Board over Respondent.

**FINDINGS OF FACT (FOF)**

**Jurisdiction:**

1. During 1994, Prior Owner was awarded an allocation of Low Income Housing Tax Credits by the Board, in the amount of \$18,368 to build and operate Second North Apartments ("Property") (HTC File No. 94001/ CMTS No. 1201 / LDLD No. 502).
2. Prior Owner signed a land use restriction agreement ("LURA") regarding the Property. The LURA was dated November 18, 1994, and filed of record at Volume 3148, Page 77, and filed of record at Volume 3618, Page 84, of the Official Public Records of Real Property of Cameron County, Texas. In accordance with Section 2 of the LURA, the LURA is a restrictive covenant/deed



restriction encumbering the Property and binding on all successors and assigns for the full term of the LURA.

3. The Property was purchased by Respondent on March 10, 2017. The restrictions remained in place in accordance with Section 2 of the LURA, thereby binding Respondent to the terms of the agreement.
4. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations<sup>1</sup>:

5. A desk file monitoring review was attempted on November 10, 2020, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. Respondent failed to respond and a notification of noncompliance was sent, setting a March 9, 2021, corrective action deadline. No corrections were received and Respondent was referred for an administrative penalty for failure to allow monitoring, a violation of 10 TAC §10.618, which requires Owners to provide records for review.
6. Respondent provided records to correct the violation for failure to allow monitoring on April 22, 2021, after the Enforcement Committee made contact. This enabled the Compliance Division to resume its monitoring review, which was ultimately completed in May of 2021. Violations of the LURA and TDHCA rules were identified, notifications of noncompliance were sent, and an August 22, 2021, corrective action deadline was set. Corrections were timely received, but the following violations were not resolved before the corrective action deadline and were referred for an administrative penalty:
  - a. Respondent failed to establish an updated utility allowance, a violation of 10 TAC §10.614 (Utility Allowances), which requires all developments to establish a utility allowance. A utility allowance schedule was submitted, but the utility allowance was not added to the Unit Status Report / Quarterly Vacancy Report in CMTS so that the Department could verify that rents are appropriately restricted.
  - b. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 1, 3, 6, 9 and 10, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income) and Section 4 of the LURA, which require screening of tenants to ensure qualification for the program.
7. All violations listed at FOF #6 above are considered unresolved at the time of this Order.

**CONCLUSIONS OF LAW**

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TAC Chapter 2.

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<sup>1</sup> Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TAC Chapter 10 refers to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

2. Respondent is a “housing sponsor” as that term is defined in Tex. Gov’t Code §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Respondent violated 10 TAC §10.618 in 2020 by failing to allow a monitoring review.
5. Respondent violated 10 TAC §10.614 in 2021 by failing to establish an updated utility allowance.
6. Respondent violated 10 TAC §10.611 and Section 4 of the LURA in 2021, by failing to provide documentation that household income was within prescribed limits upon initial occupancy for units 1, 3, 6, 9 and 10.
7. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to Tex. Gov’t Code §2306.041 and §2306.267.
8. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov’t Code §2306.267.
9. Because Respondent has violated rules promulgated pursuant to Tex. Gov’t Code §2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov’t Code §2306.041.
10. An administrative penalty of \$1,000 is an appropriate penalty in accordance with 10 TAC Chapter 2.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the Governing Board of the Texas Department of Housing and Community Affairs orders the following:

**IT IS HEREBY ORDERED** that Respondent is assessed an administrative penalty in the amount of \$1,000, subject to deferral as further ordered below.

**IT IS FURTHER ORDERED** that Adrian Duenez shall attend Income Determination Training offered by TDHCA and submit a completion certificate to the Agency on or before February 8, 2022. Registration details are at this link: <https://www.taa.org/event-category/affordable-housing/>. The next course is on November 16, 2021.

**IT IS FURTHER ORDERED** that Adrian Duenez shall attend Housing Tax Credit (HTC) Training offered by TDHCA and submit a completion certificate to the Agency on or before February 8, 2022. Registration details are at this link: <https://www.taa.org/event-category/affordable-housing/>. The next course is on November 18, 2021.

**IT IS FURTHER ORDERED** that Respondent shall fully correct the file monitoring violations as indicated in the exhibits and submit full documentation of the corrections to TDHCA on or before January 9, 2022.

**IT IS FURTHER ORDERED** that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, the satisfactory performance under this Order will be accepted in lieu of the assessed administrative penalty and the full amount of the administrative penalty will be deferred and forgiven.

**IT IS FURTHER ORDERED** that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the full administrative penalty in the amount of \$1,000 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order, or (2) the property closing date if sold before the terms and conditions of this Agreed Final Order have been fully satisfied.

**IT IS FURTHER ORDERED** that corrective documentation must be uploaded to the Compliance Monitoring and Tracking System (CMTS) by following the instructions at this link: <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>. After the upload is complete, an email must be sent to Ysella Kaseman at [ysella.kaseman@tdhca.state.tx.us](mailto:ysella.kaseman@tdhca.state.tx.us) to inform her that the documentation is ready for review. The Unit Status Report must be submitted within the Unit Status Report section of CMTS. If it comes due and payable, the penalty payment must be submitted to the following address:

<b>If via overnight mail (FedEx, UPS):</b>	<b>If via USPS:</b>
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TDHCA Attn: Ysella Kaseman 221 E 11 <sup>th</sup> St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711
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**IT IS FURTHER ORDERED** that Respondent shall follow the requirements of 10 TAC §10.406, a copy of which is included at Exhibit 3, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

**IT IS FURTHER ORDERED** that the terms of this Agreed Final Order shall be published on the TDHCA website.

*[Remainder of page intentionally blank]*





## Exhibit 1

### File Monitoring Violation Resources and Instructions

#### Resources:

1. Refer to the following link for all references to the rules at 10 TAC §10 that are referenced below:  
[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y)
2. Refer to the following link for copies of the forms that are referenced below:  
<http://www.tdhca.state.tx.us/pmcomp/forms.htm>
3. Technical support and training presentations are available at the following links:  
Income and Rent Limits: <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>  
Utility Allowance: <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>  
FAQ's: <http://www.tdhca.state.tx.us/pmcomp/compFags.htm>
4. **All corrections must be submitted via CMTS:** See link for steps to upload documents  
<http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.
5. **Important notes -**
  - i. Do not backdate any documents listed below.
  - ii. A transfer of a qualified household from another unit is not sufficient to correct any findings. A transfer from another unit will simply cause the finding to transfer to that unit.

#### Instructions:

6. **Utility Allowance** – This is not an amount that you will charge to tenants; it is an estimate of how much the households pay toward utilities, to ensure that their total housing expenses are appropriately restricted.  
How to prepare: Details regarding utility allowances are at this link: <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>. Calculate a utility allowance in accordance with 10 TAC §10.614. Look over the “10.614 (utility allowance)” tab of this spreadsheet, which provides details regarding how TDHCA monitors for this item so that you can check over your work before submission: <http://www.tdhca.state.tx.us/pmcdocs/OnsiteMonitoringForms.xlsx>  
What to submit: You previously submitted a utility allowance schedule from the Housing Authority of the City of Harlingen, but this does not demonstrate that the utility allowance has been implemented. You must:
  - i. Calculate the appropriate utility allowance using that utility allowance schedule and upload a copy to CMTS; and
  - ii. Submit the development’s updated Unit Status Report to demonstrate that the utility allowance has been implemented. Rent will be tested development-wide once the proper allowance is implemented, and any resulting noncompliance will be cited at that time and provided a separate corrective action period of 90 days.

7. **Household income above limit upon initial occupancy for units:** Follow the instructions in the following table for units 1, 3, 6, 9 and 10. Technical support regarding tenant file components are at Exhibit 2.

<b>Circumstance with respect to units listed above:</b>	<b>Instruction:</b>
<b>I. If unit is occupied by a qualified household</b>	<p><b>Provide either A or B:</b></p> <p><u>A. To qualify as of the initial move-in date:</u> Submit the full tenant file*.</p> <p><u>B. To qualify using current circumstances:</u> If your tenant file is incomplete or the household's circumstances have changed, you can qualify the household using their current circumstances. Submit all of the following:</p> <ul style="list-style-type: none"> <li>i. New application using current circumstances;</li> <li>ii. New verifications of each source of income and assets;</li> <li>iii. New Income Certification;</li> <li>iv. Lease and lease addendum; and</li> <li>v. Tenant Rights and Resources Guide Acknowledgment.</li> </ul> <p>Remember that items i-iii above must be dated within 120 days of one another.</p> <p><u>C. If the unit is vacant or the household does not qualify,</u> follow alternate instructions below, as applicable.</p>
<b>II. If unit is occupied by a nonqualified household on a month-to-month lease</b>	<p><b>Provide all of the following:</b></p> <p>A. Follow your normal procedures for terminating residency** and provide a copy of documentation to TDHCA.</p> <p>B. Once the unit becomes available, occupy the unit by a qualified household, and submit the full new tenant file*. Receipt of the full tenant file after 2/8/2022 is acceptable for this circumstance provided that Requirement A above is timely fulfilled, and the file is submitted within 30 days of occupancy.</p>
<b>III. If unit is occupied by a nonqualified household with a non-expired lease</b>	<p><b>Provide all of the following:</b></p> <p>A. Issue a nonrenewal notice** to tenant and provide a copy to TDHCA.</p> <p>B. Once the unit becomes available, occupy the unit by a qualified household, and submit the full new tenant file*. Receipt of the full tenant file after 2/8/2022 is acceptable for this circumstance provided that Requirement A above is timely fulfilled, and the file is submitted within 30 days of occupancy.</p> <p><i>[table continues on next page]</i></p>



[table continued from page 9 above]

<b>IV. If unit has been vacant <i>more than</i> 30 days</b>	<b>Provide all of the following:</b> A. Unit must be made ready for occupancy and a letter certifying that the unit is ready must be submitted to TDHCA. B. Occupy the unit by a qualified household, and submit the full new tenant file*. Receipt of the full tenant file after 2/8/2022 is acceptable for this circumstance provided that Requirement A above is timely fulfilled, and the file is submitted within 30 days of occupancy.
<b>V. If unit has been vacant <i>less than</i> 30 days</b>	<b>Provide all of the following:</b> A. If unit is ready for occupancy, a letter certifying that the unit is ready must be submitted to TDHCA. B. If unit is not ready for occupancy, submit a letter to TDHCA including details regarding work that is required and when the unit will be ready. The unit must be made ready no more than 30 days from the date of vacancy. C. Occupy the unit by a qualified household, and submit the full new tenant file*. Receipt of the full tenant file after 2/8/2022 is acceptable for this circumstance provided that Requirements A and B above are timely fulfilled, and the file is submitted within 30 days of occupancy.

*\*A full tenant file must include:*

- i. Tenant application;*
- ii. Verifications of all sources of income and assets;*
- iii. Tenant income certification;*
- iv. Lease and lease addendum; and*
- v. Tenant Rights and Resources Guide Acknowledgment.*

*Remember that items i-iii above must be dated within 120 days of one another.*

*\*\* If a notice of nonrenewal or notice of termination is sent to a tenant, ensure that it complies with requirements of the rule at 10 TAC 10.802(g).*

Technical support regarding tenant file components are at Exhibit 2.

## Exhibit 2

### Tenant File Guidelines

The following technical support does not represent a complete list of all file requirements and is intended only as a guide. Sign up for Income Determination Training in order to get a full overview of the process. Sign up at <https://www.taa.org/event-category/affordable-housing/>. Forms discussed below are available at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm>.

***\*Important Note\* The application, verifications of income and assets, and Tenant Income Certification (1 – 5 below) must be signed within 120 days of one another. If one component is outside of that time frame, you must recertify.***

1. **Intake Application:** Each adult household member must complete their own application in order to be properly screened at initial certification. A married couple can complete a joint application. The Department does not have a required form to screen households, but we make a sample form available for that purpose. All households must be screened for household composition, income and assets. Applicants must complete all blanks on the application and answer all questions. Any lines left intentionally blank should be marked with “none” or “n/a.” The application must be signed and dated by all adult household members, using the date that the form is actually completed. If you use the Texas Apartment Association (TAA) Rental Application, be aware that it does not include all requirements, but they have a “Supplemental Rental Application for Units Under Government Regulated Affordable Housing Programs” that includes the additional requirements. TDHCA also has an application form that you can use; using our form is not required for the application, but it does screen for all requirements.
2. **Release and Consent:** Have tenant sign TDHCA’s Release and Consent form so that verifications may be collected by the property.
3. **Verify Income:** Each source of income and asset must be documented for every adult household member based upon the information disclosed on the application. There are multiple methods:
  - a. **Income Verification for Households with Section 8 Certificates:** If you correctly use this form, you do not need to further verify income or assets, but you do need to collect all other components of the tenant file. This form is signed by the Public Housing Authority, verifying that the household is eligible at initial occupancy or at recertification. The form may only be used if the housing authority performed an income certification or recertification within 120 days of the effective date of the application that you collect (step 1 above) and the Income Certification form that is signed (step 5 below). If outside of that period, you must verify income and assets yourself.
  - b. **First hand verifications:** Paystubs or payroll print-outs that show gross income. If you choose this method, ensure that you consistently collect a specified number of consecutive check stubs as defined in your management plan;
  - c. **Employment Verification Form:** This is a TDHCA form. Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the employer. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the employer portion has authority to do so and has access to all applicable information in order to verify the employment income. If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it;

- d. **Verification of non-employment income:** You must obtain verifications for all other income sources, such as child support, social security, and/or unemployment benefits. Self-certification by the household is not acceptable. Examples: benefit verification letter(s) would be acceptable for social security and/or employment benefits. Acceptable verifications for child support could include documents such as divorce decree(s), court order(s), or a written statement from the court or attorney general regarding the monthly awarded amount;
  - e. **Telephone Verifications:** These are acceptable *only* for clarifying discrepancies and cannot be used as primary form of verification. Include your name, the date, the name of the person with whom you spoke, and your signature. These are appropriate if there is an unusual circumstance relating to the tenant file;
  - f. **Certification of Zero Income:** If an adult household member does not report any sources of income on the application, this form can be used to document thorough screening and to document the source of funds used to pay for rent, utilities, and/or other necessities.
  - g. **Self-employed and paid in cash:** Respondent indicated that multiple households are self-employed and are paid in cash. There are no tax records and they have no bank accounts. In these circumstances, a self-certification will be acceptable to verify income if no other form of verification is available, except that this option may not be used for all units. A self-certification:
    - i. Must be detailed regarding estimated income. The person needs to state what they do for income, how often they do it, how much they earn, and that they are paid in cash.
    - ii. Must be signed and dated.
    - iii. There is no specific form and it can be hand written if it is legible.
    - iv. This will only be accepted for a limited number of files. If we were to see this for all of the tenant files, that will be considered a violation of the Agreed Final Order.
4. **Verify Assets:** Regardless of their balances, applicants must report all assets owned, including assets such as checking or savings accounts. The accounts are typically disclosed on the application form, but you must review all documentation from the tenant to ensure proper documentation of the household's income and assets. For instance, review the credit report (if you pull one), application, pay stubs, and other documents to ensure that all information is consistent. Examples of ways to find assets that are frequently overlooked: Review pay stubs for assets such as checking and retirement accounts that the household may have forgotten to include in the application. These accounts must also be verified. Format of verifications:
- a. **Under \$5000 Asset Certification Form:** If the total cash value of the assets owned by members of the household is less than \$5,000, as reported on the Intake Application, the TDHCA Under \$5,000 Asset Certification form may be used to verify assets. If applicable, follow the instructions to complete one form per household that includes everyone's assets, even minors, and have all adults sign and date using the date that the form is actually completed.
  - b. **First hand verifications:** such as bank statements to verify a checking account. Ensure that you use a consistent number of consecutive statements, as identified in your management plan.

- c. **3<sup>rd</sup> party verifications** using the TDHCA Asset Verification form. As with the “Employment Verification Form” discussed above, Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the financial institution. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the financial institution’s portion has authority to do so and has access to all applicable information in order to verify the asset(s). If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it.
5. **Income Certification Form:** This is a TDHCA form. Upon verification of all income and asset sources disclosed on the application and any additional information found in the documentation submitted by the tenant, the next step is to annualize the sources on the Income Certification Form, add them together, and compare to the applicable income limit for household size which can be found at <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>. Be sure to include any income derived from assets. The form must include all household members, and be signed by each adult household member.
6. **Lease:** This is not a TDHCA form, but it must conform with your LURA and TDHCA requirements and indicate a rent below the maximum rent limits, which can be found at <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>. When determining the rent, ensure that the tenant’s rent, plus the utility allowance, plus any housing subsidies, plus any mandatory fees, are below the maximum limits set by TDHCA. 10 TAC §10.613(a) prohibits the eviction or termination of tenancy of low income households for reasons other than good cause throughout the affordability period in accordance with Revenue Ruling 2004-82. In addition, 10 TAC §10.613(e) prohibits HTC developments from locking out or threatening to lock out any development resident, or seizing or threatening to seize personal property of a resident, except by judicial process, for purposes of performing necessary repairs or construction work, or in case of emergency. The prohibitions must be included in the lease or lease addendum. Additionally, certain programs must include a Lead Warning Statement and the TDHCA VAWA lease addendum, per 10 TAC 10.613(f) and (h). TAA has an affordable lease addendum that has incorporated this required language. If you are not a TAA member, you can draft a lease addendum using the requirements outlined above. For Section 811 units, you must use the HUD Model Lease, HUD form 92236-PRA.
7. **Tenant Selection Criteria:** This is not a TDHCA form. In accordance with 10 TAC §10.610(b), you must maintain written Tenant Selection Criteria and a copy of those written criteria under which an applicant was screened must be included in the household’s file.
8. **Tenant Rights and Resources Guide:** This is a TDHCA form. In accordance with 10 TAC §10.613(l), you must customize the guide for your property and post a laminated copy in a common area of the leasing office. Development must also provide a copy of the guide to each household during the application process and upon any subsequent changes to the items described at paragraph b) below. The guide includes:
  - a) Information about Fair Housing and tenant choice; and
  - b) Information regarding common amenities, unit amenities, and services.Additionally, a representative of the household must receive a copy of the guide and sign an acknowledgment of receipt of the brochure prior to, but no more than 120 days prior to, the initial lease execution date.

**Exhibit 3:**

**Texas Administrative Code**

TITLE 10           COMMUNITY DEVELOPMENT  
PART 1            TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
CHAPTER 10       UNIFORM MULTIFAMILY RULES  
SUBCHAPTER E     POST AWARD AND ASSET MANAGEMENT REQUIREMENTS  
RULE §10.406     Ownership Transfers (§2306.6713)

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(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 and Executive Award Review and Advisory Committee).

(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 and Executive Award Review and Advisory Committee), 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. 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 and Executive Award Review and Advisory Committee), 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 Requirements 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).

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**Source Note:** The provisions of this §10.406 adopted to be effective February 5, 2020, 45 TexReg 722





ENFORCEMENT ACTION AGAINST ADRIAN	§	BEFORE THE
DUENEZ WITH RESPECT TO SECOND ADAMS	§	TEXAS DEPARTMENT OF HOUSING
APARTMENTS	§	AND COMMUNITY AFFAIRS
(HTC FILE # 94018 / CMTS # 1217)	§	
	§	
	§	

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 10<sup>th</sup> day of November, 2021, the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or Department) considered the matter of whether enforcement action should be taken against **ADRIAN DUENEZ** (Respondent).

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act (APA), Tex. Gov't Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondent agree to resolve this matter by this Agreed Final Order. The Respondent agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the findings of fact and conclusions of law set out in this Order.

Upon recommendation of the Enforcement Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

**WAIVER**

Respondent acknowledges the existence of their right to request a hearing as provided by Tex. Gov't Code §2306.044, and to seek judicial review, in the District Court of Travis County, Texas, of any order as provided by Tex. Gov't Code §2306.047. Pursuant to this compromise and settlement, the Respondent waives those rights and acknowledges the jurisdiction of the Board over Respondent.

**FINDINGS OF FACT (FOF)**

**Jurisdiction:**

1. During 1995, Prior Owner was awarded an allocation of Low Income Housing Tax Credits by the Board, in the amount of \$41,356 to build and operate Second Adams Apartments ("Property") (HTC file No. 94018 / CMTS No. 1217 / LDLD No. 503).
2. Prior Owner signed a land use restriction agreement ("LURA") regarding the Property. The LURA was dated November 21, 1995, and filed of record at Volume 3618, Page 84, of the Official Public Records of Real Property of Cameron County, Texas. In accordance with Section 2 of the

LURA, the LURA is a restrictive covenant/deed restriction encumbering the Property and binding on all successors and assigns for the full term of the LURA.

3. The Property was purchased by Respondent on March 10, 2017. The restrictions remained in place in accordance with Section 2 of the LURA, thereby binding Respondent to the terms of the agreement.
4. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations<sup>2</sup>:

5. A desk file monitoring review was attempted on November 10, 2020, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. Respondent failed to respond and a notification of noncompliance was sent, setting a March 9, 2021, corrective action deadline. No corrections were received and Respondent was referred for an administrative penalty for failure to allow monitoring, a violation of 10 TAC §10.618, which requires Owners to provide records for review.
6. Respondent provided records to correct the violation for failure to allow monitoring on April 22, 2021, after the Enforcement Committee made contact. This enabled the Compliance Division to resume its monitoring review, which was ultimately completed in May of 2021. Violations of the LURA and TDHCA rules were identified, notifications of noncompliance were sent, and an August 23, 2021, corrective action deadline was set. Corrections were timely received, but the following violations were not resolved before the corrective action deadline and were referred for an administrative penalty:
  - c. Respondent failed to establish an updated utility allowance, a violation of 10 TAC §10.614 (Utility Allowances), which requires all developments to establish a utility allowance. A utility allowance schedule was submitted, but the utility allowance was not added to the Unit Status Report / Quarterly Vacancy Report in CMTS so that the Department could verify that rents are appropriately restricted.
  - d. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 3, 5, 6, 12, and 16, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income) and Section 4 of the LURA, which require screening of tenants to ensure qualification for the program.
7. All violations listed at FOF #6 above are considered unresolved at the time of this Order.

**CONCLUSIONS OF LAW**

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TAC Chapter 2.

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<sup>2</sup> Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TAC Chapter 10 refers to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

2. Respondent is a “housing sponsor” as that term is defined in Tex. Gov’t Code §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Respondent violated 10 TAC §10.618 in 2020 by failing to allow a monitoring review.
5. Respondent violated 10 TAC §10.614 in 2021 by failing to establish an updated utility allowance.
6. Respondent violated 10 TAC §10.611 and Section 4 of the LURA in 2021, by failing to provide documentation that household income was within prescribed limits upon initial occupancy for units 3, 5, 6, 12, and 16.
7. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to Tex. Gov’t Code §2306.041 and §2306.267.
8. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov’t Code §2306.267.
9. Because Respondent has violated rules promulgated pursuant to Tex. Gov’t Code §2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov’t Code §2306.041.
10. An administrative penalty of \$1,600 is an appropriate penalty in accordance with 10 TAC Chapter 2.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the Governing Board of the Texas Department of Housing and Community Affairs orders the following:

**IT IS HEREBY ORDERED** that Respondent is assessed an administrative penalty in the amount of \$1,600, subject to deferral as further ordered below.

**IT IS FURTHER ORDERED** that Adrian Duenez shall attend Income Determination Training offered by TDHCA and submit a completion certificate to the Agency on or before February 8, 2022. Registration details are at this link: <https://www.taa.org/event-category/affordable-housing/>. The next course is on November 16, 2021.

**IT IS FURTHER ORDERED** that Adrian Duenez shall attend Housing Tax Credit (HTC) Training offered by TDHCA and submit a completion certificate to the Agency on or before February 8, 2022. Registration details are at this link: <https://www.taa.org/event-category/affordable-housing/>. The next course is on November 18, 2021.

**IT IS FURTHER ORDERED** that Respondent shall fully correct the file monitoring violations as indicated in the exhibits and submit full documentation of the corrections to TDHCA on or before February 8, 2022.

**IT IS FURTHER ORDERED** that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, the satisfactory performance under this Order will be accepted in lieu of the assessed administrative penalty and the full amount of the administrative penalty will be deferred and forgiven.

**IT IS FURTHER ORDERED** that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the full administrative penalty in the amount of \$1,600 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order, or (2) the property closing date if sold before the terms and conditions of this Agreed Final Order have been fully satisfied.

**IT IS FURTHER ORDERED** that corrective documentation must be uploaded to the Compliance Monitoring and Tracking System (CMTS) by following the instructions at this link: <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>. After the upload is complete, an email must be sent to Ysella Kaseman at [ysella.kaseman@tdhca.state.tx.us](mailto:ysella.kaseman@tdhca.state.tx.us) to inform her that the documentation is ready for review. The Unit Status Report must be submitted within the Unit Status Report section of CMTS. If it comes due and payable, the penalty payment must be submitted to the following address:

<b>If via overnight mail (FedEx, UPS):</b>	<b>If via USPS:</b>
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TDHCA Attn: Ysella Kaseman 221 E 11 <sup>th</sup> St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711
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**IT IS FURTHER ORDERED** that Respondent shall follow the requirements of 10 TAC §10.406, a copy of which is included at Exhibit 3, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

**IT IS FURTHER ORDERED** that the terms of this Agreed Final Order shall be published on the TDHCA website.

*[Remainder of page intentionally blank]*

Approved by the Governing Board of TDHCA on November 10, 2021.

By: \_\_\_\_\_  
Name: Leo Vasquez  
Title: Chair of the Board of TDHCA

By: \_\_\_\_\_  
Name: James "Beau" Eccles  
Title: Secretary of the Board of TDHCA

**THE STATE OF TEXAS** §  
§  
**COUNTY OF \_\_\_\_\_** §

Before me, the undersigned notary public, on this \_\_\_ day of \_\_\_\_\_, 2021, personally appeared Leo Vasquez, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

**THE STATE OF TEXAS** §  
§  
**COUNTY OF TRAVIS** §

Before me, the undersigned notary public, on this \_\_\_ day of \_\_\_\_\_, 2021, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas





## Exhibit 1

### File Monitoring Violation Resources and Instructions

#### Resources:

1. Refer to the following link for all references to the rules at 10 TAC §10 that are referenced below:  
[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y)
2. Refer to the following link for copies of the forms that are referenced below:  
<http://www.tdhca.state.tx.us/pmcomp/forms.htm>
3. Technical support and training presentations are available at the following links:  
Income and Rent Limits: <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>  
Utility Allowance: <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>  
FAQ's: <http://www.tdhca.state.tx.us/pmcomp/compFags.htm>
4. **All corrections must be submitted via CMTS:** See link for steps to upload documents  
<http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.
5. **Important notes -**
  - i. Do not backdate any documents listed below.
  - ii. A transfer of a qualified household from another unit is not sufficient to correct any findings. A transfer from another unit will simply cause the finding to transfer to that unit.

#### Instructions:

6. **Utility Allowance** – This is not an amount that you will charge to tenants; it is an estimate of how much the households pay toward utilities, to ensure that their total housing expenses are appropriately restricted.  
How to prepare: Details regarding utility allowances are at this link: <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>. Calculate a utility allowance in accordance with 10 TAC §10.614. Look over the “10.614 (utility allowance)” tab of this spreadsheet, which provides details regarding how TDHCA monitors for this item so that you can check over your work before submission: <http://www.tdhca.state.tx.us/pmcdocs/OnsiteMonitoringForms.xlsx>  
What to submit: You previously submitted a utility allowance schedule from the Housing Authority of the City of Harlingen, but this does not demonstrate that the utility allowance has been implemented. You must:
  - i. Calculate the appropriate utility allowance using that utility allowance schedule and upload a copy to CMTS; and
  - ii. Submit the development’s updated Unit Status Report to demonstrate that the utility allowance has been implemented. Rent will be tested development-wide once the proper allowance is implemented, and any resulting noncompliance will be cited at that time and provided a separate corrective action period of 90 days.

7. **Household income above limit upon initial occupancy for units:** Follow the instructions in the following table for units 3, 5, 6, 12, and 16. Technical support regarding tenant file components are at Exhibit 2.

<b>Circumstance with respect to units listed above:</b>	<b>Instruction:</b>
<b>I. If unit is occupied by a qualified household</b>	<p><b>Provide either A or B:</b></p> <p><u>A. To qualify as of the initial move-in date:</u> Submit the full tenant file*.</p> <p><u>B. To qualify using current circumstances:</u> If your tenant file is incomplete or the household's circumstances have changed, you can qualify the household using their current circumstances. Submit all of the following:</p> <ul style="list-style-type: none"> <li>vi. New application using current circumstances;</li> <li>vii. New verifications of each source of income and assets;</li> <li>viii. New Income Certification;</li> <li>ix. Lease and lease addendum; and</li> <li>x. Tenant Rights and Resources Guide Acknowledgment.</li> </ul> <p>Remember that items i-iii above must be dated within 120 days of one another.</p> <p><u>C. If the unit is vacant or the household does not qualify,</u> follow alternate instructions below, as applicable.</p>
<b>II. If unit is occupied by a nonqualified household on a month-to-month lease</b>	<p><b>Provide all of the following:</b></p> <p>A. Follow your normal procedures for terminating residency** and provide a copy of documentation to TDHCA.</p> <p>B. Once the unit becomes available, occupy the unit by a qualified household, and submit the full new tenant file*. Receipt of the full tenant file after 2/8/2022 is acceptable for this circumstance provided that Requirement A above is timely fulfilled, and the file is submitted within 30 days of occupancy.</p>
<b>III. If unit is occupied by a nonqualified household with a non-expired lease</b>	<p><b>Provide all of the following:</b></p> <p>A. Issue a nonrenewal notice** to tenant and provide a copy to TDHCA.</p> <p>B. Once the unit becomes available, occupy the unit by a qualified household, and submit the full new tenant file*. Receipt of the full tenant file after 2/8/2022 is acceptable for this circumstance provided that Requirement A above is timely fulfilled, and the file is submitted within 30 days of occupancy.</p> <p><i>[table continues on next page]</i></p>

[table continued from page 9 above]

<b>IV. If unit has been vacant <i>more than</i> 30 days</b>	<b>Provide all of the following:</b> A. Unit must be made ready for occupancy and a letter certifying that the unit is ready must be submitted to TDHCA. B. Occupy the unit by a qualified household, and submit the full new tenant file*. Receipt of the full tenant file after 2/8/2022 is acceptable for this circumstance provided that Requirement A above is timely fulfilled, and the file is submitted within 30 days of occupancy.
<b>V. If unit has been vacant <i>less than</i> 30 days</b>	<b>Provide all of the following:</b> A. If unit is ready for occupancy, a letter certifying that the unit is ready must be submitted to TDHCA. B. If unit is not ready for occupancy, submit a letter to TDHCA including details regarding work that is required and when the unit will be ready. The unit must be made ready no more than 30 days from the date of vacancy. C. Occupy the unit by a qualified household, and submit the full new tenant file*. Receipt of the full tenant file after 2/8/2022 is acceptable for this circumstance provided that Requirements A and B above are timely fulfilled, and the file is submitted within 30 days of occupancy.

*\*A full tenant file must include:*

- vi. Tenant application;*
- vii. Verifications of all sources of income and assets;*
- viii. Tenant income certification;*
- ix. Lease and lease addendum; and*
- x. Tenant Rights and Resources Guide Acknowledgment.*

*Remember that items i-iii above must be dated within 120 days of one another.*

*\*\* If a notice of nonrenewal or notice of termination is sent to a tenant, ensure that it complies with requirements of the rule at 10 TAC 10.802(g).*

Technical support regarding tenant file components are at Exhibit 2.

## Exhibit 2

### Tenant File Guidelines

The following technical support does not represent a complete list of all file requirements and is intended only as a guide. Sign up for Income Determination Training in order to get a full overview of the process. Sign up at <https://www.taa.org/event-category/affordable-housing/>. Forms discussed below are available at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm>.

***\*Important Note\* The application, verifications of income and assets, and Tenant Income Certification (1 – 5 below) must be signed within 120 days of one another. If one component is outside of that time frame, you must recertify.***

1. **Intake Application:** Each adult household member must complete their own application in order to be properly screened at initial certification. A married couple can complete a joint application. The Department does not have a required form to screen households, but we make a sample form available for that purpose. All households must be screened for household composition, income and assets. Applicants must complete all blanks on the application and answer all questions. Any lines left intentionally blank should be marked with “none” or “n/a.” The application must be signed and dated by all adult household members, using the date that the form is actually completed. If you use the Texas Apartment Association (TAA) Rental Application, be aware that it does not include all requirements, but they have a “Supplemental Rental Application for Units Under Government Regulated Affordable Housing Programs” that includes the additional requirements. TDHCA also has an application form that you can use; using our form is not required for the application, but it does screen for all requirements.
2. **Release and Consent:** Have tenant sign TDHCA’s Release and Consent form so that verifications may be collected by the property.
3. **Verify Income:** Each source of income and asset must be documented for every adult household member based upon the information disclosed on the application. There are multiple methods:
  - a. **Income Verification for Households with Section 8 Certificates:** If you correctly use this form, you do not need to further verify income or assets, but you do need to collect all other components of the tenant file. This form is signed by the Public Housing Authority, verifying that the household is eligible at initial occupancy or at recertification. The form may only be used if the housing authority performed an income certification or recertification within 120 days of the effective date of the application that you collect (step 1 above) and the Income Certification form that is signed (step 5 below). If outside of that period, you must verify income and assets yourself.
  - b. **First hand verifications:** Paystubs or payroll print-outs that show gross income. If you choose this method, ensure that you consistently collect a specified number of consecutive check stubs as defined in your management plan;
  - c. **Employment Verification Form:** This is a TDHCA form. Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the employer. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the employer portion has authority to do so and has access to all applicable information in order to verify the employment income. If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it;

- d. **Verification of non-employment income:** You must obtain verifications for all other income sources, such as child support, social security, and/or unemployment benefits. Self-certification by the household is not acceptable. Examples: benefit verification letter(s) would be acceptable for social security and/or employment benefits. Acceptable verifications for child support could include documents such as divorce decree(s), court order(s), or a written statement from the court or attorney general regarding the monthly awarded amount;
  - e. **Telephone Verifications:** These are acceptable *only* for clarifying discrepancies and cannot be used as primary form of verification. Include your name, the date, the name of the person with whom you spoke, and your signature. These are appropriate if there is an unusual circumstance relating to the tenant file;
  - f. **Certification of Zero Income:** If an adult household member does not report any sources of income on the application, this form can be used to document thorough screening and to document the source of funds used to pay for rent, utilities, and/or other necessities.
  - g. **Self-employed and paid in cash:** Respondent indicated that multiple households are self-employed and are paid in cash. There are no tax records and they have no bank accounts. In these circumstances, a self-certification will be acceptable to verify income if no other form of verification is available, except that this option may not be used for all units. A self-certification:
    - i. Must be detailed regarding estimated income. The person needs to state what they do for income, how often they do it, how much they earn, and that they are paid in cash.
    - ii. Must be signed and dated.
    - iii. There is no specific form and it can be hand written if it is legible.
    - iv. This will only be accepted for a limited number of files. If we were to see this for all of the tenant files, that will be considered a violation of the Agreed Final Order.
4. **Verify Assets:** Regardless of their balances, applicants must report all assets owned, including assets such as checking or savings accounts. The accounts are typically disclosed on the application form, but you must review all documentation from the tenant to ensure proper documentation of the household's income and assets. For instance, review the credit report (if you pull one), application, pay stubs, and other documents to ensure that all information is consistent. Examples of ways to find assets that are frequently overlooked: Review pay stubs for assets such as checking and retirement accounts that the household may have forgotten to include in the application. These accounts must also be verified. Format of verifications:
- a. **Under \$5000 Asset Certification Form:** If the total cash value of the assets owned by members of the household is less than \$5,000, as reported on the Intake Application, the TDHCA Under \$5,000 Asset Certification form may be used to verify assets. If applicable, follow the instructions to complete one form per household that includes everyone's assets, even minors, and have all adults sign and date using the date that the form is actually completed.
  - b. **First hand verifications:** such as bank statements to verify a checking account. Ensure that you use a consistent number of consecutive statements, as identified in your management plan.

- c. **3<sup>rd</sup> party verifications** using the TDHCA Asset Verification form. As with the “Employment Verification Form” discussed above, Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the financial institution. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the financial institution’s portion has authority to do so and has access to all applicable information in order to verify the asset(s). If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it.
5. **Income Certification Form:** This is a TDHCA form. Upon verification of all income and asset sources disclosed on the application and any additional information found in the documentation submitted by the tenant, the next step is to annualize the sources on the Income Certification Form, add them together, and compare to the applicable income limit for household size which can be found at <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>. Be sure to include any income derived from assets. The form must include all household members, and be signed by each adult household member.
6. **Lease:** This is not a TDHCA form, but it must conform with your LURA and TDHCA requirements and indicate a rent below the maximum rent limits, which can be found at <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>. When determining the rent, ensure that the tenant’s rent, plus the utility allowance, plus any housing subsidies, plus any mandatory fees, are below the maximum limits set by TDHCA. 10 TAC §10.613(a) prohibits the eviction or termination of tenancy of low income households for reasons other than good cause throughout the affordability period in accordance with Revenue Ruling 2004-82. In addition, 10 TAC §10.613(e) prohibits HTC developments from locking out or threatening to lock out any development resident, or seizing or threatening to seize personal property of a resident, except by judicial process, for purposes of performing necessary repairs or construction work, or in case of emergency. The prohibitions must be included in the lease or lease addendum. Additionally, certain programs must include a Lead Warning Statement and the TDHCA VAWA lease addendum, per 10 TAC 10.613(f) and (h). TAA has an affordable lease addendum that has incorporated this required language. If you are not a TAA member, you can draft a lease addendum using the requirements outlined above. For Section 811 units, you must use the HUD Model Lease, HUD form 92236-PRA.
7. **Tenant Selection Criteria:** This is not a TDHCA form. In accordance with 10 TAC §10.610(b), you must maintain written Tenant Selection Criteria and a copy of those written criteria under which an applicant was screened must be included in the household’s file.
8. **Tenant Rights and Resources Guide:** This is a TDHCA form. In accordance with 10 TAC §10.613(l), you must customize the guide for your property and post a laminated copy in a common area of the leasing office. Development must also provide a copy of the guide to each household during the application process and upon any subsequent changes to the items described at paragraph b) below. The guide includes:
  - a. Information about Fair Housing and tenant choice; and
  - b. Information regarding common amenities, unit amenities, and services.Additionally, a representative of the household must receive a copy of the guide and sign an acknowledgment of receipt of the brochure prior to, but no more than 120 days prior to, the initial lease execution date.

**Exhibit 3:**

**Texas Administrative Code**

TITLE 10           COMMUNITY DEVELOPMENT  
PART 1            TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
CHAPTER 10       UNIFORM MULTIFAMILY RULES  
SUBCHAPTER E     POST AWARD AND ASSET MANAGEMENT REQUIREMENTS  
RULE §10.406     Ownership Transfers (§2306.6713)

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(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 and Executive Award Review and Advisory Committee).

(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 and Executive Award Review and Advisory Committee), 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. 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 and Executive Award Review and Advisory Committee), 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 Requirements 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).

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**Source Note:** The provisions of this §10.406 adopted to be effective February 5, 2020, 45 TexReg 722

1n

**BOARD ACTION REQUEST**

**LEGAL DIVISION**

**NOVEMBER 10, 2021**

Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning South Texas Development Council (CSBG Contract 61190003061)

**RECOMMENDED ACTION**

**WHEREAS**, South Texas Development Council (Subrecipient), has uncorrected compliance findings for failure to meet Tripartite CSBG Board requirements relating to the above referenced Community Services Block Grant (CSBG) contract and the associated statutory and rule requirements;

**WHEREAS**, on October 26, 2021, Subrecipient representatives participated in an informal conference with the Enforcement Committee and agreed, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of \$2,500, to be fully forgiven if the violation is resolved as specified in the Agreed Final Order, with a final deadline of April 1, 2022 to submit corrections; and

**WHEREAS**, staff has based its recommendations for an Agreed Final Order on the Department's rules for administrative penalties and an assessment of each and all of the statutory factors to be considered in assessing such penalties, applied specifically to the facts and circumstances present in this case.

**NOW, therefore, it is hereby**

**RESOLVED**, that an Agreed Final Order assessing an administrative penalty of \$2,500, subject to forgiveness as outlined above, for noncompliance with CSBG Contract 61190003061, substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as the order of this Board.

## BACKGROUND

South Texas Development Council (Subrecipient or Respondent) is a recipient of the Department's Community Services Block Grant (CSBG) funds, Comprehensive Energy Assistance Program (CEAP), Department of Energy Weatherization Assistance Program (DOE), Low Income Home Energy Assistance Program (LIHEAP) and CSBG Discretionary awards. Subrecipient is a political subdivision of the State of Texas, covering a region that includes Webb County, Zapata County, Jim Hogg County, and Starr County. Robert Mendiola is the executive director, and Juan E. Rodriguez is deputy director.

CSBG Contract 61190003061 was signed on December 21, 2018, with a term commencing January 1, 2019. The Subrecipient was monitored in April of 2021, and findings were identified for multiple program contracts, including a finding for failure to meet tripartite CSBG Board requirements, relating to CSBG Contract 61190003061. The CSBG program delivers community-based services and activities intended to alleviate causes and conditions of poverty, including things like finding employment, education, housing, nutrition, emergency services, and health services. Compliance with CSBG Act requirements for tripartite board membership is a condition for Eligible Entities to receive CSBG funding. In addition to administrative penalties, this finding could ultimately jeopardize Subrecipient's status as an Eligible Entity if it were to continue uncorrected.

Tripartite board rule violations include:

- A. Board vacancies in excess of 25% for greater than 90 days. There is a vacancy rate of 60% for the private sector, and a vacancy rate of 80% for the low-income sector;
- B. Failure to provide documentation of election and/or selection materials for board members who were elected or selected in 2008 and 2012, reflecting a document retention problem;
- C. Failure to hold regular quarterly meetings as required. During 2019 through 2021, meetings were required to be held at least quarterly. Tripartite board meetings could not be held because they did not have a quorum under their bylaws due to their large vacancy rate; instead, meetings were being held at the Governing Board level, but were still only held in September 2019, December 2019, June 2020, October 2020, March 2021, June 2021, and September 2021;
- D. Board bylaws do not specify which of all of the available methods for selection and/or election processes that the Subrecipient will follow for members of the low-income sector; and
- E. Training certificates were not received for one of the board members.

Subrecipient representatives participated in an informal conference with the Enforcement Committee on October 26, 2021, and agreed to sign an Agreed Final Order with the following terms:

1. A \$2,500 administrative penalty, subject to full forgiveness as indicated below;

2. Subrecipient must submit the updated draft Bylaws for Department review on or before November 12, 2021;
3. Subrecipient must correct all violations relating to the tripartite CSBG Board as indicated in the Agreed Final Order, and submit full documentation of the corrections to TDHCA on or before April 1, 2021;
4. If Subrecipient complies with all requirements and addresses all violations as required, the full administrative penalty in the amount of \$2,500 will be forgiven; and
5. If Subrecipient violates any provision of the Agreed Final Order, the full administrative penalty will immediately come due and payable.

Per the Compliance Division, there has been a history of nonresponsiveness and incomplete submissions by Subrecipient in recent years, predating the pandemic. Subrecipient was previously referred for an administrative penalty in 2016, but resolved all findings informally with the Enforcement Committee Secretary. Enforcement Committee members highlighted these communication problems, and Subrecipient stated that they will improve delegation, responsiveness, and supervision. Part of the current responsiveness problem is understaffing; they state they should have about 40 staff members, but currently have 27, with little success in attracting qualified new applicants. Subrecipient is also currently holding quarterly Governing Board meetings, but acknowledges that this is not optimal; they are changing the bylaws to meet every other month, which should help to decrease current delays. Subrecipient representatives indicated they are having trouble attracting candidates for their tripartite advisory board, and did not realize until recently that they could amend those bylaws to change the required quorum so that meetings could be held. However, while many of the vacancies are from the pandemic period, not all vacancies occurred during the pandemic period (see Agreed Final Order Exhibit 2). With that said, Committee members felt that the challenges of the pandemic have exposed organizations such as this one that have management and structural weaknesses. Subrecipient is starting recruitment and advertising for its tripartite board in November, and expects to be able to seat at least some new members by December 2021, with the remainder by April 2022. This will resolve the quorum issue and restart tripartite board meetings. They have also committed to updating their bylaws, including changes to quorum and democratic selection procedures, which will be submitted to the Department soon for comment, before being finalized at Subrecipient's December governing board meeting. This is a first time informal conference, so a fully forgivable administrative penalty is appropriate in this instance.

Consistent with direction from the Department's Enforcement Committee, a probated and, upon successful completion of probation, fully forgivable administrative penalty in the amount of \$2,500 is recommended. This will be a reportable item of consideration under previous participation for any new award to the principals of the Owner.

ENFORCEMENT ACTION AGAINST SOUTH	§	BEFORE THE
TEXAS DEVELOPMENT COUNCIL	§	TEXAS DEPARTMENT OF
(CSBG CONTRACT 61190003061)	§	HOUSING AND COMMUNITY
	§	AFFAIRS
	§	

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 10<sup>th</sup> day of November 2021, the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or Department) considered the matter of whether enforcement action should be taken against **SOUTH TEXAS DEVELOPMENT COUNCIL**, a political subdivision for the State of Texas (Respondent).

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act (APA), Tex. Gov't Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondent agree to resolve this matter by this Agreed Final Order. The Respondent agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the findings of fact and conclusions of law set out in this Order.

Upon recommendation of the Enforcement Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

**WAIVER**

Respondent acknowledges the existence of their right to request a hearing as provided by Tex. Gov't Code §2306.044, and to seek judicial review, in the District Court of Travis County, Texas, of any order as provided by Tex. Gov't Code §2306.047. Pursuant to this compromise and settlement, the Respondent waives those rights and acknowledges the jurisdiction of the Board over Respondent.

**FINDINGS OF FACT (FOF)**

**Jurisdiction:**

1. Respondent signed CSBG Contract Number 61190003061 on December 21, 2018. The period of performance under the CSBG Contract was January 1, 2019, through December 31, 2019.

Compliance Violations<sup>1</sup>:

2. A monitoring review was conducted on April 19, 2021, to determine whether Respondent was in compliance with the CSBG Contract and all applicable state and federal statutes, regulations, and rules. The monitoring review resulted in three findings of noncompliance. Notifications of noncompliance were sent and a May 19, 2021, corrective deadline was set and multiple extensions were provided, however, the following finding was not corrected and remains unresolved:
  - a. Respondent failed to meet tripartite advisory board requirements, including:
    - i. There are tripartite advisory board vacancies exceeding 25% for greater than 90 days, which caused a loss of quorum, a violation of 10 TAC §6.212(b) limiting seat vacancies, and a violation of 10 TAC §6.214(e) setting the minimum quorum number in accordance with Subrecipient's bylaws, which currently require 50% of members to be present;
    - ii. Failure to provide documentation of election and/or selection materials for tripartite advisory board members who were elected or selected in 2008 and 2012, a violation of 10 TAC §6.210, which outlines selection procedures;
    - iii. Failure to hold required tripartite advisory board meetings; a violation of 10 TAC §6.214(a), which requires meetings to be held at least once per calendar quarter, and at minimum five times per year, and a violation of 10 TAC §6.210(b), which requires the CSBG grant to be administered through an advisory board that fully participates;
    - iv. Board bylaws do not specify which of all of the available methods for selection and/or election processes that the Subrecipient will follow for members of the low-income sector, a violation of 10 TAC §6.210(e)(2)(B), which requires the selected democratic procedure to be written in the advisory board's procedures; and
    - v. Training certificates were not received for one of the tripartite advisory board members, a violation of 10 TAC §6.214(c)-(d), which require all board members to receive training and maintain records at the Subrecipient level.
3. All violations listed above are considered unresolved at the time of this Order.

