

**BOARD BOOK  
OF  
September 2, 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)

<b>Owner Financing and Down Payment</b>	
<ul style="list-style-type: none"> <li>30-year, fixed interest rate mortgage loans</li> <li>Mortgage credit certificates</li> <li>Down payment, closing cost assistance</li> <li>Homebuyer education</li> </ul>	
<i>Programs:</i>	
<ul style="list-style-type: none"> <li>Single Family Homeownership</li> </ul>	
Expended Funds:	\$2,016,087,297
Total Households Served:	10,178

<b>Energy Related Assistance</b>	
<ul style="list-style-type: none"> <li>Utility bill payment assistance</li> <li>Energy consumption education</li> <li>Weatherization for energy efficiency</li> </ul>	
<i>Programs:</i>	
<ul style="list-style-type: none"> <li>Comprehensive Energy Assistance Program (CEAP)                             <ul style="list-style-type: none"> <li>Weatherization Assistance Program (WAP)</li> </ul> </li> </ul>	
Expended Funds:	\$128,711,463
Total Households Served:	117,007

<b>Multifamily New Construction</b>	
<ul style="list-style-type: none"> <li>Affordable rental units financed and developed</li> </ul>	
<i>Programs:</i>	
<ul style="list-style-type: none"> <li>9% Housing Tax Credits (HTC)</li> <li>4% Housing Tax Credits (HTC)</li> <li>Multifamily Bonds</li> <li>Multifamily Direct Loan Program*</li> </ul>	
Expended Funds:	\$136,910,094
Total Households Served:	6,215

<b>Homelessness Services</b>	
<ul style="list-style-type: none"> <li>Shelter building rehabilitation, conversion, operations</li> <li>Essential services e.g., health services, transportation, job training, employment services</li> </ul>	
<i>Programs:</i>	
<ul style="list-style-type: none"> <li>Emergency Solutions Grant Program (ESG)</li> <li>Homeless Housing and Services Program (HHSP)</li> </ul>	
Expended Funds:	\$15,844,690
Total Individuals Served:	23,807

<b>Multifamily Rehab Construction</b>	
<ul style="list-style-type: none"> <li>Affordable rental units financed and rehabilitated</li> </ul>	
<i>Programs:</i>	
<ul style="list-style-type: none"> <li>9% Housing Tax Credits (HTC)</li> <li>4% Housing Tax Credits (HTC)</li> <li>Multifamily Bonds</li> </ul>	
Expended Funds:	\$143,307,406
Total Households Served:	3,150

<b>Supportive Services</b>	
Provides administrative support for essential services for low income individuals through Community Action Agencies	
<i>Program:</i>	
<ul style="list-style-type: none"> <li>Community Services Block Grant Program (CSBG)</li> </ul>	
Expended Funds:	\$51,241,773
Total Individuals Served:	312,150

<b>Owner Rehabilitation Assistance</b>	
<ul style="list-style-type: none"> <li>Home rehabilitation, reconstruction</li> <li>Manufactured housing unit replacement</li> <li>Accessibility modifications e.g., ramp, grab bar installation</li> </ul>	
<i>Programs:</i>	
<ul style="list-style-type: none"> <li>Homeowner Reconstruction Assistance Program (HRA)*</li> <li>Amy Young Barrier Removal Program</li> </ul>	
Expended Funds:	\$9,019,587
Total Households Served:	158

<b>Rental Assistance</b>	
<ul style="list-style-type: none"> <li>Short, long term rent payment help</li> <li>Assistance linked with services, Transitional assistance</li> <li>Security, utility deposits</li> </ul>	
<i>Programs:</i>	
<ul style="list-style-type: none"> <li>Tenant-Based Rental Assistance (TBRA)*</li> <li>Section 8 Housing Choice Vouchers</li> <li>Section 811</li> </ul>	
Expended Funds:	\$8,225,438
Total Households Served:	4,519

<b>Single Family Development</b>	
<ul style="list-style-type: none"> <li>Single family development, reconstruction, rehabilitation</li> <li>NSP, Do-it-yourself, "sweat equity" construction (bootstrap), rehabilitation, Contract for Deed refinance</li> </ul>	
<i>Programs:</i>	
<ul style="list-style-type: none"> <li>Single Family Development Program (SFD)*</li> <li>Contract for Deed (CFD)</li> </ul>	
Expended Funds:	\$1,740,300
Total Households Served:	38

<p><b>Total Expended Funds: 2,511,088,049</b></p> <p><b>Total Households Served: 477,222</b></p> <p>All FY2021 data as reported in TDHCA's 2021 performance measures.</p> <p><i>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.</i></p>
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\* 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  
September 2, 2021**

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

Resolution Recognizing October 2021 as National Energy Awareness Month

**CONSENT AGENDA**

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

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

**EXECUTIVE**

- a) Presentation, discussion, and possible action on Board meeting minutes summaries for July 8, 2021, and July 22, 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

01086	Mission Oaks	Refugio
00155	Legend Oaks	Llano
99176	Mariposa Gardens Apartments	Mathis
99148	Windmill Run Apartment Homes	Sweeny
98148	Sandia Crossing	Luling
98147	Oaks at Winding Way	Gonzales

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.

- c) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application

20024	Dallas Stemmons Apartments	Dallas
20212	Vernon Pioneer Crossing	Vernon
20495	Fawn Ridge Apartments	The Woodlands
05447	Providence Place II Apartments	Denton

**BOND FINANCE**

- d) Presentation, discussion, and possible action on Inducement Resolution No. 22-001 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority

**Teresa Morales**  
Director of  
Multifamily Bonds

21615	The Terrace at Southern Oaks	Dallas
21621	Palladium East Berry Street	Fort Worth
21622	Palladium Oak Grove	Fort Worth
21623	The Flats at White Rock	Dallas
21624	Potter’s House at Primrose	Dallas
21625	Primrose at Sequoia Park	Denton
21626	Rosemont at Pecan Creek	Denton
21627	River Trails Apartments	San Antonio

**COMMUNITY AFFAIRS**

- e) Presentation, discussion, and possible action on the Section 8 Program 2022 Streamlined Annual Public Housing Agency Plan for the Housing Choice Voucher Program

**Michael DeYoung**  
Director of  
Community Affairs

**SINGLE FAMILY & HOMELESS PROGRAMS**

- f) Presentation, discussion and possible action on the appointment of Colonia Resident Advisory Committee members
- g) Presentation, discussion, and possible action on Colonia Self-Help Center Program Awards to Cameron County and Val Verde County in accordance with Tex. Gov’t Code §2306.582 through Community Development Block Grant Funding
- h) Presentation, discussion, and possible action on a proposed amendment to a Colonia Self-Help Center Program Contract with Maverick County in accordance with 10 TAC Chapter 25, the Colonia Self-Help Center Program Rule
- i) Presentation, discussion, and possible action on proposed amendments to the 2022-2023 Texas Housing Trust Fund Biennial Plan and authorization to enter into a capacity building agreement with Habitat for Humanity Texas, Inc.
- j) Presentation, discussion, and possible action authorizing extension to Neighborhood Stabilization Program 1 contract for City of Port Arthur

**Abigail Versyp**  
Director of Single Family  
and Homeless Programs

**RULES**

- k) Presentation, discussion, and possible action on an order proposing the repeal, and proposed 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 publication for public comment in the Texas Register
- l) Presentation, discussion, and possible action on an order proposing the repeal, and proposed 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

**Brooke Boston**  
Deputy Director of  
Programs

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 publication for public comment in the Texas Register

- m) Presentation, discussion, and possible action on an order proposing amendments to 10 TAC, Chapter 10, Subchapter G, §10.801, Affirmative Marketing Requirements, and directing its publication for public comment in the Texas Register
- n) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 20, Single Family Programs Umbrella Rule, and an order proposing new 10 TAC Chapter 20, Single Family Programs Umbrella Rule, and directing their publication for public comment in the Texas Register
- o) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities, and an order proposing new 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities, and directing their publication for public comment in the Texas Register
- p) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, and an order proposing new 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, and directing their publication for public comment in the Texas Register
- q) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 25, Colonia Self-Help Center Rule, and an order proposing new 10 TAC Chapter 25, Colonia Self-Help Center Rule, and directing their publication for public comment in the Texas Register
- r) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 26, Texas Housing Trust Fund Rule, and an order proposing new 10 TAC Chapter 26, Texas Housing Trust Fund Rule, and directing their publication for public comment in the Texas Register
- s) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 6, Community Affairs Programs; an order proposing new 10 TAC Chapter 6, Community Affairs Programs; and directing that they be published for public comment in the Texas Register

**Abigail Versyp**  
Director of Single Family  
and Homeless Programs

**Michael DeYoung**  
Director of  
Community Affairs

#### **SECTION 8**

- t) Presentation, discussion, and possible action ratifying staff's action to submit one or more Registrations of Interest to the U.S. Department of Housing and Urban Development a request for additional Veterans Affairs Supportive Housing vouchers within Kerr, Bandera, Medina, Fort Bend and Galveston counties, and if successfully awarded by HUD, authority to make those additional vouchers available through a competition as project-based vouchers

**Andre Adams**  
Manager of Section 8

#### **MULTIFAMILY FINANCE**

- u) Presentation, discussion, and possible action to amend the 2021-1 and 2021-3 Multifamily Direct Loan Notice of Funding Availability
- v) Presentation, Discussion, and Possible Action on a waiver of 10 TAC §13.8(b) and other impacted Administrative rules related to floating NHTF units for Vernon Pioneer Crossing in Vernon and approval to submit, as needed, to the U.S. Department of Housing and Urban Development an amendment to the Department's Consolidated Plan/Action Plan
- w) Presentation, Discussion, and Possible Action on waivers relating to 10 TAC §13.3, related to ineligibility of Adaptive Reuse, and 10 TAC §11.1(d)(1), related to Adaptive

**Charlotte Flickinger**  
Multifamily Direct  
Loan Manager

Reuse treatment as new construction for Commons at St. Anthony's in Amarillo for National Housing Trust Fund purposes, and approval to submit, as needed, to the U.S. Department of Housing and Development an amendment to the Department's Consolidated Plan/Action Plan

- x) 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

**Brooke Boston**  
Deputy Director of Programs

20018	The Park Tower	Fort Worth
20042	Commons at St. Anthony	Amarillo
20075	New Hope Housing Savoy	Houston
20083	Lakeview Preserve	Irving
20114	3300 Caroline Street	Houston
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

**CONSENT AGENDA REPORT ITEMS**

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

- a) Media Analysis and Outreach Report (June, July 2021)
- b) Report on Activities Related to the Department's Response to COVID-19 Pandemic
- c) Report on the Department's Swap Portfolio and recent activities with respect thereto

**Michael Lyttle**  
Director of External Affairs  
**Brooke Boston**  
Deputy Director of Programs  
**Monica Galuski**  
Director of Bond Finance

**ACTION ITEMS**

**ITEM 3: EXECUTIVE**

Executive Director's Report

**Bobby Wilkinson**  
Executive Director, TDHCA

**ITEM 4: ACTION REPORT ITEMS**

- a) Report regarding the 2021 Competitive Housing Tax Credit awards
- b) Quarterly report relating to staff-issued Determination Notices for 2021 Non-competitive 4% Housing Tax Credit applications

**Brooke Boston**  
Deputy Director of Programs  
**Teresa Morales**  
Director of Multifamily Bonds

**ITEM 5: BOND FINANCE**

Presentation, discussion, and possible action on Resolution No. 22-002 authorizing modifications to single family homeownership programs and approving amending program documents and program guidelines, authorizing the execution of documents and instruments relating to the foregoing, making certain findings and determinations in connection therewith, and containing other provisions relating to the subject; and possible waiver of 10 TAC 10 TAC §27.4(a) and 10 TAC §28.4(a)

**Monica Galuski**  
Director of Bond Finance

**ITEM 6: SINGLE FAMILY & HOMELESS PROGRAMS**

Presentation, discussion, and possible action on Program Year 2021 Emergency Solutions Grants Program Awards

**Naomi Cantu**  
Homeless Programs Manager

**ITEM 7: CDBG CARES**

Presentation, discussion, and possible action on the Community Development Block Grant Coronavirus Aid, Relief, and Economic Security Act Texas Emergency Mortgage Assistance Program awards and any timely filed appeals

**Rudy Bentancourt**  
CDBG CARES Director

**ITEM 8: RULES**

- a) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 12, concerning the Multifamily Housing Revenue Bond Rules, and an order proposing new 10 TAC Chapter 12 concerning the Multifamily Housing Revenue Bond Rules, and directing their publication for public comment in the Texas Register
- b) Presentation, discussion, and possible action on the proposed repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, proposed new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and directing their publication for public comment in the Texas Register
- c) Presentation, discussion, and possible action on an order adopting new 10 TAC §1.8, Plan Requirements, Process, and Approval Criteria for Properties Designated for Camping by Political Subdivisions for Homeless Individuals, and directing its publication for adoption in the Texas Register

**Teresa Morales**  
Director of  
Multifamily Bonds

**Brooke Boston**  
Deputy Director of  
Programs

**ITEM 9: ASSET MANAGEMENT**

- a) Presentation, Discussion, and Possible Action regarding a workout for La Esperanza Del Rio (HOME #1002040)
- b) Presentation, discussion, and possible action regarding an increase to the Housing Tax Credit amount

**Rosalio Banuelos**  
Director of Asset  
Management

18614	Springs Apartments	Balch Springs
16429	Pointe at Crestmont	Houston

**ITEM 10: MULTIFAMILY FINANCE**

- a) Presentation, Discussion, and Possible Action on a waiver relating to 10 TAC §11.101(b)(2), related to Development Size Limitations for Bluff View Apartments in Boerne
- b) Presentation, discussion and possible action regarding eligibility under 10 TAC §11.101(b)(1)(C) related to Ineligibility of Developments within Certain School Attendance Zones for Marine Park Apartments in Fort Worth
- c) Presentation, discussion, and possible action regarding the issuance of Determination Notices for 4% Housing Tax Credit Applications

**Teresa Morales**  
Director of  
Multifamily Bonds

21451	Horizon Pointe	San Antonio
21450	W. Leo Daniels	Houston

- d) Presentation, Discussion and Possible Action Relating to the Use of 2022 Credit Ceiling to Provide Allocations of Credits to 2021 Competitive Housing Tax Credit Applicants Negatively Impacted by Department Ministerial Error

**Brooke Boston**  
Deputy Director  
of Programs

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

**EXECUTIVE SESSION**

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

**Leo Vasquez**  
Chair

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

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

Pursuant to Tex. Gov't Code §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Tex. Gov't Code Chapter 551; including seeking legal advice in connection with a posted agenda item;

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

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

#### **OPEN SESSION**

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

#### **ADJOURN**

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

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact 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 Elena Peinado, 512-475-3814, at least five days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado, al siguiente número 512-475-3814 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

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

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

De acuerdo con la sección 30.07 del código penal (ingreso sin autorización de un titular de una licencia con una pistola a la vista), una persona con licencia según el subcapítulo h, capítulo 411, código del



gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola a la vista.

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

**Texas Department of Housing and Community Affairs**  
**RESOLUTION**

**WHEREAS**, the U.S. Department of Energy has designated October 2021 as National Energy Awareness Month;

**WHEREAS**, the Weatherization Assistance Program, the nation’s largest residential energy-efficiency program, was established by the U.S. Department of Energy in 1976 to make homes more energy-efficient, safer, and healthier for those with low and moderate incomes;

**WHEREAS**, the Texas Department of Housing and Community Affairs administers a Weatherization Assistance Program, funded with both U.S. Department of Energy funds and Low Income Home Energy Assistance Program funds, which is operated by a network of private nonprofits and local government entities;

**WHEREAS**, the Texas Weatherization Assistance Program has introduced millions of dollars into communities to improve thousands of homes, thereby helping Texans, including elderly, disabled, or families with young children, conserve energy and reduce utility costs;

**WHEREAS**, the Program conducts computerized energy audits and uses advanced diagnostic technology, investing as much as \$11,000 in a home and providing an array of improvements that include weather stripping of doors and windows; patching cracks and holes; insulating walls, floors, and attics; replacing doors, windows, refrigerators, and water heaters; and repairing heating and cooling systems; and

**WHEREAS**, weatherization efforts contribute to the state’s economic, social, and environmental progress by creating jobs; prompting the purchase of goods and services; improving housing; stabilizing neighborhoods; reducing emissions; and decreasing the risk of fires;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Governing Board of the Texas Department of Housing and Community Affairs does hereby celebrate October 2021, as Energy Awareness Month in Texas.

Signed this second day of September 2021.



\_\_\_\_\_  
Leo Vasquez, Chair

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Paul A. Braden, Vice Chair

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Brandon Batch, Member

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Kenny Marchant, Member

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Ajay Thomas, Member

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Sharon Thomason, Member

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Bobby Wilkinson, Executive Director

# CONSENT AGENDA

1a

**BOARD ACTION REQUEST**

**BOARD SECRETARY**

**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action on Board meeting minutes summaries for July 8, 2021, and July 22, 2021

**RECOMMENDED ACTION**

Approve the Board meeting minutes summaries for July 8, 2021, and July 22, 2021

**RESOLVED**, that the Board meeting minutes summaries for July 8, 2021, and July 22, 2021, are hereby approved as presented.

**Texas Department of Housing and Community Affairs Governing Board  
Board Meeting Minutes Summary  
July 8, 2021**

On Thursday, the eighth day of July 2021, at 9:04 a.m., the first of two regular meetings in July 2021 of the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or the Department) was held online via telephone and web link.

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

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

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

- 1) The Consent Agenda as presented was unanimously approved by the Board.
- 2) Action Item 3 – Executive Director’s Report – was presented by Bobby Wilkinson, TDHCA Executive Director. The Board heard the report and took no action.
- 3) Action Item 4 – Presentation, discussion, and possible action on an order proposing new 10 TAC §1.8, Plan Requirements, Process, and Approval Criteria for Properties Designated for Camping by Political Subdivisions for Persons Experiencing Homelessness, and directing its publication for public comment in the *Texas Register* – was presented by Brooke Boston, TDHCA Deputy Executive Director for Programs. The Board unanimously approved staff recommendation to publish the draft plan for public comment.
- 4) Action Item 5 – Presentation, discussion, and possible action on the 2022 Regional Allocation Formula Methodology – was presented by Elizabeth Yevich, Director of the Housing Resource Center. The Board unanimously approved staff recommendation to adopt the methodology.
- 5) Action Item 6 – Presentation, discussion, and possible action on adoption of the third substantial amendment to the 2019 State of Texas Consolidated Plan: One-Year Action Plan relating to the Community Development Block Grant funding under the CARES Act; programming of CDBG CARES funds; authority to request waivers of HUD; and delegation of authority to the Department’s Executive Director to make awards to subrecipients – was presented by Rudy Bentancourt, TDHCA Director of CDBG CARES. The Board unanimously approved staff recommendation to adopt the plan amendment, approve the programming of

funds as outlined in the item, and to grant authority for TDHCA to request waivers of HUD as necessary and to the TDHCA Executive Director to make awards to subrecipients.

6) Action Item 7 – Presentation, discussion, and possible action on contracting with subrecipients and contractors to perform services for the Emergency Housing Voucher Program funded by the American Rescue Plan Act of 2021 – was presented by Spencer Duran, TDHCA Director of the Section 811 Program. The Board unanimously approved staff recommendation to enter into contracts with continuum of care lead agencies and other entities for eligible activities using Emergency Housing Voucher Program funds.

7) Action Item 8 – Presentation, discussion, and possible action on Resolution No. 21-034 authorizing the issuance, sale and delivery of Texas Department of Housing and Community Affairs 2021 Series A, Single Family Mortgage Revenue Bonds, and 2021 Series B Single Family Mortgage Revenue Refunding Bonds (Taxable), approving the form and substance of related documents, authorizing the execution of documents and instruments necessary or convenient to carry out the purposes of this resolution, and containing other provisions relating to the subject – was presented by Monica Galuski, TDHCA Director of Bond Finance. The Board unanimously adopted staff recommendation to approve the bond resolution.

8) Action Item 9(a) – 2022-23 Qualified Allocation Plan (QAP) Planning Project Report – was presented by Marni Holloway, TDHCA Director of Multifamily Finance. The Board heard the report and took no action.

9) Ms. Holloway, with additional information from Mr. Wilkinson and Mr. Eccles, also presented Action Item 9(b) – Presentation, discussion and possible action on timely filed appeals for 21116 Sweetwater Station, Sweetwater; 21149 Residences at Alpha, Dallas; 21185 Weslaco Village Apartments, Weslaco; 21230 Calle del Norte Apartments, Laredo; and 21259 Jackson Place Apartments, Edinburg. Following public comment (listed below), the Board unanimously approved staff recommendation to deny the appeals from 21149, 21230, and 21259; the Board denied staff recommendation on 21116 and 21185 and approved those appeals.

- Robbye Meyer, Arx Advantage, testified in opposition to staff recommendation on 21116
- Cynthia Bast, Locke Lord attorney representing 21116, testified in opposition to staff recommendation on 21116
- Sarah Anderson, S. Anderson Consulting, testified in opposition to staff recommendation on 21116
- Audrey Martin, Purple Martin Real Estates and consultant with 21116, testified in opposition to staff recommendation on 21116
- Michael Ash, the developer for 21116, testified in opposition to staff recommendation on 21116

- Ryan Combs, representing the Paramour Jupiter Road application in the same region with 21149, testified in support of staff recommendation on 21149
- Ms. Bast, representing 21149, testified in opposition to staff recommendation on 21149
- Christian Garcia, NuRock Companies and the developer of 21149, testified in opposition to staff recommendation on 21149
- Dan Allgeier, Lakewood Property Management and part of the development team for 21149, testified in opposition to staff recommendation on 21149
- Zachary Krochtengel, Marque Real Estate Consultants, provided comments on the item for 21149
- Alyssa Carpenter, tax credit consultant, provided comments on the item for 21149
- Robert Hopkins, NuRock Companies, testified in opposition to staff recommendation on 21149
- Brad McMurray, developer of 21185, testified in opposition to staff recommendation on 21185
- Ms. Bast, representing 21185, testified in opposition to staff recommendation on 21185
- Ryan Sweeney, Prospera Housing Community Services which is the nonprofit developer of 21185, testified in opposition to staff recommendation on 21185
- Ms. Anderson testified in opposition to staff recommendation on 21185
- Walter Martinez, Prospera Housing Community Services, testified in opposition to staff recommendation on 21185
- Rebekah De La Fuente, City of Weslaco, testified in opposition to staff recommendation on 21185
- The Honorable Richard Raymond, Texas State Representative, House District 42, testified in opposition to staff recommendation on 21230
- Pete Saenz, Mayor of the City of Laredo, testified in opposition to staff recommendation on 21230
- Jose Ceballos, Laredo Housing Authority Board Chair, testified in opposition to staff recommendation on 21230
- Martha Wright Martinez, REALTOR®, testified in opposition to staff recommendation on 21230
- Jeff Beckler, representing the developer of 21230, testified in opposition to staff recommendation on 21230
- Michelle Snedden, attorney with Shackelford, Bowen, McKinley & Norton and representing 21230, testified in opposition to staff recommendation on 21230
- Donna Rickenbacker, Marque Real Estate Consultants, testified in support of staff recommendation on 21230
- Ms. Meyer testified in support of staff recommendation on 21230
- Vanessa Perez, Laredo City Councilmember, testified in opposition to staff recommendation on 21230
- Rick Deyoe, Realtex Development Corporation and developer of 21259, testified in opposition to staff recommendation on 21259
- Mr. Krochtengel provided comments on the 21259 item
- Ms. Rickenbacker provided comments on the 21259 item



10) During the general public comment portion of the meeting where persons may make comments on matters other than items for which there were posted agenda items, the following persons and comments were made:

- Cece Cox, Resource Center, provided comments on 2021 9% housing tax credit application 21136 Oaklawn Place
- Gary Cohen, representing 21078 Clifton Riverside, made comments in regards to an appeal that was filed against 21004 Skyline at Cedar Crest
- Alyssa Carpenter, consultant, provided comments on 21004 Skyline at Cedar Crest
- Sandy Watson, Albatross Development and developer of 21230 Calle del Norte Apartments, provided comments on the board's earlier decision on this appeal
- Zachary Krochtengel, Marque Real Estate Consultants, provided comments on 21004 Skyline at Cedar Crest
- Cynthia Bast, Locke Lord attorney, provided comments on 21004 Skyline at Cedar Crest
- Matt Gillam, Overland Property Group, provided comments on 21004 Skyline at Cedar Crest

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 1:25 p.m. The next meeting is set for Thursday, July 22, 2021.

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Secretary

Approved:

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Chair

**Texas Department of Housing and Community Affairs Governing Board  
Board Meeting Minutes Summary  
July 22, 2021**

On Thursday, the twenty-second day of July 2021, at 9:04 a.m., the second of two regular meetings in July 2021 of the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or the Department) was held online via telephone and web link.

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

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

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

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

2) Action Item 3(a) – Executive Director’s Report – was presented by Bobby Wilkinson, TDHCA Executive Director. The Board heard the report and took no action.

3) Action Item 3(b) – Presentation, Discussion and Possible Approval of Direct Awards of Emergency Rental Assistance Funds to Select Recipients for Housing Stabilization Services – was presented by Brooke Boston, Deputy Executive Director for Programs. The Board unanimously adopted staff recommendation to approve the awards.

4) Chairman Vasquez took up agenda items not in order as presented and Marni Holloway, TDHCA Director of Multifamily Finance, with additional information from Mr. Wilkinson and Mr. Eccles, presented Action Item 6(d) – Presentation, discussion, and possible action regarding timely filed appeals on:

21039	Uvalde Villas
21069	Dahlia Villas
21104	Heritage Heights at Abilene
21136	Oaklawn Place
21185	Weslaco Village Apartments
21206	Woodcrest
21215	Torrington Silver Creek
21235	Inn Town Lofts

21286           Blue Sky at Hawks Creek  
21290           Fish Pond at Alice

The Board did not consider sub items 21069 Dahlia Villas, 21104 Heritage Heights at Abilene, 21235 Inn Town Lofts, and 21290 Fish Pond at Alice as these appeals were granted by the TDHCA Executive Director. Sub items 21206 Woodcrest, 21215 Torrington Silver Creek, and 21286 Blue Sky at Hawks Creek were withdrawn by the applicants.

Following public comment (listed below), the Board unanimously affirmed staff recommendation to approve the appeal from 21039 Uvalde Villas. The Board did not adopt staff recommendation on 21136 Oaklawn Place and unanimously approved that appeal. The Board also did not adopt staff recommendation on 21185 Weslaco Village Apartments and by a 4-2 vote (members Batch and Thomas voting “nay”) approved that appeal.

- The Honorable Eddie Lucio, Jr., State Senator, District 27, testified in support of staff recommendation on 21039 Uvalde Villas
- Donna Rickenbacker, consultant for 21039, testified in support of staff recommendation on 21039
- Kent Hance testified in support of staff recommendation on 21039
- Henry Flores, Madhouse Development, testified in opposition to staff recommendation on 21039
- Vanessa Perez, Laredo city councilmember, testified in opposition to staff recommendation on 21039
- Cynthia Bast, Locke Lord attorney, testified in opposition to staff recommendation on 21039
- Michael Lyttle, TDHCA Director of External Affairs, read a letter into the record from the Honorable Royce West, State Senator, District 23, which was in opposition to staff recommendation on 21136 Oaklawn Place
- Cici Cox, Resource Center, testified in opposition to staff recommendation on 21136
- Jennifer Hicks, consultant for 21136, testified in opposition to staff recommendation on 21136
- Sarah Anderson testified in opposition to staff recommendation on 21136
- Zachary Krochtengel provided comments and information on consideration of 21136
- Ms. Bast, representing 21185 Weslaco Village Apartments, testified in opposition to staff recommendation on 21185
- Bill Fisher, Sonoma Housing Advisors, testified in support of staff recommendation on 21185
- Ryan Sweeney, part of the 21185 development team, testified in opposition to staff recommendation on 21185
- Brad McMurray, part of the 21185 development team, testified in opposition to staff recommendation on 21185
- Tracey Fine provided comments and information on consideration of 21185

5) The Board resumed the order of the agenda as posted and took up Action Item 4(a) – Presentation, discussion, and possible action on State Fiscal Year 2021 Ending Homelessness Fund Awards – which was presented by Abigail Versyp, TDHCA Director of Single Family and Homeless Programs. The Board unanimously approved staff recommendation to make the awards as described in the item.

6) Action Item 4(b) – Presentation, discussion, and possible action on State Fiscal years 2020 and 2021 Homeless Housing and Services Program Reallocations and Extension Requests – was presented by Ms. Versyp. The Board unanimously approved staff recommendation to make the awards of reallocated HHSP funds and to extend the City of Dallas's 2020 and 2021 HHSP contracts, as described in the item.

7) Action Item 4(c) – Presentation, discussion, and possible action on State Fiscal Year 2022 Homeless Housing and Services Program Awards – was presented by Ms. Versyp. The Board unanimously approved staff recommendation to make the HHSP awards as described in the item.

8) Action Item 4(d) – Presentation, discussion, and possible action on the 2022-2023 Texas Housing Trust Fund Biennial Plan – was presented by Ms. Versyp. The Board unanimously approved staff recommendation to approve and submit the proposed plan; and it authorized the executive director and his designees to draft and release notices of funding availability based on the plan as described in the item.

9) Action Item 5 – Presentation, discussion, and possible action regarding an increase to the Housing Tax Credit amount for Springs Apartments (HTC #18614) – was pulled from the agenda and not considered.

10) Action Item 6(a) – Presentation, discussion and possible action regarding eligibility under 10 TAC §11.101(b)(1)(C) related to Ineligibility of Developments within Certain School Attendance Zones for Villas at Shriner's Point (#21612) in San Angelo – was presented by Ms. Holloway. Following public comment (listed below), the Board unanimously denied staff recommendation and granted the requested limited waiver of the rule regarding the ineligibility of developments within certain school attendance zones.

- Morgan Chegwiddden, City of San Angelo, testified in opposition to staff recommendation
- Cynthia Bast, Locke Lord attorney representing the applicant, testified in opposition to staff recommendation
- Justin MacDonald, the applicant, testified in opposition to staff recommendation

11) Action Item 6(b) – Presentation, discussion, and possible action on the Second Amendment to the 2021-1 Multifamily Direct Loan Notice of Funding – was presented by Ms. Holloway. The Board unanimously adopted staff recommendation to approve the amendments to the notice of funding, waive the requirement of Board approval for changes to principal or scheduled

payment amounts of superior loans that result in the debt-coverage ratio fluctuating by more than .05, and direct the executive director and his designees to execute any such documents as necessary to effectuate these actions, as described in the item.

12) Action Item 6(c) – Presentation, discussion, and possible action regarding awards of Direct Loan funds from the 2021-1 Multifamily Direct Loan Notice of Funding Availability to 9% Housing Tax Credit Layered Applications for 21114 The Reserves at Holdsworth and 21131 Boulevard 61 – was presented by Ms. Holloway with additional information from Mr. Wilkinson and Mr. Eccles. The Board unanimously approved staff recommendation to make the awards as described in the item.