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<sup>1</sup> Within this Agreed Final Order, all references to violations of TDHCA rules at 10 TAC Chapter 6 refer to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.



## CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code 2306.092.
2. The CSBG Contract is a Program Agreement as that term is defined in 10 TAC §2.102(11).
3. Respondent is a Responsible Party because it is subject to a Program Agreement. 10 TAC §2.102(12).
4. As a Responsible party, Respondent failed to meet multiple tripartite board requirements in Department rules including:
  - a. Respondent violated 10 TAC §6.212(b) in 2021 by having tripartite advisory board vacancies exceeding 25% for greater than 90 days.
  - b. Respondent violated 10 TAC §6.214(e) in 2021, by failing to meet tripartite advisory board quorum requirements under its own bylaws.
  - c. Respondent violated 10 TAC §6.210 in 2021, by failing to provide election and/or selection materials for tripartite advisory board members who were elected or selected in 2008 and 2012.
  - d. Respondent violated 10 TAC §6.214(a) and 10 TAC §6.210(b) in 2019, 2020, and 2021, by failing to hold required tripartite advisory board meetings.
  - e. Respondent violated 10 TAC §6.210(e)(2)(B) in 2021, by failing to include a selected democratic selection procedure in the tripartite advisory board's written procedures.
  - f. Respondent violated 10 TAC §6.214(c)-(d) in 2021, by failing to provide training certificates for one tripartite advisory board member.
5. Because Respondent has violated Department rules and has violated a Program Agreement with the Department to which Respondent is a party, the Department may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.
6. An administrative penalty of \$2,500 is an appropriate penalty in accordance 10 TAC Chapter 2.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the Governing Board of the Texas Department of Housing and Community Affairs orders the following:

**IT IS HEREBY ORDERED** that Respondent is assessed an administrative penalty in the amount of \$2,500, subject to deferral as further ordered below.

**IT IS FURTHER ORDERED** that on or before November 12, 2021, Respondent shall submit to the Department a copy of its updated bylaws for the tripartite advisory board, in its final form as intended to be presented for approval at Respondent's December 8, 2021 Board meeting. The updated bylaws must, at a minimum, include the specific democratic process that Respondent will be following to democratically select and/or elect low income members in accordance with 10 TAC §6.210(e)(2)(B).

**IT IS FURTHER ORDERED** that Respondent shall address the remainder of the tripartite board violations as indicated at Exhibit 1 and submit corrections to the Department on or before April 1, 2022.

**IT IS FURTHER ORDERED** that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, addressing all violations as required at Exhibit 1, the satisfactory performance under this order will be accepted in lieu of the full assessed administrative penalty and the full amount of the administrative penalty will be deferred and forgiven.

**IT IS FURTHER ORDERED** that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the full administrative penalty in the amount of \$2,500 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" at the address below within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order.

<b>If via overnight mail (FedEx, UPS):</b>	<b>If via USPS:</b>
TDHCA Attn: Ysella Kaseman 221 E 11 <sup>th</sup> St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

**IT IS FURTHER ORDERED** that corrective documentation must be submitted via email to Ysella Kaseman and Rosy Falcon at [ysella.kaseman@tdhca.state.tx.us](mailto:ysella.kaseman@tdhca.state.tx.us) and [rosy.falcon@tdhca.state.tx.us](mailto:rosy.falcon@tdhca.state.tx.us), or via upload to a secure FTP server, which will be arranged by the Department if documents are too large to email. To request a temporary FTP server link, please contact Ysella Kaseman.

**IT IS FURTHER ORDERED** that the terms of this Agreed Final Order shall be published on the TDHCA website.

Approved by the Governing Board of TDHCA on November 10, 2021.

By: \_\_\_\_\_

Name: Leo Vasquez

Title: Chair of the Board of TDHCA

By: \_\_\_\_\_

Name: James "Beau" Eccles

Title: Secretary of the Board of TDHCA

**THE STATE OF TEXAS §**

**§**

**COUNTY OF \_\_\_\_\_ §**

Before me, the undersigned notary public, on this \_\_\_\_ day of \_\_\_\_\_, 2021, personally appeared Leo Vasquez, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

**THE STATE OF TEXAS §**

**§**

**COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this \_\_\_\_ day of \_\_\_\_\_, 2021, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS §  
§  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, \_\_\_\_\_ (*notary name*), a notary public in and for the State of Texas, on this day personally appeared \_\_\_\_\_ (*person signing document*), known to me or proven to me through circle one: personally known / driver's license / passport to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he/she) executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is \_\_\_\_\_, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of \_\_\_\_\_ for Respondent. I am the authorized representative of Respondent, owner of the Property, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Governing Board of the Texas Department of Housing and Community Affairs."

**RESPONDENT:**

**SOUTH TEXAS DEVELOPMENT COUNCIL**, a political subdivision for the State of Texas

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

## Exhibit 1

### **Instructions to correct noncompliance**

All corrective documentation listed below must be submitted on or before 4/1/2022, via email to Ysella Kaseman and Rosy Falcon at [ysella.kaseman@tdhca.state.tx.us](mailto:ysella.kaseman@tdhca.state.tx.us) and [rosy.falcon@tdhca.state.tx.us](mailto:rosy.falcon@tdhca.state.tx.us), or via upload to a secure FTP server, which will be arranged by the Department if documents are too large to email. To request a temporary FTP server link, please contact Ysella Kaseman.

- A. Tripartite Advisory Board Roster: New members must be selected and/or elected (as applicable) and seated to fill vacancies for each sector as soon as possible, but no later than 4/1/2022. On or before 4/1/2022, provide updated roster showing no more than 24% vacancies of any of the public, private, or low-income sectors. Include all board member names, and identify each member sector, term length, and date seated.  
  
A list of vacancies as of November 10, 2021. is at Exhibit 2.
- B. Election / Selection Materials for Tripartite Advisory Board members:
  - a. New 2021 / 2022 members: Provide election and/or selection materials on or before 4/1/2022 for each new member, which should include at a minimum, letters of recommendation, ballots, community meeting notifications, etc.
  - b. 2008 / 2012 members: No documentation required. There are no term limits set by the tripartite advisory board bylaws, which caused a violation of 10 TAC §6.210 relating to the production of (i) the 2008 election / selection materials for Eloy Vera, Reyna Guerra, and Ruben Chapa, and (ii) the 2012 election / selection materials for Sandalio Ruiz. This cannot be corrected due to age and unavailability of records resulting from document retention problems, but will not trigger payment of an administrative penalty under this Agreed Final Order. The Department has provided technical support regarding recommended improvements to prevent future findings of this type.
- C. Board meeting packets: On or before 4/1/2022, submit board meeting packets for all board meetings that take place between 11/1/2021 through 4/1/2022, including both Governing Board meetings and Tripartite Advisory Board meetings. At minimum, this must include the time stamped agenda and minutes.
- D. Tripartite Advisory Board Bylaws: On or before 4/1/2022, submit final and effective bylaws including a democratic selection procedure.
- E. Training Certificates: On or before 4/1/2022, submit training certificates for (i) Norberto Garza and (ii) all new Tripartite Advisory Board members selected or elected between 11/1/2021 through 4/1/2022.

## Exhibit 2

### Current Tripartite Advisory Board Membership Roster

Individual	County	Sector	1 <sup>st</sup> Seated Date	Vacated Date
Sandalio Ruiz	Jim Hogg	Elected Official	12/12/2013	-
Vacant	Jim Hogg	Low Income		12/2019
Vacant	Jim Hogg	Private Groups		9/2019
Romeo Salinas	Zapata County	Elected Official	06/07/2012	-
Norberto Garza	Zapata County	Elected Official	03/25/2021	-
Vacant	Zapata County	Private Groups		09/2019
Vacant	Zapata County	Low Income		01/2018
Vacant	Zapata County	Private Groups		6/2020
Eloy Vera	Starr County	Elected Official	12/9/2008	-
Vacant	Starr County	Elected Official		11/2020
Vacant	Starr County	Low Income		6/2019
Reyna Guerra	Starr County	Low Income	12/09/2008	-
Vacant	Starr County	Low Income		12/2019
Mario Gonzalez	Starr County	Private Groups	03/17/2016	-
Ruben Chapa	Starr County	Private Groups	12/09/2008	-

2a



## TDHCA Outreach and Media Analysis, September 2021

A compilation of TDHCA media analysis designed to enhance the awareness of TDHCA programs and services among key stakeholder groups and the general public, and outreach activities, such as trainings and webinars. The following is an analysis of print and broadcast news, and social media reporting for the time period of September 1 through September 30, 2021 (news articles specifically mentioned the Department and/or Texas Rent Relief Program).

Total number of articles referencing TDHCA: 93

Breakdown by Medium:<sup>1</sup>

- Print: 2 (Editorials/Columnists = 1)
- Broadcast: 35
- Trade, Government or Internet-Based Publications: 56

Figure 1 News Tone

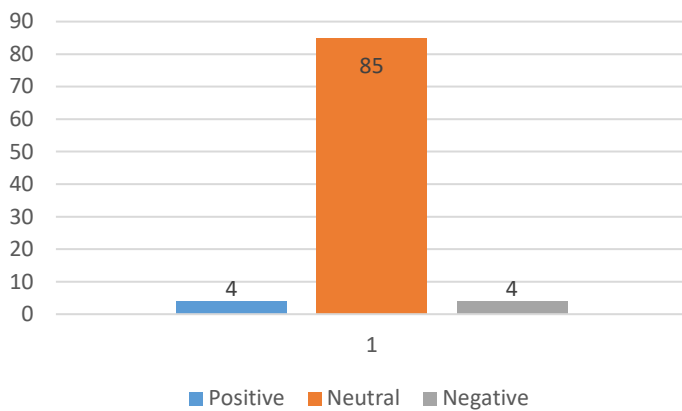
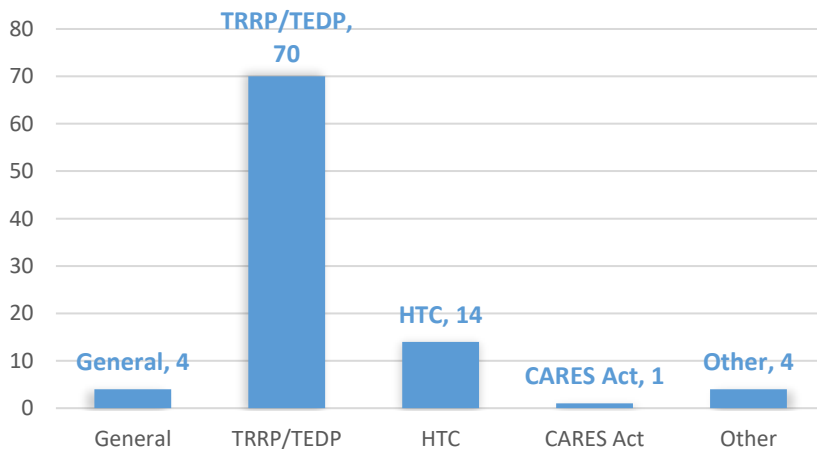


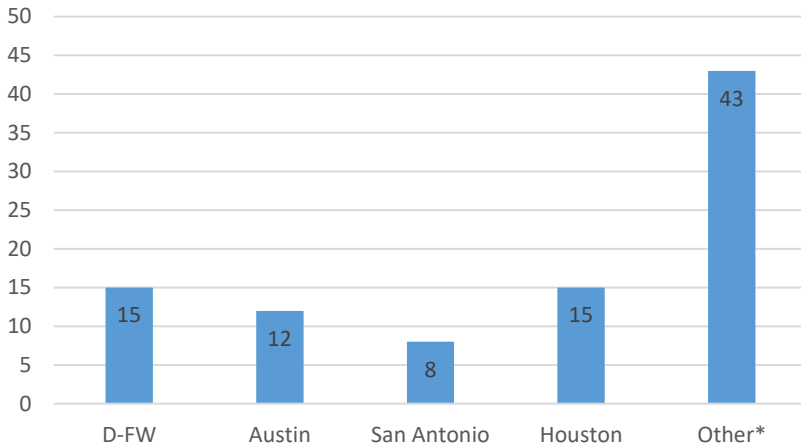
Figure 2 News Topic



<sup>1</sup> Broadcast numbers may represent instances in which TDHCA was referenced on a television or radio station's website, rather than in a specific broadcast news segment



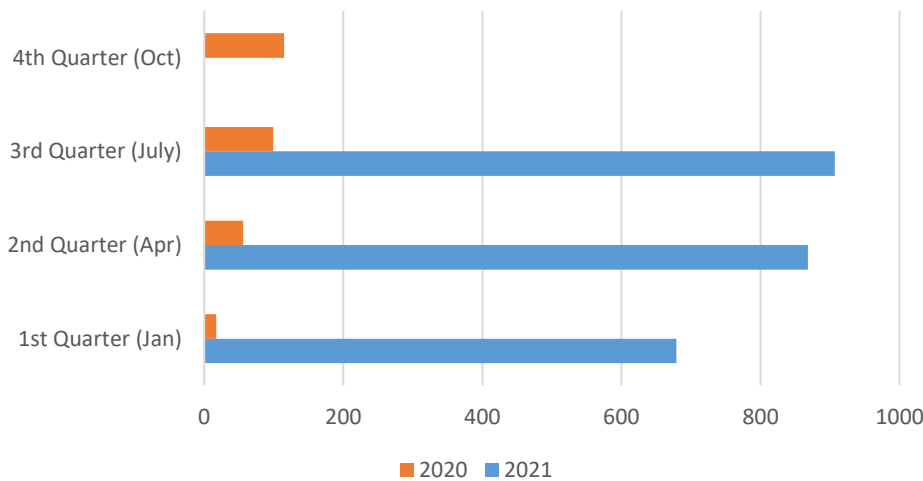
Figure 3 Media Market



**Summary:**


Reporting on Department activities by the news media totaled 93 references in September 2021. News mentions continued to reflect TDHCA’s Texas Rent Relief Program efforts, including published reprints of TRR’s disbursement milestone of \$750 million. There were negative news mentions regarding TRR payment status (review and payment process times) and payments made to wrong landlords. The following table illustrates the number of news mentions during each quarter of 2021 compared to 2020. There were 907 news articles mentioning TDHCA and/or the Texas Rent Relief Program in the third quarter of 2021.

TDHCA News Trends




**Social media:**

Through September 2021, TDHCA has gained more than 3,000 followers to its Twitter account and more than 5,900 followers to its Facebook account. TDHCA’s YouTube views totaled more than 18,000 views in September. The following is a summary analysis of TDHCA’s efforts to engage stakeholders and the public on federal and state resources, initiatives and programs.

					
Month/Yr	Posts	Clicks	Engagements	Shared posts	Liked posts
January 2021	50	20	56	20	18
February 2021	52	193	2,609	1,163	18
March 2021	71	322	355	144	55
April 2021	57	70	4,155	1,152	30
May 2021	60	211	2,861	766	39
June 2021	80	224	10,688	3,303	45
July 2021	101	649	8,443	2,440	62
August 2021	54	650	9,292	2,345	707
Sept. 2021	58	144	4,316	1,105	50

\* Clicks = number of times an individual clicked on a link provided in a post. Engagements = any action a person takes on our post

					
Month/Yr	Tweets	Clicks	Engagements	Retweets	Liked posts
January 2021	52	224	13	4	7
February 2021	61	186	92	38	39
March 2021	80	313	77	20	37
April 2021	95	144	418	159	218
May 2021	64	282	72	24	30
June 2021	97	352	79	33	34
July 2021	102	520	46	15	24
August 2021	53	818	44	12	27
Sept. 2021	61	105	81	12	30

\* Clicks = number of times an individual clicked on a link provided in a post. Engagements = any action a person takes on our post



Month	Views	Watch time (hours)	Avg. view duration	Impressions	Impressions click-through rate
January 2021	684	105.8	9:16	7,760	2.2%
Feb. 2021	11,479	1,174	6:08	91,326	1.8%
March 2021	34,663	990.5	1:42	53,853	5.6%
April 2021	29,652	623.6	1:15	41,923	6.3%

May 2021	25,522	617.7	2:14	44,358	6.1%
June 2021	32,719	833.2	1:31	47,805	5.5%
July 2021	37,996	864.4	1:21	54,038	5.9%
August 2021	45,140	1,044.4	1:23	71,161	5.6%
Sept. 2021	18,200	658.4	2:09	63,000	5.5%

## September 2021

Video	Views ↓	Watch time (hours)	Subscribers ▲	Impressions ▲	Impressions click-through rate ▲
<input type="checkbox"/> Total	<b>237,888</b>	<b>7,208.0</b>	<b>2,314</b>	<b>548,881</b>	<b>4.3%</b>
<input type="checkbox"/> Texas Rent Relief Program Completing Application Tutorial	117,496 49.4%	1,034.2 14.4%	685 29.6%	25,283	8.0%
<input type="checkbox"/> Texas Rent Relief Program Registration Tutorial	51,364 21.6%	393.2 5.5%	537 23.2%	14,863	4.5%
<input type="checkbox"/> Texas Rent Relief Program Tenant Application Tutorial	15,885 6.7%	905.2 12.6%	177 7.7%	51,254	10.2%
<input type="checkbox"/> Texas Rent Relief Program webinar	9,997 4.2%	974.2 13.5%	276 11.9%	72,722	1.2%
<input type="checkbox"/> Tutorial - Additional Funding Requests	5,134 2.2%	261.6 3.6%	81 3.5%	8,165	6.9%
<input type="checkbox"/> Texas Rent Relief Program Landlord Tips	4,685 2.0%	108.2 1.5%	28 1.2%	19,450	7.1%
<input type="checkbox"/> Texas Rent Relief Program Landlord Application Tutorial	3,203 1.4%	136.3 1.9%	20 0.9%	17,070	5.3%
<input type="checkbox"/> Texas Rent Relief Program Landlord Assistance with a Tenant Appli...	2,227 0.9%	84.6 1.2%	26 1.1%	12,557	5.7%
<input type="checkbox"/> Texas Emergency Mortgage Assistance Program TEMAP Webinar ~...	1,927 0.8%	199.4 2.8%	30 1.3%	19,943	4.2%
<input type="checkbox"/> TERAP Application Workshop	1,427 0.6%	142.8 2.0%	37 1.6%	68,751	0.9%
<input type="checkbox"/> Texas Rent Relief Webinar Fridays - March 5, 2021	1,265 0.5%	198.3 2.8%	34 1.5%	1,600	9.8%
<input type="checkbox"/> Texas Rent Relief Program Mobile Tenant Application Tutorial	1,196 0.5%	36.8 0.5%	20 0.9%	4,515	6.5%
<input type="checkbox"/> Texas Rent Relief Program Webinar - Feb. 26, 2021	1,124 0.5%	174.4 2.4%	16 0.7%	1,255	10.9%
<input type="checkbox"/> 20 IncomeDeterminationTraining	864 0.4%	138.5 1.9%	7 0.3%	8,522	5.0%
<input type="checkbox"/> Virtual Roundtable - TDHCA's Enforcement Rule	846 0.4%	124.0 1.7%	7 0.3%	11,255	4.8%
<input type="checkbox"/> Overview of Updates to Compliance, Affirmative Marketing and Writ...	818 0.3%	134.6 1.9%	5 0.2%	8,674	3.9%
<input type="checkbox"/> TERAP Implementation Workshop	801 0.3%	184.7 2.6%	10 0.4%	12,888	2.5%
<input type="checkbox"/> Average Income Webinar - Sept. 2, 2020	773 0.3%	216.8 3.0%	12 0.5%	11,477	2.7%
<input type="checkbox"/> TERAP Webinar on Monthly Reporting and Duplication of Benefits	528 0.2%	85.4 1.2%	1 0.0%	8,709	2.9%
<input type="checkbox"/> Digital Outreach Webinar	508 0.2%	122.7 1.7%	4 0.2%	2,993	2.7%
<input type="checkbox"/> Cost Certification Roundtable - November 18, 2020	432 0.2%	63.4 0.9%	3 0.1%	12,579	1.6%
<input type="checkbox"/> Utility Allowance Training - May 5, 2021	427 0.2%	110.8 1.5%	4 0.2%	5,395	4.9%
<input type="checkbox"/> TDHCA Utility Allowance Roundtable - Oct. 13, 2020	384 0.2%	52.6 0.7%	4 0.2%	7,360	2.7%
<input type="checkbox"/> Como Completar Su Aplicación para el Programa de Asistencia de ...	378 0.2%	4.7 0.1%	3 0.1%	1,699	3.2%
<input type="checkbox"/> TEMAP Implementation Workshop - June 8, 2021	373 0.2%	66.7 0.9%	6 0.3%	3,891	2.9%
<input type="checkbox"/> Como Registrarse Para el Programa de Asistencia de Pago de Rent...	359 0.2%	5.2 0.1%	7 0.3%	2,440	5.6%
<input type="checkbox"/> Fair Housing 101: The Basics of Fair Housing in Texas	338 0.1%	70.4 1.0%	7 0.3%	5,161	3.3%

<input type="checkbox"/> TERAP Monthly Reporting Workshop - March 1, 2021	311	0.1%	38.8	0.5%	4	0.2%	5,214	2.7%
<input type="checkbox"/> Fair Housing Special Topics: Reasonable Accommodations, Modifi...	290	0.1%	78.0	1.1%	2	0.1%	5,206	3.2%
<input type="checkbox"/> Fair Housing Special Topics: How to Create an Affirmative Marketin...	282	0.1%	50.0	0.7%	1	0.0%	4,784	2.9%
<input type="checkbox"/> Fair Housing Special Topics: Assistance Animals, Service Animals, ...	280	0.1%	66.4	0.9%	4	0.2%	5,069	3.0%
<input type="checkbox"/> Accessing Texas Department of Aging and Disability Services	278	0.1%	13.7	0.2%	5	0.2%	4,323	4.2%
<input type="checkbox"/> Section 811 PRA Updates for Referral Agents	272	0.1%	26.3	0.4%	2	0.1%	4,848	3.7%
<input type="checkbox"/> TDHCA's Multifamily Direct Loan Training - Sept. 24, 2020	227	0.1%	51.9	0.7%	6	0.3%	5,290	1.9%
<input type="checkbox"/> TEMAP Reporting Webinar	181	0.1%	21.9	0.3%	0	0.0%	2,878	1.6%
<input type="checkbox"/> Consejos para la solicitud de inquilinos	165	0.1%	5.1	0.1%	1	0.0%	2,215	1.8%
<input type="checkbox"/> Fair Housing Special Topics: The Violence Against Women Act in F...	164	0.1%	34.9	0.5%	1	0.0%	4,311	2.3%
<input type="checkbox"/> TDHCA Governing Board meeting - July 22, 2021	154	0.1%	28.2	0.4%	0	0.0%	3,836	2.2%
<input type="checkbox"/> Housing Stability Services Contract Implementation Webinar	143	0.1%	23.2	0.3%	2	0.1%	2,610	3.1%
<input type="checkbox"/> Consejos para la solicitud del propietario	137	0.1%	1.8	0.0%	0	0.0%	2,148	2.1%
<input type="checkbox"/> Texas Eviction Diversion Program Overview – September 9, 2021	120	0.1%	8.2	0.1%	1	0.0%	1,106	5.2%
<input type="checkbox"/> TERAP Demographics Reporting Update Workshop	113	0.1%	15.2	0.2%	0	0.0%	2,939	1.7%
<input type="checkbox"/> For Sec. 811 Referral Agents - PRA Barrier Busting Funds	112	0.1%	8.8	0.1%	0	0.0%	2,085	1.7%
<input type="checkbox"/> TEMAP Reporting Webinar Program Part C	107	0.0%	5.5	0.1%	1	0.0%	2,479	1.9%
<input type="checkbox"/> Rental Assistance	105	0.0%	5.0	0.1%	3	0.1%	2,768	2.0%
<input type="checkbox"/> TDHCA Governing Board meeting - July 8, 2021	100	0.0%	20.4	0.3%	1	0.0%	2,660	1.4%
<input type="checkbox"/> TDHCA Governing Board meeting - June 17, 2021	97	0.0%	24.4	0.3%	0	0.0%	3,025	0.9%
<input type="checkbox"/> Compliance Round Table - April 21, 2021	73	0.0%	12.2	0.2%	2	0.1%	1,571	3.1%
<input type="checkbox"/> Fair Housing Special Topics: Limited English Proficiency and Langu...	61	0.0%	13.4	0.2%	0	0.0%	1,778	1.8%
<input type="checkbox"/> Accessing Texas Department of State Health Services	51	0.0%	1.7	0.0%	1	0.0%	1,271	2.4%

### TDHCA Outreach September 2021

A compilation of outreach activities such as meetings, trainings and webinars.

Last Name	Meeting Date	Meeting Title	Attendees (includes organizer)
Community Affairs	Sep 08	2022 Service Delivery Plan	43
CAPL	Sep 08	Service Delivery Plan Overview	36
Community Affairs	Sep 08	Service Delivery Plans	38
Community Affairs	Sep 08	Service Delivery Plans	42
ERA Housing Stability Services	Sep 08	Housing Stability Services training webinar	88
Housing Stability Services	Sep 08	Contract Implementation	115
CRCBRA	Sep 09	Tx. Access to Justice Foundation TRRP-TDEP Webinar, Legal Aid/Atty for Eviction Diversion	72

Compliance	Sep 15	Income Determination, TAA	91
CRCBRA	Sep 21	TAAHP Land lord Webinar	746
Community Affairs	Sep 21	Weatherization Assistance Program, WAP Network	67
Compliance	Sep 22	Housing Tax Credit, TAA	136
Single Family - Homeless	Sep 28	TDHCA ESG/ESG CARES and CoCs	22

2b

**TO BE POSTED  
NOT LATER THAN  
THE THIRD DAY  
BEFORE THE  
DATE OF THE  
MEETING**

2c



BOARD REPORT ITEM  
FINANCIAL ADMINISTRATION DIVISION  
NOVEMBER 10, 2021

Report on the Department's 4th Quarter Investment Report in accordance with the Public Funds Investment Act

BACKGROUND

The Department's investment portfolio consists of two distinct parts. One part is related to bond funds under trust indentures that are not subject to the Public Funds Investment Act (PFIA), and the remaining portion is related to accounts excluded from the indentures but covered by the PFIA. The Department's total investment portfolio is \$1,688,734,766 of which \$1,644,639,044 is not subject to the PFIA. This report addresses the remaining \$44,095,722 (see page 1 of the Internal Management Report) in investments covered by the PFIA. These investments are deposited in the General Fund, Housing Trust Fund, Compliance, and Housing Initiative accounts, which are all held at the Texas Treasury Safekeeping Trust Company (TTSTC), primarily in the form of overnight repurchase agreements. These investments are fully collateralized and secured by U.S. Government Securities. A repurchase agreement is the daily purchase of a security with an agreement to repurchase that security at a specific price and date, which in this case was September 1, 2021, with an effective interest rate of 0.02%. These investments safeguard principal while maintaining liquidity. The overnight repurchase agreements, subject to the PFIA, earned \$1,923 in interest during the quarter.

Below is a description of each fund group and its corresponding accounts.

- The General Fund accounts maintain funds for administrative purposes to fund expenses related to the Department's ongoing operations. These accounts contain balances related to bond residuals, fee income generated from the Mortgage Credit Certificate (MCC) Program, escrow funds, single family and multifamily bond administration fees, and balances associated with the Below Market Interest Rate (BMIR) Program.
- The State Housing Trust Fund accounts maintain funds related to programs set forth by the Housing Trust Fund funding plan. The Housing Trust Fund provides loans and grants to finance, acquire, rehabilitate, and develop decent and safe affordable housing.
- The Compliance accounts maintain funds from compliance monitoring fees and asset management fees collected from multifamily developers. The number of low income units and authority to collect these fees is outlined in the individual Land Use Restriction Agreements (LURAs) that are issued to each Developer. These fees are generated for the purpose of offsetting expenses incurred by the Department related to the monitoring and administration of these properties.

- The Housing Initiative accounts maintain funds from fees collected from Developers in connection with the Department's Tax Credit Program. The majority of fees collected are application fees and commitment fees. The authority for the collection of these fees is outlined in the Department's Multifamily Rules. These fees are generated for the purpose of offsetting expenses incurred by the Department related to the administration of the Tax Credit Program.
- The Ending Homelessness Trust Fund account maintains funds from donations collected from individuals through the Texas Department of Motor Vehicles in connection with the Department's Ending Homelessness Program. The authority for the collection of these donations is outlined in House Bill 4102, 85<sup>th</sup> Texas Legislature, Regular Session. These donations are collected and disbursed for the purpose of providing grants to counties and municipalities to combat homelessness.

This report is in the format required by the Public Funds Investment Act. It shows in detail the types of investments, their maturities, their carrying (face amount) values, and fair values at the beginning and end of the quarter. The detail for investment activity is on Pages 1 and 2.

During the 4<sup>th</sup> Quarter, as it relates to the investments covered by the PFIA, the carrying value increased by \$303,192 (see page 1) for an ending balance of \$44,095,722. The change is described below by fund groups.

General Fund: The General Fund decreased by \$93,295. This consists primarily of \$932,461 received in multifamily bond fees and \$189,600 in MCC Fees, offset by disbursements including \$1,179,560 to fund the operating budget.

The State Housing Trust Fund: The Housing Trust Fund decreased by \$174,866. This consists primarily of \$1,233,538 received in loan repayments offset by disbursements including \$1,357,455 for loans, grants, and escrow payments.

Compliance: Compliance funds decreased by \$183,598. This consists primarily of \$1,639,908 received in compliance fees offset by disbursements of \$1,769,341 transferred to fund the operating budget.

Housing Initiative: Housing Initiative funds increased by \$688,427. This consists primarily of \$1,941,491 received in fees related to tax credit activities offset by disbursements of \$1,233,283 transferred to fund the operating budget.

Ending Homelessness Fund: Ending Homelessness funds increased by \$66,524. This consists primarily of \$76,213 in donations and interest earnings on current investment balances, offset by disbursements of \$9,713 for grants.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
HOUSING FINANCE DIVISION

PUBLIC FUNDS INVESTMENT ACT  
INTERNAL MANAGEMENT REPORT (SEC. 2256.023)  
QUARTER ENDING AUGUST 31, 2021

Texas Department of Housing and Community Affairs  
Non-Indenture Related Investment Summary  
For Period Ending August 31, 2021

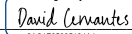

Investment Type	Issue	Current Interest Rate	Current Purchase Date	Current Maturity Date	Beginning Carrying Value 05/31/21	Beginning Market Value 05/31/21	Accretions/Purchases	Amortizations/Sales	Maturities	Transfers	Ending Carrying Value 08/31/21	Ending Market Value 08/31/21	Change In Market Value	Recognized Gain
Repo Agmt	General Fund	0.02	08/31/21	09/01/21	452,299.54	452,299.54		(34,548.51)			417,751.03	417,751.03	-	0.00
Repo Agmt	General Fund	0.02	08/31/21	09/01/21	0.02	0.02					0.02	0.02	-	0.00
Repo Agmt	General Fund	0.02	08/31/21	09/01/21	1,233.64	1,233.64	189,455.38				190,689.02	190,689.02	-	0.00
Repo Agmt	General Fund	0.02	08/31/21	09/01/21	1,703,057.53	1,703,057.53		(724,069.48)			978,988.05	978,988.05	-	0.00
Repo Agmt	General Fund	0.02	08/31/21	09/01/21	2,644,196.47	2,644,196.47	477,057.96				3,121,254.43	3,121,254.43	-	0.00
Repo Agmt	General Fund	0.02	08/31/21	09/01/21	654,596.90	654,596.90		(961.40)			653,635.50	653,635.50	-	0.00
Repo Agmt	General Fund	0.02	08/31/21	09/01/21	239,757.90	239,757.90		(3.39)			239,754.51	239,754.51	-	0.00
Repo Agmt	General Fund	0.02	08/31/21	09/01/21	750,008.47	750,008.47	34.39				750,042.86	750,042.86	-	0.00
Repo Agmt	General Fund	0.02	08/31/21	09/01/21	1,700.16	1,700.16		(259.71)			1,440.45	1,440.45	-	0.00
General Fund Total					6,446,850.63	6,446,850.63	666,547.73	(759,842.49)	0.00	0.00	6,353,555.87	6,353,555.87	0.00	0.00
Repo Agmt	Housing Trust Fund	0.02	08/31/21	09/01/21	144,088.73	144,088.73	39,767.21				183,855.94	183,855.94	-	0.00
Repo Agmt	Housing Trust Fund	0.02	08/31/21	09/01/21	3,680.63	3,680.63		(35.19)			3,645.44	3,645.44	-	0.00
Repo Agmt	Housing Trust Fund	0.02	08/31/21	09/01/21	459,595.51	459,595.51	45,786.62				505,382.13	505,382.13	-	0.00
Repo Agmt	General Revenue Appn	0.02	08/31/21	09/01/21	53,713.53	53,713.53		(319.21)			53,394.32	53,394.32	-	0.00
Repo Agmt	General Revenue Appn	0.02	08/31/21	09/01/21	992,870.53	992,870.53	141,896.70				1,134,767.23	1,134,767.23	-	0.00
Repo Agmt	General Revenue Appn	0.02	08/31/21	09/01/21	2,418,411.46	2,418,411.46		(994,844.93)			1,423,566.53	1,423,566.53	-	0.00
Repo Agmt	General Revenue Appn	0.02	08/31/21	09/01/21	289,921.78	289,921.78		(58,804.21)			231,117.57	231,117.57	-	0.00
Repo Agmt	General Revenue Appn	0.02	08/31/21	09/01/21	228,497.90	228,497.90					228,497.90	228,497.90	-	0.00
Repo Agmt	Housing Trust Fund-GR	0.02	08/31/21	09/01/21	265,392.52	265,392.52		(99,000.00)			166,392.52	166,392.52	-	0.00
Repo Agmt	Housing Trust Fund-GR	0.02	08/31/21	09/01/21	361,252.92	361,252.92		(47,836.80)			313,416.12	313,416.12	-	0.00
Repo Agmt	Housing Trust Fund-GR	0.02	08/31/21	09/01/21	1,260,470.18	1,260,470.18		(458,076.42)			802,393.76	802,393.76	-	0.00
Repo Agmt	Bootstrap -GR	0.02	08/31/21	09/01/21	181,906.42	181,906.42					181,906.42	181,906.42	-	0.00
Repo Agmt	Bootstrap -GR	0.02	08/31/21	09/01/21	1,758,198.87	1,758,198.87		(543,400.00)			1,214,798.87	1,214,798.87	-	0.00
Repo Agmt	Bootstrap -GR	0.02	08/31/21	09/01/21	1,200,000.00	1,200,000.00	1,800,000.00				3,000,000.00	3,000,000.00	-	0.00
Housing Trust Fund Total					9,618,000.98	9,618,000.98	2,027,450.53	(2,202,316.76)	0.00	0.00	9,443,134.75	9,443,134.75	0.00	0.00
Repo Agmt	Multi Family	0.02	08/31/21	09/01/21	950,143.94	950,143.94	73,427.53				1,023,571.47	1,023,571.47	-	0.00
Repo Agmt	Multi Family	0.02	08/31/21	09/01/21	1,121,858.93	1,121,858.93		(32,442.98)			1,089,415.95	1,089,415.95	-	0.00
Repo Agmt	Low Income Tax Credit Prog. Compliance Total	0.02	08/31/21	09/01/21	8,289,623.50	8,289,623.50		(224,582.06)			8,065,041.44	8,065,041.44	-	0.00
					10,361,626.37	10,361,626.37	73,427.53	(257,025.04)	0.00	0.00	10,178,028.86	10,178,028.86	0.00	0.00
Repo Agmt	Asset Management	0.02	08/31/21	09/01/21	1,751,502.39	1,751,502.39	115,938.35				1,867,440.74	1,867,440.74	-	0.00
Repo Agmt	Low Income Tax Credit Prog.	0.02	08/31/21	09/01/21	2,136,789.82	2,136,789.82		(98,222.81)			2,038,567.01	2,038,567.01	-	0.00
Repo Agmt	Low Income Tax Credit Prog.	0.02	08/31/21	09/01/21	12,616,975.29	12,616,975.29	689,381.18				13,306,356.47	13,306,356.47	-	0.00
Repo Agmt	Low Income Tax Credit Prog.	0.02	08/31/21	09/01/21	359,458.07	359,458.07		(18,670.47)			340,787.60	340,787.60	-	0.00
Housing Initiatives Total					16,864,725.57	16,864,725.57	805,319.53	(116,893.28)	0.00	0.00	17,553,151.82	17,553,151.82	0.00	0.00
Repo Agmt	Homelessness - HB4102	0.04	08/31/20	09/01/20	501,326.41	501,326.41	66,523.94				567,850.35	567,850.35	-	0.00
Homelessness - HB4102 Total					501,326.41	501,326.41	66,523.94	0.00	0.00	0.00	567,850.35	567,850.35	0.00	0.00
Total Non-Indenture Related Investment Summary					43,792,529.96	43,792,529.96	3,639,269.26	(3,336,077.57)	0.00	0.00	44,095,721.65	44,095,721.65	0.00	0.00

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
 HOUSING FINANCE DIVISION  
 PUBLIC FUNDS INVESTMENT ACT  
 Internal Management Report (Sec. 2256.023)  
 Quarter Ending August 31, 2021

Investment Type	FAIR VALUE (MARKET) @ 05/31/21	CARRYING VALUE @ 05/31/21	ACCRETION / PURCHASES	AMORTIZATION/ SALES	MATURITIES	TRANSFERS	CARRYING VALUE @ 08/31/21	FAIR VALUE (MARKET) @ 08/31/21	CHANGE IN FAIR VALUE (MARKET)	ACCRUED INT REC/VBL @ 08/31/21	RECOGNIZED GAIN
NON-INDENTURE RELATED:											
General Fund Repurchase Agreements	6,446,850.63	6,446,850.63	666,547.73	(759,842.49)			6,353,555.87	6,353,555.87	-	3.54	-
Housing Trust Fund Repurchase Agreements	9,618,000.98	9,618,000.98	2,027,450.53	(2,202,316.76)			9,443,134.75	9,443,134.75	-	5.51	-
Compliance Repurchase Agreements	10,361,626.37	10,361,626.37	73,427.53	(257,025.04)			10,178,028.86	10,178,028.86	-	5.66	-
Housing Initiatives Repurchase Agreements	16,864,725.57	16,864,725.57	805,319.53	(116,893.28)			17,553,151.82	17,553,151.82	-	9.95	-
Ending Homelessness Trust Fund Repurchase Agreements	501,326.41	501,326.41	66,523.94	-			567,850.35	567,850.35	-	0.63	-
<b>NON-INDENTURE RELATED TOTAL</b>	<b>43,792,529.96</b>	<b>43,792,529.96</b>	<b>3,639,269.26</b>	<b>(3,336,077.57)</b>	<b>0.00</b>	<b>0.00</b>	<b>44,095,721.65</b>	<b>44,095,721.65</b>	<b>0.00</b>	<b>25.29</b>	<b>0.00</b>

(b) (8) The Department is in compliance with regards to investing its funds in a manner which will provide by priority the following objectives: (1) safety of principal, (2) sufficient liquidity to meet Department cash flow needs, (3) a market rate of return for the risk assumed, and (4) conformation to all applicable state statutes governing the investment of public funds including Section 2306 of the Department's enabling legislation and specifically, Section 2256 of the Texas Government Code, the Public Funds Investment Act.

Per Section 2256.007(d) of the Texas Government Code, the Public Funds Investment Act:  
 David Cervantes completed 8.0 hrs. of training on the Texas Public Funds Investment Act on October 18 and 19, 2021  
 Monica Galuski completed 5.0 hrs. of training on the Texas Public Funds Investment Act on February 5, 2021

DocuSigned by:  2AC1E6508519444 David Cervantes Director of Administration	Date <b>10/29/2021</b>
DocuSigned by:  2106F97BE17C4A7 Monica Galuski Director of Bond Finance/Chief Investment Officer	Date <b>10/29/2021</b>

2d

**BOARD REPORT ITEM**  
**BOND FINANCE DIVISION**  
**NOVEMBER 10, 2021**

Report on the Department’s 4<sup>th</sup> Quarter Investment Report relating to funds held under Bond Trust Indentures

**BACKGROUND**

- The Department’s Investment Policy excludes funds invested under a bond trust indenture for the benefit of bond holders because the trustee for each trust indenture controls the authorized investments in accordance with the requirements of that indenture. Management of assets within an indenture is the responsibility of the Trustee. This internal management report is for informational purposes only and, while not required under the Public Funds Investment Act, it is consistent with the prescribed format and detail as required by the Public Funds Investment Act. It details the types of investments, maturity dates, carrying (face amount) values, and fair market values at the beginning and end of the quarter.
- Overall, the portfolio carrying value increased by approximately \$2.9 million (see page 3), resulting in an end of quarter balance of \$1,644,639,044.

The portfolio consists of those investments described in the attached Bond Trust Indentures Supplemental Management Report.

	Beginning Quarter	Ending Quarter
Mortgage Backed Securities (MBS)	76%	78%
Guaranteed Investment Contracts/Investment Agreements	2%	2%
Repurchase Agreements (Cash Equivalents)	10%	6%
Account Control Agreements (Cash Equivalents)	1%	1%
Municipal Bonds	4%	4%
Treasury Backed Mutual Funds	6%	6%
Treasury Notes / Bonds / SLGs	1%	2%

The increase in percentage of MBS is due to the pooling of mortgage loans under the single family and RMRB bond indentures. The decrease in Repurchase Agreements is due to the origination of bond proceeds. The increase in Treasury Notes / Bonds / SLGs is due to the issuance of multifamily bonds.

**Portfolio activity for the quarter:**

- The MBS purchases this quarter were approximately \$77.6 million, due to the issuance of single family and multifamily bonds and the investment of proceeds in MBS.
- The maturities in MBS were approximately \$40.9 million, which represent loan repayments or payoffs.

The table below shows the trend in MBS activity.

	4th Qtr FY 20	1st Qtr FY 21	2nd Qtr FY 21	3rd Qtr FY 21	4th Qtr FY 21	Total
Purchases	\$ 76,319,543	\$ 110,008,836	\$ 38,099,830	\$ 127,225,566	\$ 77,639,238	\$ 429,293,013
Sales						\$ -
Maturities	\$ 29,627,468	\$ 27,743,500	\$ 35,950,129	\$ 30,205,496	\$ 40,977,810	\$ 164,504,403
Transfers						\$ -

- The process of valuing investments at fair market value identifies unrealized gains and losses. These gains or losses do not impact the overall portfolio because the Department typically holds MBS investments until maturity.
- The fair market value (the amount at which a financial instrument could be exchanged in a current transaction between willing parties) increased \$6.7 million (see pages 3 and 4), with fair market value being greater than the carrying value. The national average for a 30-year fixed rate mortgage, as reported by the Freddie Mac Primary Mortgage Market Survey as of August 31, 2021, was 2.87%, down from 2.95% at the end of May 2021. Various factors affect the fair market value of these investments, but there is a correlation between the prevailing mortgage interest rates and the change in market value.
- Given the current financial environment, this change in market value is to be expected. However, the change is cyclical and is reflective of a general movement toward higher yields in the bond market as a whole.
- The ability of the Department’s investments to provide the appropriate cash flow to pay debt service and eventually retire the related bond debt is of more importance than the assessed relative value in the bond market as a whole.
- The more relevant measures of indenture parity are reported on page 5 in the Bond Trust Indenture Parity Comparison. This report shows parity (ratio of assets to liabilities) by indenture with assets greater than liabilities in a range from 105.91% to 121.80%, which would indicate the Department has sufficient assets to meet its obligations.



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
 BOND FINANCE DIVISION  
 BOND TRUST INDENTURES  
 Supplemental Management Report  
 Quarter Ending August 31, 2021

	FAIR VALUE (MARKET) @ 05/31/21	CARRYING VALUE @ 05/31/21	ACCRETION / PURCHASES	AMORTIZATION/ SALES	MATURITIES	TRANSFERS	CARRYING VALUE @ 08/31/21	FAIR VALUE (MARKET) @ 08/31/21	CHANGE IN FAIR VALUE (MARKET)	ACCRUED INT RECVBL @ 08/31/21	RECOGNIZED GAIN
INDENTURE RELATED:											
Single Family	788,697,605	735,246,992	16,846,532	(5,387,920)	(24,842,683)		721,862,921	772,086,011	(3,227,522)	2,246,439	-
RMRB	373,522,487	352,349,647	91,186,012	(91,967,966)	(14,997,446)		336,570,249	359,809,274	2,066,186	1,117,032	-
Taxable Mortgage Program	2,501,166	2,501,166	114	(63)			2,501,217	2,501,217	-	887,870	-
Multi Family	572,851,773	551,626,063	67,639,192	(34,422,915)	(1,137,681)		583,704,658	612,775,594	7,845,225	831,315	-
	1,737,573,031	1,641,723,868	175,671,850	(131,778,864)	(40,977,810)	-	1,644,639,044	1,747,172,096	6,683,889	5,082,656	-

(b) (8) The Department is in compliance with regards to investing its funds in a manner which will provide by priority the following objectives: (1) safety of principal, (2) sufficient liquidity to meet Department cash flow needs, (3) a market rate of return for the risk assumed, and (4) conformation to all applicable state statutes governing the investment of public funds including Section 2306 of the Department's enabling legislation and specifically, Section 2256 of the Texas Government Code, the Public Funds Investment Act.

Per Section 2256.007(d) of the Texas Government Code, the Public Funds Investment Act:

David Cervantes completed 8.0 hrs. of training on the Texas Public Funds Investment Act on October 18 and 19, 2021

Monica Galuski completed 5.0 hrs. of training on the Texas Public Funds Investment Act on February 5, 2021

DocuSigned by: <i>David Cervantes</i> ZAC1P6009019H44	Date: 10/29/2021
David Cervantes Director of Administration	
DocuSigned by: <i>Monica Galuski</i> 288E978EE1C4A7	Date: 10/29/2021
Monica Galuski Director of Bond Finance/Chief Investment Officer	

TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS  
 BOND FINANCE DIVISION  
 BOND TRUST INDENTURES  
 Supplemental Management Report  
 Quarter Ending August 31, 2021

INVESTMENT TYPE	FAIR VALUE (MARKET) @ 05/31/21	CARRYING VALUE @ 05/31/21	ACCRETION / PURCHASES	AMORTIZATION/ SALES	MATURITIES	TRANSFERS	CARRYING VALUE @ 08/31/21	FAIR VALUE (MARKET) @ 08/31/21	CHANGE IN FAIR VALUE (MARKET)	RECOGNIZED GAIN
INDENTURE RELATED:										
Mortgage-Backed Securities	1,333,734,915	1,238,090,631	77,639,238	-	(40,977,810)	-	1,274,752,058	1,376,440,865	6,044,523	-
Guaranteed Inv Contracts	34,954,095	34,954,095	28,606	(3,432,571)	-	-	31,550,130	31,550,130	-	-
Investment Agreements	918,127	918,127	-	(769,390)	-	-	148,737	148,737	-	-
Treasury-Backed Mutual Fund	102,793,952	102,793,952	23,727,230	(23,613,468)	-	-	102,907,715	102,907,715	-	-
Account Control Agreements	14,578,310	14,578,310	9	(1,039,691)	-	-	13,538,629	13,538,629	-	-
Municipal Bonds	68,425,104	68,220,226	5,603,567	(5,766,452)	-	-	68,057,342	68,901,587	639,366	-
Repurchase Agreements	163,001,813	163,001,813	30,364,815	(93,153,988)	-	-	100,212,640	100,212,640	-	-
SLG Securities	14,045,782	14,045,782	-	-	-	-	14,045,782	14,045,782	-	-
Treasury Notes / Bonds	5,120,932	5,120,932	38,308,385	(4,003,305)	-	-	39,426,012	39,426,012	-	-
	<u>1,737,573,031</u>	<u>1,641,723,868</u>	<u>175,671,850</u>	<u>(131,778,864)</u>	<u>(40,977,810)</u>	<u>-</u>	<u>1,644,639,044</u>	<u>1,747,172,096</u>	<u>6,683,889</u>	<u>-</u>

(b) (8) The Department is in compliance with regards to investing its funds in a manner which will provide by priority the following objectives: (1) safety of principal, (2) sufficient liquidity to meet Department cash flow needs, (3) a market rate of return for the risk assumed, and (4) conformation to all applicable state statutes governing the investment of public funds including Section 2306 of the Department's enabling legislation and specifically, Section 2256 of the Texas Government Code, the Public Funds Investment Act.

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DocuSigned by: <i>David Cervantes</i> 2A61F656851944A	Date <u>10/29/2021</u>
David Cervantes Director of Administration	
DocuSigned by: <i>Monica Galuski</i> 2889F978EE1C4A7	Date <u>10/29/2021</u>
Monica Galuski Director of Bond Finance/Chief Investment Officer	

**Texas Department of Housing and Community Affairs**  
**Bond Finance Division**  
**Executive Summary**  
*As of August 31, 2021*

	Single Family Indenture Funds	Residential Mortgage Revenue Bond Indenture Funds	Multi-Family Indenture Funds	Combined Totals
<b>PARITY COMPARISON:</b>				
PARITY ASSETS				
Cash	\$ 6,781,723		\$ 57,105,556	\$ 63,887,279
Investments <sup>(1)</sup>	\$ 77,921,477	\$ 50,402,823	\$ 581,078,745	\$ 709,403,045
Mortgage Backed Securities <sup>(1)</sup>	\$ 643,392,104	\$ 285,860,122		\$ 929,252,226
Loans Receivable <sup>(2)</sup>	\$ 18,265		\$ 915,965,958	\$ 915,984,223
Accrued Interest Receivable	\$ 2,213,878	\$ 1,117,032	\$ 3,798,361	\$ 7,129,271
<b>TOTAL PARITY ASSETS</b>	<b>\$ 730,327,447</b>	<b>\$ 337,379,977</b>	<b>\$ 1,557,948,620</b>	<b>\$ 2,625,656,044</b>
PARITY LIABILITIES				
Notes Payable	\$ -	\$ 10,000,000	\$ 307,052,306	\$ 317,052,306
Bonds Payable <sup>(1)</sup>	\$ 679,463,931	\$ 302,528,733	\$ 968,183,308	\$ 1,950,175,972
Accrued Interest Payable	\$ 10,115,523	\$ 1,944,955	\$ 3,875,354	\$ 15,935,832
Other Non-Current Liabilities <sup>(3)</sup>				\$ -
<b>TOTAL PARITY LIABILITIES</b>	<b>\$ 689,579,454</b>	<b>\$ 314,473,688</b>	<b>\$ 1,279,110,968</b>	<b>\$ 2,283,164,110</b>
PARITY DIFFERENCE	\$ 40,747,993	\$ 22,906,289	\$ 278,837,652	\$ 342,491,934
<b>PARITY</b>	<b>105.91%</b>	<b>107.28%</b>	<b>121.80%</b>	<b>115.00%</b>

(1) Investments, Mortgage Backed Securities and Bonds Payable reported at par value not fair value. This adjustment is consistent with indenture cashflows prepared for Also, the CHMRB Bonds were redeemed in full in January 2019.

(2) Loans Receivable include whole loans only. Special mortgage loans are excluded.

(3) Other Non-Current Liabilities include "Due to Developers" (for insurance, taxes and other operating expenses) and "Earning Due to Developers" (on investments).

Note: Based on preliminary and unaudited financial statements, subject to change in audited financial statements.

# ACTION ITEMS

# EXECUTIVE SESSION

The Chair may call an Executive Session at this point in the agenda in accordance with the provisions cited at the end of the official posted agenda<sup>1</sup>.

<sup>1</sup> Note: the Chair is not restricted by this item, and may call for an Executive Session at any time during the posted meeting.

3

# ORAL PRESENTATION

4a



**BOARD ACTION REQUEST**  
**BOND FINANCE DIVISION**  
**NOVEMBER 10, 2021**

Presentation, discussion, and possible action regarding the Issuance of Multifamily Housing Revenue Bonds (Meadowbrook Apartments) Series 2021 Resolution No. 22-009, and a Determination Notice of Housing Tax Credits

**RECOMMENDED ACTION**

**WHEREAS**, the Board adopted an inducement resolution for Meadowbrook Apartments at the Board meeting of January 14, 2021;

**WHEREAS**, an application for Meadowbrook Apartments requesting 4% Housing Tax Credits, sponsored by LDG Development and the Dallas Housing Finance Corporation, was submitted to the Department on August 12, 2021;

**WHEREAS**, a Certificate of Reservation was issued in the amount of \$30,000,000 on June 9, 2021, with a bond delivery deadline of December 6, 2021; and

**WHEREAS**, EARAC recommends approval of the issuance of Multifamily Housing Revenue Bonds (Series 2021) for Meadowbrook Apartments and the issuance of a Determination Notice;

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of tax-exempt Multifamily Housing Revenue Bonds (Meadowbrook Apartments) Series 2021 in the amount of \$30,000,000, Resolution No. 2-009, is hereby approved in the form presented to this meeting;

**FURTHER RESOLVED**, the issuance of a Determination Notice of \$1,823,422 in 4% Housing Tax Credits for Meadowbrook Apartments, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website, is hereby approved in the form presented to this meeting; and

**FURTHER RESOLVED**, that if approved, staff is authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

## **BACKGROUND**

*General Information:* The Bonds will be issued in accordance with Tex. Gov't Code §2306.353 *et seq.*, which authorizes the Department to issue revenue bonds for its public purposes, as defined therein. Tex. Gov't Code §2306.472 provides that the Department's revenue bonds are solely obligations of the Department, and do not create an obligation, debt or liability of the State of Texas or a pledge or loan of faith, credit or taxing power of the State of Texas.

*Development Information:* Meadowbrook Apartments are to be located at 15251 Seagoville Road in Dallas, Dallas County, and proposes the new construction of 180 units that will serve the general population. The Certificate of Reservation from the Bond Review Board was issued under the Priority 3 designation, which does not have a prescribed restriction on the percentage of Area Median Family Income (AMFI) that must be served. The application submitted to the Department indicates that 162 of the units will be rent and income restricted at 60% of AMFI, and the remaining 18 units will be market rate.

*Organizational Structure and Previous Participation:* The Borrower is LDG Meadowbrook, LP, and includes the entities and principals as illustrated in Exhibit A. The applicant's portfolio is considered a Category 1 and was deemed acceptable by EARAC.

*Tax Equity and Fiscal Responsibility Act (TEFRA) Public Hearing/Public Comment:* In light of COVID-19 and the inability for an in-person TEFRA hearing to be held, staff conducted a telephonic hearing, in accordance with IRS guidance, for the proposed development on September 8, 2021. Representatives from the Department and the Developer were present on the call, and no public comment was made. A copy of the hearing transcript is included herein. The Department has received no letters of support or opposition for the proposed development.

## **Summary of Financial Structure**

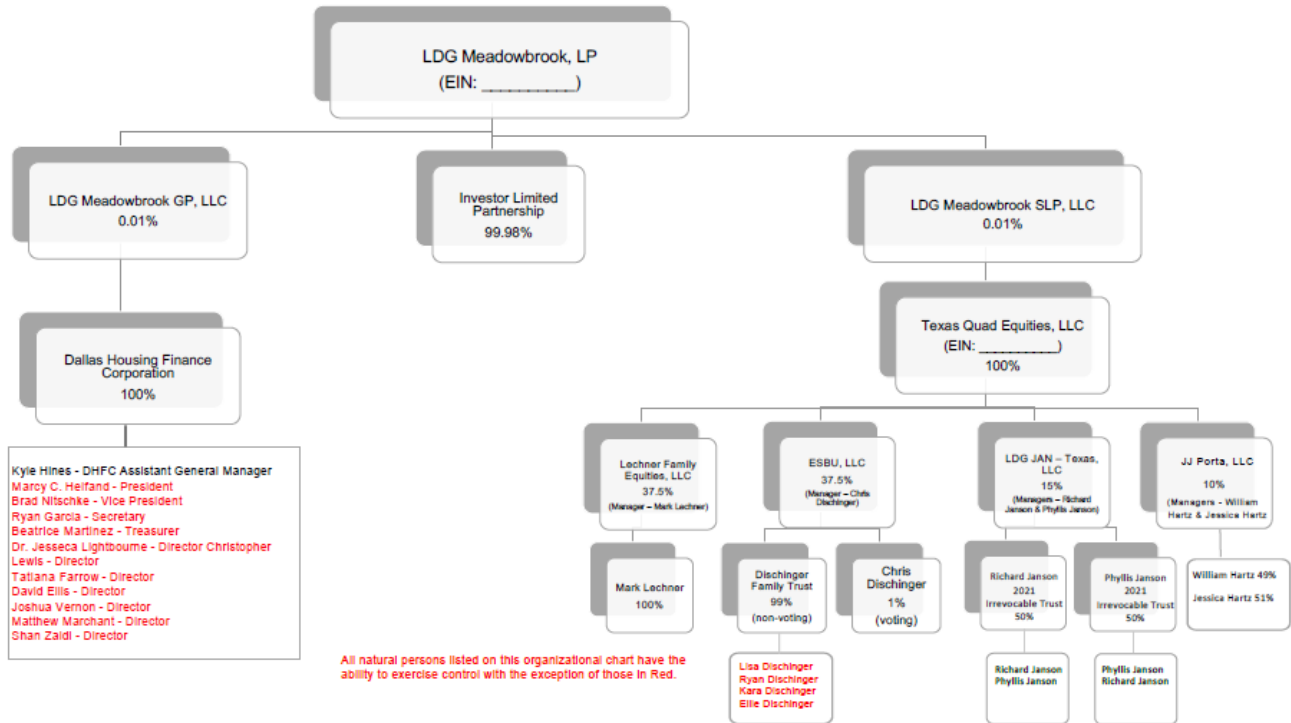
Under the proposed structure, the Department will issue fixed rate tax-exempt multifamily bonds in the amount of \$30,000,000 that will be initially purchased by R4 Capital Funding, who will be serving as the construction and permanent lender. The interest rate on the bonds will be locked prior to closing, and will be equal to the greater of either the 10-year US Treasury Index plus 2.65%, or 3.80%. Additionally, the bonds will have a 16-year optional redemption provision, and 40-year amortization period that begins after a 48-month interest only period is complete. Upon stabilization, the bonds will be paid down to approximately \$26,399,000, and will have a final maturity date of November 1, 2061, or December 1, 2061, depending on the closing date. For purposes of underwriting, the Department used a rate of 4.09%.

R4 Capital Funding will also provide a taxable construction loan in the amount of \$4,000,000 that will carry an interest rate equal to the 3-year US Treasury Index plus 3.95%. The taxable loan will be in place only during the construction period, and will be paid off upon stabilization. For purposes of underwriting, the Department used a rate of 4.65%.

A copy of the Exhibits recommended to be approved by the Board as referenced in Resolution No. 22-009 can be found online at TDHCA's Board Meeting Information Center website at <http://www.tdhca.state.tx.us/board/meetings.htm>

EXHIBIT A

Meadowbrook  
Applicant/Owner Organizational Chart



## RESOLUTION NO. 22-009

RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE, SALE AND DELIVERY OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS MULTIFAMILY HOUSING REVENUE BONDS (MEADOWBROOK APARTMENTS) SERIES 2021; APPROVING THE FORM AND SUBSTANCE AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS AND INSTRUMENTS PERTAINING THERETO; AUTHORIZING AND RATIFYING OTHER ACTIONS AND DOCUMENTS; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended (the "Act"), for the purpose, among others, of providing a means of financing the costs of residential ownership, development, construction and rehabilitation that will provide decent, safe, and affordable living environments for individuals and families of low, very low and extremely low income (as defined in the Act) and families of moderate income (as described in the Act and determined by the Governing Board of the Department (the "Board") from time to time); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the "State") intended to be occupied by individuals and families of low, very low and extremely low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds, for the purpose, among others, of obtaining funds to make such loans and provide financing, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such multifamily residential rental development loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, the Board has determined to authorize the issuance of its Multifamily Housing Revenue Bonds (Meadowbrook Apartments) Series 2021 (the "Bonds") pursuant to and in accordance with the terms of an Indenture of Trust (the "Indenture") between the Department and BOKF, NA, as trustee (the "Trustee"), for the purpose of providing funds in connection with the financing of the Development (defined below), all under and in accordance with the Constitution and laws of the State; and

WHEREAS, the Department desires to use the proceeds of the Bonds to fund a mortgage loan to LDG Meadowbrook, LP, a Texas limited partnership (the "Borrower"), in connection with the cost of acquisition, construction and equipping of a qualified residential rental development described in Exhibit A attached hereto (the "Development") located within the State and

required by the Act to be occupied by individuals and families of low and very low income and families of moderate income, as determined by the Department; and

WHEREAS, the Board, by resolution adopted on January 14, 2021, declared its intent to issue its revenue bonds to provide financing for the Development; and

WHEREAS, the Borrower has requested and received a reservation of private activity bond allocation from the State of Texas; and;

WHEREAS, it is anticipated that the Department and the Borrower will execute and deliver a Loan Agreement (the "Loan Agreement") pursuant to which (i) the Department will agree to make a mortgage loan funded with the proceeds of the Bonds (the "Loan") to the Borrower to enable the Borrower to finance the acquisition, construction and equipping of the Development and related costs, and (ii) the Borrower will execute and deliver to the Department a promissory note (the "Borrower Note") in an original principal amount equal to the original aggregate principal amount of the Bonds, and providing for payment of interest on such principal amount equal to the interest on the Bonds and to pay other costs described in the Loan Agreement; and

WHEREAS, it is anticipated that the Borrower Note will be secured by a Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (with Power of Sale) (the "Security Instrument") from the Borrower for the benefit of the Department and assigned to the Trustee; and

WHEREAS, the Department's rights (except for certain unassigned rights) under the Indenture, the Loan Agreement, the Borrower Note and the Security Instrument will be assigned to the Trustee pursuant to an Assignment of Deed of Trust and Loan Documents (the "Assignment") from the Department to the Trustee; and

WHEREAS, in order to assure compliance with Section 103 and 141 through 150 of the Code, the Board has determined that the Department, the Trustee and the Borrower will execute a Tax Exemption Certificate and Agreement (the "Tax Exemption Agreement"), in connection with the Bonds, pursuant to which the Department and the Borrower will make certifications, representations and covenants relating to the treatment of the interest on the Bonds as exempt from gross income for federal income tax purposes; and

WHEREAS, the Board has determined that the Department, the Trustee, DHFC Meadowbrook Landowner LLC (the "Fee Owner") and the Borrower will execute a Regulatory and Land Use Restriction Agreement (the "Regulatory Agreement") with respect to the Development, which will be filed of record in the real property records of Dallas County, Texas; and

WHEREAS, the Board has further determined that the Department will enter into a Bond Purchase Agreement (the "Bond Purchase Agreement") with the Borrower and R4 Tax-Exempt Housing Partners LLC or another purchaser selected by R4 Capital Funding LLC (in any event, the

“Purchaser”), setting forth certain terms and conditions upon which the Purchaser will purchase all of the Bonds from the Department and the Department will sell the Bonds to the Purchaser; and

WHEREAS, the Board has examined proposed forms of (a) the Indenture, the Loan Agreement, the Regulatory Agreement, the Assignment, the Tax Exemption Agreement and the Bond Purchase Agreement (collectively, the “Issuer Documents”), all of which are attached to and comprise a part of this Resolution and (b) the Security Instrument and the Borrower Note; has found the form and substance of such documents to be satisfactory and proper and the recitals contained therein to be true, correct and complete; and has determined, subject to the conditions set forth in Article 1, to authorize the issuance of the Bonds, the execution and delivery of the Issuer Documents, the acceptance of the Security Instrument and the Borrower Note and the taking of such other actions as may be necessary or convenient in connection therewith;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS:

## ARTICLE 1

### ISSUANCE OF BONDS; APPROVAL OF DOCUMENTS

Section 1.1 Issuance, Execution and Delivery of the Bonds. That the issuance of the Bonds is hereby authorized pursuant to the Act, including particularly Section 2306.353 thereof, all under and in accordance with the conditions set forth herein and in the Indenture, and that, upon execution and delivery of the Indenture, the Authorized Representatives of the Department named in this Resolution are each hereby authorized to execute, attest and affix the Department’s seal to the Bonds and to deliver the Bonds to the Attorney General of the State (the “Attorney General”) for approval, the Comptroller of Public Accounts of the State for registration and the Trustee for authentication (to the extent required in the Indenture), and thereafter to deliver the Bonds to or upon the order of the Purchaser.

Section 1.2 Interest Rate, Principal Amount, Maturity and Price. That (i) the Bonds shall bear interest at a fixed rate per annum, which rate shall be determined at least five (5) business days prior to the delivery of the Bonds, and shall be equal to the greater of (a) the sum of (i) 2.65%, and (ii) the 10-year US Treasury Security published by Thomson Reuters on the date of determination, or (b) 3.80%, subject to adjustment as provided in the Indenture; provided that, in no event shall the interest rate (including any default rate) on the Bonds exceed the maximum interest rate permitted by applicable law; (ii) the aggregate principal amount of the Bonds shall be \$30,000,000; (iii) the final maturity of the Bonds shall occur on (A) November 1, 2061, if the Bonds are issued in November 2021, or (B) December 1, 2061, if the Bonds are issued in December 2021; and (iv) the price at which the Bonds is sold to the Purchaser shall be the principal amount thereof.

Section 1.3 Approval, Execution and Delivery of the Indenture. That the form and substance of the Indenture are hereby approved, and that the Authorized Representatives are each hereby authorized to execute the Indenture, and to deliver the Indenture to the Trustee.

Section 1.4 Approval, Execution and Delivery of the Loan Agreement. That the form and substance of the Loan Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Loan Agreement, and to deliver the Loan Agreement to the Borrower.

Section 1.5 Approval, Execution and Delivery of the Tax Exemption Agreement. That the form and substance of the Tax Exemption Agreement are hereby approved and that the Authorized Representatives are each hereby authorized to execute the Tax Exemption Agreement and to deliver the Tax Exemption Agreement to the Borrower and the Trustee.

Section 1.6 Approval, Execution and Delivery of the Regulatory Agreement. That the form and substance of the Regulatory Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Regulatory Agreement and to deliver the Regulatory Agreement to the Borrower, the Fee Owner and the Trustee and to cause the Regulatory Agreement to be filed of record in the real property records of Dallas County, Texas.

Section 1.7 Approval, Execution and Delivery of the Bond Purchase Agreement. That the sale of the Bonds to the Purchaser is hereby approved, that the form and substance of the Bond Purchase Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Bond Purchase Agreement and to deliver the Bond Purchase Agreement to the Borrower and the Purchaser.

Section 1.8 [Reserved].

Section 1.9 Acceptance of the Borrower Note and the Security Instrument. That the form and substance of the Borrower Note and the Security Instrument are hereby accepted by the Department and that the Authorized Representatives each are hereby authorized to endorse and deliver the Borrower Note to the order of the Trustee without recourse.

Section 1.10 Approval, Execution and Delivery of the Assignment. That the form and substance of the Assignment are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Assignment, and to deliver the Assignment to the Trustee.

Section 1.11 Taking of Any Action; Execution and Delivery of Other Documents. That the Authorized Representatives are each hereby authorized to take any actions and to execute, attest and affix the Department's seal to, and to deliver to the appropriate parties, all such other agreements, commitments, assignments, bonds, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices of acceptance, written requests and other papers, whether or not mentioned herein, as they or any of them



consider to be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.12 Power to Revise Form of Documents. That, notwithstanding any other provision of this Resolution, the Authorized Representatives are each hereby authorized to make or approve such revisions in the form of the documents attached hereto as exhibits as, in the judgment of such Authorized Representative, and in the opinion of Bracewell LLP, Bond Counsel to the Department (“Bond Counsel”), may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, such approval to be evidenced by the execution of such documents by the Authorized Representatives.

Section 1.13 Exhibits Incorporated Herein. That all of the terms and provisions of each of the documents listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

- Exhibit B - Indenture
- Exhibit C - Loan Agreement
- Exhibit D - Regulatory Agreement
- Exhibit E - Borrower Note
- Exhibit F - Security Instrument
- Exhibit G - Assignment
- Exhibit H - Tax Exemption Agreement
- Exhibit I - Bond Purchase Agreement

Section 1.14 Authorized Representatives. That the following persons are each hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department’s seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Board, the Executive Director of the Department, the Director of Administration of the Department, the Director of Financial Administration of the Department, the Director of Bond Finance and Chief Investment Officer of the Department, the Director of Multifamily Bonds of the Department, the Director of Texas Homeownership of the Department, and the Secretary or any Assistant Secretary to the Board. Such persons are referred to herein collectively as the “Authorized Representatives.” Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

## ARTICLE 2

### APPROVAL AND RATIFICATION OF CERTAIN ACTIONS

Section 2.1 Approval and Ratification of Application to Texas Bond Review Board. That the Board hereby ratifies and approves the submission of the application for approval of state bonds to the Texas Bond Review Board on behalf of the Department in connection with the issuance of the Bonds in accordance with Chapter 1231, Texas Government Code.

Section 2.2 Approval of Submission to the Attorney General. That the Board hereby authorizes, and approves the submission by Bond Counsel to the Attorney General, for his approval, of a transcript of legal proceedings relating to the issuance, sale and delivery of the Bonds.

Section 2.3 Certification of the Minutes and Records. That the Secretary or Assistant Secretary to the Board hereby is authorized to certify and authenticate minutes and other records on behalf of the Department for the Bonds and all other Department activities.

Section 2.4 Authority to Invest Proceeds. That the Department is authorized to invest and reinvest the proceeds of the Bonds and the fees and revenues to be received in connection with the financing of the Development in accordance with the Indenture and the Tax Exemption Agreement and to enter into any agreements relating thereto only to the extent permitted by the Indenture and the Tax Exemption Agreement.

Section 2.5 Engagement of Other Professionals. That the Executive Director of the Department or any successor is authorized to engage auditors to perform such functions, audits, yield calculations and subsequent investigations as necessary or appropriate to comply with the Bond Purchase Agreement and the requirements of Bond Counsel, provided such engagement is done in accordance with applicable law of the State.

Section 2.6 Ratifying Other Actions. That all other actions taken by the Executive Director of the Department and the Department staff in connection with the issuance of the Bonds and the financing of the Development are hereby ratified and confirmed.

### ARTICLE 3

#### CERTAIN FINDINGS AND DETERMINATIONS

Section 3.1 Findings of the Board. That in accordance with Section 2306.223 of the Act and after the Department's consideration of the information with respect to the Development and the information with respect to the proposed financing of the Development by the Department, including but not limited to the information submitted by the Borrower, independent studies commissioned by the Department, recommendations of the Department staff and such other information as it deems relevant, the Board hereby finds:

(a) Need for Housing Development.

(i) that the Development is necessary to provide needed decent, safe, and sanitary housing at rentals or prices that individuals or families of low and very low income or families of moderate income can afford,

(ii) that the financing of the Development is a public purpose and will provide a public benefit, and

(iii) that the Development will be undertaken within the authority granted by the Act to the housing finance division and the Borrower.

(b) Findings with Respect to the Borrower.

(i) that the Borrower, by operating the Development in accordance with the requirements of the Loan Agreement, the Regulatory Agreement and the Tax Exemption Agreement, will supply well-planned and well-designed housing for individuals or families of low and very low income or families of moderate income,

(ii) that the Borrower is financially responsible, and

(iii) that the Borrower is not, and will not enter into a contract for the Development with, a housing developer that (A) is on the Department's debarred list, including any parts of that list that are derived from the debarred list of the United States Department of Housing and Urban Development; (B) breached a contract with a public agency; or (C) misrepresented to a subcontractor the extent to which the developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the developer's participation in contracts with the agency and the amount of financial assistance awarded to the developer by the Department.

(c) Public Purpose and Benefits.

(i) that the Borrower has agreed to operate the Development in accordance with the Loan Agreement, the Regulatory Agreement and the Tax Exemption Agreement, which require, among other things, that the Development be occupied by individuals and families of low and very low income and families of moderate income, and

(ii) that the issuance of the Bonds to finance the Development is undertaken within the authority conferred by the Act and will accomplish a valid public purpose and will provide a public benefit by assisting individuals and families of low and very low income and families of moderate income in the State to obtain decent, safe, and sanitary housing by financing the costs of the Development, thereby helping to maintain a fully adequate supply of sanitary and safe dwelling accommodations at rents that such individuals and families can afford.

Section 3.2 Determination of Eligible Tenants. That the Board has determined, to the extent permitted by law and after consideration of such evidence and factors as it deems relevant, the findings of the staff of the Department, the laws applicable to the Department and the provisions of the Act, that eligible tenants for the Development shall be (1) individuals and families of low and very low income, (2) persons with special needs, and (3) families of moderate income, with the income limits as set forth in the Tax Exemption Agreement and the Regulatory Agreement.

Section 3.3 Sufficiency of Loan Interest Rate. That, in accordance with Section 2306.226 of the Act, the Board hereby finds and determines that the interest rate on the Loan established pursuant to the Loan Agreement will produce the amounts required, together with other available funds, to pay for the Department's costs of operation with respect to the Bonds and the Development and enable the Department to meet its covenants with and responsibilities to the holders of the Bonds.

Section 3.4 No Gain Allowed. That, in accordance with Section 2306.498 of the Act, no member of the Board or employee of the Department may purchase any Bond in the secondary open market for municipal securities.

#### ARTICLE 4

#### GENERAL PROVISIONS

Section 4.1 Limited Obligations. That the Bonds and the interest thereon shall be special limited obligations of the Department payable solely from the trust estate created under the Indenture, including the revenues and funds of the Department pledged under the Indenture to secure payment of the Bonds, and under no circumstances shall the Bonds be payable from any other revenues, funds, assets or income of the Department.

Section 4.2 Non-Governmental Obligations. That the Bonds shall not be and do not create or constitute in any way an obligation, a debt or a liability of the State or create or constitute a pledge, giving or lending of the faith or credit or taxing power of the State. Each Bond shall contain on its face a statement to the effect that the State is not obligated to pay the principal thereof or interest thereon and that neither the faith or credit nor the taxing power of the State is pledged, given or loaned to such payment.

Section 4.3 Effective Date. That this Resolution shall be in full force and effect from and upon its adoption.

Section 4.4 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Governing Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with § 2306.032 of the Texas Government Code, regarding meetings of the Governing Board.

PASSED AND APPROVED this 10th day of November, 2021.

**EXHIBIT A**

**Description of Development**

Borrower: LDG Meadowbrook, LP, a Texas limited partnership

Development: The Development is a 180-unit affordable multifamily community to be known as Meadowbrook Apartments and to be located at or near 15251 Seagoville Road, Dallas, Dallas County, Texas 75253. It consists of seven (7) residential apartment buildings with approximately 207,492 net rentable square feet. The unit mix will consist of:

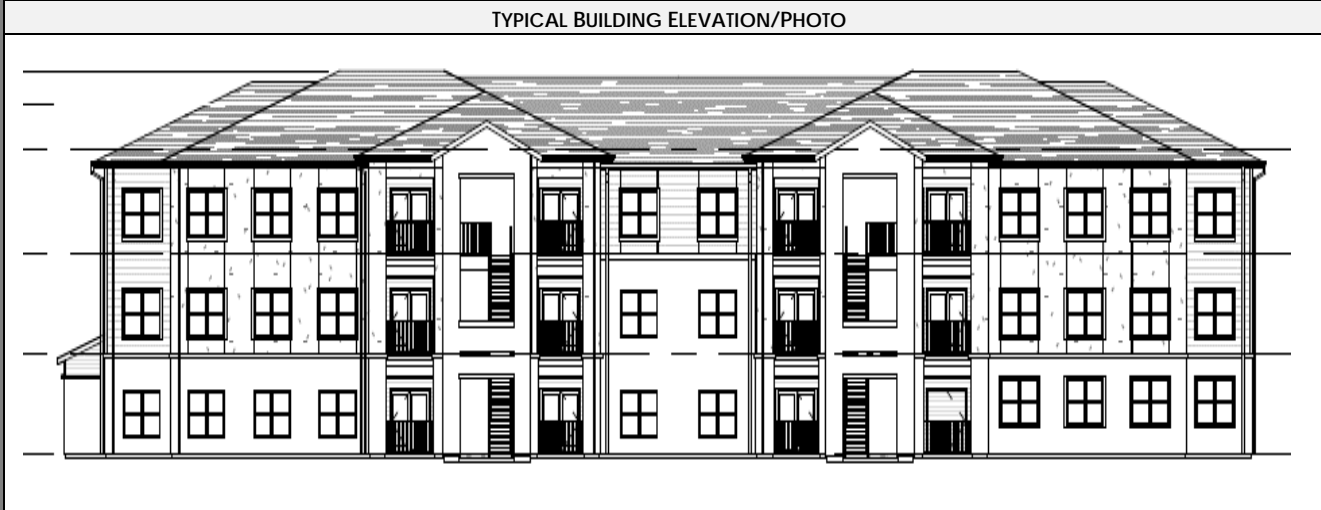
36	one-bedroom/one-bath units
72	two-bedroom/two-bath units
48	three-bedroom/two-bath units
24	four-bedroom/two-bath units
<hr/>	
180	Total Units

Unit sizes will range from approximately 851 square feet to approximately 1,517 square feet.

# 21604 Meadowbrook - Application Summary

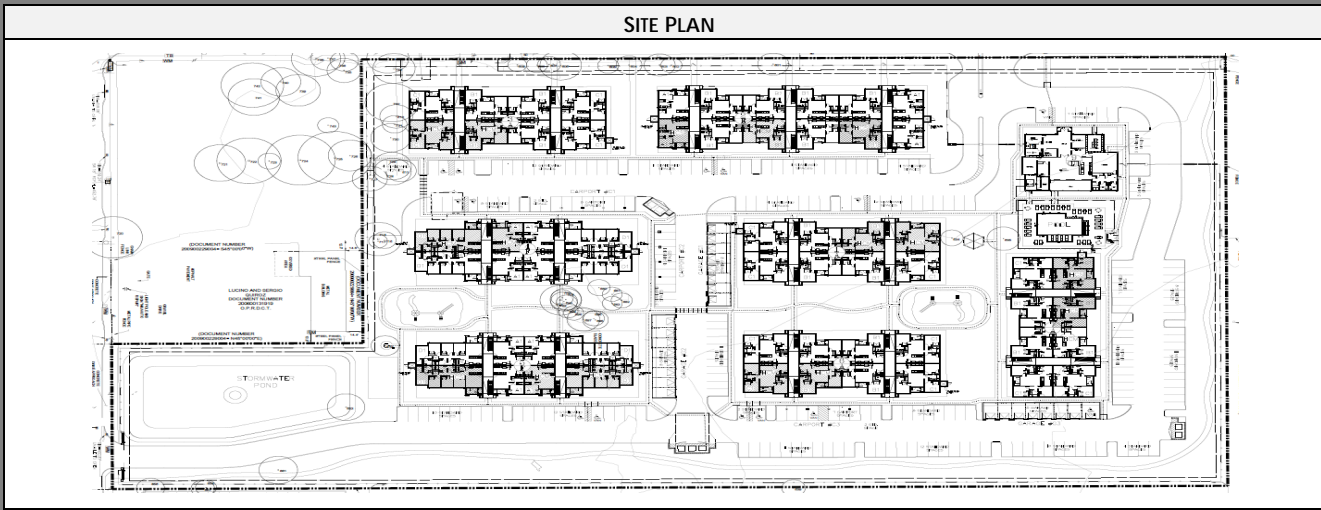
PROPERTY IDENTIFICATION		RECOMMENDATION			
Application #	21604	TDHCA Program	Request	Recommended	
Development	Meadowbrook	LIHTC (4% Credit)	\$1,823,422	\$1,823,422	\$10,130/Unit
City / County	Dallas / Dallas				\$0.82
Region/Area	3 / Urban				
Population	General				
Set-Aside	General				
Activity	New Construction	Private Activity Bonds	\$30,000,000		

KEY PRINCIPALS / SPONSOR			
LDG Development/Jason Trevino Developer/Guarantor			
Related Parties	Contractor -	Yes	Seller - No



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
1	36	20%	30%	-	0%
2	72	40%	40%	-	0%
3	48	27%	50%	-	0%
4	24	13%	60%	162	90%
			MR	18	10%
<b>TOTAL</b>	<b>180</b>	<b>100%</b>	<b>TOTAL</b>	<b>180</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	1.18	Expense Ratio	34.0%
Breakeven Occ.	83.2%	Breakeven Rent	\$1,082
Average Rent	\$1,205	B/E Rent Margin	\$124
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	\$4,626/unit	Controllable	\$3,375/unit



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (15% Maximum)			11.9%
Highest Unit Capture Rate	41%	3 BR/60%	42
Dominant Unit Cap. Rate	35%	2 BR/60%	64
Premiums (↑60% Rents)	Yes		\$190/Avg.
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY			
Costs Underwritten		Applicant's Costs	
Avg. Unit Size	1,153 SF	Density	18.7/acre
Acquisition		\$12K/unit	\$2,156K
Building Cost	\$97.15/SF	\$112K/unit	\$20,158K
Hard Cost		\$137K/unit	\$24,736K
Total Cost		\$249K/unit	\$44,890K
Developer Fee	\$5,094K	(68% Deferred)	Paid Year: 10
Contractor Fee	\$3,250K	30% Boost	Yes

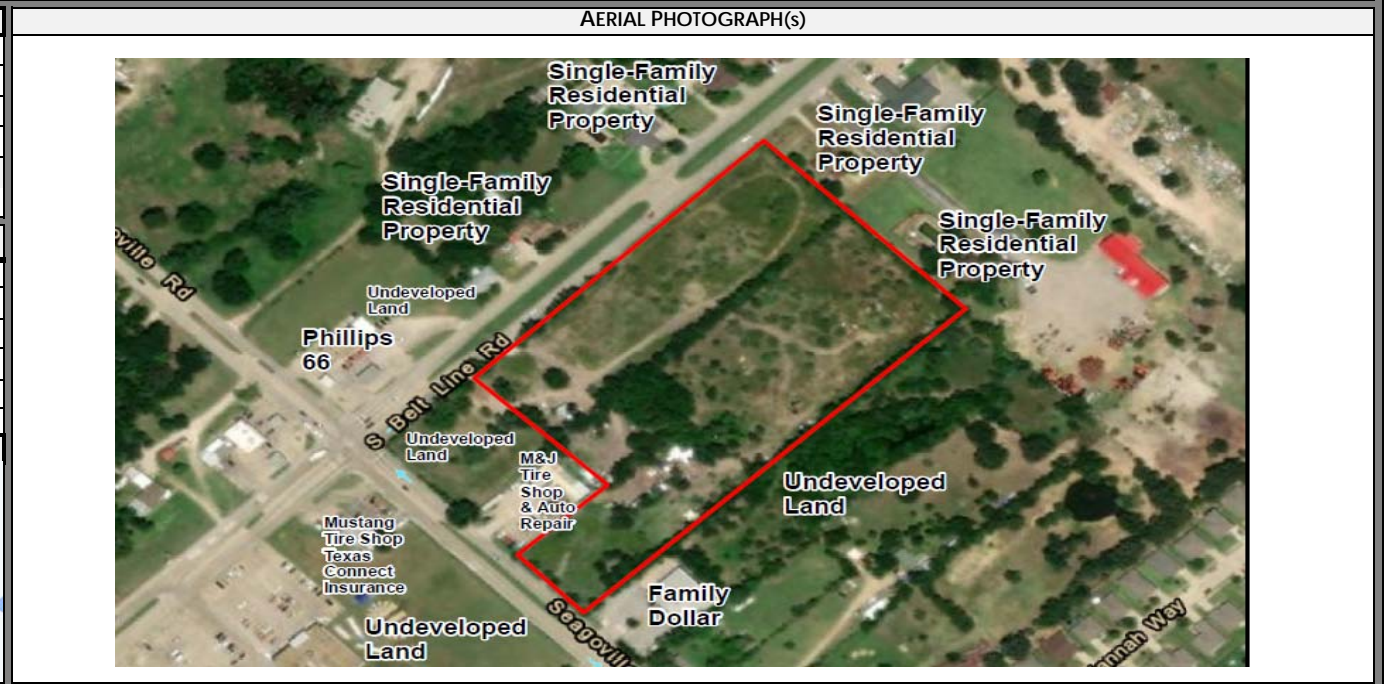
DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES	
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount
R4CF	16/40	4.09%	\$26,399,000	1.18						R4	\$15,040,226
										LDG Multifamily, LLC	\$3,450,998
<b>TOTAL DEBT (Must Pay)</b>			<b>\$26,399,000</b>		<b>CASH FLOW DEBT / GRANTS</b>			<b>\$0</b>		<b>TOTAL EQUITY SOURCES</b>	<b>\$18,491,224</b>
										<b>TOTAL DEBT SOURCES</b>	<b>\$26,399,000</b>
										<b>TOTAL CAPITALIZATION</b>	<b>\$44,890,224</b>

**CONDITIONS**

- Receipt and acceptance by Cost Certification:
  - a: Architect certification that all noise assessment recommendations were implemented and the Development is compliant with HUD noise guidelines.
  - b: Confirmation that the minimum number of parking spaces required by the City are and will continue to be available to tenants free of charge.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

BOND RESERVATION / ISSUER	
Issuer	TDHCA
Expiration Date	12/6/2021
Bond Amount	\$30,000,000
BRB Priority	Priority 3
Bond Structure	
% Financed with Tax-Exempt Bonds	81.9%
RISK PROFILE	
STRENGTHS/MITIGATING FACTORS	
▫ Developer experience	
▫ Occupancy high in market	
▫ Located in proximity to jobs area	
WEAKNESSES/RISKS	
▫ Debt coverage at 1.18 times	
AREA MAP	





**DEVELOPMENT IDENTIFICATION**

TDHCA Application #: 21604 Program(s): TDHCA Bonds/4% HTC

Meadowbrook

Address/Location: 15251 Seagoville Rd

City: Dallas County: Dallas Zip: 75253

Population: General Program Set-Aside: General Area: Urban

Activity: New Construction Building Type: Garden (Up to 4-story) Region: 3

Analysis Purpose: New Application - Initial Underwriting

**ALLOCATION**

TDHCA Program	REQUEST		RECOMMENDATION	
	Amount		Amount	
Private Activity Bonds	\$30,000,000		\$30,000,000	
LIHTC (4% Credit)	\$1,823,422		\$1,823,422	

**CONDITIONS**

- Receipt and acceptance by Cost Certification:
    - a: Architect certification that all noise assessment recommendations were implemented and the Development is compliant with HUD noise guidelines.
    - b: **Confirmation that the minimum number of parking spaces required by the City are and will continue to be available to tenants free of charge.**
- Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

**SET-ASIDES**

TDHCA SET-ASIDES for HTC LURA		
Income Limit	Rent Limit	Number of Units
60% of AMI	60% of AMI	162



## DEVELOPMENT SUMMARY

Meadowbrook is a new construction of 180 garden style general units, ranging from 1 to 4 bedrooms. 162 units will be limited to 60% and the remaining 18 will be market rate. The property will have numerous resident amenities, including a pool, playgrounds, fitness center, business center, community room and kitchen, theatre, and will offer carports and garages for additional costs.

The developer and contractor both have extensive experience working with MRB HTC deals in Texas, with over 30 deals being awarded to them since 2005.

Number of renter households is expected to continue growing in the market. Occupancy is currently over 95% for the market so the property will be easily absorbed once completed.

## RISK PROFILE

STRENGTHS/MITIGATING FACTORS	
▫	Developer experience
▫	Occupancy high in market
▫	Located in proximity to jobs area

WEAKNESSES/RISKS	
▫	Debt coverage at 1.18 times
▫	
▫	

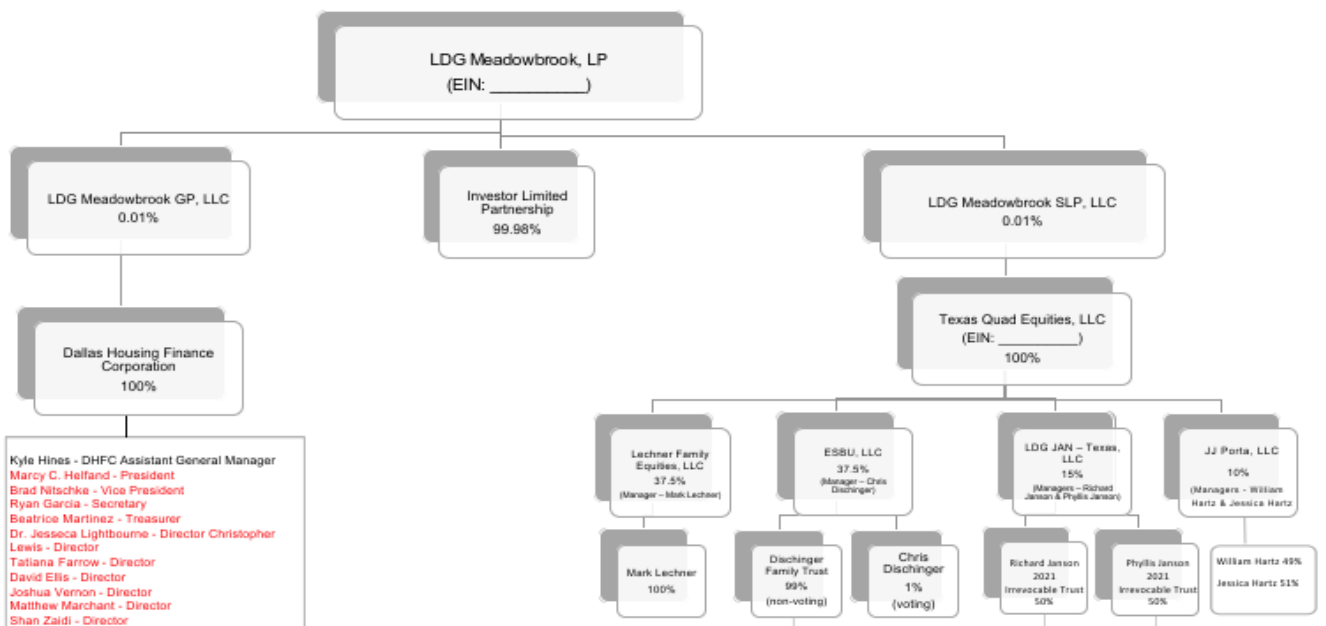
## DEVELOPMENT TEAM

### PRIMARY CONTACTS

Name: Jason Trevino  
 Phone: (512) 578-8488  
 Relationship: Developer

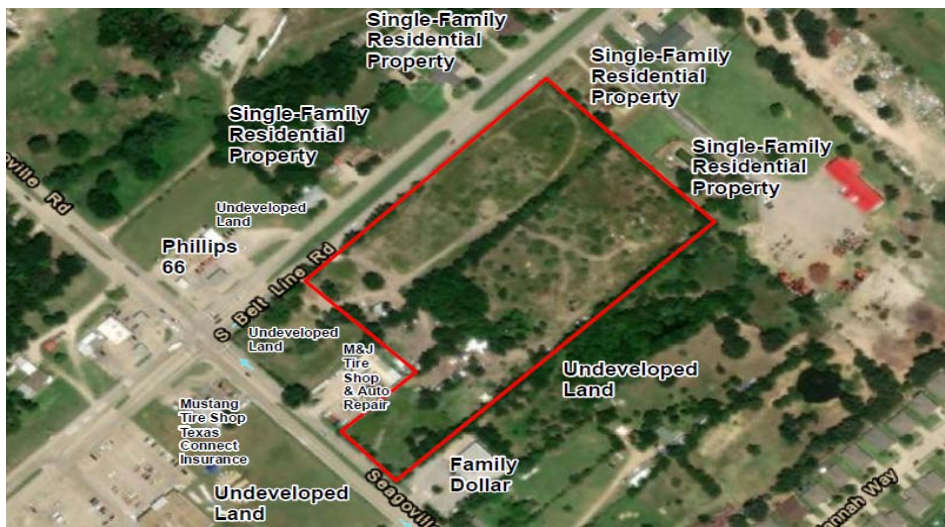
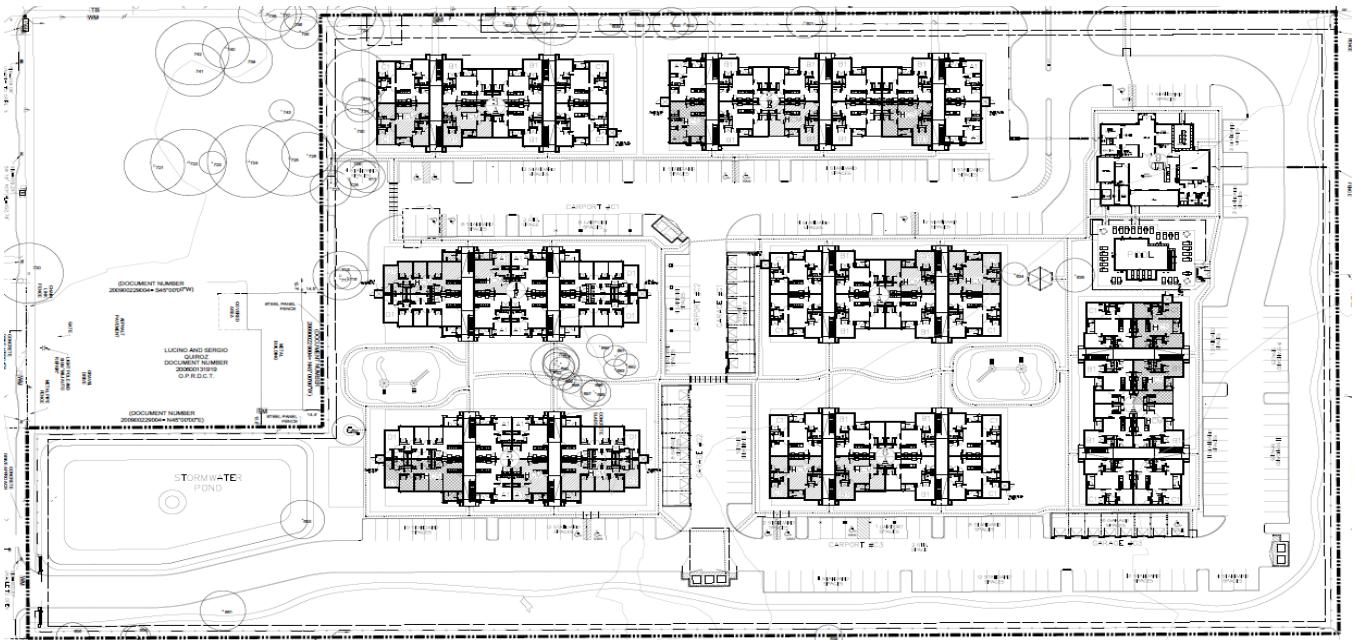
Name: William Justin Hartz  
 Phone: (502) 931-5795  
 Relationship: Developer

## OWNERSHIP STRUCTURE



# DEVELOPMENT SUMMARY

## SITE PLAN



### Comments:

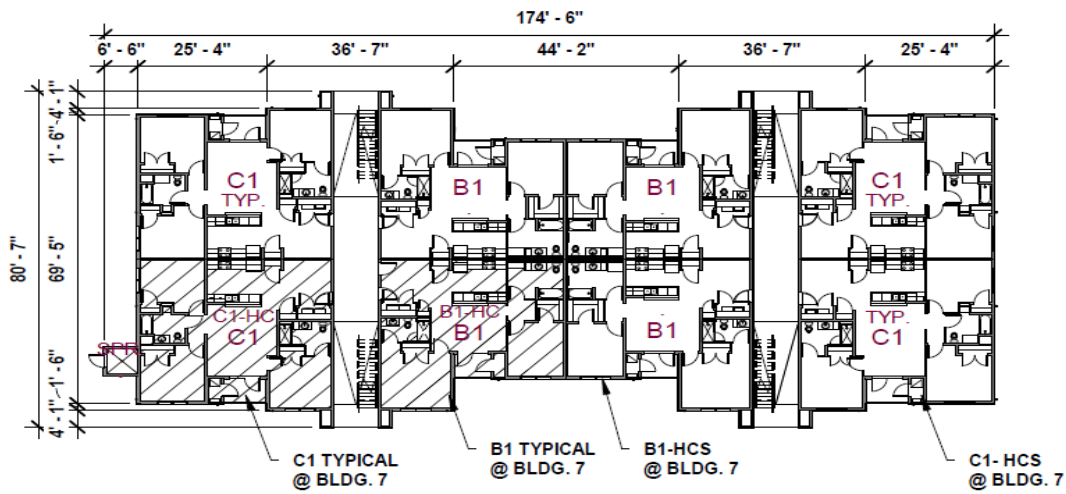
The northern six acres of the site drain to Belt Line Road at an approximate 2% slope and the southern five acres of the site drain to Seagoville Road at an approximate 1% slope. Site includes extensive green space between buildings. Site will include resident amenities including 2 playgrounds, a pool, fitness center, business center, community room and kitchen, and theater.