13) Ms. Holloway presented Action Item 6(e) – Presentation, discussion, and possible action confirming obligations for those properties recommended for an award of competitive low income housing tax credits that sought and were awarded one point for committing at least an additional 2% of the total Units to Persons referred from the Continuum of Care or local homeless service providers to be made available for those experiencing homelessness under 10 TAC §11.9(c)(6) related to Residents with Special Housing Needs for

21003	Tomball Senior Village	Tomball
21004	Skyline at Cedar Crest	Dallas
21006	Westheimer Garden Villas	Houston
21007	Retta Street Lofts	Fort Worth
21015	Embree Eastside	Garland
21020	Huntington at Bay Area	Houston
21024	Freedom's Path at Waco	Waco
21026	Vista at Park Place	Houston
21030	Abilene Pioneer Crossing	Abilene
21032	Royal Gardens Lufkin	Lufkin
21033	Beaumont Pioneer Crossing	Beaumont
21035	Manson Place	Houston
21048	Price Lofts	Brownsville
21051	Canyon Lofts	Canyon
21052	Del Rio Lofts	Del Rio
21053	Reserve at Shiloh	Garland
21054	Reserve at Palestine	Palestine
21061	Magnolia Lofts	Fort Worth
21063	Parker Apartments	Austin
21064	Fiesta Trails	San Antonio
21070	Saison North	Austin
21075	June West	Austin
21081	Kiva East	Dallas
21087	The Versia	Irving
21092	Scenic Park Apartments	Tyler
21093	Parkside on Carrier	Grand Prairie

21100	Hawthorn Terrace	Houston
21101	Longview Crossing	Longview
21113	San Angelo Crossing	San Angelo
21114	The Reserves at Holdsworth	Kerrville
21121	Paige Estates	Waco
21130	Sun Pointe	El Paso
21131	Boulevard 61	Houston
21132	OST Lofts	Houston
21139	Cypress Creek Apartment Homes at Forest Lane	Dallas
21145	Mariposa Apartment Homes at Communications Pkwy	Plano
21158	Juniper Pointe Apartments	Kaufman
21177	Carver Ridge Apartments	Hutto
21186	Palms at Blucher Park	Corpus Christi
21187	Village at Perrin Beitel	San Antonio
21208	Parmore Jupiter Road	Plano
21245	The Rushmore	Houston
21261	The Ponderosa	Alice
21264	Acadia Terrace	Houston
21274	Avanti Legacy Violet Parc	McAllen
21276	Avanti Legacy Springfield	Laredo
21289	Snowden Apartments	San Antonio
21292	Campanile on Minimax	Houston
21305	Jackson Road Apartments	McAllen
21317	San Angelo Terrace	San Angelo

The Board unanimously approved staff recommendation to require for all applications for 2021 competitive tax credits that have sought and were awarded one point for committing at least an additional 2% of the total units to be made available for those experiencing homelessness and that this condition be included in their land use restriction agreements with TDHCA as described and conditioned in the item.

14) Ms. Holloway, with additional information from Mr. Wilkinson and Mr. Eccles, presented Action Item 6(f) – Presentation, discussion, and possible action regarding awards from the 2021 State Competitive Housing Credit Ceiling and approval of the waiting list for the 2021 Competitive Housing Tax Credit Application Round:

21003	Tomball Senior Village	Tomball
21004	Skyline at Cedar Crest	Dallas
21006	Westheimer Garden Villas	Houston
21007	Retta Street Lofts	Fort Worth
21015	Embree Eastside	Garland
21017	Hughes House	Fort Worth

21020	Huntington at Bay Area	Houston
21024	Freedom's Path at Waco	Waco
21026	Vista at Park Place	Houston
21030	Abilene Pioneer Crossing	Abilene
21032	Royal Gardens Lufkin	Lufkin
21033	Beaumont Pioneer Crossing	Beaumont
21035	Manson Place	Houston
21038	Houston 150 Bayou Apartments	Houston
21048	Price Lofts	Brownsville
21051	Canyon Lofts	Canyon
21052	Del Rio Lofts	Del Rio
21053	Reserve at Shiloh	Garland
21054	Reserve at Palestine	Palestine
21061	Magnolia Lofts	Fort Worth
21063	Parker Apartments	Austin
21064	Fiesta Trails	San Antonio
21070	Saison North	Austin
21075	June West	Austin
21081	Kiva East	Dallas
21087	The Versia	Irving
21092	Scenic Park Apartments	Tyler
21093	Parkside on Carrier	Grand Prairie
21100	Hawthorn Terrace	Houston
21101	Longview Crossing	Longview
21113	San Angelo Crossing	San Angelo
21114	The Reserves at Holdsworth	Kerrville
21116	Sweetwater Station	Sweetwater
21117	Montrose Valley Apartments	Belton
21118	Cherry Village Apartments	Belton
21119	Cedar Grove Estates I and II	Buckholts; Rosebud
21121	Paige Estates	Waco
21130	Sun Pointe	El Paso
21131	Boulevard 61	Houston
21132	OST Lofts	Houston
21139	Cypress Creek Apartment Homes at Forest Lane	Dallas
21145	Mariposa Apartment Homes at Communications Pkwy	Plano
21148	William Booth Apartments	Houston
21150	Big Lake Seniors Apartments	Big Lake
21151	Colorado City Apartments	Colorado City
21156	Bayshore Manor and	

	Bay View Apartments	Palacios
21157	Katy Manor Apartments	Katy
21158	Juniper Pointe Apartments	Kaufman
21164	Town Oaks Apartments	Kenedy
21166	Mountain View Estates	El Paso
21175	Wells Manor	Wells
21176	Mill Run	Elkhart
21177	Carver Ridge Apartments	Hutto
21186	Palms at Blucher Park	Corpus Christi
21187	Village at Perrin Beitel	San Antonio
21189	Village at Boyer	San Antonio
21208	Parmore Jupiter Road	Plano
21220	Longview Square	Longview
21228	El Jardin	Brownsville
21245	The Rushmore	Houston
21261	The Ponderosa	Alice
21264	Acadia Terrace	Houston
21274	Avanti Legacy Violet Parc	McAllen
21276	Avanti Legacy Springfield	Laredo
21283	Hemley Palms	Vinton
21289	Snowden Apartments	San Antonio
21292	Campanile on Minimax	Houston
21305	Jackson Road Apartments	McAllen
21312	Savannah Park of Keene	Keene
21317	San Angelo Terrace	San Angelo
21318	Cypress Creek Temple	Temple

Following public comment (listed below), the Board unanimously approved staff recommendation to make the awards and waiting list as outlined in the item.

- Donna Rickenbacker raised concerns about the awards log posted at the time the Board took up this item
- Tamea Dula also raised concerns about the awards log posting
- Audrey Martin, Purple Martin Real Estate, thanked staff for their hard work and had a question about the awards log
- Germaine White raised concerns about application 21139 Cypress Creek Apartment Homes at Forest Lane, Dallas

15) During the general public comment portion of the meeting where persons may make comments on matters other than items for which there were posted agenda items, the following persons and comments were made:

- Donna Rickenbacker thanked staff and the Board for their hard work on the 2021 awards cycle and raised several concerns she hoped would be addressed for next year



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 1:07 p.m. The next meeting is set for Thursday, September 2, 2021.

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Secretary

Approved:

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Chair

1b

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for Mission Oaks (HTC #01086)

**RECOMMENDED ACTION**

**WHEREAS**, Mission Oaks (the Development) received a 9% Housing Tax Credit (HTC) award in 2001 for the new construction of 32 multifamily units in the City of Refugio, Refugio County;

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

Mission Oaks received a 9% HTC award in 2001 for the new construction of 32 multifamily units, all of which are set aside for residents at or below 60% of the area median income, in Refugio, Refugio County. In a letter dated June 21, 2021, Janine Sisak, representative for the Development Owner, requested approval to amend the HTC LURA related to the ROFR provision.

In 2001, the Housing Tax Credit application allotted five points to the Development Owner in exchange for a two-year ROFR period. Upon completion of the Development, the Owner entered into a Declaration of Land Use Restrictive Covenants/Land Use Restriction Agreement for Low-Income Housing Credits recorded in Refugio County on December 17, 2003.

The additional use restrictions in the current HTC LURA require, among other things, a two-year ROFR to sell the Development based on a set order of priority to a community housing development organization (as defined for purposes of the federal HOME Investment Partnership Program at 24 CFR Part 92), to a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)), or to a tenant organization or to the Department, if at any time after the 15<sup>th</sup> year of the Compliance Period the Owner decides to sell the property. The Development is currently in the 18<sup>th</sup> year of the 40-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 public hearing on the matter on August 3, 2021. An attendee list and meeting minutes with resident comments were provided. The attendee list indicates 5 residents participated. The meeting minutes indicate questions not specific to the amendment were asked, and no public comment was received regarding the requested amendment.

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

The amendment request letter also requests approval to remove the requirement for a Historically Underutilized Business (HUB) to hold an ownership interest in the project and maintain regular, continuous, and substantial participation in the operation of the development. However, this request can be approved administratively once the requirements in 10 TAC §10.405(b)(1) have been satisfied. Therefore, action on the request related to the HUB provision will be taken separately from this item related to the ROFR provision.



June 21, 2021

Rene Ruiz  
Texas Department of Housing and Community Affairs  
Asset Management  
P.O. Box 13941  
Austin, Texas 78711

Re: Mission Oaks  
LIHTC #01086/ CMTS #329

Dear Rene:

Attached is documentation requesting a LURA amendment regarding language contained in the Right of First Refusal and language requiring material participation of a Historically Underutilized Business ("HUB") for the above-mentioned development. Please note that this development is past the initial compliance period of 15 years but is still within its 40-year extended use period.

We are requesting the amendment to allow the right of first refusal to benefit a "Qualified Entity" and provide for different time periods than the ones stated in the original LURA. I have attached a revised Exhibit C, which is the same exhibit that was approved in conjunction with another DMA transaction that TDHCA approved in April 2019. This requested change is required for the right of first refusal to be consistent with the current State of Texas Government Code Section 2306.6726.

We are also requesting the removal of the required HUB participation because the HUB involved in this transaction from the onset, DMA Community Partners II, LLC, is the General Partner of Refugio DMA Housing, L.P., and now intends to sell the development to a third-party nonprofit organization, Harmony Housing Advisors, Inc. Therefore, this request to remove this HUB as a required participant in the development is solely voluntary.

These requested changes have no financial impact on the development, except to the extent they are required to effectuate the pending sale of the development. Attached is a check in the amount of \$2,500.00 for the amendment fee required by TDHCA.

We respectfully request that this request be considered for approval at either the July 22<sup>nd</sup> or the September 2<sup>nd</sup> TDHCA board meeting. Should you have any questions or concerns, please do not hesitate to contact me directly at (512) 328-3232 ext. 4505, or at [janines@dmacompanies.com](mailto:janines@dmacompanies.com).

Sincerely,

A handwritten signature in black ink, appearing to read 'Janine Sisak', written over a light blue horizontal line.

Janine Sisak  
Senior Vice President/General Counsel

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for Legend Oaks (HTC #00155)

**RECOMMENDED ACTION**

**WHEREAS**, Legend Oaks (the Development) received a 9% Housing Tax Credit (HTC) award in 2000 for the new construction of 48 multifamily units in Llano, Llano County;

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

Legend Oaks received a 9% HTC award in 2000 for the new construction of 48 multifamily units, 36 of which are set aside for residents at or below 60% of the area median income, in Llano, Llano County. In a letter dated June 21, 2021, Janine Sisak, representative for the Development Owner, requested approval to amend the HTC LURA related to the ROFR provision.

In 2000, the Housing Tax Credit application allotted five points to the Development Owner in exchange for a two-year ROFR period. Upon completion of the Development, the Owner entered into a Declaration of Land Use Restrictive Covenants/Land Use Restriction Agreement for Low-Income Housing Credits recorded in Llano County on December 4, 2002.

The additional use restrictions in the current HTC LURA require, among other things, a two-year ROFR to sell the Development based on a set order of priority to a community housing development organization (as defined for purposes of the federal HOME Investment Partnership Program at 24 CFR Part 92), to a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)), or to a tenant organization or to the Department, if at any time after the 15<sup>th</sup> year of the Compliance Period the Owner decides to sell the property. The Development is currently in the 19<sup>th</sup> year of the 40-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 public hearing on the matter on August 2, 2021. An attendee list and meeting minutes with resident comment were provided. The attendee list indicates 15 residents participated. The meeting minutes indicate questions not specific to the amendment were asked, and no public comment was received regarding the request.

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

The amendment request letter also requests approval to remove the requirement for a Historically Underutilized Business (HUB) to hold an ownership interest in the project and maintain regular, continuous, and substantial participation in the operation of the development. However, this request can be approved administratively once the requirements in 10 TAC §10.405(b)(1) have been satisfied. Therefore, action on the request related to the HUB provision will be taken separately from this item related to the ROFR provision.



June 21, 2021

Lee Ann Chance  
Texas Department of Housing and Community Affairs  
Asset Management  
P.O. Box 13941  
Austin, Texas 78711

Re: Legend Oaks  
LIHTC #00155/ CMTS #210

Dear Lee Ann:

Attached is documentation requesting a LURA amendment regarding language contained in the Right of First Refusal and language requiring material participation of a Historically Underutilized Business ("HUB") for the above-mentioned development. Please note that this development is past the initial compliance period of 15 years but is still within its 40-year extended use period.

We are requesting the amendment to allow the right of first refusal to benefit a "Qualified Entity" and provide for different time periods than the ones stated in the original LURA. I have attached a revised Exhibit C, which is the same exhibit that was approved in conjunction with another DMA transaction that TDHCA approved in April 2019. This requested change is required for the right of first refusal to be consistent with the current State of Texas Government Code Section 2306.6726.

We are also requesting the removal of the required HUB participation because the HUB involved in this transaction from the onset, DMA Community Partners, LLC, is the General Partner of Llano DMA Housing, L.P., and now intends to sell the development to a third-party nonprofit organization, Texas Housing Foundation. Therefore, this request to remove this HUB as a required participant in the development is solely voluntary.

These requested changes have no financial impact on the development, except to the extent they are required to effectuate the pending sale of the development. Attached is a check in the amount of \$2,500.00 for the amendment fee required by TDHCA.

We respectfully request that this request be considered for approval at either the July 22<sup>nd</sup> or the September 2<sup>nd</sup> TDHCA board meeting. Should you have any questions or concerns, please do not hesitate to contact me directly at (512) 328-3232 ext. 4505, or at [janines@dmacompanies.com](mailto:janines@dmacompanies.com).

Sincerely,

A handwritten signature in black ink, appearing to read 'Janine Sisak', written in a cursive style.

Janine Sisak  
Senior Vice President/General Counsel



**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for Mariposa Gardens Apartments (HTC #99176)

**RECOMMENDED ACTION**

**WHEREAS**, Mariposa Gardens Apartments (the Development) received a 9% Housing Tax Credit (HTC) award in 1999 for the new construction of 66 multifamily units in the City of Mathis, San Patricio County;

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

Mariposa Gardens Apartments received a 9% HTC award in 1999 for the new construction of 66 multifamily units, all of which are set aside for residents at or below 60% of the area median income, in Mathis, San Patricio County. In a letter dated June 21, 2021, Janine Sisak, representative for the Development Owner, requested approval to amend the HTC LURA related to the ROFR provision.

In 1999, the Housing Tax Credit application allotted five points to the Development Owner in exchange for a two-year ROFR period. Upon completion of the Development, the Owner entered into a Declaration of Land Use Restrictive Covenants/Land Use Restriction Agreement for Low-Income Housing Credits recorded in San Patricio County on December 4, 2001.

The additional use restrictions in the current HTC LURA require, among other things, a two-year ROFR to sell the Development based on a set order of priority to a community housing development organization (as defined for purposes of the federal HOME Investment Partnership Program at 24 CFR Part 92), to a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)), or to a tenant organization or to the Department, if at any time after the 15<sup>th</sup> year of the Compliance Period the Owner decides to sell the property. The Development is currently in the 21<sup>st</sup> year of the 40-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 public hearing on the matter on August 3, 2021. The attendee list indicates four residents participated. The meeting minutes indicate a question not specific to the amendment was asked, and no public comment was received regarding the requested amendment.

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

The amendment request letter also requests approval to remove the requirement for a Historically Underutilized Business (HUB) to hold an ownership interest in the project and maintain regular, continuous, and substantial participation in the operation of the Development. However, this request can be approved administratively once the requirements in 10 TAC §10.405(b)(1) have been satisfied. Therefore, action on the request related to the HUB provision will be taken separately from this item related to the ROFR provision.



June 21, 2021

Rene Ruiz  
Texas Department of Housing and Community Affairs  
Asset Management  
P.O. Box 13941  
Austin, Texas 78711

Re: Mariposa Gardens  
LIHTC #99176/ CMTS #2248

Dear Rene:

Attached is documentation requesting a LURA amendment regarding language contained in the Right of First Refusal and language requiring material participation of a Historically Underutilized Business ("HUB") for the above-mentioned development. Please note that this development is past the initial compliance period of 15 years but is still within its 40-year extended use period.

We are requesting the amendment to allow the right of first refusal to benefit a "Qualified Entity" and provide for different time periods than the ones stated in the original LURA. I have attached a revised Exhibit C, which is the same exhibit that was approved in conjunction with another DMA transaction that TDHCA approved in April 2019. This requested change is required for the right of first refusal to be consistent with the current State of Texas Government Code Section 2306.6726.

We are also requesting the removal of the required HUB participation because the HUB involved in this transaction from the onset, DMA Community Partners, LLC, is the General Partner of Mathis DMA Housing, L.P., and now intends to sell the development to a third-party nonprofit organization, Harmony Housing Advisors, Inc. Therefore, this request to remove this HUB as a required participant in the development is solely voluntary.

These requested changes have no financial impact on the development, except to the extent they are required to effectuate the pending sale of the development. Attached is a check in the amount of \$2,500.00 for the amendment fee required by TDHCA.

We respectfully request that this request be considered for approval at either the July 22<sup>nd</sup> or the September 2<sup>nd</sup> TDHCA board meeting. Should you have any questions or concerns, please do not hesitate to contact me directly at (512) 328-3232 ext. 4505, or at [janines@dmacompanies.com](mailto:janines@dmacompanies.com).

Sincerely,

A handwritten signature in black ink, appearing to read 'Janine Sisak', is written over a light blue horizontal line.

Janine Sisak  
Senior Vice President/General Counsel

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for Windmill Run Apartment Homes (HTC #99148)

**RECOMMENDED ACTION**

**WHEREAS**, Windmill Run Apartment Homes (the Development) received a 9% Housing Tax Credit (HTC) award in 1999 to construct 76 multifamily units in Sweeny, Brazoria County;

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

Windmill Run Apartment Homes received a 9% HTC award in 1999 to construct 76 multifamily units in Sweeny, Brazoria County. In a letter dated June 16, 2021, Mark Breen, representative for the Development Owner, requested approval to amend the HTC LURA related to the ROFR provision.

In 1999, the Housing Tax Credit application allotted five points to the Development Owner in exchange for a two-year ROFR period. Upon completion of the Development, the Owner entered into a Declaration of Land Use Restrictive Covenants for Low-Income Housing Credits recorded in Brazoria County on December 29, 2000. LURA amendments were recorded in Brazoria County on November 12, 2002, and on January 12, 2012.

The additional use restrictions in the current HTC LURA require, among other things, a two-year ROFR to sell the Development based on a set order of priority to a community housing development organization (as defined for purposes of the federal HOME Investment Partnership Program at 24 CFR Part 92), to a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)), or to a tenant organization or to the Department, if at any time after the 15<sup>th</sup> year of the Compliance Period the Owner decides to sell the property. The Development is currently in the 21<sup>st</sup> year of the 40-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 virtual public hearing on the matter on August 6, 2021. There were four attendees on the call, and while questions were asked about the amendment, no public comment was received regarding the requested amendment. It should be noted that the transcript of the meeting indicates that the Owner is looking at this amendment as the start to the process to seek a qualified contract.

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

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# WINDMILL RUN ASSOCIATES LTD

## *Windmill Run*

300 Silverleaf Rd., Sweeny, TX 77480  
(979) 548-0492

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June 16th 2021

**TO: Texas Department of Housing and Community Affairs (Attn:Lucy Trevino, Senior Asset Manager)**

**RE: LURA Amendment Request to TDHCA for Windmill Run**

Dear Sir/Madam:

*Windmill Run Associates, LTD is asking the Texas Department of Housing and Community Affairs Governing Board (the TDHCA Board) to approve an amendment to its Land Use Restrictive Agreement (LURA) that will change in the Right of First Refusal period as described in amended §2306.6725 of the Texas Government Code, from two (2) years to 180 days. TDHCA Rules require that notice of this request be provided to all residents of the property, a copy of this notice is attached hereto. TDHCA Rules also require that notice of this request be provided to current lender(s) and investor(s); there are no lenders involved in the property, a copy of the notice provided to the limited partner Windmill Venture, LLC is attached hereto.*

*This written notice and attaching documentation satisfy the 45 requirement stipulated by the TDHCA Post Award Activities Manual in advance of the 09/02/21 TDHCA Board Meeting.*

*Amendment Fee of \$2,500 shall be issued to TDHCA upon approval of this notice, as acknowledged by the TDHCA Asset Manager.*

Sincerely,



Mark Breen

Owner of the General Partner, Coolidge Apartments Corp.

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for Sandia Crossing (HTC #98148)

**RECOMMENDED ACTION**

**WHEREAS**, Sandia Crossing (the Development) received a 9% Housing Tax Credit (HTC) award in 1998 for the new construction of 40 multifamily units in the City of Luling, Caldwell County;

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

Sandia Crossing received a 9% HTC award in 1998 for the new construction of 40 multifamily units, 30 of which are set aside for residents at or below 60% of the area median income, in Luling, Caldwell County. In a letter dated June 21, 2021, Janine Sisak, representative for the Development Owner, requested approval to amend the HTC LURA related to the ROFR provision.

In 1998, the Housing Tax Credit application allotted five points to the Development Owner in exchange for a two-year ROFR period. Upon completion of the Development, the Owner entered into a Declaration of Land Use Restrictive Covenants/Land Use Restriction Agreement for Low-Income Housing Credits recorded in Caldwell County on December 14, 2000, which was later amended and recorded on August 7, 2019.

The additional use restrictions in the current HTC LURA require, among other things, a two-year ROFR to sell the Development based on a set order of priority to a community housing development organization (as defined for purposes of the federal HOME Investment Partnership Program at 24 CFR Part 92), to a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)), or to a tenant organization or to the Department, if at any time after the 15<sup>th</sup> year of the Compliance Period the Owner decides to sell the property. The Development is currently in the 22<sup>nd</sup> year of the 35-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 public hearing on the matter on August 4, 2021. An attendee list and meeting minutes with public comments were provided. The attendee list indicates two residents participated. The meeting minutes indicate questions not specific to the amendment were asked, and no public comment was received regarding the requested amendment.

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

The amendment request letter also requests approval to remove the requirement for a Historically Underutilized Business (HUB) to hold an ownership interest in the project and maintain regular, continuous, and substantial participation in the operation of the Development. However, this requirement was only throughout the 15-year Compliance Period, which ran through the end of 2014, and therefore, no further action is required for this additional request.





June 21, 2021

Lee Ann Chance  
Texas Department of Housing and Community Affairs  
Asset Management  
P.O. Box 13941  
Austin, Texas 78711

Re: Sandia Crossing  
LIHTC #98148/ CMTS #2005

Dear Lee Ann:

Attached is documentation requesting a LURA amendment regarding language contained in the Right of First Refusal and language requiring material participation of a Historically Underutilized Business ("HUB") for the above-mentioned development. Please note that this development is past the initial compliance period of 15 years but is still within its 40-year extended use period.

We are requesting the amendment to allow the right of first refusal to benefit a "Qualified Entity" and provide for different time periods than the ones stated in the original LURA. I have attached a revised Exhibit C, which is the same exhibit that was approved in conjunction with another DMA transaction that TDHCA approved in April 2019. This requested change is required for the right of first refusal to be consistent with the current State of Texas Government Code Section 2306.6726.

We are also requesting the removal of the required HUB participation because the HUB involved in this transaction from the onset, DMA Community Partners, LLC, is the General Partner of Luling CMG Housing, L.P., and now intends to sell the development to a third-party nonprofit organization, Harmony Housing Advisors, Inc. Therefore, this request to remove this HUB as a required participant in the development is solely voluntary.

These requested changes have no financial impact on the development, except to the extent they are required to effectuate the pending sale of the development. Attached is a check in the amount of \$2,500.00 for the amendment fee required by TDHCA.

We respectfully request that this request be considered for approval at either the July 22<sup>nd</sup> or the September 2<sup>nd</sup> TDHCA board meeting. Should you have any questions or concerns, please do not hesitate to contact me directly at (512) 328-3232 ext. 4505, or at [janines@dmacompanies.com](mailto:janines@dmacompanies.com).

Sincerely,

A handwritten signature in black ink, appearing to read 'Janine Sisak', written over a light blue horizontal line.

Janine Sisak  
Senior Vice President/General Counsel

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for Oaks at Winding Way (HTC #98147)

**RECOMMENDED ACTION**

**WHEREAS**, Oaks at Winding Way (the Development) received a 9% Housing Tax Credit (HTC) award in 1998 for the new construction of 40 multifamily units in the City of Gonzales, Gonzales County;

**WHEREAS**, the HTC application for the Development received points and/or other preferences for agreeing to provide a Right of First Refusal (ROFR) to purchase the Development over a two-year ROFR period, 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**, Gonzales CMG Housing, LP (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 Oaks at Winding Way 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

Oaks at Winding Way received a 9% HTC award in 1998 for the new construction of 40 multifamily units, 30 of which are set aside for residents at or below 60% of the area median income, in Gonzales, Gonzales County. In a letter dated June 21, 2021, Janine Sisak, representative for the Development Owner, requested approval to amend the HTC LURA related to the ROFR provision.

In 1998, the Housing Tax Credit application allotted five points to the Development Owner in exchange for a two-year ROFR period. Upon completion of the Development, the Owner entered into a Declaration of Land Use Restrictive Covenants/Land Use Restriction Agreement for Low-Income Housing Credits recorded in Gonzales County on December 15, 2000.

The additional use restrictions in the current HTC LURA require, among other things, a two-year ROFR to sell the Development based on a set order of priority to a community housing development organization (as defined for purposes of the federal HOME Investment Partnership Program at 24 CFR Part 92), to a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)), or to a tenant organization or to the Department, if at any time after the 15<sup>th</sup> year of the Compliance Period the Owner decides to sell the property. The Development is currently in the 22<sup>nd</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 public hearing on the matter on August 4, 2021. An attendee list and meeting minutes with resident comments were provided. The attendee list indicates four residents participated. The meeting minutes indicate questions not specific to the amendment were asked, and no public negative comment was received regarding the requested amendment.

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

The amendment request letter also requests approval to remove the requirement for a Historically Underutilized Business (HUB) to hold an ownership interest in the project and maintain regular, continuous, and substantial participation in the operation of the development. However, this requirement was only throughout the 15-year Compliance Period, which ran through the end of 2014, and therefore, no further action is required for this additional request.



June 21, 2021

Rene Ruiz  
Texas Department of Housing and Community Affairs  
Asset Management  
P.O. Box 13941  
Austin, Texas 78711

Re: The Oaks at Winding Way  
LIHTC #98147/ CMTS #2004

Dear Rene:

Attached is documentation requesting a LURA amendment regarding language contained in the Right of First Refusal and language requiring material participation of a Historically Underutilized Business ("HUB") for the above-mentioned development. Please note that this development is past the initial compliance period of 15 years but is still within its 40-year extended use period.

We are requesting the amendment to allow the right of first refusal to benefit a "Qualified Entity" and provide for different time periods than the ones stated in the original LURA. I have attached a revised Exhibit C, which is the same exhibit that was approved in conjunction with another DMA transaction that TDHCA approved in April 2019. This requested change is required for the right of first refusal to be consistent with the current State of Texas Government Code Section 2306.6726.

We are also requesting the removal of the required HUB participation because the HUB involved in this transaction from the onset, DMA Community Partners, LLC, is the General Partner of Gonzales CMG Housing, L.P., and now intends to sell the development to a third-party nonprofit organization, Harmony Housing Advisors, Inc. Therefore, this request to remove this HUB as a required participant in the development is solely voluntary.

These requested changes have no financial impact on the development, except to the extent they are required to effectuate the pending sale of the development. Attached is a check in the amount of \$2,500.00 for the amendment fee required by TDHCA.

We respectfully request that this request be considered for approval at either the July 22<sup>nd</sup> or the September 2<sup>nd</sup> TDHCA board meeting. Should you have any questions or concerns, please do not hesitate to contact me directly at (512) 328-3232 ext. 4505, or at [janines@dmacompanies.com](mailto:janines@dmacompanies.com).

Sincerely,

A handwritten signature in black ink, appearing to read 'Janine Sisak', written in a cursive style.

Janine Sisak  
Senior Vice President/General Counsel

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**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application for Dallas Stemmons Apartments (HTC #20024)

**RECOMMENDED ACTION**

**WHEREAS**, Dallas Stemmons Apartments (the Development) received an award of 9% Housing Tax Credits (HTCs) in 2020 for the new construction of 87 multifamily units, of which 85 are HTC units, in Dallas, Dallas County;

**WHEREAS**, Dallas Stemmons, Ltd. (the Development Owner or Owner) requests approval for a material amendment to the Application for the reduction of one 60% one-bedroom unit and the addition of one 60% two-bedroom unit;

**WHEREAS**, Board approval is required for a modification of the bedroom mix of units, as directed in Tex. Gov't Code §2306.6712(d)(2) and 10 TAC §10.405(a)(4)(B), and the Owner has complied with the amendment requirements therein;

**WHEREAS**, the amendment request documentation also identifies an increase in the three-bedroom unit size from 1,154 square feet to 1,163 square, an increase in the net rentable square feet from 78,714 to 78,951, an increase in the clubhouse conditioned space from 4,036 to 4,226 square feet, all of which are Notification Items under 10 TAC §10.405(a)(2); and

**WHEREAS**, the requested changes do not negatively affect the Development, impact the viability of the transaction, impact the scoring of the Application, or affect the amount of funding awarded;

**NOW, therefore, it is hereby**

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

## BACKGROUND

Dallas Stemmons Apartments received a 9% HTC award in 2020 to construct a three-story building consisting of 87 units (85 HTC and two market units) in Dallas, Dallas County. In a letter dated June 17, 2021, Cody J. Hunt, representative for the Owner, requested approval for the removal of one 60% one-bedroom unit and the addition of one 60% two-bedroom unit. The change impacts the unit mix, which results in a material amendment to the Application. The modification of the bedroom mix of units requires approval by the Board under Tex. Gov't Code §2306.6712(d)(2) and 10 TAC §10.405(a)(4)(B).

Additionally, the Owner proposes an increase of the three-bedroom unit size from 1,154 SF to 1,163 SF, resulting in an increase in the net rentable square feet from 78,714 to 78,951, and there will also be an increase in the clubhouse conditioned space from 4,036 to 4,226 square feet. These are Notification items under 10 TAC §10.405(a)(2).

The Owner increased the clubhouse size to provide a better layout for the community amenities to serve the residents. To achieve this, a first floor one-bedroom unit adjacent to the clubhouse had to be removed. However, according to the Owner, the units on the building all stack vertically; therefore, attempting to construct a one-bedroom unit on the upper floor creates inefficiency in the upper floor. As a result, the Owner mitigated the loss of the one-bedroom by creating a two-bedroom unit on the second floor.

The table below is a comparison of the clubhouse submitted at Application and with this amendment request:

Notification Item as defined in 10 TAC §10.405(a)(2)(B)	
Application 4,036 SF	Amendment 4,226 SF

The Owner indicated that these changes were not foreseeable or preventable at the time of Application.

An appraisal report and market analysis performed by Affordable Housing Analysts dated February 21, 2020, stated a total demand of 552 units, or a capture rate of 3.8% for the two-bedroom 60% unit type. This indicates that the change in the unit mix will have no negative impact on the Development.

The Owner provided an updated rent schedule due to the change in unit mix. The new schedule shows a slight increase in monthly gross rent from \$76,551 to \$76,724, resulting in an increase in the annual effective gross income from \$876,101 to \$878,021. There is no change to the previously recommended HTC amount.

Staff has determined that the proposed changes noted above would not have impacted the scoring of the Application. Additionally, the revised Development plan continues to meet accessibility requirements.

Staff recommends approval of the amendment request as presented herein.





June 17, 2021

Texas Department of Housing and Community Affairs  
Attn: Lee Ann Chance  
221 E. 11<sup>th</sup> Street  
Austin, TX 78701

RE: 20024 Dallas Stemmons Apartments – Amendment

Dear Ms. Chance,

Please find attached the required documents for 20024 Dallas Stemmons Apartments – Amendment.