Parking	No Fee		Tenant-Paid		Total	
	Count	Cost/unit	Count	Cost/unit	Count	Cost/unit
Open Surface	211	1.2/unit	0	--	211	1.2/unit
Carport	0	--	24	0.1/unit	24	0.1/unit
Garage	0	--	24	0.1/unit	24	0.1/unit
<b>Total Parking</b>	<b>211</b>	<b>1.2/unit</b>	<b>48</b>	<b>0.3/unit</b>	<b>259</b>	<b>1.4/unit</b>

Comments:

Site plan includes 211 open parking spaces that will be available free of charge, and 48 carports and garages for which the Applicant intends to charge fees. But the City requires 225 spaces, and the QAP states that the minimum number of spaces required by local code must be available free of charge. When the Development places in service, a minimum of 225 spaces must be available at no charge to the tenants.

BUILDING PLAN (Typical)



Comments:

Units will have small balconies and will contain washer/dryer hookups.  
 Two-bedroom and four-bedroom units have walk in closets.  
 Plumbing run is inefficient.

BUILDING ELEVATION





**HIGHLIGHTS of ENVIRONMENTAL REPORTS**

Provider: Phase Engineering, Inc. Date: 3/11/2021

Recognized Environmental Conditions (RECs) and Other Concerns:

- None

Comments:

Northwest building in noise study had a DNL of 66 dB, considered "Normally Unacceptable". Noise mitigation will be required.

**MARKET ANALYSIS**

Provider: Apartment MarketData, LLC Date: 2/25/2021  
 Contact: Darrell G Jack Phone: 210-530-0040

Primary Market Area (PMA): 28 sq. miles 3 mile equivalent radius

ELIGIBLE HOUSEHOLDS BY INCOME								
Dallas County Income Limits								
HH Size		1	2	3	4	5	6	7+
60% AMGI	Min	\$30,030	\$30,030	\$36,030	\$36,030	\$41,670	\$41,670	\$46,470
	Max	\$36,240	\$41,400	\$46,560	\$51,720	\$55,860	\$60,000	\$70,500

AFFORDABLE HOUSING INVENTORY						
Competitive Supply (Proposed, Under Construction, and Unstabilized)						
File #	Development	In PMA?	Type	Target Population	Comp Units	Total Units
21605	Palladium Simpson Stuart	No	New	General	181	270
21432	Oakwood	No	New	General	288	288
19604	Ventura at Hickory Tree	No	New	General	216	216
Other Affordable Developments in PMA since 2016						
21614	Murdeaux Villas		A/R	General	n/a	302
21436	Riverstation Apartments		A/R	General	n/a	280
18614	Springs Apartments		New	General	n/a	221
18600	Forestwood		New	General	n/a	220
<b>Stabilized Affordable Developments in PMA</b>					Total Units	2,302
					Total Developments	11
					Average Occupancy	96%

OVERALL DEMAND ANALYSIS				
	Market Analyst			
	HTC	Assisted		
Total Households in the Primary Market Area	30,446			
Potential Demand from the Primary Market Area	5,094			
10% External Demand	509			
Potential Demand from Other Sources	0			
<b>GROSS DEMAND</b>	<b>5,603</b>			
Subject Affordable Units	162			
Unstabilized Competitive Units	504			
<b>RELEVANT SUPPLY</b>	<b>666</b>			
<b>Relevant Supply ÷ Gross Demand = GROSS CAPTURE RATE</b>	<b>11.9%</b>			

Population:	<b>General</b>	Market Area:	<b>Urban</b>	Maximum Gross Capture Rate:	<b>15%</b>
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UNDERWRITING ANALYSIS of PMA DEMAND by AMGI BAND						
	Market Analyst					
AMGI Band	Demand	10% Ext	Subject Units	Comp Units	AMGI Band Capture Rate	
60% AMGI	5,094	509	162	504	12%	

**Demand Analysis:**

Market Analyst included Oakwood (proposed) and Ventura at Hickory Tree, both located outside the PMA, in the GCR calculations. Underwriter has identified an additional 181 competitive units outside the PMA located at Palladium Simpson Stuart.

If we included the 181 competitive units that are located outside the Subject PMA, but share some census tracts, the GCR would be 15.1%. This is a worst case scenario as it includes the outside supply, but none of the additional demand from Palladium Simpson's PMA.

UNDERWRITING ANALYSIS of PMA DEMAND by UNIT TYPE						
	Market Analyst					
Unit Type	Demand	10% Ext	Subject Units	Comp Units	Unit Capture Rate	
1 BR/60%	481	48	34	96	25%	
2 BR/60%	703	70	64	204	35%	
3 BR/60%	498	50	42	180	41%	
4 BR/60%	226	23	22	24	19%	

Market Analyst Comments:

Per TDHCA rules, as the Subject is a 4% general population bond development in a large MSA with high physical occupancy, the Gross Capture Rate is limited at 15%, not 10%.

The current occupancy rate of competing affordable properties is 97.6%, with many of these being built in the 1990's. Due to their age, many of these properties are becoming run down, creating a strong need for new, quality affordable housing in the area.

There is expected to be a 4.9% increase in the number of renter households in the next 4 years.

**OPERATING PRO FORMA**

SUMMARY- AS UNDERWRITTEN (Applicant's Pro Forma)					
NOI:	\$1,615,195	Avg. Rent:	\$1,205	Expense Ratio:	34.0%
Debt Service:	\$1,368,165	B/E Rent:	\$1,082	Controllable Expenses:	\$3,375
Net Cash Flow:	\$247,030	UW Occupancy:	92.5%	Property Taxes/Unit:	\$0
Aggregate DCR:	1.18	B/E Occupancy:	83.2%	Program Rent Year:	2021

Underwriting assumes maximum HTC rents. The Development includes 18 unrestricted market units (10% of mix). Underwriting assumes Applicant's market rents which are less than the 70% gross rents, and \$90-\$150 above gross 60% rents.

Applicant has elected to use income averaging, all units have been designated at 60% AMI.

Applicant included 2.5% management fee. Underwriter adjusted to 3.0% per §11.302(d)(2)(B).

Low expense ratio of 34% is due to the property tax exemption achieved through the partnership with the Dallas Housing Finance Corporation, as well as high Program Rents resulting from high Dallas MSA median income.

Without the tax exemption, debt coverage would fall to 0.92 and the development would be infeasible.

\$7.2K of supportive services will be underwritten at cost certification.

Project is underwritten at 13.5 units vacant; breakeven vacancy is 30 units.

68% deferred developer fee pays off in year 10; 15 year residual cash flow of \$3.1M

## DEVELOPMENT COST EVALUATION

### SUMMARY- AS UNDERWRITTEN (Applicant's Costs)

Acquisition	\$224,046/ac	\$11,979/unit	\$2,156,220	Contractor Fee	\$3,250,120
Off-site + Site Work		\$17,361/unit	\$3,125,000	Soft Cost + Financing	\$8,782,587
Building Cost	\$97.15/sf	\$111,989/unit	\$20,158,000	Developer Fee	\$5,094,455
Contingency	6.24%	\$8,072/unit	\$1,452,906	Reserves	\$870,936
<b>Total Development Cost</b>	<b>\$249,390/unit</b>	<b>\$44,890,224</b>		<b>Rehabilitation Cost</b>	<b>N/A</b>
<b>Qualified for 30% Basis Boost?</b>	Located in QCT with < 20% HTC units/HH				

**Acquisition:**

\$224K/acre is a moderate land price. This is a developing area in the opposite direction of Fort Worth, putting it outside of the high cost areas of the market.

**Site Work:**

Site work costs of \$15K/unit include usual site costs of detention, grading, utilities, and grading.

**Building Cost:**

Underwriter's estimate of \$103.96/SF is 6.6% higher than Applicant's building cost of \$97.15/SF. Underwriter's estimate is based on Marshall & Swift's "good" base cost adjusted for a 3 story garden style build. Breezeways are not conditioned.

**Contingency:**

Total contingency is 6.24%. Underwriter moved the \$150k of soft cost contingency from financing to contingency.

**Contractor Fee:**

Total contractor fee of 13.14% is compliant with regulations. Underwriter has included VCDC Administrative Fee in Contractor Fee calculation.

**Soft Costs:**

Underwriter moved \$150k of FFE from Financing costs to soft costs.

**Developer Fee:**

Total developer fee of 14.78% is compliant with regulations.

**Reserves:**

Reserves represent 5 months of operating expenses and debt service.

**Comments:**

Total development cost is \$249K/unit.

**Credit Allocation Supported by Costs:**

Total Development Cost	Adjusted Eligible Cost	Credit Allocation Supported by Eligible Basis
\$44,890,224	\$39,057,491	\$1,823,498



## UNDERWRITTEN CAPITALIZATION

### BOND RESERVATION

Issuer	Amount	Reservation Date	Priority
TDHCA	\$30,000,000	6/9/2021	Priority 3
<b>Closing Deadline</b>			
12/6/2021			

<b>Percent of Cost Financed by Tax-Exempt Bonds</b>	<b>81.9%</b>
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### INTERIM SOURCES

Funding Source	Description	Amount	Rate	LTC
R4CF	Conventional Loan	\$30,000,000	4.09%	74%
R4CF	Taxable Bonds	\$4,000,000	4.65%	10%
R4	HTC	\$6,768,102	\$0.83	17%
		<b>\$40,768,102</b>	<b>Total Sources</b>	

### PERMANENT SOURCES

Debt Source	PROPOSED				UNDERWRITTEN				
	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	LTC
R4CF	\$26,399,000	4.09%	40	16	\$26,399,000	4.09%	40	16	59%
<b>Total</b>	<b>\$26,399,000</b>				<b>\$26,399,000</b>				

Comments:

\$26.39M of post-construction bonds are subject to 0.10% fee.

Equity & Deferred Fees	PROPOSED			UNDERWRITTEN			
	Amount	Rate	% Def	Amount	Rate	% TC	% Def
R4	\$15,040,226	\$0.82		\$15,040,226	\$0.82	34%	
LDG Multifamily, LLC	\$3,465,998		68%	\$3,450,998		8%	68%
<b>Total</b>	<b>\$18,506,224</b>			<b>\$18,491,224</b>			
				<b>\$44,890,224</b>	<b>Total Sources</b>		

#### Credit Price Sensitivity based on current capital structure

<b>\$1.014</b>	Maximum Credit Price before the Development is oversourced and allocation is limited
<b>\$0.735</b>	Minimum Credit Price below which the Development would be characterized as infeasible

## CONCLUSIONS

**Recommended Financing Structure:**

Gap Analysis:	
Total Development Cost	\$44,890,224
Permanent Sources (debt + non-HTC equity)	\$26,399,000
<b>Gap in Permanent Financing</b>	<b>\$18,491,224</b>

Possible Tax Credit Allocations:	Equity Proceeds	Annual Credits
Determined by Eligible Basis	\$15,040,850	\$1,823,498
Needed to Balance Sources & Uses	\$18,491,224	\$2,241,808
Requested by Applicant	\$15,040,226	\$1,823,422

	RECOMMENDATION	
	Equity Proceeds	Annual Credits
<b>Tax Credit Allocation</b>	<b>\$15,040,226</b>	<b>\$1,823,422</b>

	Amount	
<b>TDHCA-Issued Bonds</b>	<b>\$30,000,000</b>	

<b>Deferred Developer Fee</b>	<b>\$3,450,998</b>	( 68% deferred)
<b>Repayable in</b>	<b>10 years</b>	

**Comments:**

Underwriter recommends the annual credit allocation of \$1,823,442 as requested by Applicant.

Underwriter:	<i>Jeff Price</i>
Manager of Real Estate Analysis:	<i>Jeanna Adams</i>
Director of Real Estate Analysis:	<i>Thomas Cavanagh</i>

## UNIT MIX/RENT SCHEDULE

*Meadowbrook, Dallas, TDHCA Bonds/4% HTC #21604*

LOCATION DATA	
CITY:	Dallas
COUNTY:	Dallas
Area Median Income	\$89,000
PROGRAM REGION:	3
PROGRAM RENT YEAR:	2021

UNIT DISTRIBUTION				
# Beds	# Units	% Total	Assisted	MDL
Eff	-	0.0%	0	0
1	36	20.0%	0	0
2	72	40.0%	0	0
3	48	26.7%	0	0
4	24	13.3%	0	0
5	-	0.0%	0	0
<b>TOTAL</b>	<b>180</b>	<b>100.0%</b>	<b>-</b>	<b>-</b>

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjust	130%
Applicable Fraction	89.78%
APP % Acquisition	4.00%
APP % Construction	4.00%
Average Unit Size	1,153 sf

60%	Income	20%	30%	40%	50%	60%	70%	80%	MR	TOTAL
Average	# Units	-	-	-	-	162	-	-	18	180
Income	% Total	0.0%	0.0%	0.0%	0.0%	90.0%	0.0%	0.0%	10.0%	100.0%

## UNIT MIX / MONTHLY RENT SCHEDULE

HTC		UNIT MIX				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS		
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	Mrkt Analyst	
TC 60%	\$1,001	24	1	1	851	\$1,001	\$63	\$938	\$0	\$1.10	\$938	\$22,512	\$22,512	\$938	\$1	\$0	\$1,172	\$1.38	\$1,172
TC 60%	\$1,001	10	1	1	857	\$1,001	\$63	\$938	\$0	\$1.09	\$938	\$9,380	\$9,380	\$938	\$1	\$0	\$1,172	\$1.37	\$1,172
MR		2	1	1	857	\$0	\$63		NA	\$1.32	\$1,133	\$2,266	\$2,266	\$1,133	\$1	NA	\$1,172	\$1.37	\$1,172
TC 60%	\$1,201	64	2	2	1,097	\$1,201	\$68	\$1,133	\$0	\$1.03	\$1,133	\$72,512	\$72,512	\$1,133	\$1	\$0	\$1,525	\$1.39	\$1,525
MR		8	2	2	1,097	\$0	\$68		NA	\$1.17	\$1,288	\$10,304	\$10,304	\$1,288	\$1	NA	\$1,525	\$1.39	\$1,525
TC 60%	\$1,389	42	3	2	1,279	\$1,389	\$73	\$1,316	\$0	\$1.03	\$1,316	\$55,272	\$55,272	\$1,316	\$1	\$0	\$1,683	\$1.32	\$1,683
MR		6	3	2	1,279	\$0	\$73		NA	\$1.17	\$1,494	\$8,964	\$8,964	\$1,494	\$1	NA	\$1,683	\$1.32	\$1,683
TC 60%	\$1,549	22	4	2	1,517	\$1,549	\$80	\$1,469	\$0	\$0.97	\$1,469	\$32,318	\$32,318	\$1,469	\$1	\$0	\$2,054	\$1.35	\$2,054
MR		2	4	2	1,517	\$0	\$80		NA	\$1.12	\$1,700	\$3,400	\$3,400	\$1,700	\$1	NA	\$2,054	\$1.35	\$2,054
<b>TOTALS/AVERAGES:</b>		<b>180</b>			<b>207,492</b>				<b>\$0</b>	<b>\$1.05</b>	<b>\$1,205</b>	<b>\$216,928</b>	<b>\$216,928</b>	<b>\$1,205</b>	<b>\$1.05</b>	<b>\$0</b>	<b>\$1,567</b>	<b>\$1.36</b>	<b>\$1,567</b>

<b>ANNUAL POTENTIAL GROSS RENT:</b>		<b>\$2,603,136</b>	<b>\$2,603,136</b>
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## STABILIZED PRO FORMA

*Meadowbrook, Dallas, TDHCA Bonds/4% HTC #21604*

### STABILIZED FIRST YEAR PRO FORMA

	COMPARABLES		APPLICANT				TDHCA				VARIANCE	
	Database	County Comps	% EGI	Per SF	Per Unit	Amount	Amount	Per Unit	Per SF	% EGI	%	\$
	<b>POTENTIAL GROSS RENT</b>				\$1.05	\$1,205	\$2,603,136	\$2,603,136	\$1,205	\$1.05		0.0%
Late, Pet and Application Fees					\$20.00	\$43,200						
Total Secondary Income					\$20.00		\$43,200	\$20.00			0.0%	\$0
<b>POTENTIAL GROSS INCOME</b>						\$2,646,336	\$2,646,336				0.0%	\$0
Vacancy & Collection Loss				7.5% PGI		(198,475)	(198,475)	7.5% PGI			0.0%	-
<b>EFFECTIVE GROSS INCOME</b>						\$2,447,861	\$2,447,861				0.0%	\$0

General & Administrative	\$118,869	\$660/Unit	\$61,265	\$340	3.49%	\$0.41	\$475	\$85,500	\$85,500	\$475	\$0.41	3.49%	0.0%	-
Management	\$101,110	3.5% EGI	\$78,678	\$437	3.00%	\$0.35	\$408	\$73,436	\$73,436	\$408	\$0.35	3.00%	0.0%	-
Payroll & Payroll Tax	\$242,847	\$1,349/Unit	\$183,641	\$1,020	10.29%	\$1.21	\$1,400	\$252,000	\$252,000	\$1,400	\$1.21	10.29%	0.0%	-
Repairs & Maintenance	\$126,088	\$700/Unit	\$99,071	\$550	5.15%	\$0.61	\$700	\$126,000	\$117,000	\$650	\$0.56	4.78%	7.7%	9,000
Electric/Gas	\$53,689	\$298/Unit	\$18,521	\$103	2.08%	\$0.25	\$283	\$51,000	\$37,764	\$210	\$0.18	1.54%	35.0%	13,236
Water, Sewer, & Trash	\$130,860	\$727/Unit	\$138,773	\$771	3.80%	\$0.45	\$517	\$93,000	\$138,773	\$771	\$0.67	5.67%	-33.0%	(45,773)
Property Insurance	\$65,503	\$0.32 /sf	\$58,143	\$323	2.94%	\$0.35	\$400	\$72,000	\$72,000	\$400	\$0.35	2.94%	0.0%	-
Property Tax (@ 0%) 2.7129	\$250,284	\$1,390/Unit	\$123,542	\$686	0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-
Reserve for Replacements					1.84%	\$0.22	\$250	\$45,000	\$45,000	\$250	\$0.22	1.84%	0.0%	-
Supportive Services					0.29%	\$0.03	\$40	\$7,200	\$7,200	\$40	\$0.03	0.29%	0.0%	-
TDHCA Compliance fees (\$40/HTC unit)					0.26%	\$0.03	\$36	\$6,480	\$6,480	\$36	\$0.03	0.26%	0.0%	-
TDHCA Bond Compliance Fee					0.17%	\$0.02	\$23	\$4,050	\$4,050	\$23	\$0.02	0.17%	0.0%	-
Bond Trustee Fees					0.18%	\$0.02	\$25	\$4,500	\$4,500	\$25	\$0.02	0.18%	0.0%	-
Security					0.37%	\$0.04	\$50	\$9,000	\$9,000	\$50	\$0.04	0.37%	0.0%	-
Alternative UA Study Renewal Fee					0.14%	\$0.02	\$19	\$3,500	\$3,500	\$19	\$0.02	0.14%	0.0%	-
<b>TOTAL EXPENSES</b>					<b>34.02%</b>	<b>\$4.01</b>	<b>\$4,626</b>	<b>\$832,666</b>	<b>\$856,203</b>	<b>\$4,757</b>	<b>\$4.13</b>	<b>34.98%</b>	<b>-2.7%</b>	<b>\$ (23,537)</b>
<b>NET OPERATING INCOME ("NOI")</b>					<b>65.98%</b>	<b>\$7.78</b>	<b>\$8,973</b>	<b>\$1,615,195</b>	<b>\$1,591,658</b>	<b>\$8,843</b>	<b>\$7.67</b>	<b>65.02%</b>	<b>1.5%</b>	<b>\$ 23,537</b>

CONTROLLABLE EXPENSES		\$3,375/Unit		\$3,506/Unit
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**CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS**

*Meadowbrook, Dallas, TDHCA Bonds/4% HTC #21604*

**DEBT / GRANT SOURCES**

APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE															AS UNDERWRITTEN DEBT/GRANT STRUCTURE				
DEBT (Must Pay)	Fee	Cumulative DCR		Pmt	Rate	Amort	Term	Principal	Principal	Term	Amort	Rate	Pmt	Cumulative					
		UW	App											DCR	LTC				
R4CF	0.10%	1.16	1.18	1,372,382	4.09%	40	16	\$26,399,000	\$26,399,000	16	40	4.09%	\$1,368,165	1.18	58.8%				
				<b>\$1,372,382</b>	<b>TOTAL DEBT / GRANT SOURCES</b>			<b>\$26,399,000</b>	<b>\$26,399,000</b>	<b>TOTAL DEBT SERVICE</b>			<b>\$1,368,165</b>	<b>1.18</b>	<b>58.8%</b>				
<b>NET CASH FLOW</b>		\$219,276	\$242,813	<b>APPLICANT</b>					<b>NET OPERATING INCOME</b>		\$1,615,195	\$247,030	<b>NET CASH FLOW</b>						

**EQUITY SOURCES**

APPLICANT'S PROPOSED EQUITY STRUCTURE												AS UNDERWRITTEN EQUITY STRUCTURE			
EQUITY / DEFERRED FEES	DESCRIPTION	% Cost	Annual Credit	Credit Price	Amount	Amount	Credit Price	Annual Credit	% Cost	Annual Credits per Unit	Allocation Method				
												R4	LIHTC Equity	33.5%	\$1,823,422
LDG Multifamily, LLC	Deferred Developer Fees	7.7%	(68% Deferred)		\$3,465,998	\$3,450,998	(68% Deferred)		7.7%	<b>Total Developer Fee: \$5,094,455</b>					
Additional (Excess) Funds Req'd		0.0%			\$0				0.0%						
<b>TOTAL EQUITY SOURCES</b>		<b>41.2%</b>			<b>\$18,506,224</b>	<b>\$18,491,224</b>			<b>41.2%</b>						
<b>TOTAL CAPITALIZATION</b>						<b>\$44,905,224</b>	<b>\$44,890,224</b>	<b>15-Yr Cash Flow after Deferred Fee:</b>			<b>\$3,066,485</b>				

**DEVELOPMENT COST / ITEMIZED BASIS**

APPLICANT COST / BASIS ITEMS													TDHCA COST / BASIS ITEMS					COST VARIANCE	
	Eligible Basis		Total Costs		Total Costs	Eligible Basis		Total Costs		Total Costs	%	\$							
	Acquisition	New Const. Rehab				New Const. Rehab	Acquisition												
Land Acquisition			\$11,979 / Unit	\$2,156,220	\$2,156,220	\$11,979 / Unit					0.0%	\$0							
Off-Sites			\$ / Unit	\$0	\$0	\$ / Unit					0.0%	\$0							
Site Work		\$2,700,000	\$15,000 / Unit	\$2,700,000	\$2,700,000	\$15,000 / Unit		\$2,700,000			0.0%	\$0							
Site Amenities		\$425,000	\$2,361 / Unit	\$425,000	\$425,000	\$2,361 / Unit		\$425,000			0.0%	\$0							
Building Cost		\$19,800,000	\$97.15 /sf	\$111,989/Unit	\$20,158,000	\$21,571,103	\$119,839/Unit	\$103.96 /sf	\$19,800,000		-6.6%	(\$1,413,103)							
Contingency		\$1,302,906	5.68%	6.24%	\$1,452,906	\$1,452,906	5.88%	5.68%	\$1,302,906		0.0%	\$0							
Contractor Fees		\$3,250,120	13.41%	13.14%	\$3,250,120	\$3,250,120	12.43%	13.41%	\$3,250,120		0.0%	\$0							
Soft Costs	\$0	\$3,801,250		\$21,118 / Unit	\$3,801,250	\$3,801,250		\$21,118 / Unit	\$3,801,250	\$0	0.0%	\$0							
Financing	\$0	\$2,683,760		\$27,674 / Unit	\$4,981,337	\$4,981,337		\$27,674 / Unit	\$2,683,760	\$0	0.0%	\$0							
Developer Fee	\$0	\$5,094,455	15.00%	14.78%	\$5,094,455	\$5,094,455	14.20%	15.00%	\$5,094,455	\$0	0.0%	\$0							
Reserves				5 Months	\$870,936	\$870,936		5 Months			0.0%	\$0							
<b>TOTAL HOUSING DEVELOPMENT COST (UNADJUSTED BASIS)</b>			<b>\$0</b>	<b>\$39,057,491</b>	\$249,390 / Unit	<b>\$44,890,224</b>	<b>\$46,303,327</b>	\$257,241 / Unit	<b>\$39,057,491</b>	<b>\$0</b>	<b>-3.1%</b>	<b>(\$1,413,103)</b>							
Acquisition Cost	\$0				\$0														
Contingency		\$0			\$0														
Contractor's Fee		\$0			\$0														
Financing Cost		\$0			\$0														
Developer Fee	\$0	\$0			\$0														
Reserves					\$0														
<b>ADJUSTED BASIS / COST</b>			<b>\$0</b>	<b>\$39,057,491</b>	\$249,390/unit	<b>\$44,890,224</b>	<b>\$46,303,327</b>	\$257,241/unit	<b>\$39,057,491</b>	<b>\$0</b>	<b>-3.1%</b>	<b>(\$1,413,103)</b>							
<b>TOTAL HOUSING DEVELOPMENT COSTS (Applicant's Uses are within 5% of TDHCA Estimate):</b>						<b>\$44,890,224</b>													

**CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS**

*Meadowbrook, Dallas, TDHCA Bonds/4% HTC #21604*

**CREDIT CALCULATION ON QUALIFIED BASIS**

	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction
	<b>ADJUSTED BASIS</b>	\$0	\$39,057,491	\$0
Deduction of Federal Grants	\$0	\$0	\$0	\$0
<b>TOTAL ELIGIBLE BASIS</b>	\$0	\$39,057,491	\$0	\$39,057,491
High Cost Area Adjustment		130%		130%
<b>TOTAL ADJUSTED BASIS</b>	\$0	\$50,774,738	\$0	\$50,774,738
Applicable Fraction	89.78%	89.78%	90%	90%
<b>TOTAL QUALIFIED BASIS</b>	\$0	\$45,587,440	\$0	\$45,587,440
Applicable Percentage	4.00%	4.00%	4.00%	4.00%
<b>ANNUAL CREDIT ON BASIS</b>	0	\$1,823,498	\$0	\$1,823,498
<b>CREDITS ON QUALIFIED BASIS</b>	\$1,823,498		\$1,823,498	

Method	ANNUAL CREDIT CALCULATION BASED ON APPLICANT BASIS		FINAL ANNUAL LIHTC ALLOCATION		
	Annual Credits	Proceeds	Credit Price \$0.8248	Variance to Request	
			Credit Allocation	Credits	Proceeds
<b>Eligible Basis</b>	\$1,823,498	\$15,040,850	----	----	----
<b>Needed to Fill Gap</b>	\$2,241,808	\$18,491,224	----	----	----
<b>Applicant Request</b>	\$1,823,422	\$15,040,226	<b>\$1,823,422</b>	<b>\$0</b>	<b>\$0</b>

50% Test for Bond Financing for 4% Tax Credits					
Tax-Exempt Bond Amount	\$30,000,000		Percent Financed by Tax-Exempt Bonds	Applicant	TDHCA
	Applicant	TDHCA		81.9%	78.9%
Land Cost	\$2,156,220	\$2,156,220	amount aggregate basis can increase before 50% test fails	\$23,372,744	\$21,959,641
Depreciable Bldg Cost	\$34,471,036	\$35,884,139		63.8%	57.7%
<b>Aggregate Basis for 50% Test</b>	<b>\$36,627,256</b>	<b>\$38,040,359</b>			

**BUILDING COST ESTIMATE**

CATEGORY	FACTOR	UNITS/SF	PER SF	
Base Cost: Garden (Up to 4-story)		207,492 SF	\$89.63	18,597,631
<b>Adjustments</b>				
Exterior Wall Finish	2.40%		2.15	\$446,343
Elderly	0.00%		0.00	0
9-Ft. Ceilings	3.30%		2.96	613,722
Roof Adjustment(s)			0.00	0
Subfloor			(0.16)	(33,199)
Floor Cover			7.68	1,594,265
Breezeways	\$29.59	20,386	2.91	603,141
Balconies	\$30.22	9,288	1.35	280,714
Plumbing Fixtures	\$1,080	432	2.25	466,560
Rough-ins	\$530	360	0.92	190,800
Built-In Appliances	\$1,830	180	1.59	329,400
Exterior Stairs	\$2,460	28	0.33	68,880
Heating/Cooling			2.34	485,531
Storage Space	\$29.59	0	0.00	0
Carports	\$13.00	4,050	0.25	52,650
Garages	\$54.50	5,550	1.46	302,475
Common/Support Area	\$91.03	7,060	3.10	642,661
Elevators		0	0.00	0
<b>Other:</b>			0.00	0
Fire Sprinklers	\$2.88	234,938	3.26	676,621
<b>SUBTOTAL</b>			<b>122.02</b>	<b>25,318,196</b>
Current Cost Multiplier	1.00		0.00	0
Local Multiplier	1.00		0.00	0
Reserved				0
<b>TOTAL BUILDING COSTS</b>			<b>122.02</b>	<b>\$25,318,196</b>
Plans, specs, survey, bldg permits	3.30%		(4.03)	(\$835,500)
Contractor's OH & Profit	11.50%		(14.03)	(2,911,593)
<b>NET BUILDING COSTS</b>		\$119,839/unit	\$103.96/sf	\$21,571,103

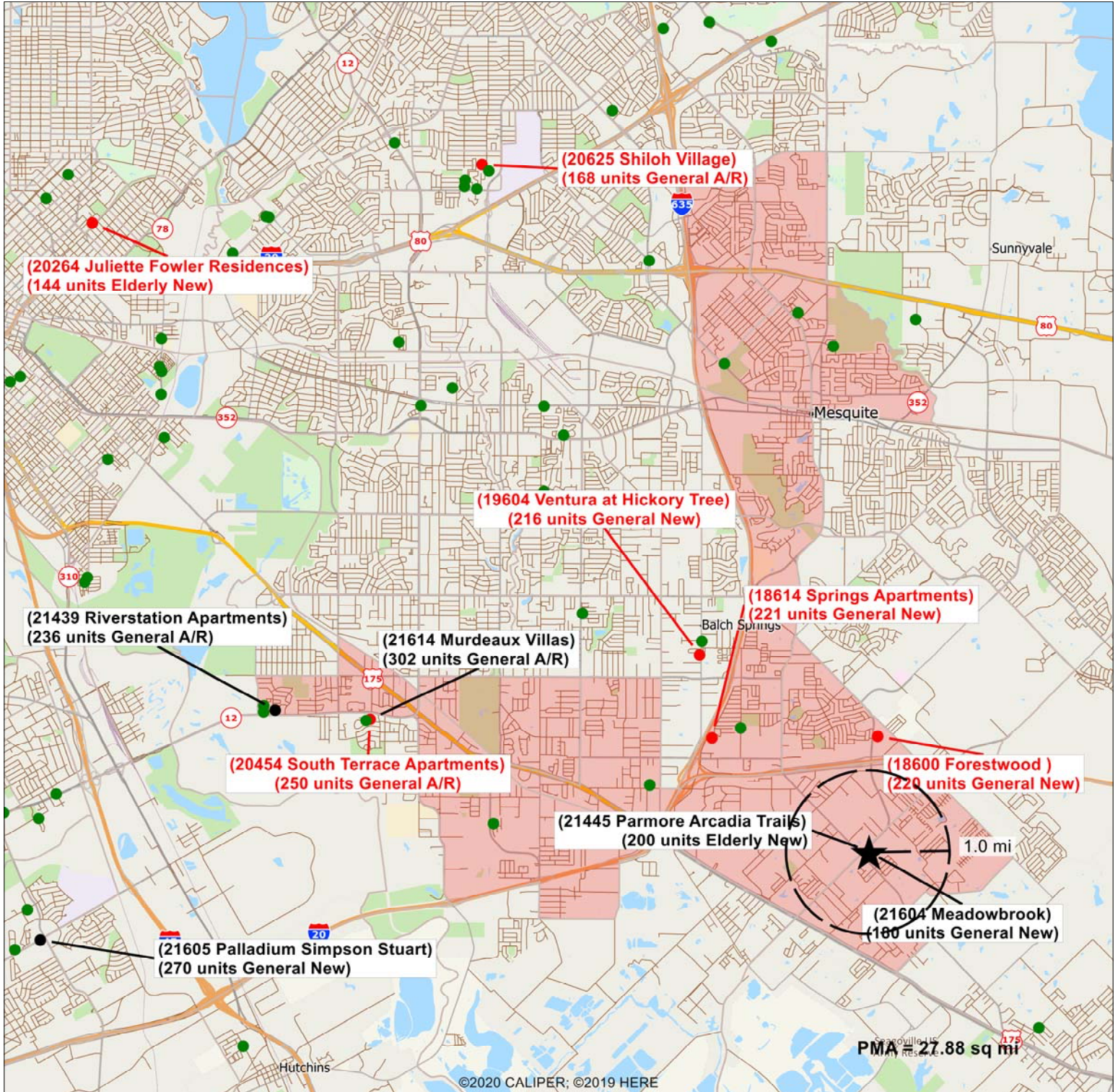
## Long-Term Pro Forma

*Meadowbrook, Dallas, TDHCA Bonds/4% HTC #21604*

	Growth Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 25	Year 30	Year 35	Year 40
EFFECTIVE GROSS INCOME	2.00%	\$2,447,861	\$2,496,818	\$2,546,754	\$2,597,689	\$2,649,643	\$2,925,420	\$3,229,900	\$3,566,071	\$3,937,230	\$4,347,021	\$4,799,462	\$5,298,994
TOTAL EXPENSES	3.00%	\$829,166	\$853,306	\$878,157	\$903,737	\$930,070	\$1,073,819	\$1,240,006	\$1,432,159	\$1,654,360	\$1,911,338	\$2,208,567	\$2,552,387
<b>NET OPERATING INCOME ("NOI")</b>		<b>\$1,618,695</b>	<b>\$1,643,512</b>	<b>\$1,668,598</b>	<b>\$1,693,952</b>	<b>\$1,719,573</b>	<b>\$1,851,601</b>	<b>\$1,989,894</b>	<b>\$2,133,912</b>	<b>\$2,282,870</b>	<b>\$2,435,683</b>	<b>\$2,590,895</b>	<b>\$2,746,607</b>
EXPENSE/INCOME RATIO		33.9%	34.2%	34.5%	34.8%	35.1%	36.7%	38.4%	40.2%	42.0%	44.0%	46.0%	48.2%
<b>MUST -PAY DEBT SERVICE</b>													
TOTAL DEBT SERVICE		\$1,368,165	\$1,367,898	\$1,367,620	\$1,367,330	\$1,367,028	\$1,365,320	\$1,363,224	\$1,360,654	\$1,357,502	\$1,353,636	\$1,348,894	\$1,343,079
DEBT COVERAGE RATIO		1.18	1.20	1.22	1.24	1.26	1.36	1.46	1.57	1.68	1.80	1.92	2.05
<b>ANNUAL CASH FLOW</b>													
		<b>\$250,530</b>	<b>\$275,614</b>	<b>\$300,978</b>	<b>\$326,622</b>	<b>\$352,545</b>	<b>\$486,282</b>	<b>\$626,670</b>	<b>\$773,257</b>	<b>\$925,368</b>	<b>\$1,082,047</b>	<b>\$1,242,001</b>	<b>\$1,403,528</b>
Deferred Developer Fee Balance		\$3,200,468	\$2,924,855	\$2,623,877	\$2,297,255	\$1,944,710	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>CUMULATIVE NET CASH FLOW</b>		<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$216,499</b>	<b>\$3,066,485</b>	<b>\$6,637,234</b>	<b>\$10,957,813</b>	<b>\$16,053,093</b>	<b>\$21,942,187</b>	<b>\$28,636,545</b>



# 21604 Meadowbrook PMA Map



Disclaimer: This map is not a survey. Boundaries, distance and scale are approximate.





## Final Transcript

**TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS:  
Multifamily Bond Hearing**

September 8, 2021/12:00 p.m. CDT

### **SPEAKERS**

Teresa Morales

### **PRESENTATION**

Teresa                    Good afternoon. This is Teresa Morales with the Texas Department of Housing and Community Affairs. The purpose of this call is to conduct a TEFRA public hearing for the proposed Meadowbrook Apartments.

To give folks an idea as to how we're going to proceed, there is a brief speech that I need to read for purposes of meeting the requirements of the Internal Revenue Code, and then it'll be at the conclusion of that speech where I will open up the lines and unmute them. And, if there are any individuals who would like to make public comment that will be your opportunity to do so.

**TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS**

**Host: Teresa Morales**

**September 8, 2021/12:00 p.m. CDT**

**Page 2**

So, let's go ahead and begin and I will start reading the speech.

Good afternoon. My name is Teresa Morales and I would like to proceed with the public hearing. Let the record show that it is 12:04 p.m. on Wednesday, September 8, 2021.

We are conducting a public hearing on behalf of the Texas Department of Housing and Community Affairs, with respect to an issue of tax exempt multifamily revenue bonds for a residential rental community. This hearing is required by the Internal Revenue Code. The sole purpose of this hearing is to provide a reasonable opportunity for interested individuals to express their views regarding the development and the proposed bond issue.

No decisions regarding the development will be made at this hearing. The Department's Board is scheduled to meet to consider the transaction on November 10, 2021. In addition to providing your comments at this hearing, the public is also invited to provide comment directly to the Board at any of their meetings.

**TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS**

**Host: Teresa Morales**

**September 8, 2021/12:00 p.m. CDT**

**Page 3**

The bonds will be issued as tax exempt multifamily revenue bonds in the aggregate principal amount not to exceed \$30 million and taxable bonds if necessary in an amount to be determined and issued in one or more series by the Texas Department of Housing and Community Affairs, the issuer. The proceeds of the bonds will be loaned to LDG Meadowbrook, LP, or a related person or affiliate entity thereof to finance a portion of the costs of acquiring and equipping a multifamily rental housing community described as follows: a 180-unit multifamily residential rental development to be located on approximately 9.62 acres of land located at or near the corner of Seagoville and Beltline Road, Dallas, Dallas County, Texas 75253. The proposed multifamily rental housing community will be initially owned and operated by the borrower or a related person or affiliate thereof.

I would now like to open the floor up for public comment.

Moderator

[Operator instructions].

Teresa

All of the lines have been unmuted. If there are any individuals who wish to make public comment or express their views regarding the proposed property, this would be your opportunity to do so.

**TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS**

**Host: Teresa Morales**  
**September 8, 2021/12:00 p.m. CDT**  
**Page 4**

Again, the lines have been unmuted. If there are any individuals who would like to make public comment, this would be your opportunity to do so.

Let the record show that there are no individuals who have expressed an interest in providing public comment and therefore the meeting is now adjourned. The time is now 12:07 p.m. Thank you.

4b

**BOARD ACTION REQUEST**  
**BOND FINANCE DIVISION**  
**NOVEMBER 10, 2021**

Presentation, discussion, and possible action regarding the Issuance of a Governmental Note (Fiji Lofts) Resolution No. 22-010 and a Determination Notice of Housing Tax Credits

**RECOMMENDED ACTION**

**WHEREAS**, the Board adopted an inducement resolution for Fiji Lofts at the Board meeting of February 11, 2021;

**WHEREAS**, an application for Fiji Lofts requesting 4% Housing Tax Credits, sponsored by Sphinx Development, and the Cameron County Housing Finance Corporation, was submitted to the Department on June 11, 2021;

**WHEREAS**, a Certificate of Reservation was issued in the amount of \$25,000,000 on June 14, 2021, with a bond delivery deadline of December 11, 2021;

**WHEREAS**, pursuant to 10 TAC §11.101(a)(3)(A), the applicant disclosed the presence of two Neighborhood Risk Factors relating to the poverty rate of the census tract containing the proposed development site, and the underperformance of Cedar Crest Elementary;

**WHEREAS**, evidence was submitted to the Department that satisfies the requirement for mitigation related to the poverty rate Neighborhood Risk Factor under 10 TAC §11.101(a)(3)(D)(i) and no further information or action is required;

**WHEREAS**, pursuant to §11.101(a)(3)(C) of the 2021 QAP, no mitigation is required for the underperforming school Neighborhood Risk Factor because this particular Neighborhood Risk Factor was waived for the 2021 program year; and

**WHEREAS**, EARAC recommends approval of the issuance of a Governmental Note (Series 2021) for Fiji Lofts and the issuance of a Determination Notice;

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of a tax-exempt, unrated Governmental Note (Fiji Lofts) Series 2021 in the amount of \$23,849,000, Resolution No. 22-010, is hereby approved in the form presented to this meeting;

**FURTHER RESOLVED**, the issuance of a Determination Notice of \$2,080,856 in 4% Housing Tax Credits for Fiji Lofts, subject to underwriting conditions that may be applicable as

found in the Real Estate Analysis report posted to the Department's website, is hereby approved in the form presented to this meeting; and

**FURTHER RESOLVED**, that if approved, staff is authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

### **BACKGROUND**

*General Information:* The Note will be issued in accordance with Tex. Gov't Code §2306.353 *et seq.*, which authorizes the Department to issue revenue bonds, including notes, for its public purposes, as defined therein. Tex. Gov't Code §2306.472 provides that the Department's revenue bonds are solely obligations of the Department, and do not create an obligation, debt or liability of the State of Texas or a pledge or loan of faith, credit or taxing power of the State of Texas.

*Development Information:* Fiji Lofts is to be located at 301 S Corinth St. Road in Dallas, Dallas County, and proposes the new construction of 174 units that will serve the general population. The Reservation was issued under the Priority 2 designation, which requires that 80% of the units within the development have rents restricted to 60% of Area Median Family Income (AMFI). The application that was submitted to the Department indicates that all 174 units will be rent and income restricted at 60% of AMFI.

The applicant has disclosed two neighborhood risk factors associated with the proposed development site of Fiji Lofts. Specifically, the development site is located within a census tract that has a poverty rate above 40% for individuals, and is within the attendance zone of an underperforming elementary school. In accordance with 10 TAC §11.101(a)(3)(D)(i), mitigation for the poverty rate NRF was submitted to the Department, and reviewed by staff. Based on the information provided related to the declining poverty rate and increases in per capita income of the census tract and surrounding area, staff believes that the poverty rate of the census tract is not of a nature or severity that should render the development site ineligible. The poverty rate within the tract is 42.6% and according to the 2022 Draft Site Demographics Report, the poverty rate has decreased to 41%. As it relates to the school NRF, per the 2021 QAP, no mitigation is required for the underperforming school for 2021 applications.

*Organizational Structure and Previous Participation:* The Borrower is SDC Corinth III, LP and includes the entities and principals as illustrated in Exhibit A. The applicant's portfolio is considered a Category 1 and was deemed acceptable by EARAC.

*Tax Equity and Fiscal Responsibility Act (TEFRA) Public Hearing/Public Comment:* In light of COVID-19 and the inability for an in-person TEFRA hearing to be held, staff conducted a telephonic hearing, in accordance with IRS guidance, for the proposed development on September 9, 2021. Representatives from the Department and the Developer were present, and no public comment was made. A copy of the hearing transcript is included herein. The Department has received a letter of support for the proposed development from Dallas City Councilmember for District 4, Carolyn King Arnold, which is included herein. The Department has received no letters of opposition for the proposed development.

## **Summary of Financial Structure**

Under the proposed structure, the Department will issue an unrated, fixed rate tax-exempt multifamily note in the amount of \$23,849,000 that will be initially purchased by CommunityBank of Texas, who will be serving as construction and permanent lender. The construction phase of the loan will have a term of 30 months, plus two 6-month extension options. Payments during the construction phase will be interest only. For both the construction and permanent phase of the loan the interest rate will be equal to the 19 year LIBOR Swap Index (with a floor of 0.75%) plus a spread of 2.05%, and will be fixed prior to closing. The note will have an 18-year term, a 40-year amortization, and a final maturity date of June 1, 2058.