The Application for Dallas Stemmons, Ltd. was submitted with tabs showing:

1. 13 one-bedroom units at 60%
2. 23 two-bedroom units at 60%
3. Three-bedroom square footage of 1,154 each
4. Total Unit Square Footage of 78,714
5. 4,036 Clubhouse conditioned square footage
6. \$876,101 Effective Gross Annual Income

However, after the application was submitted, the following changes were made:

1. 12 one-bedroom units at 60% (one fewer)
2. 24 two-bedroom units at 60% (one additional)
3. Three-bedroom square footage of 1,163 each (9 sf more per unit)
4. Total Unit Square Footage of 78,951 (237 more Unit SF or .3%)
5. 4,226 Clubhouse conditioned square footage (190 more sf or 4.7%)
6. \$878,021 Effective Gross Annual Income (increase of \$1,920 or .22%)

The immaterial changes were implemented to add additional space to the clubhouse to properly service the number of residents and to allow for additional space for community amenities. This resulted in the elimination of a one-bedroom unit on the ground floor next to the Clubroom and the addition of a two-bedroom unit on the second floor. The three-bedroom size was also increased from 1,154 sf to 1,163 sf.

We request that this modification be approved as it does not affect the Project in a negative manner, impact the scoring of the Application, change the total unit count, change the set-asides, affect the tax credit allocation awarded, and was not reasonably foreseeable or preventable at the time of Application.



We have attached the following in support of the Amendment:

1. Tab 23 Bldg Unit Configuration "Original Application" and "As Amended"
2. Tab 24 Rent Schedule "Original Application" and "As Amended"
3. Clubhouse Plan "Original Application" and "As Amended"
4. Project Data Sheet "Original Application" and "As Amended"

If you have any questions, please do not hesitate to contact me.

Thanks and Best Regards,

A handwritten signature in blue ink, appearing to read "CJH", is positioned above the typed name.

Cody J. Hunt, CPA  
Riva Switzerland, Inc.

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action regarding a material amendment to the Housing Tax Credit Application for Vernon Pioneer Crossing (HTC #20212)

**RECOMMENDED ACTION**

**WHEREAS**, Vernon Pioneer Crossing (the Development) received an award of 9% Housing Tax Credits (HTCs) in 2020 for the construction of 64 units of elderly housing in the City of Vernon, Wilbarger County;

**WHEREAS**, Vernon Pioneer Crossing, LLC (the Applicant) is now requesting approval for a change in the Development site acreage from 7.21 to 10.92, which results in a 33.97% change in residential density from 8.88 units per acre to 5.86 units per acre;

**WHEREAS**, Board approval is required for a modification of the residential density of at least 5% as directed in Tex. Gov't Code §2306.6712(d)(6) and 10 TAC §10.405(a)(4)(F), and the Owner has complied with the amendment requirements therein; and

**WHEREAS**, the requested change does not materially alter the Development in a negative manner, affect the HTC recommendation, and would not have adversely affected the selection of the Application in the Application Round;

**NOW, therefore, it is hereby**

**RESOLVED**, that the requested material amendment to the Application for Vernon Pioneer Crossing is approved as presented at this meeting, and the Executive Director and his designees are each authorized, directed, and empowered to take all necessary action to effectuate the Board's determination.

**BACKGROUND**

Vernon Pioneer Crossing received an award of 9% Housing Tax Credits in 2020 for the new construction of 64 units of elderly housing in Vernon, Wilbarger County. The Development is proposed to be owned by Vernon Pioneer Crossing, LLC, with VPC, LLC as its 0.01% General Partner, owned by Target Builders, LLC, which is owned by Khairunissa Jooma and Noorallah Jooma.

In a letter dated July 14, 2021, Lora Myrick, representative for the Applicant, is now requesting approval for a change from 7.21 acres to 10.92 acres (an increase of 51.46%), and as a result, the residential density will change from 8.88 to 5.86 units per acre (a related decrease of 33.97%), requiring approval by the Board under Tex. Gov't Code §2306.6712(d)(6) and 10 TAC §10.405(a)(4)(F). According to the Applicant's representative, the change is a result of unforeseen storm water and excavation management requirements from the City of Vernon.

At the time of application, the original plan included 10.92 acres, but was later revised at Commitment and reflected in an Addendum to the Underwriting Report removing 3.80 acres from the land to be encumbered in the LURA and reducing the site to 7.21 acres. This revision reduced the acquisition costs to include only the cost of the reduced acreage at a prorated amount and a correlative reduction in the deferred developer fee. The Applicant stated that there are no substantial changes to the development costs as a result of this current increase in acreage. However, please note that the site plan submitted shows that the detention pond will be relocated from the east-southeastern boundary to the newly included land and will be larger than the pond originally proposed. No additional site changes were noted. If approved, the LURA will encumber the full 10.92 acres at the time of filing.

<b>Material Alterations as defined in Texas Gov't Code §2306.6712(d)(6) and 10 TAC §10.405(a)(4)(F)</b>	
<b>Addendum to Underwriting at Commitment</b>	<b>Current Amendment</b>
Density: 8.88 units per acre (64 units constructed on 7.21 acres)	Density: 5.86 units per acre (64 units constructed on 10.92 acres)

The requested change does not materially alter the Development in a negative manner, affect the HTC recommendation, and would not have adversely affected the selection of the Application in the Application Round.

Staff recommends approval of the requested material amendment to the Application.



July 14, 2021

Texas Department of Housing and Community Affairs  
Asset Management Division  
Attn: Mr. Rosalio Banelos, Director  
221 E 11<sup>th</sup> Street  
Austin, Texas 78701

Via Email: [Rosalio.Banelos@tdhca.state.tx.us](mailto:Rosalio.Banelos@tdhca.state.tx.us)

Re: TDHCA Application #20212:  
Vernon Pioneer Crossing Material Amendment Request

Dear Mr. Banelos,

We are formally requesting an amendment for the above-referenced housing tax credit application. A check for the amendment fee in the amount of \$2,500 has been included with this request.

We would like to amend the development site acreage. The development site acreage has changed from 7.21 acres to 10.92 acres, as reflected in the attached and labeled Exhibit A. The change is a result of unforeseen stormwater and excavation management requirements from the City of Vernon. The site plan filed at Commitment is attached and labeled Exhibit B.

Due to the change in site acreage, the rental density decreased from 8.88 units/acre to 5.86 units/acre. As a result, rental density has decreased 33.97% from Commitment. We confirm that the changes in rental density have resulted in a greater percentage than the 5% variance allowed in the rule. In accordance with Section 10.405(a)(4) of Subchapter E of the Uniform Multifamily Rules, we submit this request for a material change to the application.

It should be noted that this change does not negatively affect the proposed development, as it does not impact the viability of this transaction, and has no affect on the original competitive score of the site. There were no substantial changes to the development costs as a result of the changes mentioned above. Therefore, we respectfully request approval of this amendment request.

Mr. Banuelos  
Page 2 of 2

If you have any questions, please do not hesitate to contact me directly at (512) 785-3710 or via email at [lora@betcohousinglab.com](mailto:lora@betcohousinglab.com) any time.

Sincerely,

A handwritten signature in blue ink that reads "Lora Myrick". The signature is written in a cursive style with a large initial "L" and "M".

Representative of  
**Vernon Pioneer Crossing, LLC**  
Development Owner  
2727 LBJ Freeway, Suite 1020  
Dallas, TX 75234  
(469) 855-6662

w/Attachments

cc: Noor Jooma, Michael Beard, Andrea Sivells

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application for Fawn Ridge Apartments (HTC #20495)

**RECOMMENDED ACTION**

**WHEREAS**, Fawn Ridge Apartments (the Development) received an award of 4% Housing Tax Credits (HTCs) in 2020 for the acquisition and rehabilitation of 119 multifamily units in The Woodlands, Montgomery County;

**WHEREAS**, EC Fawn Ridge, LLC (the Development Owner) requests approval for a material amendment to the Application to decrease the number of Low-Income Units from 119 to 109;

**WHEREAS**, Board approval is required for a reduction in the number of Low-Income Units, and the Development Owner has complied with the amendment requirements in 10 TAC §10.405(a);

**WHEREAS**, nine households were discovered to be over income when the management company began income qualifications of the current residents, and these nine residents receive a HUD Section 236 rental subsidy and have a right to return to the Development upon completion of the rehabilitation;

**WHEREAS**, since the units affected by this change are all subject to a HUD Section 236 contract, the units would remain as affordable housing units even without the HTC designation; and

**WHEREAS**, the requested change does not negatively affect the Development, impact the viability of the transaction, impact the scoring of the Application, or negatively affect the amount of funding awarded;

**NOW, therefore, it is hereby**

**RESOLVED**, that the requested amendment Fawn Ridge Apartments is approved as presented at this meeting, and the Executive Director and his designees are each hereby authorized, directed, and empowered to take all necessary action to effectuate the foregoing.

## **BACKGROUND**

Fawn Ridge Apartments received a 4% HTC award to acquire and rehabilitate 119 units in The Woodlands, Montgomery County. In a letter dated May 4, 2021, Janna Cormier, representative for the Development Owner, requested approval to decrease the number of low-income units from 119 to 109, which includes one employee unit as a market unit. This change represents a material amendment to the Application.

The Development Owner states that nine of the current households are over income, but because they receive a HUD Section 236 rental subsidy, they have a right to return to the Development upon completion of the rehabilitation. Therefore, without this amendment, the Development would be out of compliance from the start, and these nine units would not generate the tax credits expected by the investor.

Because these units are covered by the HUD Section 236 Preservation Program, they will remain as affordable housing units even without the HTC designation. With approval of this amendment, these nine over-income households will remain in their units, and the Development would meet the HTC requirements.

The change in the number of low-income units will result in having 109 units at 60% AMI and 10 units without a HTC designation but still being designated as affordable units under the HUD Section 236 Preservation Program.

The Development Owner provided updated financial information that has been analyzed by the Real Estate Analysis (REA) Division. REA's analysis of the updated financial information indicates that the Development is expected to be feasible, and there is no change to the previously recommended funding amount at this time. The Determination Notice is still valid, and the final credit amount will be determined at cost certification.

Specifically, the financial impact of this change is not significant. The rents for the units remain the same since all the units are covered by the HUD Section 236 rental subsidy. The operating expenses also remain unchanged. Overall, total development costs decreased by \$559K; however, the loss of eligible basis due to a lower application fraction is more than compensated for by the fixed 4% tax credit.

Due to the increase in eligible basis from the fixed 4% credit, the permanent debt decreased \$950K, while the interest rate increased 21 bps. The seller's note decreased \$800K, and the deferred fee increased \$56K. The HTC investor has agreed to this change, and is pricing the credits at \$0.86. Equity proceeds increased \$1.1M.

Staff has determined that the proposed changes noted above would not have impacted the scoring of the Application.

Staff recommends approval of the amendment request as presented herein.





**Addendum to Underwriting Report**

TDHCA Application #: **20495** Program(s): **4% HTC**

**Fawn Ridge**

Address/Location: 12420 Sawmill Road

City: The Woodlands County: Montgomery Zip: 77380

APPLICATION HISTORY	
Report Date	PURPOSE
07/29/21	LIHTC Unit Amendment
12/03/20	Original Underwriting

**ALLOCATION**

TDHCA Program	Previous Allocation				RECOMMENDATION				
	Amount	Rate	Amort	Term	Amount	Rate	Amort	Term	Lien
LIHTC (4% Credit)	\$733,463				\$860,431				

**CONDITIONS STATUS**

- 1 Receipt and acceptance before Determination Notice:
  - a: Confirmation of HUD assignment and issuance of a new 20-year Mark-Up-to-Market (MUTM) HAP contract with a post-renovation rent increase or documentation from the third party administrator evidencing their approval of the proposed replacement HAP contract with rents increased to the current market rents presented in this application.

**Status:** Applicant submitted an email notification dated 12/02/20 from Southwest Housing Compliance Corporation stating that they have received HUD approval for the HAP contract renewal at the rents presented in this application. Rents will be effective 1/01/21.

**Condition cleared.**

- b: A revised Scope and Cost Review ("SCR") that is fully compliant with Program Rules.

**Status:** SCR provider submitted a supplemental letter dated 12/08/20 that meets our requirements.

**Condition cleared.**

- 2 Receipt and acceptance by Cost Certification:

- a: Certification of comprehensive testing for asbestos; that any appropriate abatement procedures were implemented; and that any remaining asbestos-containing materials are being managed in accordance with an acceptable Operations and Maintenance (O&M) program.
- b: Architect certification that buildings were tested for the presence of radon and any recommended mitigation measures were 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	109

**ANALYSIS**

Applicant is requesting an Amendment in order to change the number of LIHTC designated units in the property. Nine of the current households at the property are over income, but have a right to return to the property upon completion of the rehabilitation due to the Section 236 rental subsidy. With this amendment, the property would go from 100% LIHTC units to 92% LIHTC units, however the units affected by this change are all subject to a HUD Section 236 contract, and therefore would remain as affordable housing units even without the LIHTC LURA covering them.

Without this amendment, the property will be out of compliance from the start, and these 9 units would not generate the LIHTCs the investor would expect. By making this change, the property will be in compliance with LIHTC requirements, and not cause an LIHTC adjuster due to credits not provided to the investor.

**Operating Pro Forma**

There are no changes to the rents since all units are covered by HUD assistance; operating expenses also did not change.

**Development Cost**

Underwriter's cost estimate is based on the budget presented in the Novogradac Financial Forecast for the project.

Total development costs decreased \$559k.

The loss of eligible basis due to a lower applicable fraction is more than compensated for by the fixed 4% credit

**Sources of Funds**

Due to the increase in eligible basis from the fixed 4% credit, the perm debt decreased \$950k while the interest rate increased 21 bps. The seller's note decreased \$800k and the deferred fee increased \$56k.

The LIHTC investor has agreed to this change and is pricing the credits at \$0.86. Equity proceeds increased \$1.1M.

The Applicant's current cost schedule indicates a credit request of \$860,431, based on a 90.57% applicable fraction. The Underwriter's analysis uses a 91.69% fraction (includes the employee-occupied unit), and indicates a potential credit allocation of \$865,213.

The project was issued a determination notice for annual credits of \$733,463 at original underwriting in December of 2020. This determination notice is still valid and credits will be trued-up at cost certification.

Manager of Real Estate Analysis: Jeanna Adams

Director of Real Estate Analysis: Thomas Cavanagh

**UNIT MIX/RENT SCHEDULE**  
**Fawn Ridge, The Woodlands, 4% HTC #20495**

LOCATION DATA	
CITY:	The Woodlands
COUNTY:	Montgomery
Area Median Income	\$78,800
PROGRAM REGION:	6
PROGRAM RENT YEAR:	2020

UNIT DISTRIBUTION				
# Beds	# Units	% Total	Assisted	MDL
Eff	-	0.0%	0	0
1	32	26.9%	32	0
2	55	46.2%	55	0
3	32	26.9%	31	0
4	-	0.0%	0	0
5	-	0.0%	0	0
<b>TOTAL</b>	<b>119</b>	<b>100.0%</b>	<b>118</b>	<b>-</b>

60%	Average Income	
Income	# Units	% Total
20%	-	0.0%
30%	-	0.0%
40%	-	0.0%
50%	-	0.0%
60%	109	100.0%
70%	-	0.0%
80%	-	0.0%
MR	-	0.0%
<b>TOTAL</b>	<b>109</b>	<b>91.6%</b>

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjust	130%
Applicable Fraction	91.69%
APP % Acquisition	4.00%
APP % Construction	4.00%
Average Unit Size	844 sf

UNIT MIX / MONTHLY RENT SCHEDULE																					
HTC		RENT ASSISTED UNIT		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	Mkt Analyst	
TC 60%	\$887	Sec 8	\$1,089	29	1	1	656	\$1,089	\$64	\$1,025	\$0	\$1.56	\$1,025	\$29,725	\$29,725	\$1,025	\$1.56	\$0	\$1,025	\$1.56	\$1,025
TC 60%	\$1,065	Sec 8	\$1,323	51	2	1	816	\$1,323	\$73	\$1,250	\$0	\$1.53	\$1,250	\$63,750	\$63,750	\$1,250	\$1.53	\$0	\$1,250	\$1.53	\$1,250
TC 60%	\$1,230	Sec 8	\$1,644	17	3	1.5	1,080	\$1,644	\$94	\$1,550	\$0	\$1.44	\$1,550	\$26,350	\$26,350	\$1,550	\$1.44	\$0	\$1,550	\$1.44	\$1,550
TC 60%	\$887	Sec 236	\$569	1	1	1	656	\$569	\$64	\$505	\$0	\$0.77	\$505	\$505	\$505	\$505	\$0.77	\$0	\$1,025	\$1.56	\$1,025
non-HTC		Sec 236	\$569	2	1	1	656	\$569	\$64	\$505	\$0	\$0.77	\$505	\$1,010	\$1,010	\$505	\$0.77	\$0	\$1,025	\$1.56	\$1,025
TC 60%	\$1,065	Sec 236	\$676	2	2	1	816	\$676	\$73	\$603	\$0	\$0.74	\$603	\$1,206	\$1,206	\$603	\$0.74	\$0	\$1,250	\$1.53	\$1,250
non-HTC		Sec 236	\$676	2	2	1	816	\$676	\$73	\$603	\$0	\$0.74	\$603	\$1,206	\$1,206	\$603	\$0.74	\$0	\$1,250	\$1.53	\$125
TC 60%	\$1,230	Sec 236	\$729	9	3	1.5	1,080	\$729	\$94	\$635	\$0	\$0.59	\$635	\$5,715	\$5,715	\$635	\$0.59	\$0	\$1,550	\$1.44	\$1,550
non-HTC		Sec 236	\$729	5	3	1.5	1,080	\$729	\$94	\$635	\$0	\$0.59	\$635	\$3,175	\$3,175	\$635	\$0.59	\$0	\$1,550	\$1.44	\$1,550
EO		0		1	3	1.5	1,080	\$94	\$94	\$0		\$0.00	\$0	\$0		\$0		NA	\$1,550	\$1.44	\$1,550
<b>TOTALS/AVERAGES:</b>				<b>119</b>			<b>100,432</b>				<b>\$0</b>	<b>\$1.32</b>	<b>\$1,115</b>	<b>\$132,642</b>	<b>\$132,642</b>	<b>\$1,115</b>	<b>\$1.32</b>	<b>\$0</b>	<b>\$1,270</b>	<b>\$1.50</b>	<b>\$1,251</b>

<b>ANNUAL POTENTIAL GROSS RENT:</b>	<b>\$1,591,704</b>	<b>\$1,591,704</b>
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**STABILIZED PRO FORMA**

*Fawn Ridge, The Woodlands, 4% HTC #20495*

**STABILIZED FIRST YEAR PRO FORMA**

	COMPARABLES		Rolling 12 Mos. July '19 to June '20	APPLICANT				PRIOR REPORT		TDHCA				VARIANCE	
	Database	Expense Comps		% EGI	Per SF	Per Unit	Amount	Applicant	TDHCA	Amount	Per Unit	Per SF	% EGI	%	\$
<b>POTENTIAL GROSS RENT</b>				\$1.32	\$1,115	\$1,591,704	\$1,591,704	\$1,591,704	\$1,591,704	\$1,591,704	\$1,115	\$1.32		0.0%	\$0
Late Fees, forfeit deposits					\$5.00	\$7,140	7,140								
Total Secondary Income					\$5.00			7,140	\$7,140	\$5.00				0.0%	\$0
<b>POTENTIAL GROSS INCOME</b>						\$1,598,844	\$1,598,844	\$1,598,844	\$1,598,844					0.0%	\$0
Vacancy & Collection Loss					5.24% PGI	(\$83,779)	(84,259)	(84,259)	(83,779)	5.24% PGI				0.0%	-
Rental Concessions						\$0		0	-					0.0%	-
<b>EFFECTIVE GROSS INCOME</b>						\$1,515,065	\$1,514,585	\$1,514,585	\$1,515,065					0.0%	\$0

General & Administrative	\$49,664	\$417/Unit	\$41,527	\$349/Unit	\$28,002	\$235/Unit	2.12%	\$0.32	\$270	\$32,096	\$32,096	\$28,002	\$28,002	\$235	\$0.28	1.85%	14.6%	4,094
Management	\$49,443	4.5% EGI	\$50,550	3.3% EGI	\$60,589	4.0% EGI	4.00%	\$0.60	\$509	\$60,602	\$60,602	\$75,729	\$75,729	\$636	\$0.75	5.00%	-20.0%	(15,127)
Payroll & Payroll Tax	\$161,122	\$1,354/Unit	\$167,844	\$1,410/Unit	\$184,402	\$1,550/Unit	12.78%	\$1.93	\$1,628	\$193,679	\$193,679	\$184,402	\$184,402	\$1,550	\$1.84	12.17%	5.0%	9,277
Repairs & Maintenance	\$87,829	\$738/Unit	\$89,447	\$752/Unit	\$81,281	\$683/Unit	3.30%	\$0.50	\$420	\$49,996	\$49,996	\$71,400	\$71,400	\$600	\$0.71	4.71%	-30.0%	(21,404)
Electric/Gas	\$25,808	\$217/Unit	\$16,249	\$137/Unit	\$22,892	\$192/Unit	1.47%	\$0.22	\$187	\$22,275	\$22,275	\$22,892	\$22,892	\$192	\$0.23	1.51%	-2.7%	(617)
Water, Sewer, & Trash	\$74,698	\$628/Unit	\$102,717	\$863/Unit	\$61,548	\$517/Unit	4.29%	\$0.65	\$546	\$65,012	\$65,012	\$61,548	\$61,548	\$517	\$0.61	4.06%	5.6%	3,465
Property Insurance	\$47,466	\$0.47 /sf	\$52,370	\$0.52 /sf	\$46,304	\$0.46 /sf	3.02%	\$0.45	\$384	\$45,689	\$45,689	\$46,304	\$46,304	\$389	\$0.46	3.06%	-1.3%	(615)
Property Tax (@ 100%) 2.1482	\$92,231	\$775/Unit	\$102,794	\$864/Unit	\$55,344	\$465/Unit	11.14%	\$1.68	\$1,418	\$168,778	\$168,778	\$173,188	\$173,188	\$1,455	\$1.72	11.43%	-2.5%	(4,410)
Reserve for Replacements							2.36%	\$0.36	\$300	\$35,700	\$35,700	\$35,700	\$35,700	\$300	\$0.36	2.36%	0.0%	-
TDHCA Compliance fees (\$40/HTC unit)							0.31%	\$0.05	\$40	\$4,720	\$4,720	\$4,720	\$4,720	\$40	\$0.05	0.31%	0.0%	-
Bond Trustee Fees							0.30%	\$0.04	\$38	\$4,500	\$4,500	\$4,500	\$4,500	\$38	\$0.04	0.30%	0.0%	-
<b>TOTAL EXPENSES</b>							<b>45.08%</b>	<b>\$6.80</b>	<b>\$5,740</b>	<b>\$683,047</b>	\$683,047	\$708,385	<b>\$708,385</b>	<b>\$5,953</b>	<b>\$7.05</b>	<b>46.76%</b>	<b>-3.6%</b>	<b>\$ (25,338)</b>
<b>NET OPERATING INCOME ("NOI")</b>							<b>54.92%</b>	<b>\$8.28</b>	<b>\$6,992</b>	<b>\$832,018</b>	\$831,538	\$806,200	<b>\$806,679</b>	<b>\$6,779</b>	<b>\$8.03</b>	<b>53.24%</b>	<b>3.1%</b>	<b>\$ 25,338</b>

<b>CONTROLLABLE EXPENSES</b>									\$3,051/Unit					\$3,094/Unit				
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**CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS**

*Fawn Ridge, The Woodlands, 4% HTC #20495*

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	Prior Underwriting		Principal	Term	Amort	Rate	Pmt	Cumulative	
		UW	App						Applicant	TDHCA						DCR	LTC
JLL - FHLMC Immediate TEL	0.11%	1.22	1.25	663,358	3.36%	40	17	\$14,250,000	\$15,200,000	\$15,200,000	\$14,250,000	17	40	3.36%	\$663,832	1.25	55.9%
<b>CASH FLOW DEBT / GRANTS</b>																	
Seller Note - Fawn Ridge Apts., LLC		1.22	1.25		2.00%	0	17	\$3,500,000	\$4,300,000	\$4,300,000	\$3,500,000	17	0	2.00%		1.25	13.7%
				<b>\$663,358</b>	<b>TOTAL DEBT / GRANT SOURCES</b>			<b>\$17,750,000</b>	\$19,500,000	\$19,500,000	<b>\$17,750,000</b>	<b>TOTAL DEBT SERVICE</b>			<b>\$663,832</b>	<b>1.25</b>	<b>69.6%</b>
<b>NET CASH FLOW</b>		\$143,321	\$168,660											<b>APPLICANT NET OPERATING INCOME</b>	\$832,018	\$168,185	<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	Prior Underwriting		Amount	Credit Price	Annual Credit	% Cost	Annual Credits per Unit	Allocation Method		
						Applicant	TDHCA							Applicant	TDHCA
First Horizon	LIHTC Equity	29.0%	\$860,431	0.86	\$7,398,967	\$6,307,151	\$6,307,151	\$7,398,967	\$0.86	\$860,431	29.0%	\$7,231	Applicant Request		
Involve Communities, LLC	Deferred Developer Fees	2.2%	(34% Deferred)		\$549,791	\$267,667	\$246,295	\$345,016	(22% Deferred)		1.4%	<b>Total Developer Fee: \$1,542,543</b>			
Additional (Excess) Funds Req'd		0.0%						\$0			0.0%				
<b>TOTAL EQUITY SOURCES</b>		<b>31.2%</b>			<b>\$7,948,758</b>	<b>\$6,574,818</b>	<b>\$6,553,446</b>	<b>\$7,743,983</b>			<b>30.4%</b>				
<b>TOTAL CAPITALIZATION</b>					<b>\$25,698,758</b>	\$26,074,818	\$26,053,446	<b>\$25,493,983</b>						15-Yr Cash Flow after Deferred Fee:	<b>\$3,296,451</b>

DEVELOPMENT COST / ITEMIZED BASIS														
APPLICANT COST / BASIS ITEMS					TDHCA COST / BASIS ITEMS				COST VARIANCE					
Eligible Basis	Acquisition	New Const. Rehab	Total Costs	Prior Underwriting	Applicant	TDHCA	Total Costs	Eligible Basis	New Const. Rehab	Acquisition	%	\$		
														Applicant
Land Acquisition			\$10,084 / Unit	\$1,200,000	\$1,200,000	\$1,200,000	\$1,200,000	\$10,084 / Unit			0.0%	\$0		
Building Acquisition	\$15,100,000		\$126,891 / Unit	\$15,100,000	\$15,100,000	\$15,100,000	\$15,100,000	\$126,891 / Unit		\$15,100,000	0.0%	\$0		
Off-Sites		\$0	\$ / Unit	\$0	\$0	\$0	\$ / Unit	\$0			0.0%	\$0		
Site Work		\$146,147	\$1,228 / Unit	\$146,147	\$146,147	\$146,147	\$146,147	\$1,228 / Unit	\$146,147		0.0%	\$0		
Site Amenities		\$81,243	\$683 / Unit	\$81,243	\$81,243	\$81,243	\$81,243	\$683 / Unit	\$81,243		0.0%	\$0		
Building Cost		\$3,640,232	\$36.25 /sf	\$30,590/Unit	\$3,640,232	\$3,525,982	\$3,554,266	\$29,868/Unit	\$35.39 /sf	\$3,554,266	2.4%	\$85,966		
Contingency		\$386,762	10.00%	10.00%	\$386,762	\$375,337	\$378,166	10.00%	10.00%	\$378,166	2.3%	\$8,596		
Contractor Fees		\$560,614	13.18%	14.00%	\$595,614	\$578,019	\$582,375	14.00%	13.48%	\$560,614	2.3%	\$13,239		
Soft Costs	49,700	\$328,185	\$6,111 / Unit	\$727,182	\$837,236	\$837,236	\$727,182	\$6,111 / Unit	\$328,185	\$49,700	0.0%	\$0		
Financing	0	\$90,539	\$12,642 / Unit	\$1,504,449	\$1,918,698	\$1,918,698	\$1,504,449	\$12,642 / Unit	\$90,539	\$0	0.0%	\$0		
Developer Fee	5.05%	\$764,611	\$790,722	15.11%	7.99%	\$1,625,333	\$1,627,824	\$1,606,451	\$1,528,359	7.55%	\$770,874	\$757,485	6.3%	\$96,974
Reserves			6 Months	\$691,796	\$684,332	\$684,332	\$691,796	6 Months			0.0%	\$0		
<b>TOTAL HOUSING DEVELOPMENT COST (UNADJUSTED BASIS)</b>		<b>\$15,914,311</b>	<b>\$6,024,444</b>	\$215,956 / Unit	<b>\$25,698,758</b>	\$26,074,818	\$26,053,446	<b>\$25,493,983</b>	\$214,235 / Unit	<b>\$5,910,034</b>	<b>\$15,907,185</b>	<b>0.8%</b>	<b>\$204,775</b>	
Acquisition Cost		\$0		\$0	\$0									
Contingency		\$0		\$0	\$0									
Contractor's Fee		\$0		(\$0)	\$0									
Financing Cost		\$0												
Developer Fee	5.00%	(\$7,126)	(\$5,664)	15.00%	7.57%	(\$82,790)	\$0							
Reserves				\$0	\$0									
<b>ADJUSTED BASIS / COST</b>		<b>\$15,907,185</b>	<b>\$6,018,780</b>	\$215,260/unit	<b>\$25,615,968</b>	\$26,074,818	\$26,053,446	<b>\$25,493,983</b>	\$214,235/unit	<b>\$5,910,034</b>	<b>\$15,907,185</b>	<b>0.5%</b>	<b>\$121,985</b>	
<b>TOTAL HOUSING DEVELOPMENT COSTS BASED ON 3RD PARTY SCR/CNA</b>					<b>\$25,493,983</b>									

**CAPITALIZATION / DEVELOPMENT COST BUDGET / ITEMIZED BASIS ITEMS**

CREDIT CALCULATION ON QUALIFIED BASIS				
	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction Rehabilitation
<b>ADJUSTED BASIS</b>	\$15,907,185	\$6,018,780	\$15,907,185	\$5,910,034
Deduction of Federal Grants	\$0	\$0	\$0	\$0
<b>TOTAL ELIGIBLE BASIS</b>	\$15,907,185	\$6,018,780	\$15,907,185	\$5,910,034
High Cost Area Adjustment		130%		130%
<b>TOTAL ADJUSTED BASIS</b>	\$15,907,185	\$7,824,414	\$15,907,185	\$7,683,044
Applicable Fraction	91.69%	91.69%	91.69%	91.69%
<b>TOTAL QUALIFIED BASIS</b>	\$14,585,599	\$7,174,354	\$14,585,599	\$7,044,728
Applicable Percentage	4.00%	4.00%	4.00%	4.00%
<b>ANNUAL CREDIT ON BASIS</b>	\$583,424	\$286,974	\$583,424	\$281,789
<b>CREDITS ON QUALIFIED BASIS</b>	\$870,398		\$865,213	

Method	ANNUAL CREDIT CALCULATION BASED ON TDHCA BASIS		FINAL ANNUAL LIHTC ALLOCATION		
	Annual Credits	Proceeds	Credit Price \$0.8599	Variance to Request	
			Credit Allocation	Credits	Proceeds
<b>Eligible Basis</b>	\$865,213	\$7,440,089	----	----	----
<b>Needed to Fill Gap</b>	\$900,553	\$7,743,983	----	----	----
<b>Applicant Request</b>	\$860,431	\$7,398,967	<b>\$860,431</b>	<b>\$0</b>	<b>\$0</b>

50% Test for Bond Financing for 4% Tax Credits					
Tax-Exempt Bond Amount	\$14,250,000		Percent Financed by Tax-Exempt Bonds	Applicant	TDHCA
	Applicant	TDHCA		64.9%	65.2%
Land Cost	\$1,200,000	\$1,200,000			
Depreciable Bldg Cost	\$20,767,719	\$20,659,918			
<b>Aggregate Basis for 50% Test</b>	<b>\$21,967,719</b>	<b>\$21,859,918</b>			
			amount aggregate basis can increase before 50% test fails	\$6,532,281 29.7%	\$6,640,082 30.4%

## Long-Term Pro Forma

*Fawn Ridge, The Woodlands, 4% HTC #20495*

	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%	\$1,515,065	\$1,545,366	\$1,576,273	\$1,607,799	\$1,639,955	\$1,810,642	\$1,999,096	\$2,207,163	\$2,436,886	\$2,690,519	\$2,970,551	\$3,279,728
TOTAL EXPENSES	3.00%	\$683,047	\$702,932	\$723,402	\$744,474	\$766,165	\$884,575	\$1,021,467	\$1,179,747	\$1,362,777	\$1,574,452	\$1,819,282	\$2,102,488
<b>NET OPERATING INCOME ("NOI")</b>		<b>\$832,018</b>	<b>\$842,433</b>	<b>\$852,871</b>	<b>\$863,325</b>	<b>\$873,790</b>	<b>\$926,068</b>	<b>\$977,629</b>	<b>\$1,027,416</b>	<b>\$1,074,109</b>	<b>\$1,116,067</b>	<b>\$1,151,269</b>	<b>\$1,177,240</b>
EXPENSE/INCOME RATIO		45.1%	45.5%	45.9%	46.3%	46.7%	48.9%	51.1%	53.5%	55.9%	58.5%	61.2%	64.1%
<b>MUST -PAY DEBT SERVICE</b>													
TOTAL DEBT SERVICE		\$663,832	\$663,643	\$663,448	\$663,245	\$663,036	\$661,878	\$660,508	\$658,888	\$656,972	\$654,706	\$652,027	\$648,858
DEBT COVERAGE RATIO		1.25	1.27	1.29	1.30	1.32	1.40	1.48	1.56	1.63	1.70	1.77	1.81
<b>ANNUAL CASH FLOW</b>													
		\$168,185	\$178,790	\$189,423	\$200,080	\$210,754	\$264,190	\$317,120	\$368,528	\$417,137	\$461,361	\$499,242	\$528,382
Deferred Developer Fee Balance		\$176,830	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>CUMULATIVE NET CASH FLOW</b>		\$0	\$1,960	\$191,383	\$391,463	\$602,216	\$1,816,321	\$3,296,451	\$5,037,119	\$7,026,998	\$9,247,470	\$11,670,899	\$14,258,571

May 4, 2021

Lucy Trevino  
Senior Asset Manager  
Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, Texas 78711

RE: LIHTC #20495 – Fawn Ridge Apartments

Dear Lucy,

Change Requested:

We are requesting an Amendment to the above referenced application in order to change the number of LIHTC designated units in the property. Nine of the current households are over income, but have a right to return to the property upon completion of the rehabilitation. With this amendment, the property would go from 100% LIHTC units to 92% LIHTC units, however the units affected by this change are all subject to a HUD Section 236 contract, and therefore would remain as affordable housing units.