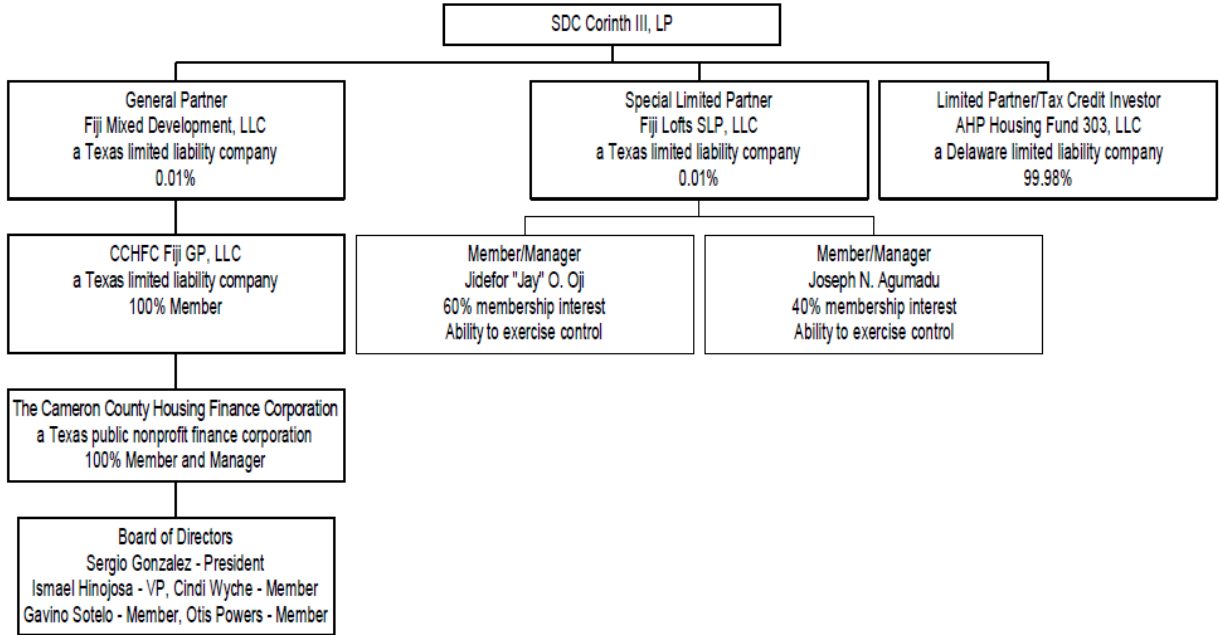
Additionally, CommunityBank of Texas will provide a taxable construction loan in the amount of \$9,500,000; payments on which will be interest only. The interest rate on the taxable construction loan will be variable, equal to the 30-Day Compounded average SOFR (with a floor of 0.39%) as published on the Fed's website plus a spread of 2.86%. and will be adjusted monthly.

A copy of the Exhibits recommended to be approved by the Board as referenced in Resolution No. 22-010 can be found online at TDHCA's Board Meeting Information Center website at <http://www.tdhca.state.tx.us/board/meetings.htm>



# Exhibit A

## Ownership Structure



## RESOLUTION NO. 22-010

RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE, SALE AND DELIVERY OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS GOVERNMENTAL LENDER NOTE (FIJI LOFTS) SERIES 2021; APPROVING THE FORM AND SUBSTANCE AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS AND INSTRUMENTS PERTAINING THERETO; AUTHORIZING AND RATIFYING OTHER ACTIONS AND DOCUMENTS; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended (the "Act"), for the purpose, among others, of providing a means of financing the costs of residential ownership, development, construction and rehabilitation that will provide decent, safe, and affordable living environments for individuals and families of low, very low and extremely low income (as defined in the Act) and families of moderate income (as described in the Act and determined by the Governing Board of the Department (the "Board") from time to time); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the "State") intended to be occupied by individuals and families of low, very low and extremely low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds (including notes), for the purpose, among others, of obtaining funds to make such loans and provide financing, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such multifamily residential rental development loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, the Board has determined to authorize the issuance of its Texas Department of Housing and Community Affairs Multifamily Housing Governmental Note (Fiji Lofts) Series 2021 (the "Governmental Lender Note") pursuant to and in accordance with the terms of a Funding Loan Agreement (the "Funding Loan Agreement") among the Department, CommunityBank of Texas, N.A., a national banking association, as funding lender (the "Funding Lender"), and Wilmington Trust, National Association, as fiscal agent (the "Fiscal Agent"), for the purpose of obtaining funds to finance the Development (defined below), all under and in accordance with the Constitution and laws of the State; and

WHEREAS, the Department desires to use the proceeds of the Governmental Lender Note to fund a mortgage loan to SDC Corinth III, LP, a Texas limited partnership (the

“Borrower”) in order to finance the cost of acquisition, construction and equipping of a qualified residential rental development described in Exhibit A attached hereto (the “Development”) located within the State and required by the Act to be occupied by individuals and families of low and very low income and families of moderate income, as determined by the Department; and

WHEREAS, the Board, by resolution adopted on February 11, 2021, declared its intent to issue its revenue bonds to provide financing for the Development; and

WHEREAS, the Borrower has requested and received a reservation of private activity bond allocation from the State of Texas; and

WHEREAS, it is anticipated that the Department and the Borrower will execute and deliver a Borrower Loan Agreement (the “Borrower Loan Agreement”) pursuant to which (i) the Department will agree to make a mortgage loan funded with the proceeds of the Governmental Lender Note (the “Borrower Loan”) to the Borrower to enable the Borrower to finance the cost of acquisition, construction and equipping of the Development and related costs, and (ii) the Borrower will execute and deliver to the Department a multifamily note in an original principal amount equal to the original aggregate principal amount of the Governmental Lender Note (the “Borrower Note”), and providing for payment of interest on such principal amount equal to the interest on the Governmental Lender Note and to pay other costs described in the Borrower Loan Agreement; and

WHEREAS, it is anticipated that the Borrower Note will be secured by a Multifamily Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (Texas) (the “Security Instrument”) from the Borrower for the benefit of the Department and assigned to the Fiscal Agent; and

WHEREAS, the Department’s rights (except for certain reserved rights) under the Borrower Loan Agreement, the Borrower Note and the Security Instrument will be assigned to the Fiscal Agent pursuant to an Assignment of Deed of Trust and Loan Documents (the “Assignment”) from the Department to the Fiscal Agent; and

WHEREAS, in order to assure compliance with Section 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended, the Board has determined that the Department, the Fiscal Agent and the Borrower will execute a Tax Exemption Agreement (the “Tax Exemption Agreement”), in connection with the Governmental Lender Note, pursuant to which the Department and the Borrower will make certifications, representations and covenants relating to the treatment of the interest on the Governmental Lender Note as tax exempt from gross income for federal income tax purposes; and

WHEREAS, the Board has determined that the Department, the Fiscal Agent, The Cameron County Housing Finance Corporation, a Texas public nonprofit housing finance corporation, as fee owner (the “Fee Owner”) and the Borrower will execute a Regulatory and Land Use Restriction Agreement (the “Regulatory Agreement”) with respect to the

Development, which will be filed of record in the real property records of Dallas County, Texas; and

WHEREAS, the Board has further determined that the Funding Lender will purchase the Governmental Lender Note from the Department; and

WHEREAS, the Board has examined proposed forms of (a) the Funding Loan Agreement, the Borrower Loan Agreement, the Regulatory Agreement, the Assignment and the Tax Exemption Agreement (collectively, the "Issuer Documents"), all of which are attached to and comprise a part of this Resolution and (b) the Security Instrument and the Borrower Note; has found the form and substance of such documents to be satisfactory and proper and the recitals contained therein to be true, correct and complete; and has determined, subject to the conditions set forth in Article 1, to authorize the issuance of the Governmental Lender Note, the execution and delivery of the Issuer Documents, the acceptance of the Security Instrument and the Borrower Note and the taking of such other actions as may be necessary or convenient in connection therewith;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS:

## ARTICLE 1

### ISSUANCE OF GOVERNMENTAL LENDER NOTE; APPROVAL OF DOCUMENTS

Section 1.1 Issuance, Execution and Delivery of the Governmental Lender Note. That the issuance of the Governmental Lender Note is hereby authorized pursuant to the Act, including particularly Section 2306.353 thereof, all under and in accordance with the conditions set forth herein and in the Funding Loan Agreement, and that, upon execution and delivery of the Funding Loan Agreement, the Authorized Representatives of the Department named in this Resolution each are hereby authorized to execute, attest and affix the Department's seal to the Governmental Lender Note and to deliver the Governmental Lender Note to the Attorney General of the State (the "Attorney General") for approval, the Comptroller of Public Accounts of the State for registration and the Fiscal Agent for authentication (to the extent required in the Funding Loan Agreement), and thereafter to deliver the Governmental Lender Note to the Funding Lender.

Section 1.2 Interest Rate, Principal Amount, Maturity and Price of the Governmental Lender Note. That (i) the Governmental Lender Note shall bear interest at a fixed rate as described in the Borrower Note subject to adjustment as provided in the Funding Loan Agreement; provided that, in no event shall the interest rate (including any default rate) on the Governmental Lender Note exceed the maximum interest rate permitted by applicable law; (ii) the aggregate principal amount of the Governmental Lender Note shall be \$23,849,000; (iii) the final maturity of the Governmental Lender Note shall occur on June 1, 2058; and (iv) the price at which the Governmental Lender Note is sold to the Funding Lender shall be the principal amount thereof.

Section 1.3 Approval, Execution and Delivery of the Funding Loan Agreement. That the form and substance of the Funding Loan Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Funding Loan Agreement, and to deliver the Funding Loan Agreement to the Fiscal Agent and the Funding Lender.

Section 1.4 Approval, Execution and Delivery of the Borrower Loan Agreement. That the form and substance of the Borrower Loan Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Borrower Loan Agreement, and to deliver the Borrower Loan Agreement to the Borrower.

Section 1.5 Approval, Execution and Delivery of the Tax Exemption Agreement. The form and substance of the Tax Exemption Agreement relating to the Governmental Lender Note are hereby approved and that the Authorized Representatives each are hereby authorized to execute the Tax Exemption Agreement and to deliver the Tax Exemption Agreement to the Borrower and the Fiscal Agent.

Section 1.6 Approval, Execution and Delivery of the Regulatory Agreement. That the form and substance of the Regulatory Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute, attest and affix the Department's seal to the Regulatory Agreement, and to deliver the Regulatory Agreement to the Borrower, the Fee Owner and the Fiscal Agent and to cause the Regulatory Agreement to be filed of record in the real property records of Dallas County, Texas.

Section 1.7 Sale of the Governmental Lender Note. That the sale of the Governmental Lender Note to the Funding Lender is hereby authorized and approved.

Section 1.8 Acceptance of the Borrower Note and the Security Instrument. That the form and substance of the Borrower Note and the Security Instrument are hereby accepted by the Department and that the Authorized Representatives each are hereby authorized to endorse and deliver the Borrower Note to the order of the Fiscal Agent without recourse.

Section 1.9 Approval, Execution and Delivery of the Assignment. That the form and substance of the Assignment are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Assignment, and to deliver the Assignment to the Fiscal Agent.

Section 1.10 Taking of Any Action; Execution and Delivery of Other Documents. That the Authorized Representatives each are hereby authorized to take any actions and to execute, attest and affix the Department's seal to, and to deliver to the appropriate parties, all such other agreements, commitments, assignments, bonds, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices of acceptance, written requests and other papers, whether or not mentioned herein, as they or any of them consider to be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.11 Power to Revise Form of Documents. That, notwithstanding any other provision of this Resolution, the Authorized Representatives each are hereby authorized to make or approve such revisions in the form of the documents attached hereto as exhibits as, in the judgment of such Authorized Representative, and in the opinion of Bracewell LLP, Bond Counsel to the Department (“Bond Counsel”), may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, such approval to be evidenced by the execution of such documents by the Authorized Representatives.

Section 1.12 Exhibits Incorporated Herein. That all of the terms and provisions of each of the documents listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

- Exhibit B - Funding Loan Agreement
- Exhibit C - Borrower Loan Agreement
- Exhibit D - Regulatory Agreement
- Exhibit E - Borrower Note
- Exhibit F - Security Instrument
- Exhibit G - Assignment
- Exhibit H - Tax Exemption Agreement

Section 1.13 Authorized Representatives. That the following persons are hereby named as Authorized Representatives of the Department for purposes of executing, attesting, affixing the Department’s seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Board, the Executive Director of the Department, the Director of Administration of the Department, the Director of Financial Administration of the Department, the Director of Bond Finance and Chief Investment Officer of the Department, the Director of Multifamily Bonds of the Department, the Director of Texas Homeownership of the Department, and the Secretary or any Assistant Secretary to the Board. Such persons are referred to herein collectively as the “Authorized Representatives.” Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

## ARTICLE 2

### APPROVAL AND RATIFICATION OF CERTAIN ACTIONS

Section 2.1 Approval and Ratification of Application to Texas Bond Review Board. That the Board hereby ratifies and approves the submission of the application for approval of state bonds to the Texas Bond Review Board on behalf of the Department in connection with the issuance of the Governmental Lender Note in accordance with Chapter 1231, Texas Government Code.

Section 2.2 Approval of Submission to the Attorney General. That the Board hereby authorizes, and approves the submission by Bond Counsel to the Attorney General, for his

approval, of a transcript of legal proceedings relating to the issuance, sale and delivery of the Governmental Lender Note.

Section 2.3 Certification of the Minutes and Records. That the Secretary or Assistant Secretary to the Board hereby is authorized to certify and authenticate minutes and other records on behalf of the Department for the Governmental Lender Note and all other Department activities.

Section 2.4 Authority to Invest Proceeds. That the Department is authorized to invest and reinvest the proceeds of the Governmental Lender Note and the fees and revenues to be received in connection with the financing of the Development in accordance with the Funding Loan Agreement and to enter into any agreements relating thereto only to the extent permitted by the Funding Loan Agreement.

Section 2.5 Engagement of Other Professionals. That the Executive Director of the Department or any successor is authorized to engage auditors to perform such functions, audits, yield calculations and subsequent investigations as necessary or appropriate to comply with the requirements of Bond Counsel, provided such engagement is done in accordance with applicable law of the State.

Section 2.6 Ratifying Other Actions. That all other actions taken by the Executive Director of the Department and the Department staff in connection with the issuance of the Governmental Lender Note and the financing of the Development are hereby ratified and confirmed.

### ARTICLE 3

#### CERTAIN FINDINGS AND DETERMINATIONS

Section 3.1 Findings of the Board. That in accordance with Section 2306.223 of the Act and after the Department's consideration of the information with respect to the Development and the information with respect to the proposed financing of the Development by the Department, including but not limited to the information submitted by the Borrower, independent studies commissioned by the Department, recommendations of the Department staff and such other information as it deems relevant, the Board hereby finds:

(a) Need for Housing Development.

(i) that the Development is necessary to provide needed decent, safe, and sanitary housing at rentals or prices that individuals or families of low and very low income or families of moderate income can afford,

(ii) that the financing of the Development is a public purpose and will provide a public benefit, and

(iii) that the Development will be undertaken within the authority granted by the Act to the housing finance division and the Borrower.

(b) Findings with Respect to the Borrower.

(i) that the Borrower, by operating the Development in accordance with the requirements of the Borrower Loan Agreement, the Tax Exemption Agreement and the Regulatory Agreement, will supply well-planned and well-designed housing for individuals or families of low and very low income or families of moderate income,

(ii) that the Borrower is financially responsible, and

(iii) that the Borrower is not, and will not enter into a contract for the Development with, a housing developer that (A) is on the Department's debarred list, including any parts of that list that are derived from the debarred list of the United States Department of Housing and Urban Development; (B) breached a contract with a public agency; or (C) misrepresented to a subcontractor the extent to which the developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the developer's participation in contracts with the agency and the amount of financial assistance awarded to the developer by the Department.

(c) Public Purpose and Benefits.

(i) that the Borrower has agreed to operate the Development in accordance with the Borrower Loan Agreement, the Tax Exemption Agreement and the Regulatory Agreement, which require, among other things, that the Development be occupied by individuals and families of low and very low income and families of moderate income, and

(ii) that the issuance of the Governmental Lender Note to finance the Development is undertaken within the authority conferred by the Act and will accomplish a valid public purpose and will provide a public benefit by assisting individuals and families of low and very low income and families of moderate income in the State to obtain decent, safe, and sanitary housing by financing the costs of the Development, thereby helping to maintain a fully adequate supply of sanitary and safe dwelling accommodations at rents that such individuals and families can afford.

Section 3.2 Determination of Eligible Tenants. That the Board has determined, to the extent permitted by law and after consideration of such evidence and factors as it deems relevant, the findings of the staff of the Department, the laws applicable to the Department and the provisions of the Act, that eligible tenants for the Development shall be (1) individuals and families of low and very low income, (2) persons with special needs, and (3) families of moderate income, with the income limits as set forth in the Tax Exemption Agreement and the Regulatory Agreement.



Section 3.3 Sufficiency of Loan Interest Rate. That, in accordance with Section 2306.226 of the Act, the Board hereby finds and determines that the interest rate on the Borrower Loan established pursuant to the Borrower Loan Agreement will produce the amounts required, together with other available funds, to pay for the Department's costs of operation with respect to the Governmental Lender Note and the Development and enable the Department to meet its covenants with and responsibilities to the holders of the Governmental Lender Note.

Section 3.4 No Gain Allowed. That, in accordance with Section 2306.498 of the Act, no member of the Board or employee of the Department may purchase the Governmental Lender Note in the secondary open market for municipal securities.

#### ARTICLE 4

##### GENERAL PROVISIONS

Section 4.1 Limited Obligations. That the Governmental Lender Note and the interest thereon shall be special limited obligations of the Department payable solely from the trust estate created under the Funding Loan Agreement, including the revenues and funds of the Department pledged under the Funding Loan Agreement to secure payment of the Governmental Lender Note, and under no circumstances shall the Governmental Lender Note be payable from any other revenues, funds, assets or income of the Department.

Section 4.2 Non-Governmental Obligations. That the Governmental Lender Note shall not be and does not create or constitute in any way an obligation, a debt or a liability of the State or create or constitute a pledge, giving or lending of the faith or credit or taxing power of the State. The Governmental Lender Note shall contain on its face a statement to the effect that the State is not obligated to pay the principal thereof or interest thereon and that neither the faith or credit nor the taxing power of the State is pledged, given or loaned to such payment.

Section 4.3 Effective Date. That this Resolution shall be in full force and effect from and upon its adoption.

Section 4.4 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Governing Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Governing Board.

PASSED AND APPROVED this 10th day of November, 2021.

**EXHIBIT A**

**Description of Development**

Borrower: SDC Corinth III, LP, a Texas limited partnership

Development: The Development is a 174-unit affordable multifamily community to be known as Fiji Lofts, and to be located at 301 S. Corinth St. Rd., Dallas, Dallas County, TX 75203. It will consist of 2 residential buildings with approximately 136,869 net rentable square feet. The unit mix will consist of:

3	efficiency units
82	one-bedroom/one-bath units
89	two-bedroom/two-bath units
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174	Total Units

Unit sizes will range from approximately 550 square feet to approximately 1,032 square feet.

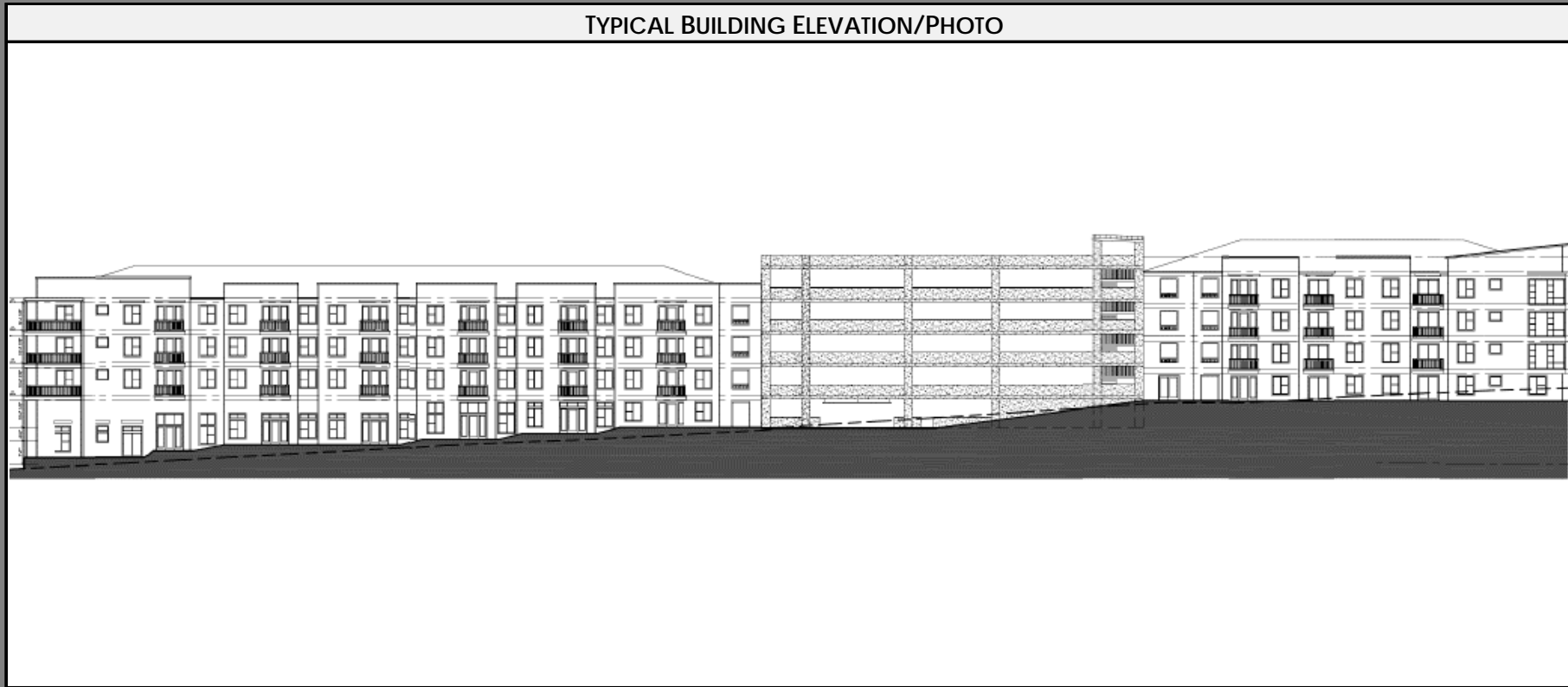
# 21608 Fiji Lofts - Application Summary

REAL ESTATE ANALYSIS DIVISION  
November 3, 2021

PROPERTY IDENTIFICATION	
Application #	21608
Development	Fiji Lofts
City / County	Dallas / Dallas
Region/Area	3 / Urban
Population	General
Set-Aside	General
Activity	New Construction

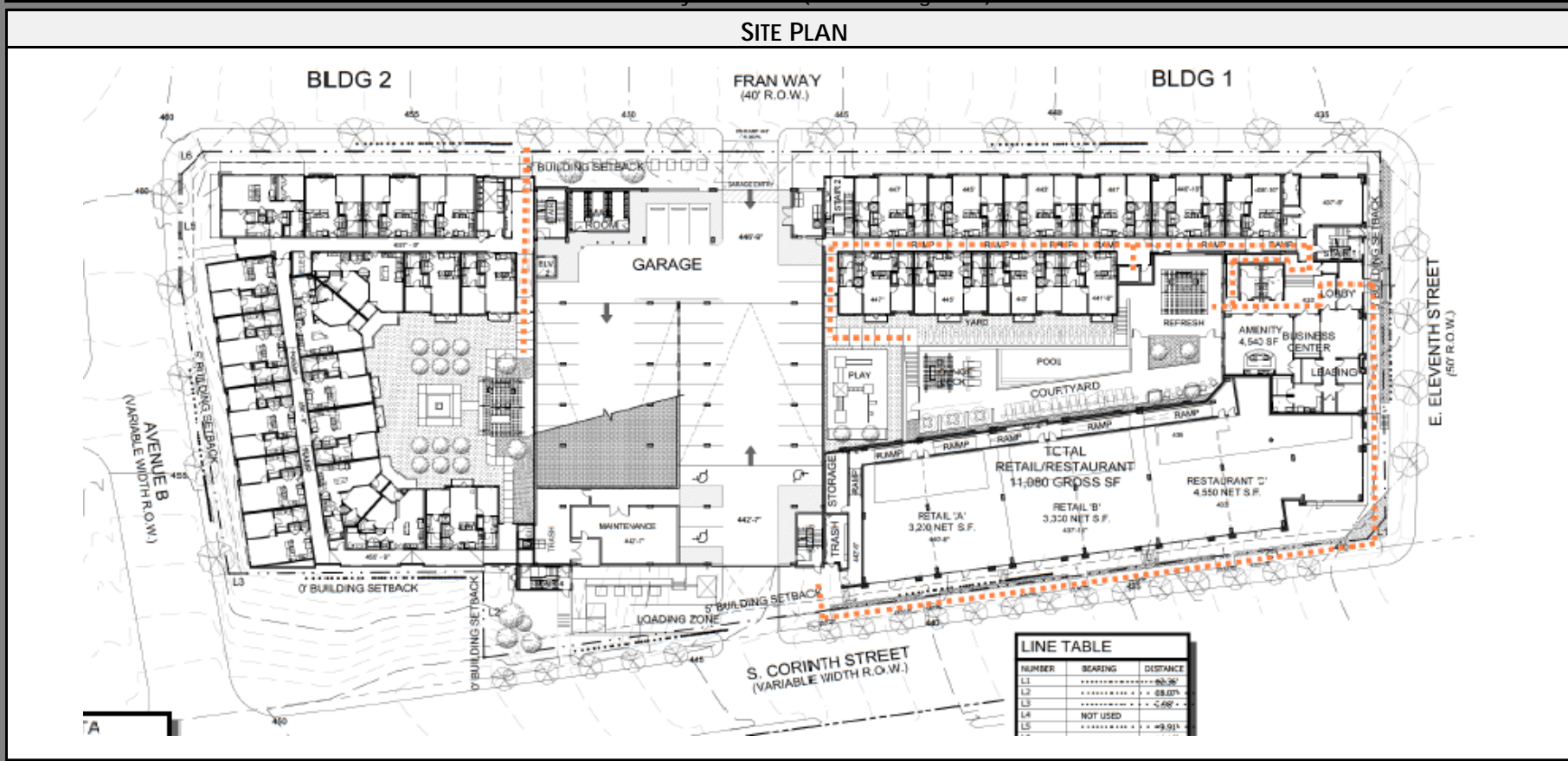
RECOMMENDATION					
TDHCA Program	Request	Recommended			
LIHTC (4% Credit)	\$2,137,340	\$2,080,856	\$11,959/Unit	\$0.87	
Private Activity Bonds	\$22,549,000				

KEY PRINCIPALS / SPONSOR			
Sphinx Development Corporation Joseph Agumadu (60%) Jay Oji (40%) Cameron County HFC TDHCA - Bond Issuer			
Related Parties	Contractor -	No	Seller - Yes



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	3	2%	20%	-	0%
1	82	47%	30%	-	0%
2	89	51%	40%	-	0%
3	-	0%	50%	-	0%
4	-	0%	60%	174	100%
			70%	-	0%
			80%	-	0%
			MR	-	0%
<b>TOTAL</b>	<b>174</b>	<b>100%</b>	<b>TOTAL</b>	<b>174</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		TDHCA's Pro Forma	
Debt Coverage	1.15	Expense Ratio	37.0%
Breakeven Occ.	84.8%	Breakeven Rent	\$955
Average Rent	\$1,044	B/E Rent Margin	\$89
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	\$4,366/unit	Controllable	\$3,172/unit



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)			9.7%
Highest Unit Capture Rate	29%	1 BR/60%	82
Dominant Unit Cap. Rate	22%	2 BR/60%	89
Premiums (↑60% Rents)	#DIV/0!		#DIV/0!
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY			
Costs Underwritten		Applicant's Costs	
Avg. Unit Size	787 SF	Density	77.0/acre
Acquisition		\$10K/unit	\$1,740K
Building Cost	\$121.78/SF	\$96K/unit	\$16,669K
Hard Cost		\$121K/unit	\$21,089K
Total Cost		\$256K/unit	\$44,596K
Developer Fee	\$5,366K	(74% Deferred)	Paid Year: 14
Contractor Fee	\$3,547K	30% Boost	Yes



DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES		
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount	
Community Bank of Texas	18/40	3.82%	\$22,549,000	1.15						Affordable Housing Partners, Inc	\$18,099,831	
										Sphinx Development Corporation	\$3,946,875	
										<b>TOTAL EQUITY SOURCES</b>	<b>\$22,046,707</b>	
										<b>TOTAL DEBT SOURCES</b>	<b>\$22,549,000</b>	
<b>TOTAL DEBT (Must Pay)</b>			<b>\$22,549,000</b>		<b>CASH FLOW DEBT / GRANTS</b>				<b>\$0</b>		<b>TOTAL CAPITALIZATION</b>	<b>\$44,595,707</b>

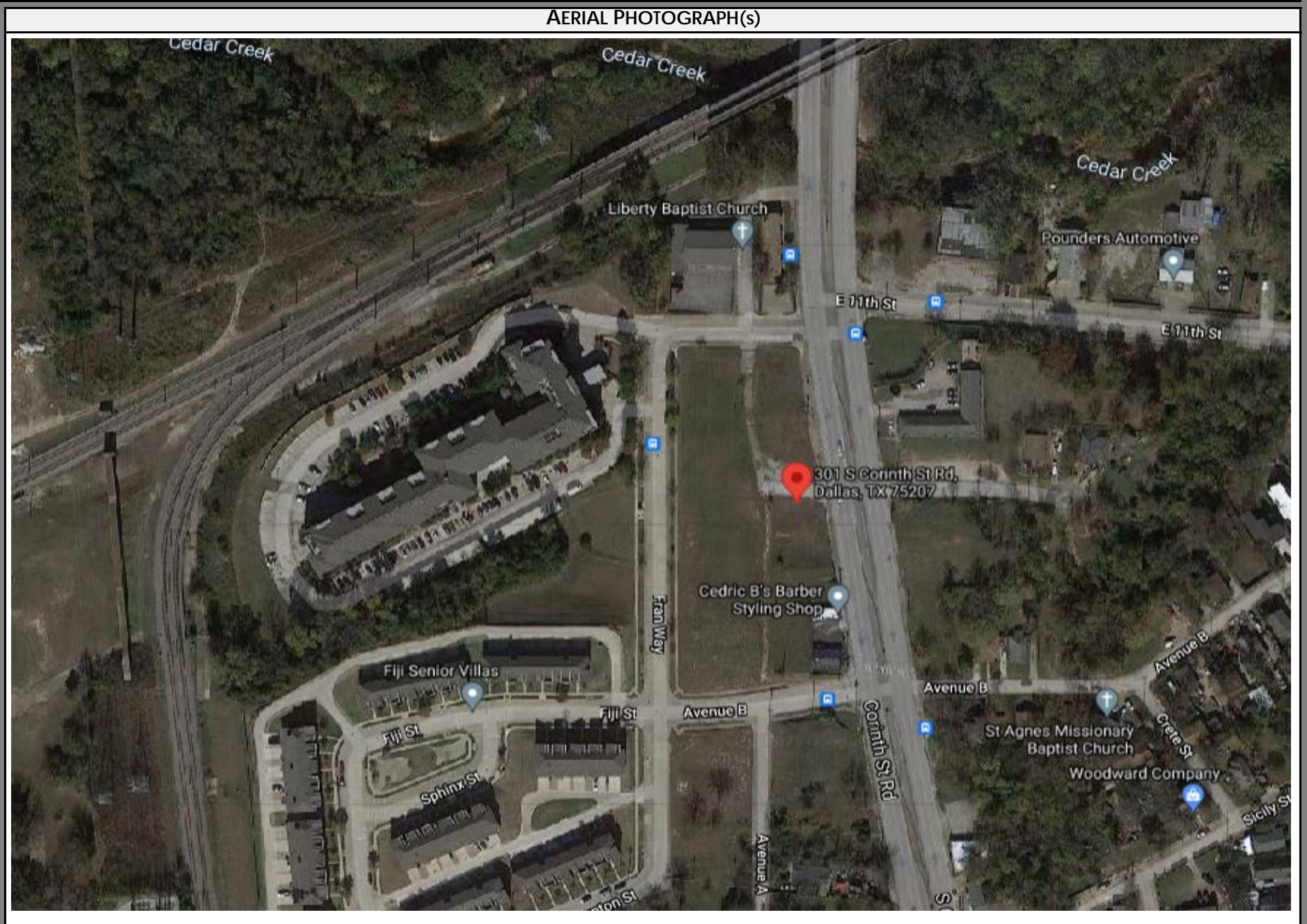
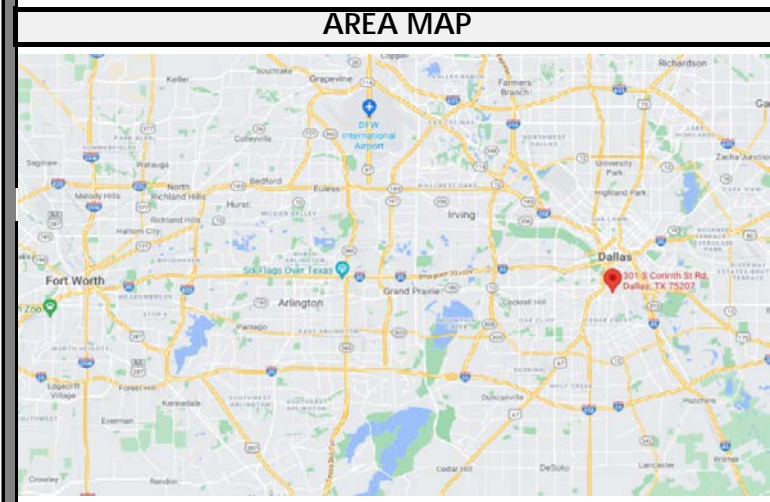
**CONDITIONS**

- Receipt and acceptance by Cost Certification:
  - a: Architect certification that a noise assessment was completed, and that all recommendations were implemented and the Development is compliant with HUD noise guidelines.
  - b: Certification that subsurface environmental investigation was performed as specified in the ESA, and if necessary, that any recommended mitigation measures were fully implemented.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

BOND RESERVATION / ISSUER	
Issuer	TDHCA
Expiration Date	12/11/2021
Bond Amount	\$25,000,000
BRB Priority	Priority 2
<b>% Financed with Tax-Exempt Bonds</b>	<b>63.1%</b>

RISK PROFILE	
STRENGTHS/MITIGATING FACTORS	
▫ Experienced Developer	
▫ Overall building design should compete well in the market.	
WEAKNESSES/RISKS	
▫ Feasibility dependent on Property Tax Exemption	
▫ 1.15 DCR	
▫ 19 different unit plans	
▫ Low construction cost assumption for retail space	





**DEVELOPMENT IDENTIFICATION**

TDHCA Application #: 21608 Program(s): TDHCA Bonds/4% HTC

Fiji Lofts

Address/Location: 301 S Corinth St. Rd.

City: Dallas County: Dallas Zip: 75203

Population: General Program Set-Aside: General Area: Urban

Activity: New Construction Building Type: Elevator Served Region: 3

Analysis Purpose: New Application - Initial Underwriting

**ALLOCATION**

TDHCA Program	REQUEST				RECOMMENDATION				
	Amount				Amount				
Private Activity Bonds	\$23,849,000				\$22,549,000				
LIHTC (4% Credit)	\$2,137,340				\$2,080,856				

\*Underwriter recommends \$23,849,000 in tax-exempt bonds during construction, and \$22,549,000 as permanent long term debt.

**CONDITIONS**

- Receipt and acceptance by Cost Certification:
  - a: Architect certification that a noise assessment was completed, and that all recommendations were implemented and the Development is compliant with HUD noise guidelines.
  - b: Certification that subsurface environmental investigation was performed as specified in the ESA, and if necessary, that any recommended mitigation measures were fully implemented.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

**SET-ASIDES**

TDHCA SET-ASIDES for HTC LURA		
Income Limit	Rent Limit	Number of Units
60% of AMI	60% of AMI	174



## DEVELOPMENT SUMMARY

Fiji Lofts will be a 174-unit affordable housing development of which 100% of the units will be marketed to families earning no more than 60% of the area median income. The development will be financed with Tax Exempt Bonds and 4% Tax Credits. The project is designed for development under the "integrated setting" guidelines as defined by US Housing & Urban Development (HUD). The development plan calls for two buildings, a 5-level structured parking garage, a club house and approximately 11,000 SF of retail space to be constructed on +/- 2.26 acres.

## RISK PROFILE

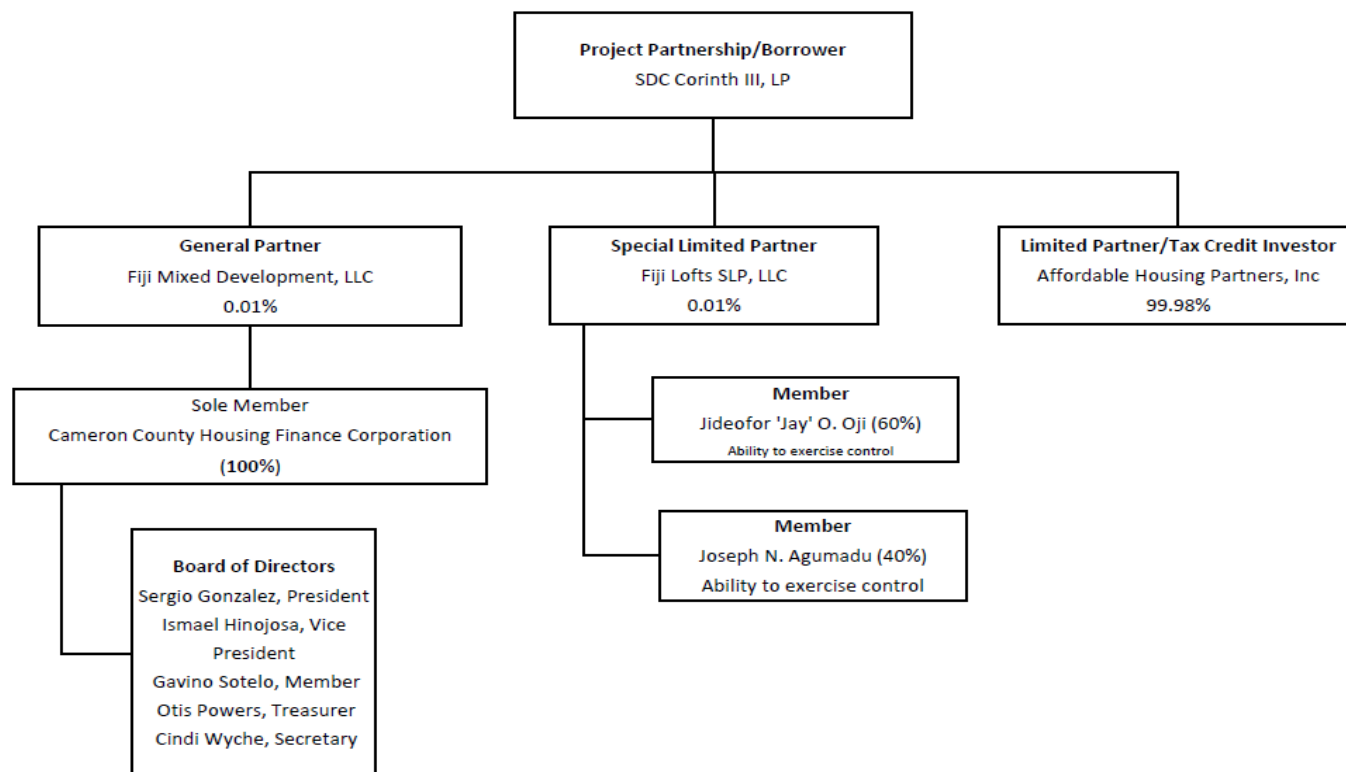
STRENGTHS/MITIGATING FACTORS	WEAKNESSES/RISKS
<ul style="list-style-type: none"> <li>▫ Experienced Developer</li> </ul>	<ul style="list-style-type: none"> <li>▫ Feasibility dependent on Property Tax Exemption</li> </ul>
<ul style="list-style-type: none"> <li>▫ Overall building design should compete well in the market.</li> </ul>	<ul style="list-style-type: none"> <li>▫ 1.15 DCR</li> </ul>
<ul style="list-style-type: none"> <li>▫ </li> </ul>	<ul style="list-style-type: none"> <li>▫ 19 different unit plans</li> </ul>
<ul style="list-style-type: none"> <li>▫ </li> </ul>	<ul style="list-style-type: none"> <li>▫ Low construction cost assumption for retail space</li> </ul>

## DEVELOPMENT TEAM

### PRIMARY CONTACTS

Name: <u>Tekevwe Okobiah</u>	Name: <u>Amara Oji</u>
Phone: <u>214-342-1400</u>	Phone: <u>214-342-1400</u>
Relationship: <u>GP/Development Team</u>	Relationship: <u>GP/Development Team</u>

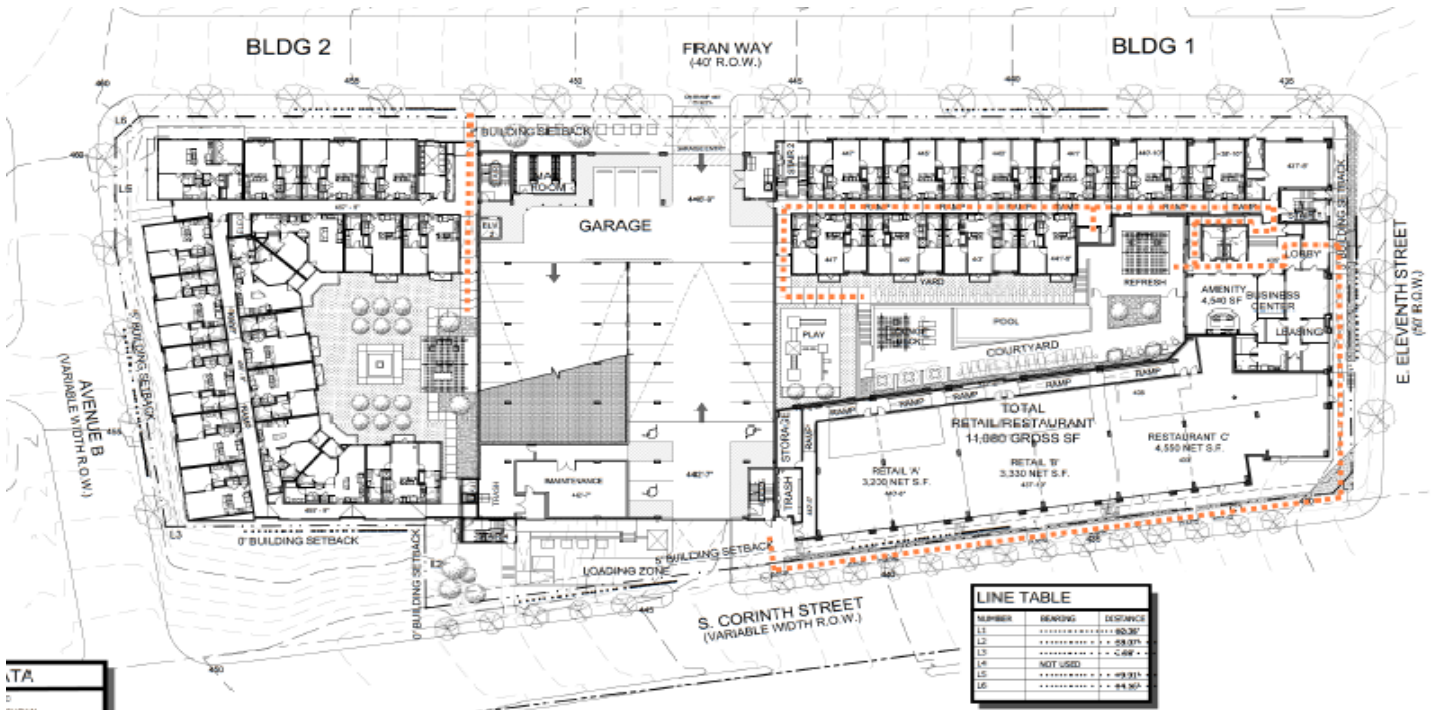
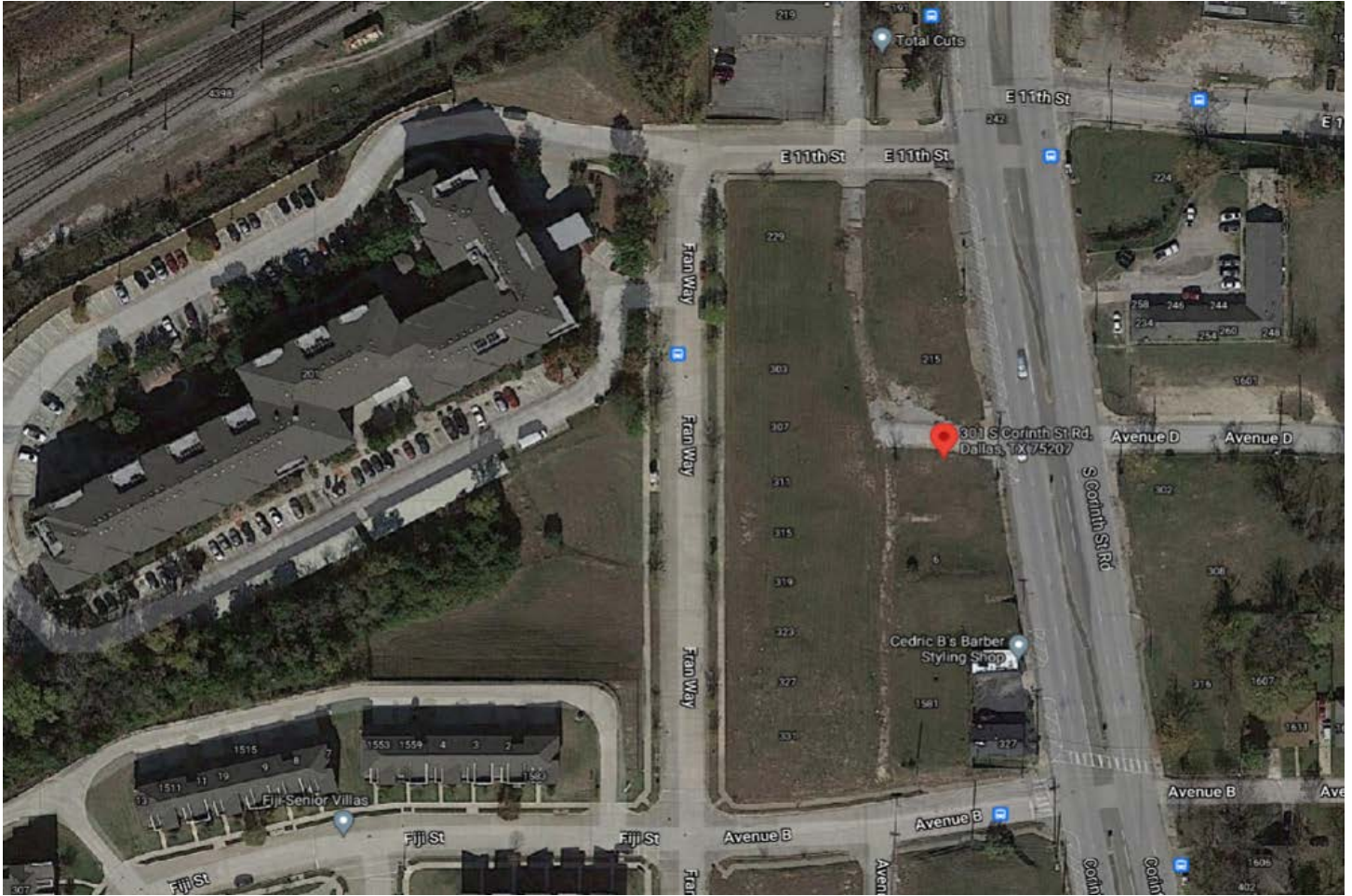
## OWNERSHIP STRUCTURE



- The Applicant, Developer, General Contractor, Cost Estimator, and property manager are related entities. Sphinx Development Corp. (Co-Developer, members are the SLP members) is a Dallas based real estate development company with major and recent accomplishments of more than 1,440 housing units within ten (10) projects . The company has collaborated on 15 HTC developments in Texas since 1998.