The Reason the Change is Necessary:

As the management company began income qualification of the current residents at Fawn Ridge and were verifying incomes, it became evident that 9 households are over income, and would not qualify as LIHTC households. Due to the Section 236 rental subsidy on the property, these residents have a right to return to their units upon completion of the rehabilitation. Because the majority of these residents have lived at Fawn Ridge for an extended period of time, we do not expect them to vacate their units any time soon, to allow for an LIHTC eligible household to move in. Without this amendment, the property will be out of compliance from the start, and these 9 units would not generate the LIHTCs the investor would expect. By making this change, the property will be in compliance with LIHTC requirements, and not cause an LIHTC adjuster due to credits not provided to the investor.

The Good Cause for the Change:

By granting this amendment, the 9 over-income households will remain in their units post-completion, and the property will meet its LIHTC requirements. Note that because these units are covered by HUD's Section 236 Preservation Program, they will remain as affordable housing units even without the LIHTC LURA covering them.



Whether the Cause was reasonably foreseeable or preventable at the time of application:

At the time of application it was assumed that households that were eligible for Section 8 and Section 236 would meet LIHTC requirements. Only as we got further along in due diligence of the property, and began to income qualify the existing households, did we realize that 9 of the households would not qualify. In conversation with the investor, it was decided that the best approach would be to not have these 9 units as LIHTC units.

The financial impact of this change is insignificant. The rents for the units remain the same. The loss of eligible basis due to a lower applicable fraction is more than compensated for by the fixed 4% credit. As indicated on page 17 of the attached First Amended and Restated Operating Agreement, the Investor has underwritten 109 of the 119 residential units in the project as LIHTC units, with 9 other units and 1 employee unit.

The attached Sources and Uses reflects the closing budget, and ties to the Operating Agreement and Loan Agreement submitted with the Initial Construction Reporting. The development cost schedule matches the Development Budget on page 129 of the Operating Agreement pdf.

Please let me know if you have any questions or comments regarding this amendment request.

Sincerely,

*Janna Cormier*

Janna Cormier

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application for Providence Place II Apartments (HTC #05447)

**RECOMMENDED ACTION**

**WHEREAS**, Providence Place II Apartments (the Development) received an award of 4% Housing Tax Credits (HTCs) in 2005 for the new construction of 252 units of multifamily housing in Denton, Denton County;

**WHEREAS**, AT Owner 18, L.P. (the Development Owner or Owner) is requesting approval for a modification of the residential density from 15.40 units per acre to 16.84 units per acre, or an increase of 9.3%, due to the City of Denton (the City) planning to acquire a 0.835-acre portion of the Development site through eminent domain;

**WHEREAS**, Board approval is required for a modification of the residential density of at least 5% as directed in Tex. Gov't Code §2306.6712(d)(6) and 10 TAC §10.405(a)(4)(F), and the Owner has complied with the amendment requirements therein; and

**WHEREAS**, the requested change does not materially alter the Development in a negative manner, was not reasonably foreseeable or preventable by the Owner at the time of Application, and would not have adversely affected the selection of the Application;

**NOW, therefore, it is hereby**

**RESOLVED**, that the requested material amendment to the Application for Providence Place II Apartments is approved as presented at this meeting, and the Executive Director and his designees are each hereby authorized, directed, and empowered to take all necessary action to effectuate the foregoing.

**BACKGROUND**

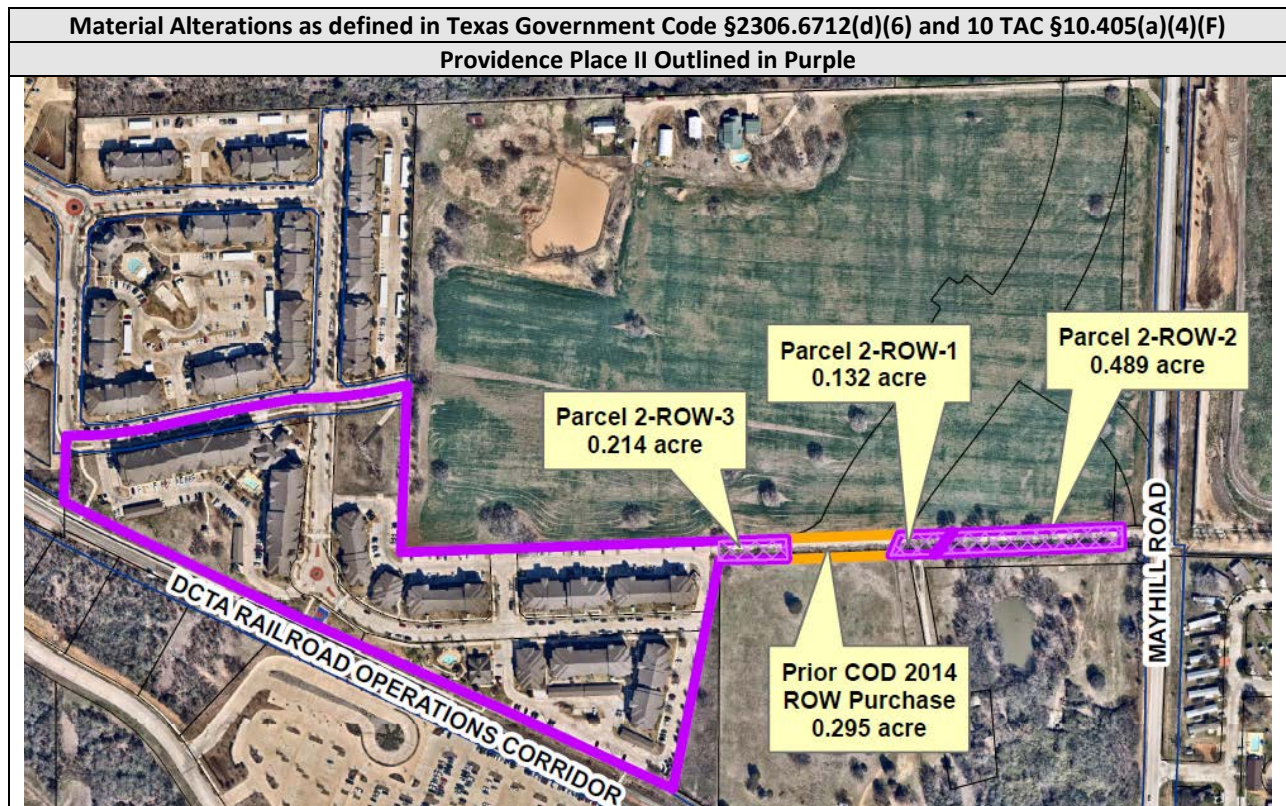
Providence Place II Apartments was awarded 4% Housing Tax Credits in 2005 for the construction of 252 multifamily housing units in Denton, Denton County. In a letter dated August 5, 2021, Samantha D'Angelo, representative for the Development Owner, requested

approval for a change in the legal description due to the City of Denton purchasing portions of the property through eminent domain.

At Application, the site consisted of 16.364 acres, and ultimately, the legal description in the Land Use Restriction Agreement (LURA) reflected a total of 16.098 acres. However, in 2014, the prior owner conveyed a 0.295-acre portion of the site to the City of Denton, and this transfer was acknowledged by the Department at that time. The Owner now requests that the LURA be amended, as three parcels totaling 0.835 acres (0.214 + 0.132 + 0.489) are being sold to the City of Denton for \$73,000. This results in a new acreage of 14.968 for the Development. The Owner states the City intends to use the parcels in connection with a bridge and road project. This change in acreage was not foreseen at Application, nor at the time of the first site reduction in 2014.

The residential density at Application was 15.40 units per acre (252 units/16.364 acres), while the proposed residential density now is 16.84 per unit (252 units/14.968 acres), or an increase of 9.3%. Board approval is required for a modification of the residential density of at least 5% as directed in Tex. Gov't Code §2306.6712(d)(6) and 10 TAC §10.405(a)(4)(F).

The reduction in acreage will not impact the financial characteristics of the Development, the amenities offered, or the general layout of the Development. Below is an aerial of the site with the latest acreage removal.



Staff has reviewed the original Application against this amendment request and has concluded that the change described above would not have affected the award.

Staff recommends approval of the requested material amendment to the Application.

August 5, 2021

**VIA FEDERAL EXPRESS AND E-MAIL DELIVERY**  
**(MARK.FUGINA@TDHCA.STATE.TX.US)**

Texas Department of Housing and Community Affairs  
221 E. 11th Street  
Austin, TX 78701  
Attn: Mark Fugina

Re: Providence Place II Apartments – Sale of Land to the City of Denton

Dear Mr. Fugina:

We represent AT Owner 18, L.P. (the "Owner"), the owner of that certain low-income rental housing development located in Denton, Texas and known as Providence Place II Apartments (the "Development"). By way of background, the Development is affected by that certain Declaration of Land Use Restrictive Covenants Land Use Restriction Agreement for Low-Income Housing Credits, dated as of August 30, 2007 (the "Declaration"), as amended, between Quail Creek South, LP (the "Previous Owner") and the Texas Department of Housing and Community Affairs (the "TDHCA"). The Owner purchased the Development from the Previous Owner on August 22, 2019.

The City of Denton (the "City") has requested, and the Owner has agreed, to sell three tracts of land, all of which are non-contiguous to the Development (but are included in the legal description of the Development attached as an exhibit to the Declaration) to the City. Specifically, the Owner would transfer i) a 0.132 acre fee tract more accurately described by Exhibit A attached hereto ("Tract 1"), ii) a 0.489 acre fee tract more accurately described by Exhibit B attached hereto ("Tract 2"), and iii) a 0.214 acre fee tract more accurately described by Exhibit C attached hereto ("Tract 3" and, together with Tracts 1 and 2, the "Tracts") to the City (the "Proposed Transaction"). The City has represented to the Owner that it intends to use the Tracts in connection with a bridge and road project, a depiction of which is attached hereto as Exhibit D (the "Project"). To the best of the Owner's knowledge, it was not reasonably foreseeable to the Previous Owner (at the time Previous Owner submitted its applications to the TDHCA, nor at the time it entered into the Declaration) nor to the Owner (at the time the Owner purchased the Development) that the City would pursue the Project. The City and the Owner anticipate closing on the Proposed Transaction as soon as possible once all necessary consents for the Proposed Transaction are received.

The Proposed Transaction would require an amendment to the legal description of the Development included in the Declaration. As such, we are writing to formally request the consent of TDHCA for the Proposed Transaction and the amendment of the legal description of the Development included in the Declaration.

If you need any additional information concerning this matter, please do not hesitate to contact me by at (407) 839-4218 or by email at [Samantha.DAngelo@nelsonmullins.com](mailto:Samantha.DAngelo@nelsonmullins.com). Thank you.

Sincerely,

NELSON MULLINS BROAD AND CASSEL

A handwritten signature in black ink, appearing to read "Samantha D'Angelo". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

Samantha D'Angelo, Esq.

**Exhibit A**

**Tract 1**

**BEING** all that certain lot, tract or parcel of land situated in the David Hough Survey, Abstract Number 646, City of Denton, Denton County, Texas, and being part of Lot 1R, Block F of Providence Place II, an addition to the City of Denton, Denton County, Texas, according to the plat thereof recorded in Cabinet X, Page 905, Plat Records, Denton County, Texas (P.R.D.C.T.), and being more particularly described as follows:

**COMMENCING** at a 5/8 inch iron rod with cap stamped "Cotton Surveying" found for the most easterly southeast corner of said Lot 1R, same point being in the north line of Donnelly Addition, an addition to the City of Denton, Denton County, Texas, according to the plat thereof recorded in Cabinet O, Page 77, P.R.D.C.T. and being in the existing west right-of-way line of Mayhill Road;

**THENCE** South 88 degrees 02 minutes 42 seconds West, with a south line of said Lot 1R and the north line of said Donnelly Addition, a distance of 478.17 feet to a 1/2 inch iron rod with yellow cap stamped "Arthur Surveying Company" (ASC) set for the **POINT OF BEGINNING**;

**THENCE** South 88 degrees 02 minutes 42 seconds West, passing the northwest corner of said Donnelly Addition, continuing on for a total distance of 107.54 feet to a 1/2 inch iron rod with yellow cap stamped "ASC" set for corner being in the north line of a tract of land described by deed to Robert P. Donnelly, recorded in Volume 3384, Page 905, Deed Records, Denton County, Texas (D.R.D.C.T.), same point being the southeast corner of a tract of land described by deed to the City of Denton, recorded under Instrument Number 2015-34890, Official Public Records, Denton County, Texas (O.P.R.D.C.T.), and being the beginning of a non-tangent curve to the right, having a radius of 917.00 feet;

**THENCE** over and across said Lot 1R with the east line of said City of Denton tract, with said curve to the right, through a central angle of 03 degrees 30 minutes 41 seconds, whose chord bears North 26 degrees 10 minutes 19 seconds East at 56.19 feet, an arc length of 56.20 feet to a 1/2 inch iron rod with yellow cap stamped "ASC" set for corner being in the south line of a tract of land described by deed to Kevin Nelms (et. al), recorded under Instrument Number 2017-81759, O.P.R.D.C.T., same point being the northeast corner of said City of Denton tract;

**THENCE** North 88 degrees 01 minutes 21 seconds East, passing the southeast corner of said Nelms tract, a distance of 125.54 feet to a 1/2 inch iron rod with yellow cap stamped "ASC" set for corner being in the south line of a tract of land described by deed to Kevin Nelms (et. al), recorded in Volume 3432, Page 911, D.R.D.C.T.;

**THENCE** South 41 degrees 28 minutes 51 seconds West, over and across said Lot 1R, a distance of 9.10 feet to a 1/2 inch iron rod with yellow cap stamped "ASC" set for the beginning of a curve to the left, having a radius of 920.00 feet;

**THENCE** over and across said Lot 1R and with said curve to the left, through a central angle of 03 degrees 35 minutes 01 seconds, whose chord bears South 39 degrees 41 minutes 20 seconds West at 57.53 feet, an arc length of 57.54 feet to the **POINT OF BEGINNING** and containing 0.132 acre of land.