# DEVELOPMENT SUMMARY

## SITE PLAN



Comments:

The property will be drained in an underground stormwater detention vault, below the parking garage, that will discharge into the local municipal storm water system in improved existing 21" RCP in S. Corinth Street Road right-of-way.

The property generally slopes to the north with an average surface slope of 3.2%.

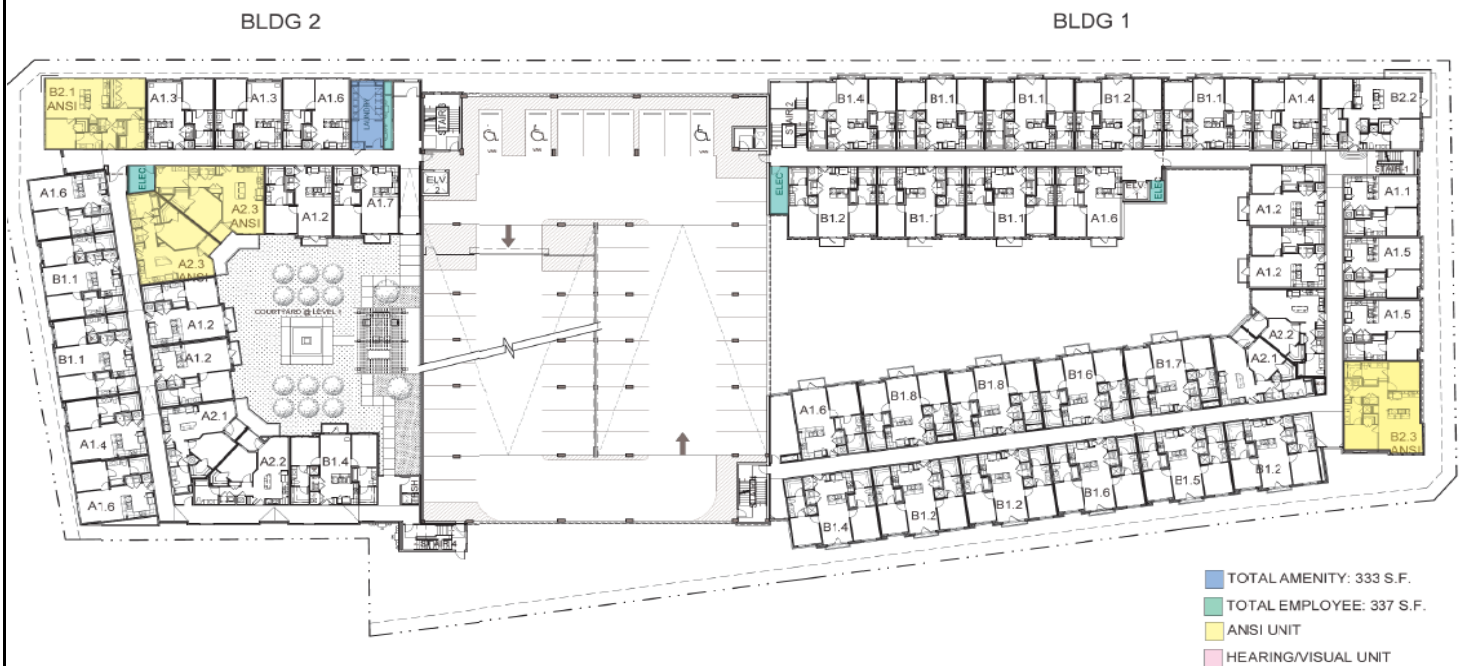
Based on the present site plan, there are two means of ingress/egress proposed. Both points of access are located centrally to the development. The proposed drive approach on Fran Way will be used for access to the parking garage. The proposed drive approach on S. Corinth Street Road will provide access to the loading area, maintenance area and additional access to the parking garage.

Parking	No Fee		Tenant-Paid		Total	
Open Surface	0	--	0	--	0	--
Carport	0	--	0	--	0	--
Garage	296	1.7/unit	0	--	296	1.7/unit
<b>Total Parking</b>	<b>296</b>	<b>1.7/unit</b>	<b>0</b>	<b>--</b>	<b>296</b>	<b>1.7/unit</b>

Comments:

City requires 275 parking spaces, 296 structured parking garage spaces will be provided.

BUILDING PLAN (Typical)



Comments:

Full length enclosed corridor buildings, open to courtyards on the ground and first levels. Some non-rectangular units and small average unit sizes (787 s.f on average).





APPRAISED VALUE

Appraiser: Robert Brett Moore Date: 6/8/2021
Land as Vacant: 2.255 acres \$2,750,000 Per Unit: \$15,805

SITE INFORMATION

Flood Zone: X Scattered Site? No
Zoning: PD 812 Within 100-yr floodplain? No
Re-Zoning Required? No Utilities at Site? Yes
Year Constructed: N/A Title Issues? No

Current Uses of Subject Site:
vacant land

Surrounding Uses:

- North: East 11th St, Liberty Baptist Church, convenience store, railroad tracks
East: South Cornith Rd, residential and vacant land
South: Avenue B, residential and vacant land
West: Fran Way, Fiji Senior Villas

HIGHLIGHTS of ENVIRONMENTAL REPORTS

Provider: Reed Engineering Group Date: 6/25/2021

Recognized Environmental Conditions (RECs) and Other Concerns:

- Oak Crest Cleaners/SIMS Cleaners and Taylor/Williams Cleaners (On-site) Reed's assessment identified that the former cleaners with potential releases of solvent related to the onsite cleaners activities to on-site soil and groundwater were within the critical distance of 30 feet for volatile organic compounds (VOCs).
The combined Day Night Level (DNL) for roadway noise was calculated to be 70.2 decibels (dB), which is within "Normally Unacceptable" value of 65 dB to 75 dB.

## MARKET ANALYSIS

Provider: Apartment MarketData, LLC

Date: 6/30/2021

Contact: Darrell G Jack

Phone: (210) 530-0040

Primary Market Area (PMA): 21 sq. miles 3 mile equivalent radius

ELIGIBLE HOUSEHOLDS BY INCOME								
Dallas County Income Limits								
HH Size		1	2	3	4	5	6	7+
60% AMGI	Min	\$28,020	\$30,030	\$36,030	\$36,030	---	---	---
	Max	\$37,380	\$42,720	\$48,060	\$53,400	---	---	---

AFFORDABLE HOUSING INVENTORY						
Competitive Supply (Proposed, Under Construction, and Unstabilized)						
File #	Development	In PMA?	Type	Target Population	Comp Units	Total Units
21411	Gateway Oak Cliff	Yes	New	General	164	230
21004	Skyline at Cedar Crest	No	New	General	35	107
21417	Westmoreland Station	No	New	General	129	248
21081	Kiva East	No	New	General	27	87
20493	The Ridge at Lancaster	No	New	General	152	300
Other Affordable Developments in PMA since 2016						
16439	Peoples El Shaddai Village		New	General	n/a	100
16440	Saint James Manor		New	General	n/a	100
19420	Pythian Manor		A/R	Elderly	n/a	76
21400	The Oaks		New	Elderly	n/a	260
Stabilized Affordable Developments in PMA					Total Units	2,201
					Total Developments	16
					Average Occupancy	97%

Proposed, Under Construction, and Unstabilized Competitive Supply:

Gateway Oak Cliff (#21411) is located inside the PMA and has 164 units that will directly compete with the Subject HTC units.

The Ridge at Lancaster (#20493), Kiva East (#21081), Westmoreland Station (#21417), and Skyline at Cedar Crest (#21004) are approved bond (4%) & 9% projects, all less than 2 miles outside the PMA; Market Analyst did not include these units in their calculations. While these four competitive properties are located outside the PMA, their PMA's share census tracts and therefore share some qualified demand to absorb the new units.

OVERALL DEMAND ANALYSIS				
	Market Analyst			
	HTC	Assisted		
Total Households in the Primary Market Area	35,901			
Potential Demand from the Primary Market Area	4,633			
10% External Demand	463			
Potential Demand from Other Sources				
<b>GROSS DEMAND</b>	5,096			
Subject Affordable Units	174		174	
Unstabilized Competitive Units	320			
<b>RELEVANT SUPPLY</b>	494			
<b>Relevant Supply ÷ Gross Demand = GROSS CAPTURE RATE</b>	<b>9.7%</b>			

Population:	<b>General</b>	Market Area:	<b>Urban</b>	Maximum Gross Capture Rate:	<b>10%</b>
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UNDERWRITING ANALYSIS of PMA DEMAND by AMGI BAND										
	Market Analyst									
AMGI Band	Demand	10% Ext	Subject Units	Comp Units	AMGI Band Capture Rate					
60% AMGI	4,633	463	174	320	9.7%					

**Demand Analysis:**

If we included the 343 competitive units that are located outside the Subject PMA, but share some census tracts, the GCR would be 16.4%. This is a worst case scenario as it includes the outside supply, but none of the additional demand from the other PMAs; this project would qualify for the large MSA bond capture rate of 15%.

UNDERWRITING ANALYSIS of PMA DEMAND by UNIT TYPE										
	Market Analyst									
Unit Type	Demand	10% Ext	Subject Units	Comp Units	Unit Capture Rate					
0 BR/60%	301	30	3	26	9%					
1 BR/60%	660	66	82	126	29%					
2 BR/60%	1,049	105	89	168	22%					

**Market Analyst Comments:**

The overall occupancy reported in the market is 96.1%. (p.12)

The most recently constructed affordable family project in the PMA is High Point Family Living (TDHCA #13234). High Point Family Living has 252 units, was completed in 2013 and leased well. They are currently 95% occupied. (p. 13)

The level of tax credit rent being charged is between 16% and 31% lower than the adjusted rents charged at market rate comparables within the PMA. (p.18)

## OPERATING PRO FORMA

SUMMARY- AS UNDERWRITTEN (TDHCA Pro Forma)					
NOI:	\$1,294,573	Avg. Rent:	\$1,044	Expense Ratio:	37.0%
Debt Service:	\$1,123,339	B/E Rent:	\$955	Controllable Expenses:	\$3,172
Net Cash Flow:	\$171,235	UW Occupancy:	92.5%	Property Taxes/Unit:	\$0
Aggregate DCR:	1.15	B/E Occupancy:	84.8%	Program Rent Year:	2021

All units are set at maximum program rents.

Applicant assumed \$23/unit secondary income; Underwriter adjusted to \$20/unit per TDHCA rules.

Breakeven occupancy occurs with 26 units vacant (underwritten at 13).

Low expense ratio due to assumed 100% tax exemption with Cameron Housing Finance Corporation as GP.

Pro Forma exhibits feasibility throughout the 15-year term. NOI is not able to withstand any increase in the permanent loan rate before going below 1.15 DCR threshold.

As presented, 15 year residual cash flow is \$737K with \$3.9M (74%) deferral of the developer fee.

## DEVELOPMENT COST EVALUATION

SUMMARY- AS UNDERWRITTEN (Applicant's Costs)					
Acquisition	\$769,912/ac	\$10,000/unit	<b>\$1,740,000</b>	Contractor Fee	<b>\$3,547,489</b>
Off-site + Site Work		\$15,879/unit	<b>\$2,763,000</b>	Soft Cost + Financing	<b>\$7,893,610</b>
Building Cost	\$121.78/sf	\$95,796/unit	<b>\$16,668,500</b>	Developer Fee	<b>\$5,366,084</b>
Contingency	7.03%	\$9,527/unit	<b>\$1,657,705</b>	Reserves	<b>\$709,319</b>
<b>Total Development Cost</b>	<b>\$256,297/unit</b>		<b>\$44,595,707</b>	<b>Rehabilitation Cost</b>	<b>N/A</b>
<b>Qualified for 30% Basis Boost?</b>	Located in OCT with < 20% HTC units/HH				

Off-site:

\$120K in off sites to improve portions of the existing sidewalk around the development frontage, and paving work for on-street parking and street lighting.

Site Work:

\$2.27M (\$13K/unit) in site work, includes \$450K for detention, \$927K for grading & paving, \$338K for on-site utilities, and \$308K for decorative masonry, bumper stops, striping & signs.

Amenity cost of \$375K (\$2.2K/unit) was not included in the site work certification, but is comprised of \$155K for landscaping, \$185K for pool & decking, and \$35K for playgrounds.

Building Cost:

The quality and design of the Subject is above average when comparing it to other developments offering low income units. As mentioned previously, development plans depict two four-story buildings, wrap-style residential, elevator-served, interior corridor buildings. \$4M for the 5-story parking garage structure is itemized separately.

As a result of these factors, Applicant's building cost of \$121.78/s.f. is comparable to Marshall & Swift's ("M&S") Good Quality costing model rather than the traditionally used Average Quality costing model.

Applicant includes \$250K for ~11K s.f (\$22/s.f.) of commercial retail/restaurant space. These costs are certified by the Contractor's (BC Contracting) bid, separated from the building costs and not included in basis. No income is assumed from this commercial space.

Contingency:

\$100K soft cost contingency reallocated to contingency, results in total and eligible contingency to be overstated.

Contractor Fee:

Total and eligible contractor fee also overstated by \$32.5K and \$87.9K respectively.

Financing Cost:

Eligible interest for tax-exempt bond developments is limited to 2 years fully drawn interest. Applicant has overstated this amount by \$525K.

Developer Fee:

Eligible developer fee overstated by \$440K.

Reserves:

Applicant's capitalized reserves equal approximately 5 months of operating expenses and debt service.

Comments:

Total adjusted housing development costs varies by \$712K (1.6%); therefore, the recommended capital structure is based on Applicant's cost schedule. Should the Underwriter's higher development costs (\$45.6M ; \$262K/unit) be realized, there is sufficient cashflow to absorb any additional deferred fee.

Credit Allocation Supported by Costs:

Total Development Cost	Adjusted Eligible Cost	Credit Allocation Supported by Eligible Basis
\$44,595,707	\$40,016,471	\$2,080,856

**UNDERWRITTEN CAPITALIZATION**

BOND RESERVATION			
Issuer	Amount	Reservation Date	Priority
TDHCA	\$25,000,000	6/14/2021	Priority 2
Closing Deadline			
12/11/2021			

<b>Percent of Cost Financed by Tax-Exempt Bonds</b>	<b>63.1%</b>
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INTERIM SOURCES				
Funding Source	Description	Amount	Rate	LTC
TDHCA	Mortgage Revenue Bond	\$23,849,000	3.82%	53%
Community Bank of Texas	Conventional Loan (taxable)	\$9,500,000	3.25%	21%
Affordable Housing Partners, Inc	HTC	\$7,430,880	\$0.87	17%
Sphinx Development Corporation	Deferred Fee	\$3,519,230	0.00%	8%
ODR	Equity	\$649,319	0.00%	1%
		<b>\$44,948,429</b>	<b>Total Sources</b>	

**PERMANENT SOURCES**

Debt Source	PROPOSED				UNDERWRITTEN				
	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	LTC
Community Bank of Texas	\$23,849,000	3.82%	40	15	\$22,549,000	3.82%	40	18	51%
<b>Total</b>	<b>\$23,849,000</b>				<b>\$22,549,000</b>				

Comments:

Underwritten debt service includes a 0.10% Bond Issuer Fee.

Permanent loan rate is budgeted at 3.82%. However, all else equal, any rate increase would cause DCR to fall below 1.15 threshold.

Although \$23.8M in bonds will be issued during the construction period, the current underwriting analysis only supports approximately \$22.5M in permanent debt. The difference between the \$23.8M of bonds issued and the projected permanent loan amount will be used to bridge equity funding in addition to the bridge loan. At conversion and based on then actual operations and stabilization requirements, the permanent debt amount may be higher than the current supported debt recommendation (up to the total \$23.8M).

Additionally, based on the underwritten analysis, the DCR is 1.09, falling below the minimum 1.15. Underwriter assumes a \$1.3M reduction from the requested permanent debt amount to maintain the minimum 1.15 debt coverage. An additional \$736K of repayable deferred developer fee may be used to offset any further reduction of debt should the final interest rate exceed the pro forma rate.

Equity & Deferred Fees	PROPOSED			UNDERWRITTEN			
	Amount	Rate	% Def	Amount	Rate	% TC	% Def
Affordable Housing Partners, Inc	\$18,591,143	\$0.87		\$18,099,831	\$0.87	41%	
Sphinx Development Corporation	\$2,488,286		46%	\$3,946,875		9%	74%
<b>Total</b>	<b>\$21,079,429</b>			<b>\$22,046,707</b>			
				<b>\$44,595,707</b>			<b>Total Sources</b>

**Credit Price Sensitivity based on current capital structure**

<b>\$1.032</b>	Maximum Credit Price before the Development is oversourced and allocation is limited
<b>\$0.812</b>	Minimum Credit Price below which the Development would be characterized as infeasible

## CONCLUSIONS

### Recommended Financing Structure:

Gap Analysis:	
Total Development Cost	\$44,595,707
Permanent Sources (debt + non-HTC equity)	\$22,549,000
<b>Gap in Permanent Financing</b>	<b>\$22,046,707</b>

Possible Tax Credit Allocations:	Equity Proceeds	Annual Credits
Determined by Eligible Basis	\$18,099,831	\$2,080,856
Needed to Balance Sources & Uses	\$22,046,707	\$2,534,611
Requested by Applicant	\$18,591,140	\$2,137,340

	RECOMMENDATION	
	Equity Proceeds	Annual Credits
<b>Tax Credit Allocation</b>	<b>\$18,099,831</b>	<b>\$2,080,856</b>

	Amount
<b>TDHCA-Issued Bonds</b>	<b>\$22,549,000</b>

<b>Deferred Developer Fee</b>	<b>\$3,946,875</b>	( 74% deferred)
<b>Repayable in</b>	<b>14 years</b>	

### Comments:

The recommended allocation is \$2,080,856 in annual tax credits as supported by eligible basis.

Underwriter also recommends \$23,849,000 in tax-exempt bonds during construction, and \$22,549,000 as permanent long term debt.

Underwriter:	<u>Diamond Unique Thompson</u>
Manager of Real Estate Analysis:	<u>Jeanna Adams</u>
Director of Real Estate Analysis:	<u>Thomas Cavanagh</u>



**UNIT MIX/RENT SCHEDULE**  
*Fiji Lofts, Dallas, TDHCA Bonds/4% HTC #21608*

LOCATION DATA	
CITY:	Dallas
COUNTY:	Dallas
Area Median Income	\$89,000
PROGRAM REGION:	3
PROGRAM RENT YEAR:	2021

UNIT DISTRIBUTION				
# Beds	# Units	% Total	Assisted	MDL
Eff	3	1.7%	0	0
1	82	47.1%	0	0
2	89	51.1%	0	0
3	-	0.0%	0	0
4	-	0.0%	0	0
5	-	0.0%	0	0
<b>TOTAL</b>				
	<b>174</b>	<b>100.0%</b>	<b>-</b>	<b>-</b>

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjust	130%
Applicable Fraction	100.00%
APP % Acquisition	4.00%
APP % Construction	4.00%
Average Unit Size	787 sf

60%	Income	20%	30%	40%	50%	60%	70%	80%	MR	TOTAL
Average	# Units	-	-	-	-	174	-	-	-	174
Income	% Total	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%

UNIT MIX / MONTHLY RENT SCHEDULE																			
HTC		UNIT MIX				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS		
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	Mrkt Analyst	
TC 60%	\$934	3	0	1	550	\$934	\$44	\$890	\$0	\$1.62	\$890	\$2,670	\$2,670	\$890	\$1.62	\$0	\$1,072	\$1.95	\$1,072
TC 60%	\$1,001	2	1	1	650	\$1,001	\$51	\$950	\$0	\$1.46	\$950	\$1,900	\$1,900	\$950	\$1.46	\$0	\$1,145	\$1.76	\$1,145
TC 60%	\$1,001	1	1	1	658	\$1,001	\$51	\$950	\$0	\$1.44	\$950	\$950	\$950	\$950	\$1.44	\$0	\$1,151	\$1.75	\$1,151
TC 60%	\$1,001	9	1	1	660	\$1,001	\$51	\$950	\$0	\$1.44	\$950	\$8,550	\$8,550	\$950	\$1.44	\$0	\$1,156	\$1.75	\$1,156
TC 60%	\$1,001	10	1	1	660	\$1,001	\$51	\$950	\$0	\$1.44	\$950	\$9,500	\$9,500	\$950	\$1.44	\$0	\$1,156	\$1.75	\$1,156
TC 60%	\$1,001	7	1	1	660	\$1,001	\$51	\$950	\$0	\$1.44	\$950	\$6,650	\$6,650	\$950	\$1.44	\$0	\$1,156	\$1.75	\$1,156
TC 60%	\$1,001	7	1	1	665	\$1,001	\$51	\$950	\$0	\$1.43	\$950	\$6,650	\$6,650	\$950	\$1.43	\$0	\$1,163	\$1.75	\$1,163
TC 60%	\$1,001	1	1	1	665	\$1,001	\$51	\$950	\$0	\$1.43	\$950	\$950	\$950	\$950	\$1.43	\$0	\$1,163	\$1.75	\$1,163
TC 60%	\$1,001	6	1	1	668	\$1,001	\$51	\$950	\$0	\$1.42	\$950	\$5,700	\$5,700	\$950	\$1.42	\$0	\$1,168	\$1.75	\$1,168
TC 60%	\$1,001	10	1	1	672	\$1,001	\$51	\$950	\$0	\$1.41	\$950	\$9,500	\$9,500	\$950	\$1.41	\$0	\$1,174	\$1.75	\$1,174
TC 60%	\$1,001	7	1	1	672	\$1,001	\$51	\$950	\$0	\$1.41	\$950	\$6,650	\$6,650	\$950	\$1.41	\$0	\$1,174	\$1.75	\$1,174
TC 60%	\$1,001	7	1	1	687	\$1,001	\$51	\$950	\$0	\$1.38	\$950	\$6,650	\$6,650	\$950	\$1.38	\$0	\$1,195	\$1.74	\$1,195
TC 60%	\$1,001	7	1	1	693	\$1,001	\$51	\$950	\$0	\$1.37	\$950	\$6,650	\$6,650	\$950	\$1.37	\$0	\$1,214	\$1.75	\$1,214
TC 60%	\$1,001	3	1	1	770	\$1,001	\$51	\$950	\$0	\$1.23	\$950	\$2,850	\$2,850	\$950	\$1.23	\$0	\$1,294	\$1.68	\$1,294
TC 60%	\$1,001	5	1	1	861	\$1,001	\$51	\$950	\$0	\$1.10	\$950	\$4,750	\$4,750	\$950	\$1.10	\$0	\$1,375	\$1.60	\$1,375
TC 60%	\$1,201	3	2	2	855	\$1,201	\$66	\$1,135	\$0	\$1.33	\$1,135	\$3,405	\$3,405	\$1,135	\$1.33	\$0	\$1,488	\$1.74	\$1,488
TC 60%	\$1,201	6	2	2	857	\$1,201	\$66	\$1,135	\$0	\$1.32	\$1,135	\$6,810	\$6,810	\$1,135	\$1.32	\$0	\$1,491	\$1.74	\$1,491
TC 60%	\$1,201	2	2	2	857	\$1,201	\$66	\$1,135	\$0	\$1.32	\$1,135	\$2,270	\$2,270	\$1,135	\$1.32	\$0	\$1,491	\$1.74	\$1,491
TC 60%	\$1,201	3	2	2	861	\$1,201	\$66	\$1,135	\$0	\$1.32	\$1,135	\$3,405	\$3,405	\$1,135	\$1.32	\$0	\$1,497	\$1.74	\$1,497
TC 60%	\$1,201	3	2	2	873	\$1,201	\$66	\$1,135	\$0	\$1.30	\$1,135	\$3,405	\$3,405	\$1,135	\$1.30	\$0	\$1,526	\$1.75	\$1,526
TC 60%	\$1,201	6	2	2	873	\$1,201	\$66	\$1,135	\$0	\$1.30	\$1,135	\$6,810	\$6,810	\$1,135	\$1.30	\$0	\$1,526	\$1.75	\$1,526
TC 60%	\$1,201	11	2	2	874	\$1,201	\$66	\$1,135	\$0	\$1.30	\$1,135	\$12,485	\$12,485	\$1,135	\$1.30	\$0	\$1,528	\$1.75	\$1,528
TC 60%	\$1,201	27	2	2	875	\$1,201	\$66	\$1,135	\$0	\$1.30	\$1,135	\$30,645	\$30,645	\$1,135	\$1.30	\$0	\$1,541	\$1.76	\$1,541
TC 60%	\$1,201	1	2	2	875	\$1,201	\$66	\$1,135	\$0	\$1.30	\$1,135	\$1,135	\$1,135	\$1,135	\$1.30	\$0	\$1,541	\$1.76	\$1,541
TC 60%	\$1,201	2	2	2	875	\$1,201	\$66	\$1,135	\$0	\$1.30	\$1,135	\$2,270	\$2,270	\$1,135	\$1.30	\$0	\$1,541	\$1.76	\$1,541
TC 60%	\$1,201	15	2	2	875	\$1,201	\$66	\$1,135	\$0	\$1.30	\$1,135	\$17,025	\$17,025	\$1,135	\$1.30	\$0	\$1,541	\$1.76	\$1,541
TC 60%	\$1,201	1	2	2	1,008	\$1,201	\$66	\$1,135	\$0	\$1.13	\$1,135	\$1,135	\$1,135	\$1,135	\$1.13	\$0	\$1,546	\$1.53	\$1,546
TC 60%	\$1,201	3	2	2	1,008	\$1,201	\$66	\$1,135	\$0	\$1.13	\$1,135	\$3,405	\$3,405	\$1,135	\$1.13	\$0	\$1,546	\$1.53	\$1,546
TC 60%	\$1,201	2	2	2	1,032	\$1,201	\$66	\$1,135	\$0	\$1.10	\$1,135	\$2,270	\$2,270	\$1,135	\$1.10	\$0	\$1,582	\$1.53	\$1,582
TC 60%	\$1,201	4	2	2	1,032	\$1,201	\$66	\$1,135	\$0	\$1.10	\$1,135	\$4,540	\$4,540	\$1,135	\$1.10	\$0	\$1,582	\$1.53	\$1,582
<b>TOTALS/AVERAGES:</b>		<b>174</b>				<b>136,869</b>			<b>\$0</b>	<b>\$1.33</b>	<b>\$1,044</b>	<b>\$181,585</b>	<b>\$181,585</b>	<b>\$1,044</b>	<b>\$1.33</b>	<b>\$0</b>	<b>\$1,362</b>	<b>\$1.73</b>	<b>\$1,362</b>

<b>ANNUAL POTENTIAL GROSS RENT:</b>	<b>\$2,179,020</b>	<b>\$2,179,020</b>
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## STABILIZED PRO FORMA

*Fiji Lofts, Dallas, TDHCA Bonds/4% HTC #21608*

### STABILIZED FIRST YEAR PRO FORMA

	COMPARABLES		APPLICANT				TDHCA				VARIANCE	
	Database	Local Comps	% EGI	Per SF	Per Unit	Amount	Amount	Per Unit	Per SF	% EGI	%	\$
<b>POTENTIAL GROSS RENT</b>				\$1.33	\$1,044	\$2,179,020	\$2,179,020	\$1,044	\$1.33		0.0%	\$0
Appl Fee, Pet, Laundry, Forfeited Dep					\$20.00	\$41,760						
Total Secondary Income					\$20.00		\$41,760	\$20.00			0.0%	\$0
<b>POTENTIAL GROSS INCOME</b>						\$2,220,780	\$2,220,780				0.0%	\$0
Vacancy & Collection Loss					7.5% PGI	(166,559)	(166,559)	7.5% PGI			0.0%	-
<b>EFFECTIVE GROSS INCOME</b>						\$2,054,222	\$2,054,222				0.0%	\$0

General & Administrative	\$91,994	\$529/Unit	\$75,718	\$435	2.77%	\$0.42	\$327	\$56,900	\$75,718	\$435	\$0.55	3.69%	-24.9%	(18,818)
Management	\$78,538	3.6% EGI	\$69,102	\$397	4.02%	\$0.60	\$474	\$82,500	\$82,169	\$472	\$0.60	4.00%	0.4%	331
Payroll & Payroll Tax	\$234,752	\$1,349/Unit	\$270,367	\$1,554	10.37%	\$1.56	\$1,224	\$213,000	\$213,000	\$1,224	\$1.56	10.37%	0.0%	-
Repairs & Maintenance	\$121,885	\$700/Unit	\$158,902	\$913	3.08%	\$0.46	\$364	\$63,300	\$113,100	\$650	\$0.83	5.51%	-44.0%	(49,800)
Electric/Gas	\$41,773	\$240/Unit	\$29,683	\$171	1.22%	\$0.18	\$144	\$25,000	\$29,683	\$171	\$0.22	1.44%	-15.8%	(4,683)
Water, Sewer, & Trash	\$126,498	\$727/Unit	\$120,349	\$692	6.09%	\$0.91	\$718	\$125,000	\$120,349	\$692	\$0.88	5.86%	3.9%	4,651
Property Insurance	\$63,320	\$0.46 /sf	\$58,894	\$338	3.39%	\$0.51	\$400	\$69,676	\$63,320	\$364	\$0.46	3.08%	10.0%	6,356
Property Tax (@ 0%) 2.7129	\$190,341	\$1,094/Unit	\$120,462	\$692	0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-
Reserve for Replacements					2.12%	\$0.32	\$250	\$43,500	\$43,500	\$250	\$0.32	2.12%	0.0%	-
Supportive Services					0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-
TDHCA Compliance fees (\$40/HTC unit)					0.34%	\$0.05	\$40	\$6,960	\$6,960	\$40	\$0.05	0.34%	0.0%	-
TDHCA Bond Compliance Fee					0.21%	\$0.03	\$25	\$4,350	\$4,350	\$25	\$0.03	0.21%	0.0%	-
Bond Trustee Fees					0.19%	\$0.03	\$23	\$4,000	\$4,000	\$23	\$0.03	0.19%	0.0%	-
Fire Safety					0.17%	\$0.03	\$20	\$3,500	\$3,500	\$20	\$0.03	0.17%	0.0%	-
<b>TOTAL EXPENSES</b>					<b>33.96%</b>	<b>\$5.10</b>	<b>\$4,010</b>	<b>\$697,686</b>	<b>\$759,648</b>	<b>\$4,366</b>	<b>\$5.55</b>	<b>36.98%</b>	<b>-8.2%</b>	<b>\$ (61,962)</b>
<b>NET OPERATING INCOME ("NOI")</b>					<b>66.04%</b>	<b>\$9.91</b>	<b>\$7,796</b>	<b>\$1,356,536</b>	<b>\$1,294,573</b>	<b>\$7,440</b>	<b>\$9.46</b>	<b>63.02%</b>	<b>4.8%</b>	<b>\$ 61,962</b>

CONTROLLABLE EXPENSES	\$2,777/Unit	\$3,172/Unit
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**CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS**  
*Fiji Lofts, Dallas, TDHCA Bonds/4% HTC #21608*

<b>DEBT / GRANT SOURCES</b>																
<b>APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE</b>										<b>AS UNDERWRITTEN DEBT/GRANT STRUCTURE</b>						
<b>DEBT (Must Pay)</b>	<b>Fee</b>	<b>Cumulative DCR</b>		<b>Pmt</b>	<b>Rate</b>	<b>Amort</b>	<b>Term</b>	<b>Principal</b>	<b>Principal</b>	<b>Term</b>	<b>Amort</b>	<b>Rate</b>	<b>Pmt</b>	<b>Cumulative</b>		
		<b>UW</b>	<b>App</b>											<b>DCR</b>	<b>LTC</b>	
Community Bank of Texas	0.10%	1.09	1.15	1,184,589	3.82%	40	15	\$23,849,000	\$22,549,000	18	40	3.82%	\$1,123,339	1.15	50.6%	
<b>CASH FLOW DEBT / GRANTS</b>				<b>\$1,184,589</b>	<b>TOTAL DEBT / GRANT SOURCES</b>			<b>\$23,849,000</b>	<b>\$22,549,000</b>	<b>TOTAL DEBT SERVICE</b>			<b>\$1,123,339</b>	<b>1.15</b>	<b>50.6%</b>	
<b>NET CASH FLOW</b>		\$109,984	\$171,947	<b>TDHCA NET OPERATING INCOME</b>						\$1,294,573	\$171,235	<b>NET CASH FLOW</b>				

<b>EQUITY SOURCES</b>											
<b>APPLICANT'S PROPOSED EQUITY STRUCTURE</b>						<b>AS UNDERWRITTEN EQUITY STRUCTURE</b>					
<b>EQUITY / DEFERRED FEES</b>	<b>DESCRIPTION</b>	<b>% Cost</b>	<b>Annual Credit</b>	<b>Credit Price</b>	<b>Amount</b>	<b>Amount</b>	<b>Credit Price</b>	<b>Annual Credit</b>	<b>% Cost</b>	<b>Annual Credits per Unit</b>	<b>Allocation Method</b>
Affordable Housing Partners, Inc	LIHTC Equity	41.7%	\$2,137,340	\$0.87	\$18,591,143	\$18,099,831	\$0.8698	\$2,080,856	40.6%	\$11,959	Eligible Basis
Sphinx Development Corporation	Deferred Developer Fees	5.6%	(44% Deferred)		\$2,488,286	\$3,946,875	(74% Deferred)		8.9%	<b>Total Developer Fee:</b>	<b>\$5,366,084</b>
Additional (Excess) Funds Req'd		0.0%			\$0				0.0%		
<b>TOTAL EQUITY SOURCES</b>		<b>47.3%</b>			<b>\$21,079,429</b>	<b>\$22,046,707</b>			<b>49.4%</b>		
<b>TOTAL CAPITALIZATION</b>						<b>\$44,928,429</b>	<b>\$44,595,707</b>	<b>15-Yr Cash Flow after Deferred Fee:</b>			<b>\$736,639</b>

<b>DEVELOPMENT COST / ITEMIZED BASIS</b>												
<b>APPLICANT COST / BASIS ITEMS</b>					<b>TDHCA COST / BASIS ITEMS</b>					<b>COST VARIANCE</b>		
	<b>Eligible Basis</b>		<b>Total Costs</b>		<b>Total Costs</b>	<b>Eligible Basis</b>				<b>%</b>	<b>\$</b>	
	<b>Acquisition</b>	<b>New Const. Rehab</b>				<b>New Const. Rehab</b>	<b>Acquisition</b>					
Land Acquisition			\$10,000 / Unit	\$1,740,000	\$1,740,000	\$10,000 / Unit				0.0%	\$0	
Building Acquisition	\$0		\$ / Unit	\$0	\$0	\$ / Unit		\$0		0.0%	\$0	
Off-Sites			\$690 / Unit	\$120,000	\$120,000	\$690 / Unit				0.0%	\$0	
Site Work		\$2,268,000	\$13,034 / Unit	\$2,268,000	\$2,268,000	\$13,034 / Unit	\$2,268,000			0.0%	\$0	
Site Amenities		\$375,000	\$2,155 / Unit	\$375,000	\$375,000	\$2,155 / Unit	\$375,000			0.0%	\$0	
Commercial Space			\$1,437 / Unit	\$250,000	\$250,000	\$1,437 / Unit				0.0%	\$0	
Structured Parking		\$4,000,000	\$22,989 / Unit	\$4,000,000	\$4,000,000	\$22,989 / Unit	\$4,000,000			0.0%	\$0	
Building Cost		\$16,668,500	\$121.78 /sf	\$95,796/Unit	\$16,668,500	\$17,674,867	\$101,580/Unit	\$129.14 /sf	\$16,668,500	-5.7%	(\$1,006,367)	
Contingency		\$1,664,000	7.14%	7.03%	\$1,664,000	\$1,664,000	6.74%	7.00%	\$1,631,805	0.0%	\$0	
Contractor Fees		\$3,580,000	14.33%	14.12%	\$3,580,000	\$3,580,000	13.59%	14.00%	\$3,492,063	0.0%	\$0	
Soft Costs	\$0	\$2,906,600		\$17,969 / Unit	\$3,126,600	\$3,126,600	\$17,969 / Unit		\$2,906,600	\$0	0.0%	\$0
Financing	\$0	\$3,980,600		\$27,397 / Unit	\$4,767,010	\$4,767,010	\$27,397 / Unit		\$3,454,964	\$0	0.0%	\$0
Developer Fee	\$0	\$5,660,000	15.97%	15.80%	\$5,660,000	\$5,366,084	14.82%	15.00%	\$5,219,540	\$0	5.5%	\$293,916
Reserves				5 Months	\$709,319	\$709,319	5 Months				0.0%	\$0
<b>TOTAL HOUSING DEVELOPMENT COST (UNADJUSTED BASIS)</b>			<b>\$0</b>	<b>\$41,102,700</b>	\$258,209 / Unit	<b>\$44,928,429</b>	<b>\$45,640,880</b>	\$262,304 / Unit	<b>\$40,016,471</b>	<b>\$0</b>	<b>-1.6%</b>	<b>(\$712,451)</b>
Acquisition Cost	\$0				\$0							
Contingency					(\$32,195)				(\$6,295)			
Contractor's Fee					(\$87,937)				(\$32,511)			
Financing Cost					(\$525,636)							
Developer Fee	\$0				(\$440,460)	15.00%	15.00%		(\$293,916)			
Reserves					\$0				\$0			
<b>ADJUSTED BASIS / COST</b>			<b>\$0</b>	<b>\$40,016,471</b>	\$256,297/unit	<b>\$44,595,707</b>	<b>\$45,640,880</b>	\$262,304/unit	<b>\$40,016,471</b>	<b>\$0</b>	<b>-2.3%</b>	<b>(\$1,045,173)</b>
<b>TOTAL HOUSING DEVELOPMENT COSTS (Applicant's Uses are within 5% of TDHCA Estimate):</b>						<b>\$44,595,707</b>						

**CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS**

*Fiji Lofts, Dallas, TDHCA Bonds/4% HTC #21608*

CREDIT CALCULATION ON QUALIFIED BASIS				
	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction
<b>ADJUSTED BASIS</b>	\$0	\$40,016,471	\$0	\$40,016,471
Deduction of Federal Grants	\$0	\$0	\$0	\$0
<b>TOTAL ELIGIBLE BASIS</b>	\$0	\$40,016,471	\$0	\$40,016,471
High Cost Area Adjustment		130%		130%
<b>TOTAL ADJUSTED BASIS</b>	\$0	\$52,021,412	\$0	\$52,021,412
Applicable Fraction	100.00%	100.00%	100%	100%
<b>TOTAL QUALIFIED BASIS</b>	\$0	\$52,021,412	\$0	\$52,021,412
Applicable Percentage	4.00%	4.00%	4.00%	4.00%
<b>ANNUAL CREDIT ON BASIS</b>	0	\$2,080,856	\$0	\$2,080,856
<b>CREDITS ON QUALIFIED BASIS</b>		\$2,080,856		\$2,080,856

Method	ANNUAL CREDIT CALCULATION BASED ON APPLICANT BASIS		FINAL ANNUAL LIHTC ALLOCATION		
	Annual Credits	Proceeds	Credit Price \$0.8698	Variance to Request	
			Credit Allocation	Credits	Proceeds
<b>Eligible Basis</b>	\$2,080,856	\$18,099,831	<b>\$2,080,856</b>	<b>(\$56,484)</b>	<b>(\$491,308)</b>
<b>Needed to Fill Gap</b>	\$2,534,611	\$22,046,707	----	----	----
<b>Applicant Request</b>	\$2,137,340	\$18,591,140	----	----	----

50% Test for Bond Financing for 4% Tax Credits					
Tax-Exempt Bond Amount	\$23,849,000		Percent Financed by Tax-Exempt Bonds	Applicant	TDHCA
	Applicant	TDHCA		63.1%	62.3%
Land Cost	\$1,740,000	\$1,740,000	amount aggregate basis can increase before 50% test fails	\$9,925,300	\$9,444,570
Depreciable Bldg Cost	\$36,032,700	\$36,513,430		26.3%	24.7%
<b>Aggregate Basis for 50% Test</b>	<b>\$37,772,700</b>	<b>\$38,253,430</b>			

BUILDING COST ESTIMATE				
CATEGORY	FACTOR	UNITS/SF	PER SF	
Base Cost:	Elevator Served	136,869 SF	\$103.69	14,191,579
Adjustments				
Exterior Wall Finish	8.00%		8.29	\$1,135,326
Elderly	0.00%		0.00	0
9-Ft. Ceilings	4.00%		4.15	567,663
Roof Adjustment(s)			1.91	261,000
Subfloor			0.22	30,453
Floor Cover			2.56	350,385
Enclosed Corridors	\$95.24	21,553	15.00	2,052,650
Balconies	\$27.47	1,575	0.32	43,265
Plumbing Fixtures	\$1,080	267	2.11	288,360
Rough-ins	\$530	348	1.35	184,440
Built-In Appliances	\$1,830	174	2.33	318,420
Exterior Stairs	\$2,460	0	0.00	0
Heating/Cooling			2.34	320,273
Storage Space	\$95.24	0	0.00	0
Carports	\$12.25	0	0.00	0
Structured Parking Garage		122,748	0.00	0
Common/Support Area	\$95.49	4,661	3.25	445,081
Elevators	\$190,000	2	2.78	380,000
<b>Other:</b>			0.00	0
Fire Sprinklers	\$2.88	163,083	3.43	469,679
<b>SUBTOTAL</b>			<b>153.71</b>	<b>21,038,576</b>
Current Cost Multiplier	1.00		0.00	0
Local Multiplier	1.00		0.00	0
Reserved				0
<b>TOTAL BUILDING COSTS</b>			<b>153.71</b>	<b>\$21,038,576</b>
Plans, specs, survey, bldg permits	3.30%		(5.07)	(\$694,273)
Contractor's OH & Profit	11.50%		(17.68)	(2,419,436)
<b>NET BUILDING COSTS</b>		\$103,016/unit	\$130.96/sf	\$17,924,867

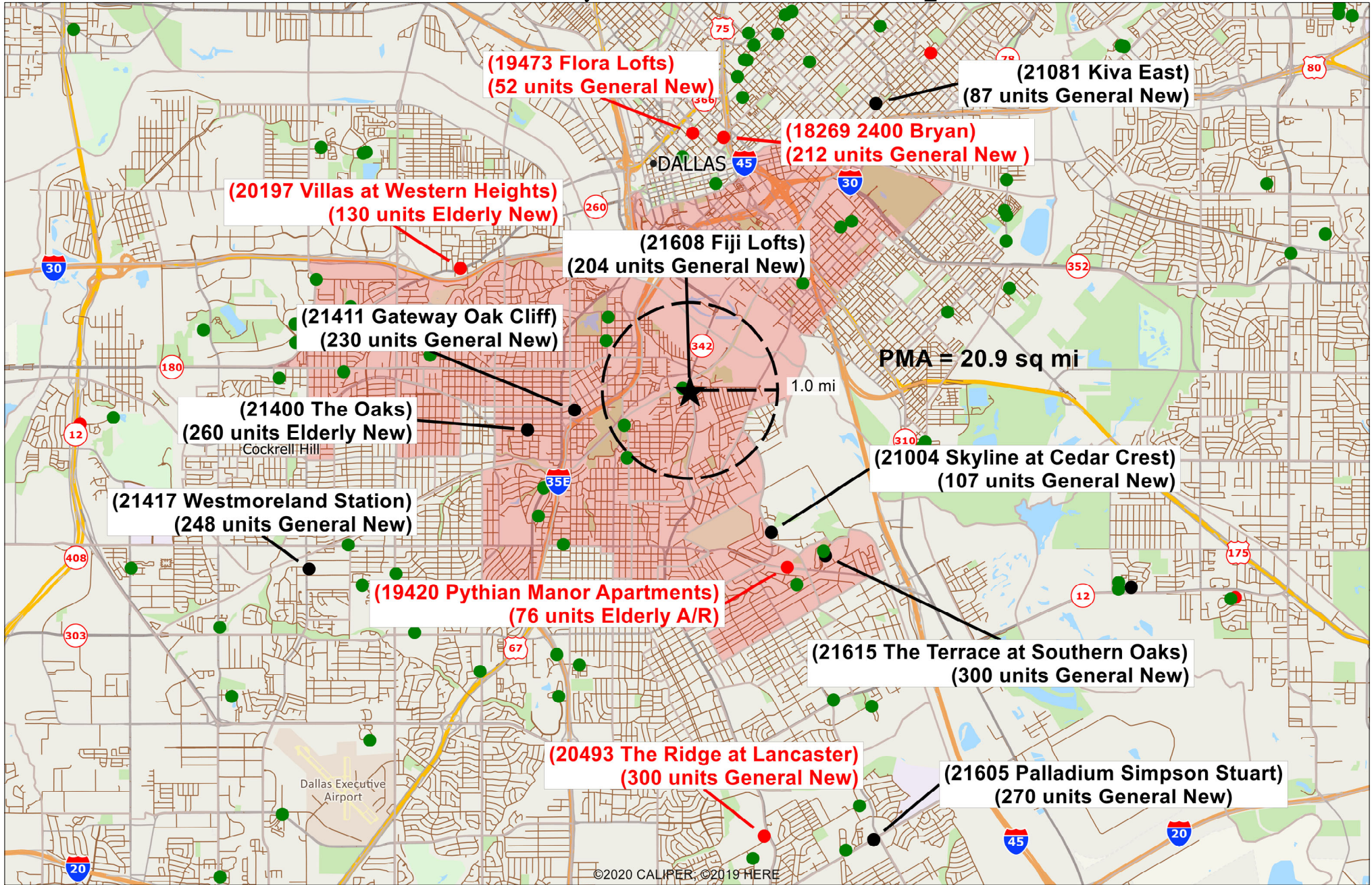
## Long-Term Pro Forma

*Fiji Lofts, Dallas, TDHCA Bonds/4% HTC #21608*

	Growth Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 25	Year 30	Year 35	Year 40
EFFECTIVE GROSS INCOME	2.00%	\$2,054,222	\$2,095,306	\$2,137,212	\$2,179,956	\$2,223,555	\$2,454,985	\$2,710,502	\$2,992,613	\$3,304,086	\$3,647,978	\$4,027,663	\$4,446,865
TOTAL EXPENSES	3.00%	\$759,648	\$781,616	\$804,226	\$827,498	\$851,451	\$982,156	\$1,133,168	\$1,307,668	\$1,509,339	\$1,742,443	\$2,011,916	\$2,323,470
<b>NET OPERATING INCOME ("NOI")</b>		<b>\$1,294,573</b>	<b>\$1,313,690</b>	<b>\$1,332,986</b>	<b>\$1,352,458</b>	<b>\$1,372,104</b>	<b>\$1,472,829</b>	<b>\$1,577,333</b>	<b>\$1,684,944</b>	<b>\$1,794,747</b>	<b>\$1,905,535</b>	<b>\$2,015,747</b>	<b>\$2,123,396</b>
EXPENSE/INCOME RATIO		37.0%	37.3%	37.6%	38.0%	38.3%	40.0%	41.8%	43.7%	45.7%	47.8%	50.0%	52.2%
<b>MUST -PAY DEBT SERVICE</b>													
TOTAL DEBT SERVICE		\$1,123,339	\$1,123,095	\$1,122,842	\$1,122,579	\$1,122,306	\$1,120,772	\$1,118,916	\$1,116,670	\$1,113,952	\$1,110,663	\$1,106,684	\$1,101,868
DEBT COVERAGE RATIO		1.15	1.17	1.19	1.20	1.22	1.31	1.41	1.51	1.61	1.72	1.82	1.93
<b>ANNUAL CASH FLOW</b>		<b>\$171,235</b>	<b>\$190,595</b>	<b>\$210,144</b>	<b>\$229,879</b>	<b>\$249,799</b>	<b>\$352,057</b>	<b>\$458,418</b>	<b>\$568,274</b>	<b>\$680,795</b>	<b>\$794,872</b>	<b>\$909,064</b>	<b>\$1,021,528</b>
Deferred Developer Fee Balance		\$3,775,641	\$3,585,045	\$3,374,901	\$3,145,022	\$2,895,223	\$1,341,193	\$0	\$0	\$0	\$0	\$0	\$0
<b>CUMULATIVE NET CASH FLOW</b>		<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$736,639</b>	<b>\$3,357,047</b>	<b>\$6,535,115</b>	<b>\$10,280,958</b>	<b>\$14,598,182</b>	<b>\$19,482,010</b>



# 21608 Fiji Lofts PMA Map



Disclaimer: This map is not a survey. Boundaries, distance and scale are approximate only.



## Final Transcript

**TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS:  
Multifamily Bond Hearing**

September 9, 2021/10:00 a.m. CDT

### **SPEAKERS**

Teresa Morales

### **PRESENTATION**

Teresa                      Good afternoon. This is Teresa Morales with the Texas Department of Housing and Community Affairs. The purpose of this call is to conduct a TEFRA public hearing for the proposed Fiji Lofts.

To give folks an idea as to how the hearing will proceed, there is a brief speech that I need to read for purposes of meeting the federal requirements of the Internal Revenue Code, and then it will be at the conclusion of that speech when I will unmute all of the lines. And, if there are any individuals listening who wish to make public comment with respect to Fiji Lofts that will be your opportunity to do so.

**TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS**

**Host: Teresa Morales**

**September 9, 2021/10:00 a.m. CDT**

**Page 2**

So, with that I will go ahead and start with the speech.

Good morning. My name is Teresa Morales and I would like to proceed with the public hearing. Let the record show that it is 10:03 a.m. Thursday, September 9, 2021.

We are conducting a public hearing on behalf of the Texas Department of Housing and Community Affairs, with respect to an issue of tax exempt multifamily revenue bonds for a residential rental community. This hearing is required by the Internal Revenue Code. The sole purpose of this hearing is to provide a reasonable opportunity for interested individuals to express their views regarding the development and the proposed bond issue.

No decisions regarding the development will be made at this hearing. The Department's Board is scheduled to meet to consider the transaction on October 14, 2021. In addition to providing your comments at this hearing, the public is also invited to provide comment directly to the Board at any of their meetings.



**TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS**

**Host: Teresa Morales**

**September 9, 2021/10:00 a.m. CDT**

**Page 3**

The bonds will be issued as tax exempt multifamily revenue bonds in the aggregate principal amount not to exceed \$25 million and taxable bonds if necessary in an amount to be determined and issued in one or more series by the Texas Department of Housing and Community Affairs, the issuer. The proceeds of the bonds will be loaned to SDC Corinth III, LP, or a related person or affiliate entity thereof to finance a portion of the costs of acquiring and equipping a multifamily rental housing community described as follows: a 174-unit multifamily residential rental development to be located on approximately 2.26 acres of land located at 301 South Corinth St. Road, Dallas, Dallas County, Texas 75203. The proposed multifamily rental housing community will be initially owned and operated by the borrower or a related person or affiliate thereof.

I would now like to open the floor up for public comment.

Moderator [Operator instructions].

Teresa All of the lines have been unmuted. So, if there are any individuals on the line who wish to make public comment with respect to Fiji Lofts now would be an opportunity to do so.

**TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS**

**Host: Teresa Morales**

**September 9, 2021/10:00 a.m. CDT**

**Page 4**

Again, if there are any individuals who would like to make public comment with respect to Fiji Lofts, this would be an opportunity to do so. All of the lines have been unmuted.

Let the record show that there are no individuals who have expressed an interest to make public comment with respect to Fiji Lofts and therefore the meeting is now adjourned. The time is now 10:06 a.m. Thank you.



**CAROLYN KING ARNOLD**  
COUNCILMEMBER  
DISTRICT 4

February 2, 2021

Texas Department of Housing & Community Affairs  
221 East 11th Street  
Austin, Texas 78701  
Attention: Teresa Morales

**Re: MF #21608 – Fiji Lofts**

Dear Ms. Morales:

I am writing this letter to indicate my support for the private activity/tax exempt bond application submitted to the Texas Department of Community Affairs with Application #21608 for Fiji Lofts to be located at 301 South Corinth Street, Dallas TX 75203.

I am of the opinion that Fiji Lofts, a mixed-income multifamily project is much needed in the City of Dallas and the metroplex. The development will assist in meeting the housing needs of residents of modest means by providing affordable housing for these residents.

Sincerely,

A handwritten signature in cursive script that reads "Carolyn King Arnold".

Carolyn King Arnold

5

**TO BE POSTED  
NOT LATER THAN  
THE THIRD DAY  
BEFORE THE  
DATE OF THE  
MEETING**

6a

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**NOVEMBER 10, 2021**

Presentation, discussion, and possible action regarding awards from the Multifamily Direct Loan (MFDL) 2021-3 Notice of Funding Availability (NOFA), as amended

Table 1 2021-3 NOFA Applications Recommended for Action				
App. ID	Application Name	Recommended Award	Fund Source*	City
21518	Brenham Trails	\$775,000	NHTF	Brenham
*All recommendations are sourced from the General Set-Aside.				

**RECOMMENDED ACTION**

**WHEREAS**, the Governing Board approved publication of the MFDL 2021-3 NOFA and its first amendment on June 17, 2021, and September 2, 2021, respectively, in response to previously approved Applicants’ demonstrated need for gap financing caused by increased construction costs resulting from the COVID-19 pandemic;

**WHEREAS**, the 2021-3 NOFA provides a streamlined review under the Department’s administrative rules for reviews approved under the prior application for eligibility and third-party reports, among others;

**WHEREAS**, the Previous Participation Review (PPR) performed under 10 TAC §1.301 was favorably reported as a Category 1 and will be adopted for this 2021-3 NOFA recommendation;

**WHEREAS**, the Application has been deemed acceptable by the Executive Award Review Advisory Committee (EARAC); and

**WHEREAS**, staff recommends approval of \$775,000 in National Housing Trust Fund (NHTF) from the General Set-Aside of the 2021-3 NOFA for Brenham Trails.

**NOW, therefore, it is hereby**

**RESOLVED**, that an award of \$775,000 of NHTF for Brenham Trails from the General Set-Aside of the 2021-3 NOFA is approved, subject to conditions that may be applicable as found in the Real Estate Analysis underwriting report posted to the Department’s website;

**FURTHER RESOLVED**, the prior Previous Participation Review is adopted;

**FURTHER RESOLVED**, that, in accordance with the 2021-3 NOFA, the latest deadline to sign a contract with the Department is July 29, 2022, despite any other deadline in 10 TAC Chapter 13; and

**FURTHER RESOLVED**, that the Board's approval is conditioned upon satisfaction of all conditions of EARAC, underwriting, and completion of any other reviews required to assure compliance with the applicable rules and requirements.



## **BACKGROUND**

*Description:* Previously approved for 9% LIHTC (#20222) on July 23, 2020, Brenham Trails is the new construction of 49 units that will serve an elderly population in compliance with the Housing for Older Persons Act under the Fair Housing Act in a three-story, elevator-equipped building in Brenham, located in Washington County. Units will be one or two bedrooms and rent/income levels range from 30% to 60% of the area median income (AMI), with eight unrestricted units.

The Application documents a construction cost increase of \$900,730. Trinity Brenham Trails, LP, is requesting \$775,000 in gap financing, and is currently under construction.

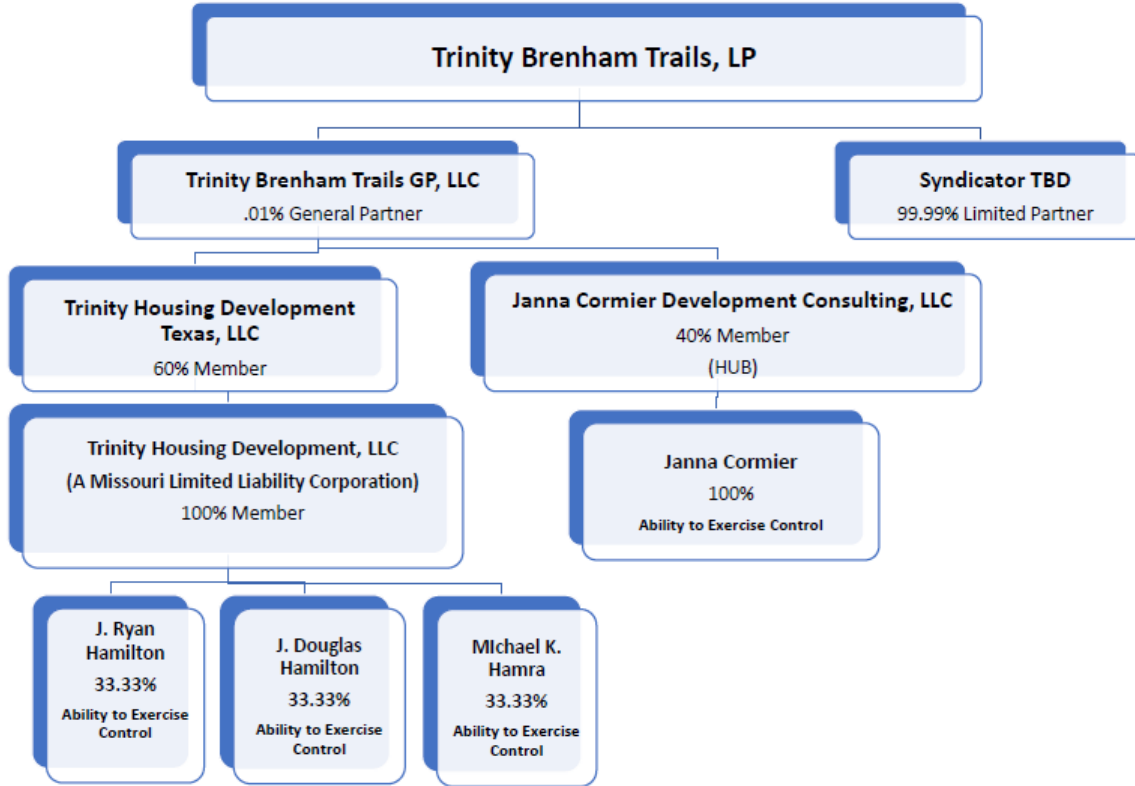
*Financing and Regulatory Terms:* Subject to final underwriting as further set forth in the following Real Estate Analysis (REA) Report, the \$775,000 MFDL NHTF loan will have a 15-year term and 40-year amortization, structured as deferred payable.

Of the five MFDL units restricted to 30% AMI, there will be three with one bedroom and two with two bedrooms. One additional HOME Match-Eligible Unit serving households at or below 60% AMI is required. The Federal Affordability Period will be 30 years; the State Affordability Period will be 45 years.

*Organizational Structure:* The proposed borrower is Trinity Brenham Trails, LP, and includes principals with the ability to exercise control as indicated in the organizational chart below.

# Brenham Trails

## Organizational Chart -- Ownership Entity





**Addendum to Underwriting Report**

TDHCA Application #: 21518 Program(s): 9% HTC/MDL

Brenham Trails

Address/Location: SWQ S Market St. and Ryan St.

City: Brenham County: Washington Zip: 77833

APPLICATION HISTORY	
Report Date	PURPOSE
11/03/21	MDL Application
09/10/20	Original Underwriting Report

**ALLOCATION**

TDHCA Program	Previous Allocation				RECOMMENDATION				
	Amount	Rate	Amort	Term	Amount	Rate	Amort	Term	Lien
Multifamily Direct Loan (Soft Repayable)					\$775,000	0.00%	40	15	2
LIHTC (9% Credit)	\$974,013				\$974,013				

\* Multifamily Direct Loan Terms:

\* Pursuant to 10 TAC §13.8(a), the term of a Multifamily Direct Loan should match the term of any superior loan (within 6 months).

\* Lien position after conversion to permanent. The Department's lien position during construction may vary.

**CONDITIONS STATUS**

- 0 Receipt and acceptance before Direct Loan Closing:
  - a: Substantially final construction contract with Schedule of Values.
  - b: Updated term sheets with substantially final terms from all lenders
  - c: Substantially final draft of limited partnership agreement.
  - d: Senior loan documents (and/or partnership documents) must contain a provision(s) that any stabilization resizing on the senior debt includes the debt service on the TDHCA MDL at a 1.15 DCR.
  - e: Documentation identifying any required matching funds, and confirming that the source is eligible to be counted as matching funds under HUD and TDHCA requirements.
- 1 Receipt and acceptance by 10% test:
  - a: Documentation that a noise study has been completed, and Architect certification that all recommendations from the noise study are incorporated into the development plans.
- 2 Documentation at Cost Certification clearing environmental issues identified in the ESA report, specifically:
  - a: Architect certification that all noise assessment recommendations were implemented and the Development is compliant with HUD noise guidelines.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

**SET-ASIDES**

TDHCA SET-ASIDES for HTC LURA		
Income Limit	Rent Limit	Number of Units
30% of AMI	30% of AMI	4
50% of AMI	50% of AMI	9
60% of AMI	60% of AMI	28

TDHCA SET-ASIDES for DIRECT LOAN LURA		
Income Limit	Rent Limit	Number of Units
30% of AMFI	30% of AMFI	5

**ANALYSIS**

The Development received a 9% HTC allocation in 2020. The Applicant has applied for Multifamily Direct Loan funding under the 2021-3 NOFA.

The requested Direct Loan funding requires the restriction of 5 units at 30% AMI.

**Operating Pro Forma**

Rents have been updated to the 2021 Program Rents.

**Development Cost**

Building Costs increased \$774,054.

Total Development Costs increased \$780,418.

**Sources of Funds**

The Applicant has applied for a MultiFamily Direct Loan consistent with the requirements of NOFA 2021-3.

The Underwriter recommends approval of an MFDL as a second lien in the amount of \$775,000 at 0% interest payable from Surplus Cash Flow with a 15-year term (to match the senior debt).

Underwriter: Greg Stoll

Manager of Real Estate Analysis: Jeanna Adams

Director of Real Estate Analysis: Thomas Cavanagh

**UNIT MIX/RENT SCHEDULE**

**Brenham Trails, Brenham, 9% HTC #20222**

LOCATION DATA	
CITY:	Brenham
COUNTY:	Washington
Area Median Income	\$67,400
PROGRAM REGION:	8
PROGRAM RENT YEAR:	2021

UNIT DISTRIBUTION				
# Beds	# Units	% Total	Assisted	MDL
Eff	-	0.0%	0	0
1	31	63.3%	0	3
2	18	36.7%	0	2
3	-	0.0%	0	0
4	-	0.0%	0	0
5	-	0.0%	0	0
<b>TOTAL</b>				
	<b>49</b>	<b>100.0%</b>	<b>-</b>	<b>5</b>

55% Average Income		
Income	# Units	% Total
20%	-	0.0%
30%	4	8.2%
40%	-	0.0%
50%	9	18.4%
60%	28	57.1%
70%	-	0.0%
80%	-	0.0%
MR	8	16.3%
<b>TOTAL</b>		
	<b>49</b>	<b>100.0%</b>

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjust	130%
Applicable Fraction	83.36%
APP % Acquisition	3.32%
APP % Construction	9.00%
Average Unit Size	732 sf

**UNIT MIX / MONTHLY RENT SCHEDULE**

HTC		TDHCA Direct Loan Program		UNIT MIX				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS		
Type	Gross Rent	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	Mrkt Analyst	
TC 30%	\$405	30%/30%	\$406	2	1	1	650	\$405	\$74	\$331	\$0	\$0.51	\$331	\$662	\$662	\$331	\$0.51	\$0	\$811	\$1.25	\$920
TC 50%	\$676			3	1	1	650	\$676	\$74	\$602	\$0	\$0.93	\$602	\$1,806	\$1,806	\$602	\$0.93	\$0	\$811	\$1.25	\$920
TC 60%	\$811			10	1	1	650	\$811	\$74	\$737	\$0	\$1.13	\$737	\$7,370	\$7,370	\$737	\$1.13	\$0	\$811	\$1.25	\$920
MR				1	1	1	650	\$0	\$74		NA	\$1.25	\$811	\$811	\$811	\$811	\$1.25	NA	\$811	\$1.25	\$920
MR				1	1	1	750	\$0	\$74		NA	\$1.08	\$811	\$811	\$811	\$811	\$1.08	NA	\$811	\$1.08	\$920
TC 30%	\$405	30%/30%	\$406	1	1	1	671	\$405	\$74	\$331	\$0	\$0.49	\$331	\$331	\$331	\$331	\$0.49	\$0	\$811	\$1.21	\$920
TC 50%	\$676			2	1	1	671	\$676	\$74	\$602	\$0	\$0.90	\$602	\$1,204	\$1,204	\$602	\$0.90	\$0	\$811	\$1.21	\$920
TC 60%	\$811			8	1	1	671	\$811	\$74	\$737	\$0	\$1.10	\$737	\$5,896	\$5,896	\$737	\$1.10	\$0	\$811	\$1.21	\$920
MR				3	1	1	671	\$0	\$74		NA	\$1.21	\$811	\$2,433	\$2,433	\$811	\$1.21	NA	\$811	\$1.21	\$920
TC 30%	\$486	30%/30%	\$487	1	2	1	852	\$486	\$93	\$393	\$0	\$0.46	\$393	\$393	\$393	\$393	\$0.46	\$0	\$811	\$0.95	\$1,100
TC 50%	\$811	30%/30%	\$487	1	2	1	852	\$487	\$93	\$394	(\$1)	\$0.46	\$393	\$393	\$394	\$394	\$0.46	\$0	\$811	\$0.95	\$1,100
TC 50%	\$811			3	2	1	852	\$811	\$93	\$718	\$0	\$0.84	\$718	\$2,154	\$2,154	\$718	\$0.84	\$0	\$811	\$0.95	\$1,100
TC 60%	\$973			10	2	1	852	\$973	\$93	\$880	\$0	\$1.03	\$880	\$8,800	\$8,800	\$880	\$1.03	\$0	\$973	\$1.14	\$1,100
MR				3	2	1	852	\$0	\$93		NA	\$1.14	\$973	\$2,919	\$2,919	\$973	\$1.14	NA	\$973	\$1.14	\$1,100
<b>TOTALS/AVERAGES:</b>				<b>49</b>			<b>35,880</b>				<b>(\$0)</b>	<b>\$1.00</b>	<b>\$734</b>	<b>\$35,983</b>	<b>\$35,984</b>	<b>\$734</b>	<b>\$1.00</b>	<b>\$0</b>	<b>\$854</b>	<b>\$1.17</b>	<b>\$986</b>

<b>ANNUAL POTENTIAL GROSS RENT:</b>	<b>\$431,796</b>	<b>\$431,808</b>
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**STABILIZED PRO FORMA**

**Brenham Trails, Brenham, 9% HTC #20222**

**STABILIZED FIRST YEAR PRO FORMA**

	COMPARABLES		APPLICANT				PRIOR REPORT		TDHCA				VARIANCE	
	Database	Four Local Comps	% EGI	Per SF	Per Unit	Amount	Applicant	TDHCA	Amount	Per Unit	Per SF	% EGI	%	\$
<b>POTENTIAL GROSS RENT</b>				\$1.00	\$734	\$431,796	\$407,304	\$405,024	\$431,808	\$734	\$1.00		0.0%	(\$12)
Late Fees, Forfeit deposits						\$10.00	\$5,880	5,880						
Total Secondary Income						\$10.00		5,880	\$5,880	\$10.00			0.0%	\$0
<b>POTENTIAL GROSS INCOME</b>						\$437,676	\$413,184	\$410,904	\$437,688				0.0%	(\$12)
Vacancy & Collection Loss						7.5% PGI	(32,826)	(30,989)	(30,818)	(32,827)	7.5% PGI		0.0%	1
Rental Concessions						-	0	0	-				0.0%	-
<b>EFFECTIVE GROSS INCOME</b>						\$404,850	\$382,195	\$380,086	\$404,861				0.0%	(\$11)

General & Administrative	\$14,760	\$301/Unit	\$29,874	\$610	3.29%	\$0.37	\$272	\$13,328	\$13,328	\$14,740	\$14,760	\$301	\$0.41	3.65%	-9.7%	(1,432)
Management	\$25,554	8.0% EGI	\$22,364	\$456	4.73%	\$0.53	\$391	\$19,164	\$19,162	\$19,004	\$20,243	\$413	\$0.56	5.00%	-5.3%	(1,079)
Payroll & Payroll Tax	\$47,203	\$963/Unit	\$52,712	\$1,076	10.74%	\$1.21	\$887	\$43,463	\$43,463	\$52,712	\$52,712	\$1,076	\$1.47	13.02%	-17.5%	(9,249)
Repairs & Maintenance	\$39,236	\$801/Unit	\$27,594	\$563	7.76%	\$0.88	\$641	\$31,400	\$31,400	\$29,400	\$29,400	\$600	\$0.82	7.26%	6.8%	2,000
Electric/Gas	\$8,727	\$178/Unit	\$7,986	\$163	1.82%	\$0.20	\$150	\$7,350	\$7,350	\$7,986	\$7,986	\$163	\$0.22	1.97%	-8.0%	(636)
Water, Sewer, & Trash	\$28,285	\$577/Unit	\$16,101	\$329	5.08%	\$0.57	\$420	\$20,580	\$20,580	\$16,101	\$16,101	\$329	\$0.45	3.98%	27.8%	4,479
Property Insurance	\$13,840	\$0.39 /sf	\$10,933	\$223	3.27%	\$0.37	\$270	\$13,239	\$13,239	\$13,840	\$13,840	\$282	\$0.39	3.42%	-4.3%	(601)
Property Tax (@ 100%) 2.1150	\$19,288	\$394/Unit	\$20,311	\$415	10.43%	\$1.18	\$862	\$42,222	\$38,553	\$37,082	\$41,158	\$840	\$1.15	10.17%	2.6%	1,064
Reserve for Replacements				\$0	3.03%	\$0.34	\$250	\$12,250	\$12,250	\$12,250	\$12,250	\$250	\$0.34	3.03%	0.0%	-
TDHCA Compliance fees (\$40/HTC unit)				\$0	0.41%	\$0.05	\$33	\$1,640	\$1,640	\$1,640	\$1,640	\$33	\$0.05	0.41%	0.0%	-
<b>TOTAL EXPENSES</b>					<b>50.58%</b>	<b>\$5.71</b>	<b>\$4,179</b>	<b>\$ 204,772</b>	\$200,965	\$204,756	<b>\$210,260</b>	<b>\$4,291</b>	<b>\$5.86</b>	<b>51.93%</b>	<b>-2.6%</b>	<b>\$ (5,488)</b>
<b>NET OPERATING INCOME ("NOI")</b>					<b>49.42%</b>	<b>\$5.58</b>	<b>\$4,083</b>	<b>\$200,078</b>	\$181,230	\$175,331	<b>\$194,601</b>	<b>\$3,971</b>	<b>\$5.42</b>	<b>48.07%</b>	<b>2.8%</b>	<b>\$ 5,477</b>

CONTROLLABLE EXPENSES				\$2,370/Unit								\$2,469/Unit				
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**CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS**

*Brenham Trails, Brenham, 9% HTC #20222*

DEBT / GRANT SOURCES																			
APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE									Prior Underwriting		AS UNDERWRITTEN DEBT/GRANT STRUCTURE								
DEBT (Must Pay)	Fee	Cumulative DCR		Pmt	Rate	Amort	Term	Principal	Prior Underwriting		Principal	Term	Amort	Rate	Pmt	Cumulative			
		UW	App						Applicant	TDHCA						DCR	LTC		
Legacy Bank		1.30	1.34	149,590	5.05%	40	15	\$2,235,000	\$2,200,000	\$2,200,000	\$2,235,000	15	40	5.05%	\$130,215	1.54	18.7%		
TDHCA		1.30	1.34		0.00%	40	15	\$775,000			\$775,000	15	40	0.00%	\$19,375	1.34	6.5%		
<b>CASH FLOW DEBT / GRANTS</b>																			
City of Brenham		1.30	1.34		0.00%	0	0	\$250			\$250	0	0	0.00%		1.34	0.0%		
Westfal Construction Services		1.30	1.34		0.00%	0	0	\$58,125			\$58,125	0	0	0.00%		1.34	0.5%		
				<b>\$149,590</b>	<b>TOTAL DEBT / GRANT SOURCES</b>				<b>\$3,068,375</b>			<b>\$3,068,375</b>	<b>TOTAL DEBT SERVICE</b>				<b>\$149,590</b>	<b>1.34</b>	<b>25.7%</b>

<b>NET CASH FLOW</b>	\$45,011	\$50,488											<b>APPLICANT NET OPERATING INCOME</b>	\$200,078	\$50,489	<b>NET CASH FLOW</b>
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EQUITY SOURCES													
APPLICANT'S PROPOSED EQUITY STRUCTURE						Prior Underwriting		AS UNDERWRITTEN EQUITY STRUCTURE					
EQUITY / DEFERRED FEES	DESCRIPTION	% Cost	Annual Credit	Credit Price	Amount	Prior Underwriting		Amount	Credit Price	Annual Credit	% Cost	Annual Credits per Unit	Allocation Method
						Applicant	TDHCA						
42 Equity Partners	LIHTC Equity	68.5%	\$974,013	0.84	\$8,180,891	\$8,605,718	\$8,570,461	\$8,179,898	\$0.84	\$974,013	68.5%	\$19,878	Previous Allocation
Trinity Development	Deferred Developer Fees	5.8%	(41% Deferred)		\$695,506	\$358,385	\$393,642	\$696,499	(41% Deferred)		5.8%		Total Developer Fee:
Additional (Excess) Funds Req'd		0.0%					\$0	\$0			0.0%		\$1,703,991
<b>TOTAL EQUITY SOURCES</b>					<b>74.3%</b>			<b>\$8,876,397</b>	<b>\$8,964,103</b>	<b>\$8,964,103</b>	<b>\$8,876,396</b>	<b>74.3%</b>	

<b>TOTAL CAPITALIZATION</b>			<b>\$11,944,772</b>	\$11,164,353	\$11,164,353	<b>\$11,944,771</b>						15-Yr Cash Flow after Deferred Fee:	<b>\$277,385</b>
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DEVELOPMENT COST / ITEMIZED BASIS														
APPLICANT COST / BASIS ITEMS					Prior Underwriting		TDHCA COST / BASIS ITEMS					COST VARIANCE		
Eligible Basis		Total Costs			Prior Underwriting		Total Costs			Eligible Basis		%	\$	
Acquisition	New Const. Rehab				Applicant	TDHCA				New Const. Rehab	Acquisition			
Land Acquisition		\$12,668 / Unit	\$620,730	\$620,730	\$620,730	\$620,730	\$620,730	\$12,668 / Unit			0.0%	\$0		
Off-Sites	\$0	\$3,570 / Unit	\$174,923	\$174,923	\$174,923	\$174,923	\$174,923	\$3,570 / Unit	\$0		0.0%	\$0		
Site Work	\$977,206	\$19,943 / Unit	\$977,206	\$919,810	\$919,810	\$898,082	\$18,328 / Unit	\$977,206			8.8%	\$79,124		
Site Amenities	\$153,092	\$3,124 / Unit	\$153,092	\$155,934	\$155,934	\$144,969	\$2,959 / Unit	\$153,092			5.6%	\$8,123		
Building Cost	\$5,495,594	\$153.17 /sf	\$112,155/Unit	\$5,495,594	\$4,721,540	\$4,443,739	\$5,654,967	\$115,407/Unit	\$157.61 /sf	\$5,495,594	-2.8%	(\$159,373)		
Contingency	\$418,054	6.31%	6.15%	\$418,054	\$418,054	\$398,608	\$418,054	6.08%	6.31%	\$418,054	0.0%	\$0		
Contractor Fees	\$966,759	13.72%	13.39%	\$966,759	\$894,636	\$853,022	\$894,637	13.26%	13.72%	\$966,759	8.1%	\$72,122		
Soft Costs	0	\$621,617	\$12,992 / Unit	\$636,617	\$636,617	\$636,617	\$636,617	\$12,992 / Unit	\$621,617	\$0	0.0%	\$0		
Financing	0	\$535,827	\$12,654 / Unit	\$620,052	\$746,749	\$746,749	\$620,052	\$12,654 / Unit	\$535,827	\$0	0.0%	\$0		
Developer Fee	\$0	\$1,703,991	18.59%	18.24%	\$1,703,991	\$1,703,991	\$1,629,390	\$1,703,991	18.10%	18.59%	\$1,703,991	\$0	0.0%	\$0
Reserves			6 Months	\$177,754	\$171,369	\$171,369	\$176,016	6 Months			1.0%	\$1,738		
<b>TOTAL HOUSING DEVELOPMENT COST (UNADJUSTED BASIS)</b>		<b>\$0</b>	<b>\$10,872,140</b>	\$243,771 / Unit	<b>\$11,944,771</b>	\$11,164,353	\$10,750,890	<b>\$11,943,038</b>	\$243,735 / Unit	<b>\$10,872,140</b>	<b>\$0</b>	<b>0.0%</b>	<b>\$1,734</b>	
Acquisition Cost	\$0			\$0	\$0									
Contingency	\$0			\$0	\$0									
Contractor's Fee	\$0			\$0	\$0									
Financing Cost	\$0			\$0	\$0									
Developer Fee	\$0	\$0		\$0	\$0									
Reserves				\$0	\$0									
<b>ADJUSTED BASIS / COST</b>		<b>\$0</b>	<b>\$10,872,140</b>	\$243,771/unit	<b>\$11,944,771</b>	\$11,164,353	\$10,750,890	<b>\$11,943,038</b>	\$243,735/unit	<b>\$10,872,140</b>	<b>\$0</b>	<b>0.0%</b>	<b>\$1,734</b>	
<b>TOTAL HOUSING DEVELOPMENT COSTS (Applicant's Uses are within 5% of TDHCA Estimate):</b>						<b>\$11,944,771</b>								

**CAPITALIZATION / DEVELOPMENT COST BUDGET / ITEMIZED BASIS ITEMS**

*Brenham Trails, Brenham, 9% HTC #20222*

CREDIT CALCULATION ON QUALIFIED BASIS				
	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction Rehabilitation
<b>ADJUSTED BASIS</b>	\$0	\$10,872,140	\$0	\$10,872,140
Deduction of Federal Grants	\$0	\$0	\$0	\$0
<b>TOTAL ELIGIBLE BASIS</b>	\$0	\$10,872,140	\$0	\$10,872,140
High Cost Area Adjustment		130%		130%
<b>TOTAL ADJUSTED BASIS</b>	\$0	\$14,133,781	\$0	\$14,133,781
Applicable Fraction	83.36%	83.36%	83.36%	83.36%
<b>TOTAL QUALIFIED BASIS</b>	\$0	\$11,782,484	\$0	\$11,782,484
Applicable Percentage	3.32%	9.00%	3.32%	9.00%
<b>ANNUAL CREDIT ON BASIS</b>	\$0	\$1,060,424	\$0	\$1,060,424
<b>CREDITS ON QUALIFIED BASIS</b>	\$1,060,424		\$1,060,424	

Method	ANNUAL CREDIT CALCULATION BASED ON APPLICANT BASIS		FINAL ANNUAL LIHTC ALLOCATION		
	Annual Credits	Proceeds	Credit Price \$0.8398	Variance to Request	
			Credit Allocation	Credits	Proceeds
<b>Eligible Basis</b>	\$1,060,424	\$8,905,586	----	----	----
<b>Needed to Fill Gap</b>	\$1,056,948	\$8,876,396	----	----	----
<b>Previous Allocation</b>	\$974,013	\$8,179,898	<b>\$974,013</b>	<b>\$0</b>	<b>\$0</b>



## Long-Term Pro Forma

*Brenham Trails, Brenham, 9% HTC #20222*

	Growth Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 25	Year 30	Year 35	Year 40
EFFECTIVE GROSS INCOME	2.00%	\$404,850	\$412,947	\$421,206	\$429,630	\$438,223	\$483,834	\$534,191	\$589,790	\$651,176	\$718,951	\$793,780	\$876,398
TOTAL EXPENSES	3.00%	\$204,772	\$210,724	\$216,850	\$223,156	\$229,647	\$265,079	\$306,035	\$353,383	\$408,127	\$471,430	\$544,638	\$629,311
<b>NET OPERATING INCOME ("NOI")</b>		<b>\$200,078</b>	<b>\$202,224</b>	<b>\$204,356</b>	<b>\$206,475</b>	<b>\$208,576</b>	<b>\$218,754</b>	<b>\$228,156</b>	<b>\$236,407</b>	<b>\$243,049</b>	<b>\$247,522</b>	<b>\$249,142</b>	<b>\$247,087</b>
EXPENSE/INCOME RATIO		50.6%	51.0%	51.5%	51.9%	52.4%	54.8%	57.3%	59.9%	62.7%	65.6%	68.6%	71.8%
<b>MUST -PAY DEBT SERVICE</b>													
Legacy Bank		\$130,215	\$130,215	\$130,215	\$130,215	\$130,215	\$130,215	\$130,215	\$130,215	\$130,215	\$130,215	\$130,215	\$130,215
TDHCA		\$19,375	\$19,375	\$19,375	\$19,375	\$19,375	\$19,375	\$19,375	\$19,375	\$19,375	\$19,375	\$19,375	\$19,375
<b>TOTAL DEBT SERVICE</b>		<b>\$149,590</b>	<b>\$149,590</b>	<b>\$149,590</b>	<b>\$149,590</b>	<b>\$149,590</b>	<b>\$149,590</b>	<b>\$149,590</b>	<b>\$149,590</b>	<b>\$149,590</b>	<b>\$149,590</b>	<b>\$149,590</b>	<b>\$149,590</b>
DEBT COVERAGE RATIO		1.34	1.35	1.37	1.38	1.39	1.46	1.53	1.58	1.62	1.65	1.67	1.65
<b>ANNUAL CASH FLOW</b>		<b>\$50,489</b>	<b>\$52,634</b>	<b>\$54,767</b>	<b>\$56,885</b>	<b>\$58,986</b>	<b>\$69,165</b>	<b>\$78,567</b>	<b>\$86,818</b>	<b>\$93,460</b>	<b>\$97,932</b>	<b>\$99,553</b>	<b>\$97,497</b>
Deferred Developer Fee Balance		\$646,010	\$593,376	\$538,609	\$481,724	\$422,738	\$97,025	\$0	\$0	\$0	\$0	\$0	\$0
<b>CUMULATIVE NET CASH FLOW</b>		<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$277,385</b>	<b>\$695,517</b>	<b>\$1,150,279</b>	<b>\$1,631,990</b>	<b>\$2,127,806</b>	<b>\$2,621,060</b>

6b

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**NOVEMBER 10, 2021**

Presentation, discussion and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Application 18235 Memorial Apartments in McAllen

**RECOMMENDED ACTION**

**WHEREAS**, an award of Competitive (9%) Housing Tax Credits in the amount of \$1,883,683 to 18325 Memorial Apartments (the Development) was approved by the Board in July 2018;

**WHEREAS**, staff executed a Carryover Allocation Agreement with the Development Owner on December 20, 2018, that included a certification from the Development Owner that each building for which the allocation was made would be placed in service by December 31, 2020, and that documentation to satisfy the 10% Test would be submitted by July 1, 2019;

**WHEREAS**, the placement in service deadline was subsequently extended to November 30, 2021, in accordance with relief provided under Internal Revenue Service (IRS) Revenue Procedure 2014-49;

**WHEREAS**, on October 4, 2021, the Department received a request to further extend the placement in service deadline;

**WHEREAS**, other than in situations covered by force majeure or described in IRS Revenue Procedure 2014-49, the Department lacks authority to extend federal deadlines for placement in service; and

**WHEREAS**, the precipitating events described in the request meet the requirements for force majeure events described in 10 TAC §11.6(5);

**NOW, therefore, it is hereby**

**RESOLVED**, the request for treatment of the Development under an application of the force majeure rule is approved, with the 2018 Qualified Allocation Plan and Uniform Multifamily Rules, and the 2021 Program Calendar applicable to the Development (to the extent allowable by federal or state law) for the purposes of the force majeure event;

**FURTHER RESOLVED**, that the Department may issue a 2021 Carryover Agreement, with the extended placement in service deadline of December 31, 2023; 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 acts and deeds as may be necessary to effectuate the foregoing.

## BACKGROUND

An award of \$1,883,683 in Competitive (9%) Housing Tax Credits to the Development was approved by the Board in July 2018. Staff executed a Carryover Allocation Agreement with the Development Owner on December 20, 2018, that included a certification from the Development Owner that, in order to satisfy the requirements of §42 of the Internal Revenue Code, each building for which the allocation was made would be placed in service by December 31, 2020, and documentation for the 10% Test would be submitted by July 1, 2019. The deadline for placement in service was subsequently extended by the Department to November 30, 2021, in accordance with the relief related to major disasters described in IRS Revenue Procedure 2014-49. On October 4, 2021, the Department received a request from the Development Owner to extend the placement in service deadline under the provisions of 10 TAC §11.6(5) related to Credits Returns Resulting from Force Majeure Events.

10 TAC §11.6(5) of the Qualified Allocation Plan (QAP), related to Credits Returns Resulting from Force Majeure Events, allows a Development Owner to return issued credits within three years of award, and have those credits re-allocated to the Development outside of the usual regional allocation system if all of the requirements of the subsection are met. Pursuant to 10 TAC §11.6(5), the Department's Governing Board may approve the execution of a current program year Carryover Allocation Agreement regarding the returned credits with the Development Owner that returned such credits only if:

(A) The credits were returned as a result of "Force Majeure" events that occurred before issuance of Forms 8609. **Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner:** acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; unrelated party litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. If a Force Majeure event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions. Force Majeure events must make construction activity impossible or materially impede its progress; (emphasis added).

Of the circumstances listed in the rule, the request indicates that force majeure might be triggered by the COVID-19 Pandemic and related disruptions. According to the request, the development has experienced significant delays due to supply chain disruptions, local lockdown orders, resident and worker quarantine requirements, and labor and equipment shortages.

The request includes a letter from the Development Owner explaining the difficulties they have encountered. The letter indicates the approximately 80% of the units will be in service as of December 31, 2021, and requests that the deadline for placement in service be extended to June 30, 2022. IRS Revenue Procedure 2014-49 allows for placement in service relief in the context of a major disaster. Under this Procedure, the extension must not extend beyond December 31 of the year following the end of the two-year period described in Internal Revenue Code §42(h)(1)(E)(i), which limits the extension that staff is able to provide this development to December 31, 2021. As this is not sufficient to meet the construction timeline represented in the Owner's letter, the Department is unable to meet the request without treatment under the force majeure provision of the QAP.

Staff has determined that the Development Owner has provided sufficient evidence of “sudden and unforeseen circumstances outside the control of the Development Owner” as described in 10 TAC §11.6(5). If the Board grants the request to consider this a force majeure event, the Development Owner’s return of \$1,883,683 in credits and execution of a 2021 Carryover Allocation Agreement, will result in the new date of December 31, 2023, for the Development be placed in service in accordance with the 2021 Program Calendar. The Board may impose a deadline that is earlier than what is prescribed by the Calendar. For the purposes of the force majeure event, the 2018 Qualified Allocation Plan and Uniform Multifamily Rules will be applicable to the Development.

If the Board denies the request regarding this force majeure event, the date by which the Development must be placed in service will remain as November 30, 2021. Because the Development Owner anticipates not meeting the placed in service deadline, the credits are expected to be returned. If the Development Owner returns the credits, the credits would first be made available in the At-risk Set-aside from which they were originally awarded, pursuant to 10 TAC §11.6(2), related to returned credits.

Staff recommends the Board approve the request for treatment of Memorial Apartments under an application of the force majeure rule.

# TX McAllen Memorial Apartments II, LP

TDHCA  
Multifamily Divisions  
C/O Mr. Campbell  
221 E 11<sup>th</sup> Street  
Austin, TX 78701

September 30, 2021

RE: 18235 Memorial Apartments – Placed in Service Extension Request

Dear Mr. Campbell:

In follow up to our recent reports and e-mails on construction progress delays caused by COVID 19 in our market and national supply chain disruptions. This letter serves as our request for an extension to complete the Memorial Apartments rehabilitation project, due to be placed in service by December 2021. The developer and construction entity has encountered significant delays due to Covid-19 related supply disruptions involving appliances and hardy board specifically. Specifically, the property is 248 occupied units under rehab. We have experienced no less than 5 deaths on the property with the most recent one this Summer. When those cases happen, the relocation stops and construction in that area are delayed.

Cumulatively, they represent circumstances of force majeure preventing the timely completion of the work by the required in 2021 placed in service date. I believe it is clear we meet both the requirements and intentions of the force majeure provisions of the QAP.

Covid-19 has also introduced significant labor shortages, reduction in manpower and skilled labor in our market. Related requirements federal, state, and local guidelines and orders to stay at home in Hidalgo County are known to TDHCA. This also creates a fearful environment where labor is unwilling to man the job site where residents and other workers are sick with COVID 19.

Not just positive tests but household with sick family member who have this disease. It has also caused material disruptions in the material supply chain. We are having difficulty sourcing doors, windows, appliances, and more due to what we are advised to be labor shortages and source material supply disruptions at the manufacturer and distributor levels. Now we have logistic issues with ships unable to timely off load their containers. Many suppliers and manufacturers have not been able to produce at previous levels for the same reasons, which has led to shortages. This, in turn, has caused serious ripple effects in our ability to complete work necessary to obtain certificates of occupancy. All of these issues inevitably add time to our construction schedule.

Although residential construction was an approved essential business and allowed to continue, much of our subcontractor's labor force dwindled due to concerns over Covid-19. They simply did not show up for work.

# TX McAllen Memorial Apartments II, LP

McAllen, TX, where Memorial Apartments homes is located, became the national hot spot in August 2020. The County Judge imposed their own lockdown orders locally. Limiting essential workers only and limiting travel as well. The GP is owned and managed by the Hidalgo County Housing Authority whose board is appointed by The Hidalgo County Judge. The Hidalgo County housing authority's offices were closed for two weeks in August in adherence to the County orders to curtail all activities and work only from home.

This redevelopment is a modernization of an occupied property in McAllen. We have experienced outbreaks of some significance on the property which has rendered entire sections unavailable for move out for relocation. We cannot move sick and infected residents to start. We cannot move them to an off-site location for the same reason.

We started late through no fault of the sponsor. Our award was only final at the November 2019 TDHCA governing board meeting. The window to complete the rehabilitation was tight from the start in late 2019. No lender nor investor could or would close nor start work until the Award was vested at this November 2019 meeting.

The Sponsors could not reasonably foresee:

- The COVID 19 pandemic and related lockdowns, travel, and work restrictions

- The direct impact of the Pandemic on our community in McAllen, much more significant than other metro areas of Texas and the country

- The corresponding labor and equipment disruptions brought about by factory closures and reductions in manufacturing output caused by COVID 19

- The direct spread of the virus in our housing community that has materially affected relocation activities necessary to complete the approved scope of work as submitted and funded by the department

- The sponsors could not reasonably foresee the days and weeks lost in the work schedule from damage and clean up resulting from Hurricane Hanna.

- The supply chain interruptions for materials and equipment sourced through the Suez Canal and the Port of Long Beach California.

The estimated cumulative delay is difficult to quantify but has pushed the current schedule to at least June 30, 2022. Remember many of the challenges are ongoing but are clearly sufficient to cause a reasonable sponsor to go past the placed in service deadline in June 2022. We are and have been working diligently to add additional crews and subs to double up on the work in a concentrated effort to bring this project in on time at year end, wherever possible. Finding alternate vendors for materials has been difficult or impossible, as it seems that most are experiencing the same labor, parts and supply constraints. Approximately 80% of the units will be in service under the award by 12/31/21. Work will be underway by year end in the final 54 units of the 246 unit property. RISE will finish this year if possible.

## TX McAllen Memorial Apartments II, LP

We have not given up and continue to make all reasonable efforts to finish on time. But our subcontractors are not showing a completion schedule that could reasonably finish the rehabilitation work on time to meet the placed in service date for all building and units. Memorial is 82 buildings with three units in each building. Unlike other rental community designs, we cannot be rescued by the one unit in a building, criteria for placed in service. Our request is to extend the placed in service date to June 30, 2022, which is 30 months from the time of final board approval of our 2018 HTC award.

Respectfully, we request staff approval for the extension or if appropriate to be placed on the Board agenda for the next meeting for our extension request.

Sincerely,



Melissa Fisher

Mike Lopez

TX McAllen Memorial Apartments II, LP



6c

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**NOVEMBER 10, 2021**

Presentation, discussion, and possible action regarding the issuance of a Determination Notice for Torrey Chase Apartments (#21463) in the Houston ETJ

**RECOMMENDED ACTION**

**WHEREAS**, an application for Torrey Chase Apartments, as further detailed below, was submitted to the Department for consideration of a Determination Notice of 4% Housing Tax Credits; and

**WHEREAS**, staff has completed the program, underwriting and compliance reviews associated with the application and recommends that a Determination Notice of 4% Housing Tax Credits be issued, in the specific amount noted herein, and subject to any underwriting conditions as noted in the Real Estate Analysis Report and any compliance conditions as reflected in Exhibit A, as applicable;

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of a Determination Notice in the amount listed herein, subject to underwriting conditions as found in the Real Estate Analysis report posted to the Department's website, and subject to any compliance conditions as reflected in Exhibit A, is hereby approved in the form presented at this meeting.

**BACKGROUND**

The 4% Housing Tax Credit (HTC) program is considered a non-competitive program in that there is not a specific ceiling amount of HTCs that can be issued each year. Rather, the ceiling amount of HTCs that can possibly be issued is limited by the amount of Private Activity Bond volume cap available. The Texas Bond Review Board (BRB) administers the Private Activity Bond program for the State of Texas, and for the 2021 calendar year, the state received approximately \$3.2 billion in Private Activity Bond authority, of which approximately \$847 million is reserved for multifamily housing until August 15<sup>th</sup> of each year. After such date, there may be more Private Activity Bond volume cap that goes towards multifamily housing. The collapse occurred on August 16, 2021 (given that the 15<sup>th</sup> was a weekend), and there was approximately \$1.76 billion in applications requesting volume cap, with the majority of those requests being for multifamily. There was approximately \$241 million in unreserved volume cap that collapsed, leaving approximately \$1.3 million unreserved and waiting for volume cap to be released through currently reserved applications that were withdrawn. The last day to issue a reservation for the 2021 program year is November 15.

Individual projects receive a Certification of Reservation (Reservation) from the BRB that allows for a statutory 180-day closing timeline. For those projects seeking 4% HTCs (as the majority of them do), they must complete the Department's review process, the bond issuer's process, and the Attorney General's process in order to close within the prescribed timeframe. The Department accepts applications on a monthly basis throughout the year. The year from which the Reservation is issued is what determines the Qualified Allocation Plan (QAP) to which the application must adhere.

### 21463 Torrey Chase Apartments

The development involves the new construction of 280 units at the southeast corner of Cypress Creek Parkway and Torrey Chase Boulevard in the extraterritorial jurisdiction of Houston, Harris County. The general population will be served and all of the units are proposed to be rent and income restricted at 60% of AMFI. The Lakeside Place PFC is serving as the bond issuer.

*School:* There is a Neighborhood Risk Factor associated with the development relating to the performance of the middle school in the attendance zone for which the site is located. The Edwin M. Wells Middle School earned a Met Standard accountability rating for 2018 and an "F" for 2019 from the Texas Education Agency. These are the most recent ratings available as all of the districts and schools were not rated in 2020 due to the COVID-19 pandemic. The middle school was also not rated in 2021 due to a declared state of disaster. Pursuant to §11.101(a)(3)(C) of the QAP, mitigation for school performance is not required for applications submitted in 2021 due to school closures as a result of the COVID-19 pandemic.

*Public Comment:* The Department received a letter of opposition from State Representative Sam Harless, as well as four letters from residents of the surrounding neighborhood, all of which are included herein. The letters express concern regarding increased traffic, overcrowded schools, fear of decreased property values, and increased strain on Emergency Ambulance Services, Police, and Fire Department resources.

Recommended HTC Amount: \$2,584,935

**EXHIBIT A**  
**Previous Participation Results**

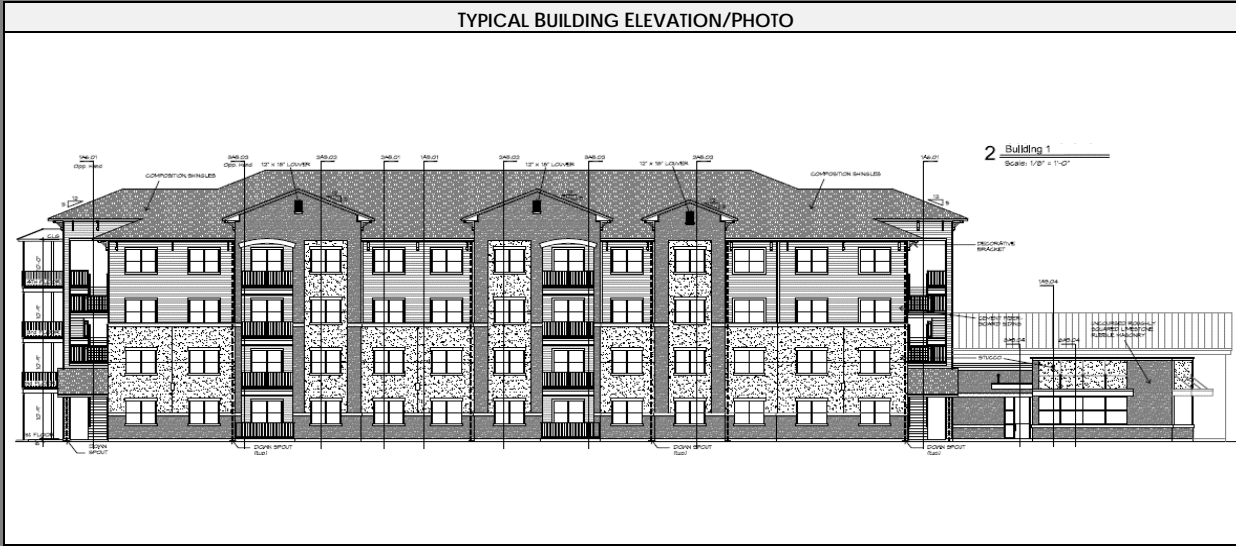
<b>Application Number</b>	<b>Development Name</b>	<b>Category</b>	<b>PPR Conditions</b>
21463	Torrey Chase Apartments	1	N/A

# 21463 Torrey Chase - Application Summary

PROPERTY IDENTIFICATION	
Application #	21463
Development	Torrey Chase
City / County	Houston / Harris
Region/Area	6 / Urban
Population	General
Set-Aside	General
Activity	New Construction

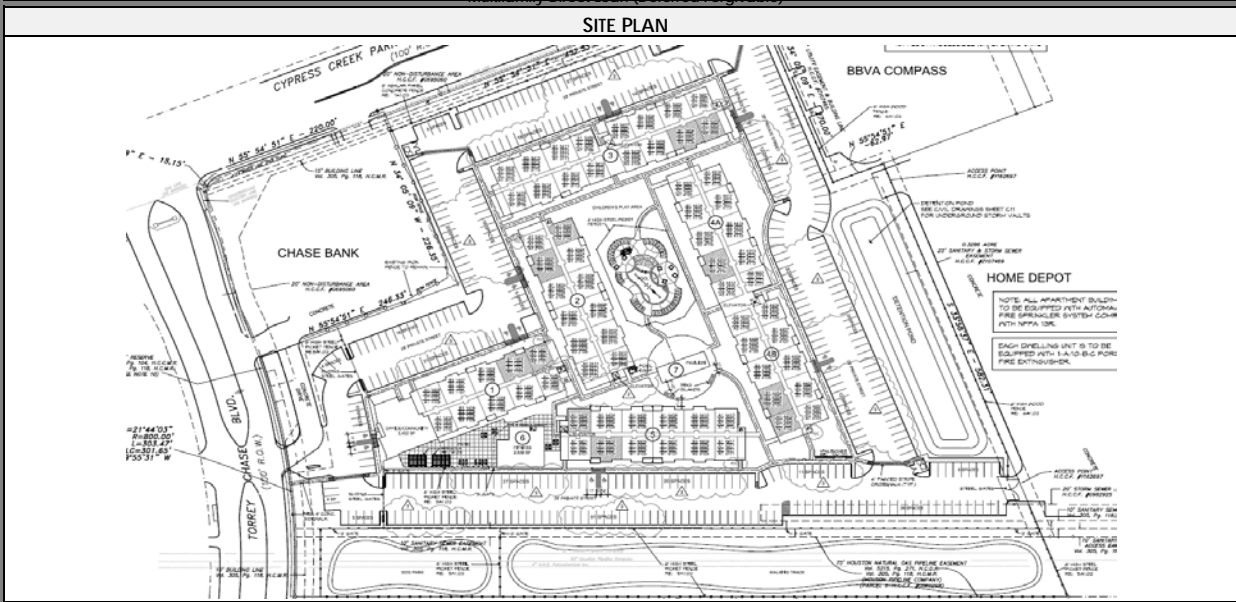
RECOMMENDATION					
TDHCA Program	Request	Recommended			
LIHTC (4% Credit)	\$2,597,494	\$2,584,935	\$9,232/Unit	\$0.83	

KEY PRINCIPALS / SPONSOR		
Houston Housing Authority / Lakeside Place PFC Michael Rogers, Director Cody Roskelley, Director LaRence Snowden, President & Chairman		
Streamline Advisory Partners, LLC Joel Pollack, Mark Gregg		
Related Parties	Contractor - No	Seller - No



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	20%	-	0%
1	112	40%	30%	-	0%
2	168	60%	40%	-	0%
3	-	0%	50%	-	0%
4	-	0%	60%	280	100%
			70%	-	0%
			80%	-	0%
			MR	-	0%
<b>TOTAL</b>	<b>280</b>	<b>100%</b>	<b>TOTAL</b>	<b>280</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	1.15	Expense Ratio	44.4%
Breakeven Occ.	85.7%	Breakeven Rent	\$833
Average Rent	\$900	B/E Rent Margin	\$67
Property Taxes	\$255/unit	Exemption/PILOT	100%
Total Expense	\$3,516/unit	Controllable	\$3,149/unit



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)			4.0%
Highest Unit Capture Rate	9%	2 BR/60%	144
Dominant Unit Cap. Rate	9%	2 BR/60%	144
Premiums (>60% Rents)	#DIV/0!		#DIV/0!
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY			
Costs Underwritten		Applicant's Costs	
Avg. Unit Size	884 SF	Density	26.0/acre
Acquisition	\$13K/unit		\$3,525K
Building Cost	\$107.67/SF	\$95K/unit	\$26,651K
Hard Cost		\$118K/unit	\$33,026K
Total Cost		\$197K/unit	\$55,133K
Developer Fee	\$6,498K	(81% Deferred)	Paid Year: 15
Contractor Fee	\$4,412K	30% Boost	Yes

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES		
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount	
Piper Sandler	17/40	3.78%	#####	1.12						AHP Equity	\$21,450,673	
										Deferred Developer Fee	\$5,232,351	
										<b>TOTAL EQUITY SOURCES</b>	<b>\$26,683,024</b>	
										<b>TOTAL DEBT SOURCES</b>	<b>\$28,450,000</b>	
<b>TOTAL DEBT (Must Pay)</b>			<b>\$28,450,000</b>		<b>CASH FLOW DEBT / GRANTS</b>				<b>\$0</b>		<b>TOTAL CAPITALIZATION</b>	<b>\$55,133,024</b>

**CONDITIONS**

- Receipt and acceptance by Cost Certification:
  - a: Architect certification that a noise assessment was completed, and that all recommendations were implemented and the Development is compliant with HUD noise guidelines.

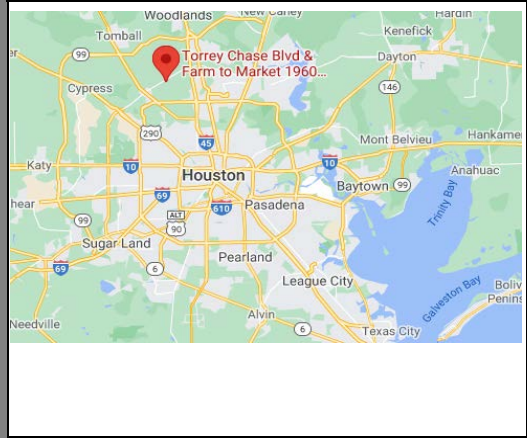
**BOND RESERVATION / ISSUER**

Issuer	Lakeside Place PFC
Expiration Date	12/7/2021
Bond Amount	\$35,000,000
BRB Priority	Priority 3
% Financed with Tax-Exempt Bonds	64.5%

**AERIAL PHOTOGRAPH(S)**



**AREA MAP**





**DEVELOPMENT IDENTIFICATION**

TDHCA Application #: 21463 Program(s): 4% HTC

Torrey Chase

Address/Location: SEC of Cypress Creek Pkwy & Torrey Chase Blvd

City: Houston County: Harris Zip: 77068

Population: General Program Set-Aside: General Area: Urban

Activity: New Construction Building Type: Elevator Served Region: 6

Analysis Purpose: New Application - Initial Underwriting

**ALLOCATION**

TDHCA Program	REQUEST				RECOMMENDATION				
	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	Lien
LIHTC (4% Credit)	\$2,597,494				\$2,584,935				

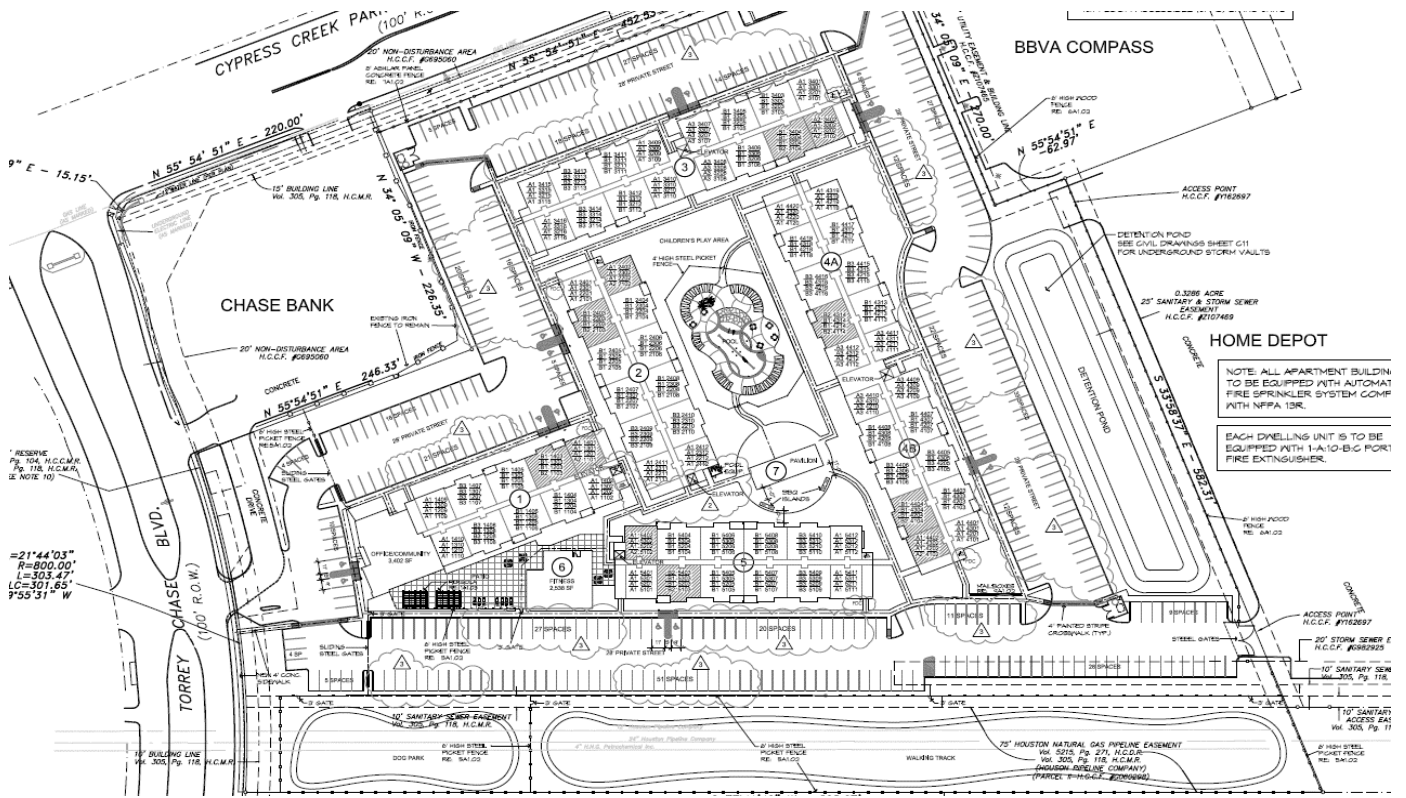
**CONDITIONS**

- Receipt and acceptance by Cost Certification:
  - a: Architect certification that a noise assessment was completed, and that all recommendations were implemented and the Development is compliant with HUD noise guidelines.

**SET-ASIDES**

TDHCA SET-ASIDES for HTC LURA		
Income Limit	Rent Limit	Number of Units
60% of AMI	60% of AMI	280

# SITE PLAN



**NOTE:** ALL APARTMENT BUILDING TO BE EQUIPPED WITH AUTOMAT FIRE SPRINKLER SYSTEM COMP WITH NFPA 13R.

**EACH DWELLING UNIT IS TO BE EQUIPPED WITH 1-A-10-BIG PORT FIRE EXTINGUISHER.**

Parking	No Fee		Tenant-Paid		Total	
	Count	Rate	Count	Rate	Count	Rate
Open Surface	423	1.5/unit	0	--	423	1.5/unit
Carport	0	--	0	--	0	--
Garage	0	--	0	--	0	--
<b>Total Parking</b>	<b>423</b>	<b>1.5/unit</b>	<b>0</b>	<b>--</b>	<b>423</b>	<b>1.5/unit</b>

**Comments:**

The development is in the ETJ and will follow TDHCA's parking requirements of 1.5 parking spaces per unit. A total of 420 parking spaces are required. There will be a 423 open surface parking spaces provided.





**HIGHLIGHTS of ENVIRONMENTAL REPORTS**

Provider: Professional Service Industries, Inc. Date: 7/16/2021

Recognized Environmental Conditions (RECs) and Other Concerns:

- None

Comments:

The combined noise level from major roads within 1,000 feet, railroads within 3,000 feet of the subject property and airports within 15 miles of the subject property, is approximately 89 decibels, which is above the threshold level of 65 decibels. A noise study or mitigation may be necessary.

PSI recommends communication with operator of the natural gas pipeline in the right-of-way along the southern property boundary prior to subsurface work in that area. It has been conveyed by the client any recommendations regarding the natural gas pipeline in the right-of-way along the southern property boundary will be followed.

**MARKET ANALYSIS**

Provider: Affordable Housing Analysts Date: 7/15/2021  
 Contact: Bob Coe Phone: 281-387-7552

Primary Market Area (PMA): 23.0 sq. miles 3 mile equivalent radius

ELIGIBLE HOUSEHOLDS BY INCOME								
Harris County Income Limits								
HH Size		1	2	3	4	5	6	7+
60% AMGI	Min	\$26,730	\$26,730	\$32,070	\$32,070	---	---	---
	Max	\$33,300	\$38,040	\$42,780	\$47,520	---	---	---

AFFORDABLE HOUSING INVENTORY								
Competitive Supply (Proposed, Under Construction, and Unstabilized)								
File #	Development			In PMA?	Type	Target Population	Comp Units	Total Units
21413	Summit at Renaissance Park			No	New	General	69	325
Other Affordable Developments in PMA since 2016								
17186	Oasis on Ella				New	General	n/a	135
17449	Quail Chase Apartments				A/R	General	n/a	248
21603	The Park at Kirkstall				A/R	General	n/a	240
Stabilized Affordable Developments in PMA							Total Units	2,396
							Total Developments	11
							Average Occupancy	95.4%

Proposed, Under Construction, and Unstabilized Competitive Supply:

Summit at Renaissance Park (#21413, 69 comp units) is under construction, outside the PMA; Market Analyst did not include these units in their calculations. While these competitive units are located outside the PMA, their PMA's share census tracts and therefore share some qualified demand to absorb the new units.

OVERALL DEMAND ANALYSIS				
	Market Analyst			
	HTC	Assisted		
Total Households in the Primary Market Area	38,907			
Potential Demand from the Primary Market Area	6,432			
10% External Demand	643			
Potential Demand from Other Sources				
<b>GROSS DEMAND</b>	7,075			
Subject Affordable Units	280			
Unstabilized Competitive Units				
<b>RELEVANT SUPPLY</b>	280			
<b>Relevant Supply ÷ Gross Demand = GROSS CAPTURE RATE</b>	<b>3.96%</b>			

<b>Population:</b>	<b>General</b>	<b>Market Area:</b>	<b>Urban</b>	<b>Maximum Gross Capture Rate:</b>	<b>10%</b>
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UNDERWRITING ANALYSIS of PMA DEMAND by AMGI BAND						
	Market Analyst					
AMGI Band	Demand	10% Ext	Subject Units	Comp Units	AMGI Band Capture Rate	
60% AMGI	6,432	643	280		3.96%	

**Demand Analysis:**

The capture rate calculation determines the percentage of the qualified demand that is needed to absorb the proposed units. All capture rates reported are below the maximum thresholds.

If we included the 69 competitive units from 21413 Summit at Renaissance Park that are located outside the Subject PMA (but share the some of same census tracts), the GCR increases from 3.96% to 4.93%. This is a worst case scenario as it includes the outside supply, but none of the additional demand.

Because the competitive units are located outside the Market Analyst's determined PMA, and Underwriter's worst case scenario test produced an acceptable Gross Capture Rate, Market Analyst's capture rates are used for analysis.

UNDERWRITING ANALYSIS of PMA DEMAND by UNIT TYPE						
	Market Analyst					
Unit Type	Demand	10% Ext	Subject Units	Comp Units	Unit Capture Rate	
1 BR/60%	1,807	181	112	0	6%	
2 BR/60%	1,444	144	144	0	9%	

**Market Analyst Comments:**

The market analyst focused the PMA around FM 1960 towards Interstate 45 which seemed to be more appropriate when gauging demand. Willowbrook Mall and Highway 249 is somewhat of a different market and population limits will not allow the PMA to go from Highway 249 to Interstate 45.

## OPERATING PRO FORMA

### SUMMARY- AS UNDERWRITTEN (Applicant's Pro Forma)

NOI:	\$1,590,088	Avg. Rent:	\$900	Expense Ratio:	44.4%
Debt Service:	\$1,380,488	B/E Rent:	\$833	Controllable Expenses:	\$3,149
Net Cash Flow:	\$209,600	UW Occupancy:	92.5%	Property Taxes/Unit:	\$255
Aggregate DCR:	1.15	B/E Occupancy:	85.7%	Program Rent Year:	2021

The underwriter adjusted the utility allowance to include the \$15 additional electric fee and made an adjustment to the debt to achieve a 1.15 DCR.

Per TDHCA rules, Asset Management Fees are not included in Operating Expenses, the underwriter excluded the \$8.5K equity annual fee.

This property will be tax exempt, however, the development is within the Houston Area Municipal Utility District (M.U.D.) 21 and will be responsible for paying the M.U.D. taxes affiliated with the development.

The Lender signed a long-term pro forma that includes \$15K annual expense for Supportive Services. Pursuant to §11.302(d)(2)(K), the estimated expenses underwritten at Application will be included in the DCR calculation at Cost Cert regardless if actually incurred.

## DEVELOPMENT COST EVALUATION

### SUMMARY - AS UNDERWRITTEN (Applicant's Costs)

Acquisition	\$326,994/ac	\$12,589/unit	\$3,525,000	Contractor Fee	\$4,412,254
Off-site + Site Work		\$17,411/unit	\$4,875,000	Soft Cost + Financing	\$6,171,282
Building Cost	\$107.67/sf	\$95,182/unit	\$26,651,097	Developer Fee	\$6,498,391
Contingency	4.76%	\$5,357/unit	\$1,500,000	Reserves	\$1,500,000

<b>Total Development Cost</b>	\$196,904/unit	<b>\$55,133,024</b>	<b>Rehabilitation Cost</b>	N/A
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<b>Qualified for 30% Basis Boost?</b>	Located in QCT with < 20% HTC units/HH
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Financing Cost:

Eligible financing is overstated by \$96K.

Developer Fee:

Eligible developer fee is overstated by \$14K.

Credit Allocation Supported by Costs:

<b>Total Development Cost</b>	<b>Adjusted Eligible Cost</b>	<b>Credit Allocation Supported by Eligible Basis</b>
\$55,133,024	\$49,710,297	\$2,584,935

## APPLICANT'S CAPITALIZATION

### BOND RESERVATION

Issuer	Amount	Reservation Date	Priority
Lakeside Place PFC	\$35,000,000	6/10/2021	Priority 3
<b>Closing Deadline</b>			
12/7/2021			

<b>Percent of Cost Financed by Tax-Exempt Bonds</b>	<b>64.5%</b>
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## CONCLUSIONS

### Gap Analysis:

Total Development Cost	\$55,133,024
Permanent Sources (debt + non-HTC equity)	\$28,450,000
<b>Gap in Permanent Financing</b>	<b>\$26,683,024</b>

Possible Tax Credit Allocations:	Equity Proceeds	Annual Credits
Determined by Eligible Basis	\$21,450,673	\$2,584,935
Needed to Balance Sources & Uses	\$26,683,024	\$3,215,465
Requested by Applicant	\$21,554,888	\$2,597,494

	RECOMMENDATION	
	Equity Proceeds	Annual Credits
Tax Credit Allocation	\$21,450,673	\$2,584,935
Deferred Developer Fee	\$5,232,351	( 76% deferred)
Repayable in	15 years	

Comments:

Recommended annual tax credit allocation is \$2,584,935 as determined by eligible basis.

Underwriter:	<i>Deborah Willson</i>
Manager of Real Estate Analysis:	<i>Jeanna Adams</i>
Director of Real Estate Analysis:	<i>Thomas Cavanagh</i>

**UNIT MIX/RENT SCHEDULE**  
**Torrey Chase, Houston, 4% HTC #21463**

LOCATION DATA	
CITY:	Houston
COUNTY:	Harris
Area Median Income	\$79,200
PROGRAM REGION:	6
PROGRAM RENT YEAR:	2021

UNIT DISTRIBUTION				
# Beds	# Units	% Total	Assisted	MDL
Eff	-	0.0%	0	0
1	112	40.0%	0	0
2	168	60.0%	0	0
3	-	0.0%	0	0
4	-	0.0%	0	0
5	-	0.0%	0	0
<b>TOTAL</b>	<b>280</b>	<b>100.0%</b>	<b>-</b>	<b>-</b>

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjust	130%
Applicable Fraction	100%
APP % Acquisition	4.00%
APP % Construction	4.00%
Average Unit Size	884 sf

60%	Income	20%	30%	40%	50%	60%	70%	80%	MR	TOTAL
Average	# Units	-	-	-	-	280	-	-	-	280
Income	% Total	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%

UNIT MIX / MONTHLY RENT SCHEDULE														
HTC		UNIT MIX				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				MARKET RENTS	
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		Mrkt Analyst
TC 60%	\$891	88	1	1	705	\$891	\$83	\$808	\$0	\$1.15	\$808	\$71,104		\$1,125
TC 60%	\$891	24	1	1	730	\$891	\$83	\$808	\$0	\$1.11	\$808	\$19,392		\$1,450
TC 60%	\$1,069	120	2	2	995	\$1,069	\$107	\$962	\$0	\$0.97	\$962	\$115,440		\$1,125
TC 60%	\$1,069	48	2	2	1,012	\$1,069	\$107	\$962	\$0	\$0.95	\$962	\$46,176		\$1,450
<b>TOTALS/AVERAGES:</b>		<b>280</b>			<b>247,536</b>				<b>\$0</b>	<b>\$1.02</b>	<b>\$900</b>	<b>\$252,112</b>		<b>\$1,209</b>

<b>ANNUAL POTENTIAL GROSS RENT:</b>	<b>\$3,025,344</b>
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**STABILIZED PRO FORMA**

*Torrey Chase, Houston, 4% HTC #21463*

**STABILIZED FIRST YEAR PRO FORMA**

	COMPARABLES		APPLICANT			
	Database		% EGI	Per SF	Per Unit	Amount
<b>POTENTIAL GROSS RENT</b>				\$1.02	\$900	\$3,025,344
Late Fees, App Fees, Pet					\$20.00	\$67,200
Total Secondary Income					\$20.00	
<b>POTENTIAL GROSS INCOME</b>						\$3,092,544
Vacancy & Collection Loss					7.5% PGI	(231,941)
Rental Concessions						-
<b>EFFECTIVE GROSS INCOME</b>						\$2,860,603

General & Administrative	\$124,103	\$443/Unit		3.77%	\$0.44	\$385	\$107,766
Management	\$126,833	5.2% EGI		4.07%	\$0.47	\$415	\$116,289
Payroll & Payroll Tax	\$388,203	\$1,386/Unit		13.25%	\$1.53	\$1,354	\$379,000
Repairs & Maintenance	\$213,983	\$764/Unit		6.19%	\$0.72	\$632	\$177,000
Electric/Gas	\$66,028	\$236/Unit		2.62%	\$0.30	\$268	\$75,000
Water, Sewer, & Trash	\$195,387	\$698/Unit		5.00%	\$0.58	\$511	\$143,000
Property Insurance	\$125,586	\$0.51 /sf		3.67%	\$0.42	\$375	\$105,000
Property Tax (@ 0%) 2.3991	\$238,531	\$852/Unit		2.49%	\$0.29	\$255	\$71,260
Reserve for Replacements				2.45%	\$0.28	\$250	\$70,000
Cable TV				0.00%	\$0.00	\$0	\$0
Supportive Services				0.52%	\$0.06	\$54	\$15,000
TDHCA Compliance fees (\$40/HTC unit)				0.39%	\$0.05	\$40	\$11,200
Equity Annual Fee				0.00%	\$0.00	\$0	\$0
<b>TOTAL EXPENSES</b>				<b>44.41%</b>	<b>\$5.13</b>	<b>\$4,538</b>	<b>\$1,270,515</b>
<b>NET OPERATING INCOME ("NOI")</b>				<b>55.59%</b>	<b>\$6.42</b>	<b>\$5,679</b>	<b>\$1,590,088</b>

CONTROLLABLE EXPENSES						\$3,149/Unit	
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## PROPOSED SOURCES OF FINANCING

Torrey Chase, Houston, 4% HTC #21463

Bond Issuer		Interim Bonds		Permanent Bonds						
Lakeside Place PFC		\$35,000,000		\$35,000,000						
DEBT		Interim		Permanent Period				Debt Service		
		Type	Principal	Rate	Principal	Term	Amort	Rate	DCR	Payment
Piper Sandler		Conventional Loan	\$29,150,000	3.78%	\$29,150,000	17	40	3.78%	1.12	\$1,414,455
Adjustment to Debt Per §11.302(c)(2)					(\$700,000)	17	40	3.78%	1.15	(\$33,966)
<b>TOTAL</b>			<b>\$29,150,000</b>		<b>\$28,450,000</b>				<b>1.15</b>	Cumulative DCR
EQUITY						credit price	annual credits			
AHP Equity		\$2,597,494 HTC Equity	\$21,498,751		\$21,450,673	\$0.83	\$2,584,935			
<b>TOTAL</b>			<b>\$21,498,751</b>		<b>\$21,450,673</b>					
PARTNERSHIP DEBT										
Deferred Developer Fee		Developer Fee Note	\$4,949,992		\$5,232,351					
<b>TOTAL</b>			<b>\$4,949,992</b>		<b>\$5,232,351</b>					
CASH FLOW DEBT/GRANTS										
<b>TOTAL</b>			<b>\$0</b>		<b>\$0</b>					
OTHER										
<b>TOTAL</b>			<b>\$0</b>		<b>\$0</b>					
<b>TOTAL</b>			<b>\$55,598,743</b>		<b>\$55,133,024</b>					



<b>TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS</b>
<i>Torrey Chase, Houston, 4% HTC #21463</i>

DEBT / GRANT SOURCES								
APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE								
DEBT (Must Pay)	Fee	Cumulative DCR		Pmt	Rate	Amort	Term	Principal
		UW	App					
Piper Sandler		-0.65	1.12	1,414,455	3.78%	40	17	\$29,150,000
Adjustment to Debt Per §11.302(c)(2)	0.00%							
<b>CASH FLOW DEBT / GRANTS</b>								
				<b>\$1,414,455</b>	<b>TOTAL DEBT / GRANT SOURCES</b>			<b>\$29,150,000</b>
<b>NET CASH FLOW</b>		<b>(\$2,336,902)</b>	<b>\$175,633</b>					

EQUITY SOURCES					
APPLICANT'S PROPOSED EQUITY STRUCTURE					
EQUITY / DEFERRED FEES	DESCRIPTION	% Cost	Annual Credit	Credit Price	Amount
AHP Equity	LIHTC Equity	39.0%	\$2,597,494	\$0.83	\$21,498,751
Deferred Developer Fee	Deferred Developer Fees	9.0%		(76% Deferred)	\$4,949,992
Additional (Excess) Funds Req'd		0.0%			
<b>TOTAL EQUITY SOURCES</b>		<b>48.0%</b>			<b>\$26,448,743</b>
<b>TOTAL CAPITALIZATION</b>					<b>\$55,598,743</b>

DEVELOPMENT COST / ITEMIZED BASIS					
APPLICANT COST / BASIS ITEMS					
	Eligible Basis		Total Costs		
	Acquisition	New Const. Rehab			
Land Acquisition			\$12,589 / Unit		\$3,525,000
Off-Sites			\$ / Unit		\$0
Site Work		\$3,925,000	\$14,018 / Unit		\$3,925,000
Site Amenities		\$950,000	\$3,393 / Unit		\$950,000
Building Cost		\$26,651,097	\$107.67 /sf	\$95,182/Unit	\$26,651,097
Contingency		\$1,500,000	4.76%	4.76%	\$1,500,000
Contractor Fees		\$4,412,254	13.36%	13.36%	\$4,412,254
Soft Costs	\$0	\$1,883,500		\$6,727 / Unit	\$1,883,500
Financing	\$0	\$4,000,754		\$15,314 / Unit	\$4,287,782
Developer Fee	\$0	\$6,498,391	15.00%	15.00%	\$6,498,391
Reserves				7 Months	\$1,500,000
<b>TOTAL HOUSING DEVELOPMENT COST (UNADJUSTED BASIS)</b>		<b>\$0</b>	<b>\$49,820,996</b>	<b>\$196,904 / Unit</b>	<b>\$55,133,024</b>

Acquisition Cost	\$0				\$0
Contingency			\$0		\$0
Contractor's Fee			\$0		\$0
Financing Cost			(\$96,260)		
Developer Fee	\$0	(\$14,439)	15.00%	15.00%	(\$0)
Reserves					\$0
<b>ADJUSTED BASIS / COST</b>	<b>\$0</b>	<b>\$49,710,297</b>		\$196,904/unit	<b>\$55,133,024</b>
<b>TOTAL HOUSING DEVELOPMENT COSTS Applicant's Uses</b>					<b>\$55,133,024</b>

**TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS**  
*Torrey Chase, Houston, 4% HTC #21463*

CREDIT CALCULATION ON QUALIFIED BASIS		
	Applicant	
	Acquisition	Construction Rehabilitation
<b>ADJUSTED BASIS</b>	\$0	\$49,710,297
Deduction of Federal Grants	\$0	\$0
<b>TOTAL ELIGIBLE BASIS</b>	\$0	\$49,710,297
High Cost Area Adjustment		130%
<b>TOTAL ADJUSTED BASIS</b>	\$0	\$64,623,386
Applicable Fraction	100.00%	100.00%
<b>TOTAL QUALIFIED BASIS</b>	\$0	\$64,623,386
Applicable Percentage	4.00%	4.00%
<b>ANNUAL CREDIT ON BASIS</b>	0	\$2,584,935
<b>CREDITS ON QUALIFIED BASIS</b>	\$2,584,935	

Method	ANNUAL CREDIT CALCULATION BASED ON APPLICANT BASIS		FINAL ANNUAL LIHTC ALLOCATION		
	Annual Credits	Proceeds	Credit Price \$0.8298	Variance to Request	
			Credit Allocation	Credits	Proceeds
<b>Eligible Basis</b>	\$2,584,935	\$21,450,673	<b>\$2,584,935</b>	(\$12,559)	(\$104,215)
<b>Needed to Fill Gap</b>	\$3,215,465	\$26,683,024	----	----	----
<b>Applicant Request</b>	\$2,597,494	\$21,554,888	----	----	----

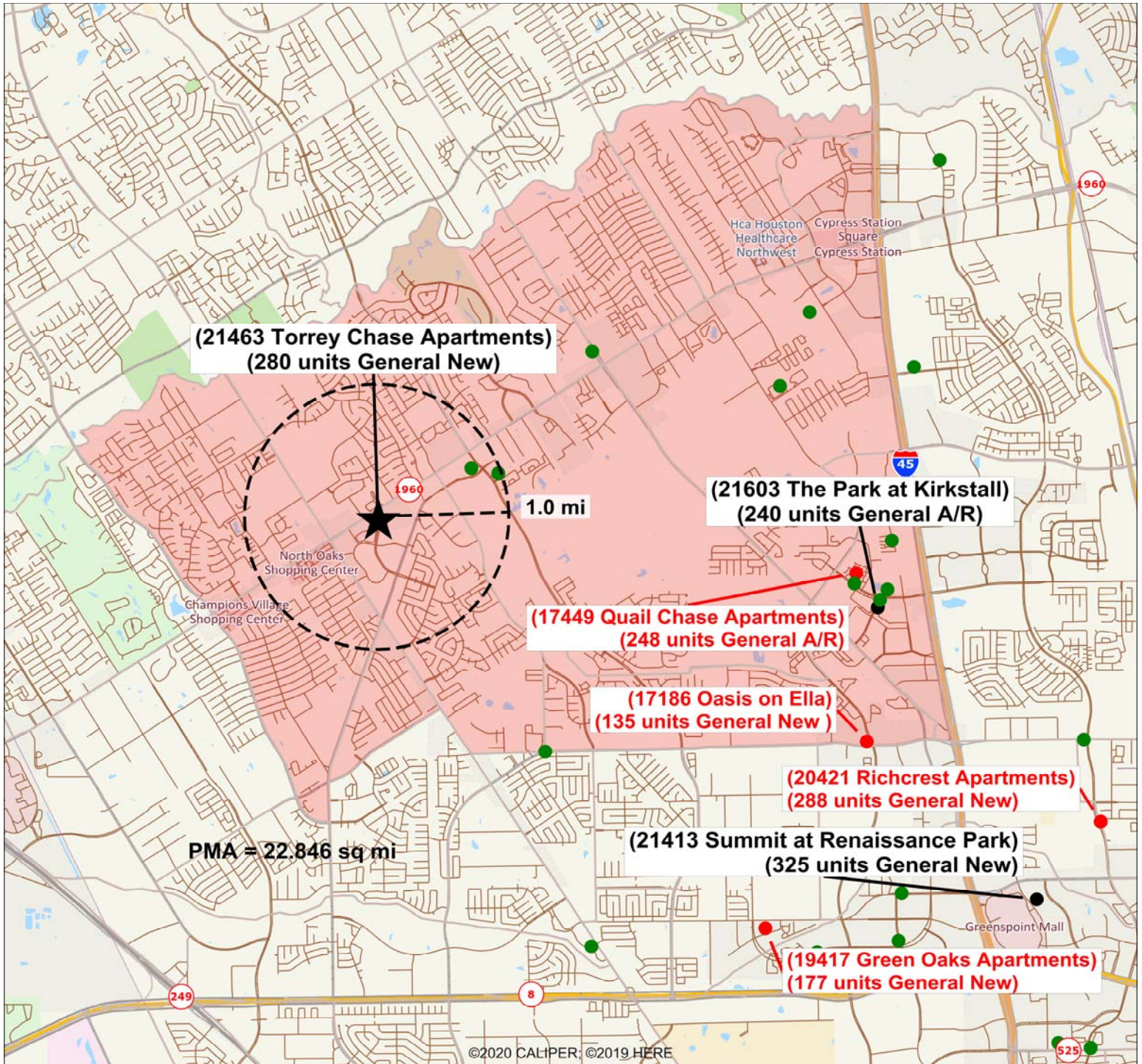
50% Test for Bond Financing for 4% Tax Credits					
Tax-Exempt Bond Amount	\$30,200,000		Percent Financed by Tax-Exempt Bonds	Applicant	
	Applicant			64.5%	
Land Cost	\$3,525,000				
Depreciable Bldg Cost	\$43,322,605				
<b>Aggregate Basis for 50% Test</b>	<b>\$46,847,605</b>				
			amount aggregate basis can increase before 50% test fails	\$13,552,395	28.9%

## Long-Term Pro Forma

*Torrey Chase, Houston, 4% HTC #21463*

	Growth Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 25	Year 30	Year 35	Year 40
EFFECTIVE GROSS INCOME	2.00%	\$2,860,603	\$2,917,815	\$2,976,172	\$3,035,695	\$3,096,409	\$3,418,686	\$3,774,505	\$4,167,359	\$4,601,101	\$5,079,987	\$5,608,716	\$6,192,476
TOTAL EXPENSES	3.00%	\$1,270,515	\$1,307,468	\$1,345,505	\$1,384,661	\$1,424,966	\$1,644,979	\$1,899,311	\$2,193,353	\$2,533,347	\$2,926,520	\$3,381,241	\$3,907,201
<b>NET OPERATING INCOME ("NOI")</b>		<b>\$1,590,088</b>	<b>\$1,610,348</b>	<b>\$1,630,666</b>	<b>\$1,651,034</b>	<b>\$1,671,442</b>	<b>\$1,773,706</b>	<b>\$1,875,194</b>	<b>\$1,974,005</b>	<b>\$2,067,753</b>	<b>\$2,153,467</b>	<b>\$2,227,475</b>	<b>\$2,285,275</b>
EXPENSE/INCOME RATIO		44.4%	44.8%	45.2%	45.6%	46.0%	48.1%	50.3%	52.6%	55.1%	57.6%	60.3%	63.1%
<b>MUST -PAY DEBT SERVICE</b>													
TOTAL DEBT SERVICE		\$1,380,488	\$1,380,488	\$1,380,488	\$1,380,488	\$1,380,488	\$1,380,488	\$1,380,488	\$1,380,488	\$1,380,488	\$1,380,488	\$1,380,488	\$1,380,488
DEBT COVERAGE RATIO		1.15	1.17	1.18	1.20	1.21	1.28	1.36	1.43	1.50	1.56	1.61	1.66
<b>ANNUAL CASH FLOW</b>													
		<b>\$209,600</b>	<b>\$229,859</b>	<b>\$250,178</b>	<b>\$270,546</b>	<b>\$290,954</b>	<b>\$393,218</b>	<b>\$494,705</b>	<b>\$593,517</b>	<b>\$687,265</b>	<b>\$772,978</b>	<b>\$846,986</b>	<b>\$904,786</b>
Deferred Developer Fee Balance		\$5,022,751	\$4,792,892	\$4,542,714	\$4,272,169	\$3,981,215	\$2,219,669	\$0	\$0	\$0	\$0	\$0	\$0
<b>CUMULATIVE NET CASH FLOW</b>		\$0	\$0	\$0	\$0	\$0	\$0	\$51,541	\$2,823,011	\$6,074,412	\$9,771,768	\$13,864,200	\$18,280,035

# 21463 Torrey Chase PMA Map



Disclaimer: This map is not a survey. Boundaries, distance and scale are approximate only.



TEXAS HOUSE of REPRESENTATIVES



**SAM HARLESS**  
DISTRICT 126

August 27, 2021

Teresa Morales  
Director of Multifamily Bonds  
P.O. Box 13941  
Austin, Texas 78711-3491

Dear Ms. Morales:

My office received notice that an application for a housing tax credit for Torrey Chase (Development # 21463), located at the southeast corner of Cypress Creek Parkway & Torrey Chase Blvd. Houston, TX 77068, has been submitted. As the State Representative from this area, it is my responsibility to oppose this tax credit based on the opposition in my district.

My constituents have expressed concern that the project would not be in the best interest of the community, citing overcrowded schools, lack of public transportation, and increased traffic congestion as just some of the problems that could be experienced with the additional influx of people multi-family construction would bring. **For these reasons, I respectfully request that the housing tax credit application for Torrey Chase be denied.**

Thank you for allowing me to submit this letter in order for my district to be heard in this matter. Should you have any questions or concerns please do not hesitate to contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read "Sam Harless".

Sam Harless  
State Representative  
District 126  
512.463.0496 (Capitol office)

**CC: Marni Holloway, Director, Multifamily Finance Division**

TEXAS HOUSE of REPRESENTATIVES



**SAM HARLESS**  
DISTRICT 126

July 26, 2021

Marni Holloway  
Director Multifamily Finance Division  
P.O. Box 13941  
Austin, Texas 78711-3491

Dear Ms. Holloway,

My office received notice that Torrey Chase Apartments, LP will be making an application for a housing tax credit for Torrey Chase Apartments, located on the Southeast Corner of Torrey Chase Blvd, & Cypress Creek Parkway, Houston, TX, in Harris County. As the State Representative from this area, it is my responsibility to notify you that based on community input I oppose this tax credit.

My constituents have expressed concern that the project would not be in the best interest of the community, citing perceived negative influences, overcrowded schools, increased traffic congestion and fear of decreased property values as just some of the problems that could be experienced with the additional influx of people multi-family construction would bring. For these reasons, I respectfully request that the housing tax credit application for Torrey Chase Apartments be denied.

Thank you for allowing me to submit this letter in order for my district to be heard in this matter. Should you have any questions or concerns please do not hesitate to contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read "Sam Harless".

Sam Harless  
State Representative  
District 126  
512.463.0496 (Capitol office)

Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> St  
Austin, Texas 78701

Subject: Affordable Housing Issues

It has come to my attention that there a proposal to build a Low Income Housing Development at Torrey Chase and 1960 near my home.

I have the following concerns:

- This development will place an even greater strain on our Emergency Ambulance Services. As it is today I cannot travel very far from my house without seeing two or more EMS vehicles responding to calls.
- This development will also require additional Police and Fire Department resources. Many studies have shown a direct correlation between low income and crime.
- This development will overload the schools in this area which are already overcrowded and do not have enough teachers to maintain proper teacher/student ratios.
- The development will also add additional traffic in an area that is already overcrowded.
- The addition of this development will not create the additional taxes to support this development.

Sincerely Yours;



Adolph Assenheimer  
150 Old Bridge Lake  
Houston, Tx 77069

September 1, 2021

To : Texas Department of Housing and Community Affairs,

To whom it may concern,

I am a concerned property owner. I have heard that there is conversation about putting an affordable housing project near the 1960 and Torry Chase area near my home. I would like to voice my concerns about this happening.

We already have such a strain on our Police, Fire Department, EMS and schools in our area.

We are overloaded in our schools and do not have enough teachers to take care of the students we have. Adding more children to this system does not make any sense. Our students have already suffered from the effects of Covid and many are very far behind where they should be, adding more students just doesn't make any sense.

As everyone knows all of our emergency service are working overtime during this time to keep everyone safe. A lot of them are working short staffed. By adding more people to this area would be putting lives at risk in my opium.

Our traffic along F.M.1960 is already very heavy at all times, there are lots of major accidents and there is always some kind of construction going on. I do not feel like we can handle any more traffic.

Please take some of this into consideration and decided againts this Low Income Housing in my area

Sincerely

A handwritten signature in cursive script that reads "Dave + Jill Billings". The signature is written in black ink and is followed by a long horizontal line that extends to the right.

Dave and Jill Billings

111 Old Bridge Lake

Houston, Texas 77069



Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> St  
Austin, Texas 78701

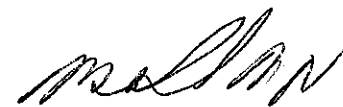
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Sincerely Yours;



Michael Rozek  
146 Old Bridge Lake  
Houston, Tx 77069

Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> St  
Austin, Texas 78701

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- The addition of this development will not create the additional taxes to support this development.

Sincerely Yours;



Sue Rozek  
146 Old Bridge Lake  
Houston, Tx 77069