Exhibit B

Tract 2

BEING A TRACT OF LAND SITUATED IN THE DAVID HOUGH SURVEY, ABSTRACT NO. 646, CITY OF DENTON, DENTON COUNTY, TEXAS, BEING THAT PART OF LOT 1R, BLOCK F, OF PROVIDENCE PLACE II, AN ADDITION TO THE CITY OF DENTON, DENTON COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN CABINET X, PAGE 905 OF THE PLAT RECORDS OF DENTON COUNTY, TEXAS (P.R.D.C.T.), AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS (BEARINGS ARE BASED ON THE EASTERNMOST NORTH LINE OF LOT 1R, BLOCK F, PROVIDENCE PLACE II):

BEGINNING AT A POINT FOR CORNER LYING ON THE AND THE EASTERNMOST NORTHEAST LINE OF SAID LOT 1R, AND THE SOUTH LINE OF A TRACT OF LAND DESCRIBED IN DEED TO RICHARD A. & NANCY A. GREB, RECORDED IN INSTRUMENT NUMBER 2006-1007700EASTERNMOST, DEED RECORDS OF DENTON COUNTY, TEXAS (D.R.D.C.T.); FROM SAID POINT A 5/8-INCH REBAR WITH CAP STAMPED "COTTON SURVEYING" FOUND ON THE NORTH LINE OF SAID LOT 1R BEARS SOUTH 88 DEGREES 03 MINUTES 27 SECONDS WEST, A DISTANCE OF 616.06 FEET;

THENCE NORTH 88 DEGREES 03 MINUTES 27 SECONDS EAST, WITH THE NORTH LINE OF SAID LOT 1R AND THE SOUTH LINE OF SAID GREB TRACT, AND CONTINUING WITH THE SOUTH LINE OF A TRACT OF LAND DESCRIBED IN SPECIAL WARRANTY DEED TO THE CITY OF DENTON, RECORDED IN INSTRUMENT NUMBER 2014-26436 (D.R.D.C.T.), A DISTANCE OF 407.02 FEET TO A POINT FOR THE EASTERNMOST NORTHEAST CORNER OF SAID LOT 1R, AND LYING ON THE WEST RIGHT-OF-WAY LINE OF MAYHILL ROAD (VARIABLE WIDTH RIGHT-OF-WAY);

THENCE SOUTH 02 DEGREES 00 MINUTES 03 SECONDS WEST, WITH THE EASTERNMOST LINE OF SAID LOT 1R, AND THE WEST RIGHT-OF-WAY LINE OF SAID MAYHILL ROAD, A DISTANCE OF 49.99 FEET TO A POINT FOR THE EASTERNMOST SOUTHEAST CORNER OF SAID LOT 1R, AND LYING ON THE NORTH LINE OF LOT 1, BLOCK A, DONNELLY ADDITION, AN ADDITION TO THE CITY OF DENTON, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME O, PAGE 77 (P.R.D.C.T.);

THENCE SOUTH 88 DEGREES 03 MINUTES 27 SECONDS WEST, WITH THE EASTERNMOST SOUTH LINE OF SAID LOT 1R, AND THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 448.18 FEET TO A POINT FOR CORNER LYING AT THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 03 DEGREES 35 MINUTES 32 SECONDS, A RADIUS OF 920.00 FEET AND A CHORD BEARING AND DISTANCE OF NORTH 39 DEGREES 43 MINUTES 11 SECONDS EAST, 57.67 FEET;

THENCE, IN A NORTHEASTERLY DIRECTION, DEPARTING THE SOUTH LINE OF SAID LOT 1R, AND THE NORTH LINE OF SAID LOT 1, OVER, ACROSS AND UPON SAID LOT 1R, AND ALONG SAID NON-TANGENT CURVE TO THE RIGHT, AN ARC LENGTH OF 57.68 FEET TO POINT FOR CORNER;

THENCE NORTH 41 DEGREES 30 MINUTES 57 SECONDS EAST, CONTINUING THROUGH SAID LOT 1R, A DISTANCE OF 9.10 FEET TO THE POINT OF BEGINNING AND CONTAINING 21,314 SQUARE FEET OR 0.489 ACRES OF LAND, MORE OR LESS.





## Exhibit C

### Tract 3

BEING A TRACT OF LAND SITUATED IN THE DAVD HOUGH SURVEY, ABSTRACT NO. 646, CITY OF DENTON, DENTON COUNTY, TEXAS, BEING PART OF LOT 1R, BLOCK F OF PROVIDENCE PLACE II, AN ADDITION TO THE CITY OF DENTON, DENTON COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN CABINET X, PAGE 905, OF THE PLAT RECORDS OF DENTON COUNTY, TEXAS (P.R.D.C.T.), AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS (BEARINGS AND DISTANCES ARE BASED ON THE STATE PLANE COORDINATE SYSTEM, TEXAS NORTH CENTRAL ZONE (4202) NORTH AMERICAN DATUM OF 1983 (NAD 83)(US FOOT) WITH A COMBINED SCALE FACTOR OF 1.000150630):

COMMENCING AT A 5/8-INCH REBAR WITH A CAP STAMPED "COTTON SURVEYING" FOUND FOR THE NORTHWEST CORNER OF SAID LOT 1R, SAME BEING THE NORTHEAST CORNER OF SOMERSET ROAD (65' RIGHT-OF-WAY), AND LYING ON THE SOUTH LINE OF A TRACT OF LAND DESCRIBED TO RICHARD GREB & NANCY GREB, IN A SPECIAL WARRANTY DEED RECORDED IN DOCUMENT NO. 2006-100770 OF THE DEED RECORDS OF DENTON COUNTY, TEXAS (D.R.D.C.T.);

THENCE NORTH 88 DEGREES 01 MINUTES 21 SECONDS EAST, WITH THE SOUTH LINE OF SAID GREB TRACT, AND THE NORTH LINE OF SAID LOT 1R, A DISTANCE OF 489.64 FEET TO A POINT FOR THE NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT AND THE POINT OF BEGINNING;

THENCE NORTH 88 DEGREES 01 MINUTES 21 SECONDS EAST, CONTINUING WITH THE SOUTH LINE OF SAID GREB TRACT, AND THE NORTH LINE OF SAID LOT 1R, A DISTANCE OF 187.07 FEET TO A POINT FOR THE NORTHEAST CORNER OF THE HEREIN DESCRIBED TRACT, SAME BEING THE NORTHWEST CORNER OF A TRACT OF LAND DESCRIBED TO THE CITY OF DENTON, IN A SPECIAL WARRANTY DEED RECORDED IN DOCUMENT NO. 2015-34890 (D.R.D.C.T.), SAME BEING THE SOUTHERNMOST SOUTHEAST CORNER OF SAID GREB TRACT;

THENCE SOUTH 01 DEGREES 58 MINUTES 58 SECONDS EAST, WITH THE WEST LINE OF SAID CITY OF DENTON TRACT, A DISTANCE OF 49.45 FEET TO A POINT FOR THE SOUTHWEST CORNER THEREOF, ALSO BEING THE SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT, AND LYING ON THE NORTH LINE OF A TRACT OF LAND DESCRIBED TO ROBERT P. DONNELLY IN A SPECIAL WARRANTY DEED, RECORDED IN VOLUME 3384, PAGE 905 (D.R.D.C.T.);

THENCE SOUTH 88 DEGREES 02 MINUTES 42 SECONDS WEST, WITH THE NORTH LINE OF SAID DONNELLY TRACT, AND A SOUTH LINE OF SAID LOT 1R, A DISTANCE OF 190.25 FEET TO A POINT FOR THE SOUTHWEST CORNER OF THE HEREIN DESCRIBED TRACT, SAME BEING THE NORTHWEST CORNER OF SAID DONNELLY TRACT, AND BEING AN INTERIOR "ELL" CORNER OF SAID LOT 1R;

THENCE NORTH 01 DEGREES 41 MINUTES 52 SECONDS EAST, OVER, ACROSS, AND UPON SAID LOT 1R, A DISTANCE OF 49.47 FEET TO THE POINT OF BEGINNING AND CONTAINING A TOTAL OF 9,322 SQUARE FEET, OR 0.214 ACRES OF LAND, MORE OR LESS.

## Exhibit D

### Depiction of the Project



1d

**BOARD ACTION REQUEST**  
**BOND FINANCE DIVISION**  
**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action on Inducement Resolution No. 22-001 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority

**RECOMMENDED ACTION**

**WHEREAS**, eight bond pre-applications, as further detailed below, were 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. 22-001 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 \$278.7 million in private activity bond volume cap. Staff notes that the Department's set-aside for the 2021 program year is \$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 pre-applications listed below will be included as part of the Department's participation in the 2022 Lottery. The Department's set-aside for 2022 has not been announced, but is anticipated to be approximately \$170M. Previously induced applications, in addition to those being induced today, will bring the Lottery total to approximately \$460M.

### **21615 – Terrace at Southern Oaks**

New construction of 300 units is proposed for this multifamily development to be located on +/- 22 acres of Southern Oaks Boulevard in Dallas, Dallas County. This transaction is proposed to be Priority 2 and will serve the general population. A full application for this project was previously submitted, reviewed and subsequently withdrawn, but is expected to be resubmitted. The applicant has disclosed Neighborhood Risk Factors (NRF) relating to the poverty rate and violent crime rate associated with the census tract containing the proposed development. Applicant has indicated that they intend to submit a resolution from the appropriate governing body acknowledging the poverty rate, and allowing the development to move forward, pursuant to §11.101(a)(3)(D)(i) of the 2021 QAP. For the violent crime rate NRF, the applicant has provided mitigation in accordance with §11.101(a)(3)(D)(ii), which was reviewed and deemed acceptable by staff. 270 of the units will be rent and income restricted at 60% of AMFI, while the remaining thirty units will be market rate. The Department has received a letter of opposition to the proposed development from the Inclusive Communities Project. The Department has also received a letter of support for the proposed development from Dallas City Council Member for District 4, Carolyn King Arnold. Copies of said letters are included herein.

Bond Inducement Amount: \$45,000,000

### **21621 – Palladium East Berry Street**

New construction of 240 units is proposed for this multifamily development to be located at 2350 E. Berry Street in Fort Worth, Tarrant County. This transaction is proposed to be Priority 2, and will serve the general population. The applicant has indicated they plan to pursue income averaging for the development. Twelve of the units will be rent and income restricted at 30% of Area Median Family Income (AMFI), 203 units will be rent and income restricted at 60% of AMFI, 15 of the units will be rent and income restricted at 70% of AMFI, and the remaining 10 units will be rent and income restricted at 80% of AMFI. The Department has received no letters of support or opposition for the proposed development.

Bond Inducement Amount: \$26,100,000

### **21622 – Palladium Oak Grove**

New construction of 240 units is proposed for this multifamily development to be located at 1000 Oak Grove Road in Fort Worth, Tarrant County. This transaction is proposed to be Priority 2, and will serve the general population. Applicant has disclosed a Neighborhood Risk Factor (NRF) related to the

underperformance of Rosemont 6<sup>th</sup> Grade School. Pursuant to §11.101(a)(3)(C) of the 2021 QAP, mitigation is not required for the underperforming school NRF. The applicant has indicated they plan to pursue income averaging for the development. Twelve of the units will be rent and income restricted at 30% of Area Median Family Income (AMFI), 203 units will be rent and income restricted at 60% of AMFI, 15 of the units will be rent and income restricted at 70% of AMFI, and the remaining 10 units will be rent and income restricted at 80% of AMFI. The Department has received no letters of support or opposition for the proposed development.

Bond Inducement Amount: \$25,600,000

**21623 – The Flats at White Rock**

New construction of 263 units is proposed for this multifamily development to be located at 2825 N. Buckner Boulevard in Dallas, Dallas County. This transaction is proposed to be Priority 3, and will serve the general population. The applicant has indicated they plan to pursue income averaging for the development. Of the 263 units, 237 will be rent and income restricted at 60% of AMFI, and the remaining 26 units will be market rate. The Department has received no letters of support or opposition for the proposed development.

Bond Inducement Amount: \$50,000,000

**21624 – Potter’s House at Primrose**

The acquisition and rehabilitation of 280 units is proposed for this multifamily development located at 2515 Perryton Drive in Dallas, Dallas County. This transaction is proposed to be Priority 2 and will continue to serve the elderly population. All 280 units will be rent and income restricted at 60% of AMFI. The Department has received no letters of support or opposition for the proposed development.

Bond Inducement Amount: \$33,000,000

**21625 – Primrose at Sequoia Park**

The acquisition and rehabilitation of 250 units is proposed for this multifamily development located at 1400 E. University Drive in Denton, Denton County. This transaction is proposed to be Priority 2 and will continue to serve the general population. All 250 units will be rent and income restricted at 60% of AMFI. The Department has received no letters of support or opposition for the proposed development.

Bond Inducement Amount: \$28,000,000

**21626 – Rosemont at Pecan Creek**

The acquisition and rehabilitation of 264 units is proposed for this multifamily development located at 3500 E. McKinney Street in Denton, Denton County. This transaction is proposed to be Priority 2 and will continue to serve the general population. All 264 units will be rent and income restricted at 60% of AMFI. The Department has received no letters of support or opposition for the proposed development.

Bond Inducement Amount: \$31,000,000

**21627 – River Trails Apartments**

The acquisition and rehabilitation of 220 units is proposed for this multifamily development located at 2914 Roosevelt Avenue in San Antonio, Bexar County. This transaction is proposed to be Priority 1a and will continue to serve the general population. Applicant has disclosed a Neighborhood Risk Factor related to the poverty rate associated with the census tract containing the proposed development. Applicant has indicated that they intend to submit a resolution at the time of full application from the appropriate governing body acknowledging the poverty rate, and allowing the development to move forward, pursuant to §11.101(a)(3)(D)(i) of the 2021 QAP. Of the 220 units, 110 will be rent and income restricted at 50% of AMFI, and the remaining 110 units will be rent and income restricted at 60% of AMFI. The Department has received no letters of support or opposition for the proposed development.

Bond Inducement Amount: \$40,000,000

## RESOLUTION NO. 22-001

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 or Acting 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 2<sup>nd</sup> day of September, 2021.

**EXHIBIT "A"**

Descriptions of the Owners and the Developments

Project Name	Owner	Principals	Amount Not to Exceed
The Terrace at Southern Oaks	LDG The Terrace at Southern Oaks, LP, a Texas limited partnership	General Partner: LDG The Terrace at Southern Oaks GP, LLC, a Texas limited liability company	\$45,000,000
Costs: Acquisition/construction of a 300-unit affordable, multifamily housing development to be known as The Terrace at Southern Oaks Apartments, located at or near 3300 Southern Oaks Boulevard, Dallas, Dallas County, Texas 75216			

Project Name	Owner	Principals	Amount Not to Exceed
Palladium East Berry Street	Palladium East Berry, Ltd., a Texas limited partnership	General Partner: Palladium East Berry GP, LLC, a Texas limited liability company;	\$26,100,000
Costs – Acquisition/construction of a 240 unit affordable, multifamily housing development to be known as Palladium East Berry Street, located at 2350 East Berry Street, Fort Worth, Tarrant County, Texas 76105			

Project Name	Owner	Principals	Amount Not to Exceed
Palladium Oak Grove	Palladium Oak Grove, Ltd., a Texas limited partnership	General Partner: Palladium Oak Grove GP, LLC, a Texas limited liability company;	\$25,600,000
Costs – Acquisition/construction of a 240 unit affordable, multifamily housing development to be known as Palladium Oak Grove, located at 840 and 1000 Oak Grove Road, Fort Worth, Tarrant County, Texas 76115			

Project Name	Owner	Principals	Amount Not to Exceed
Potter's House at Primrose	Potter's House at Primrose, LP, a Texas limited partnership	General Partner: Potter's House at Primrose GP, LLC, a Texas limited liability company	\$33,000,000
Costs – Acquisition/rehab of a 280 unit affordable, multifamily housing development to be known as Potter's House at Primrose, located at 2515 Perryton Drive, Dallas, Dallas County, Texas 75233			

Project Name	Owner	Principals	Amount Not to Exceed
The Flats at White Rock	LDG The Flats at White Rock, LP, a Texas limited partnership	General Partner: LDG The Flats at White Rock GP, LLC, a Texas limited liability company	\$50,000,000
Costs – Acquisition/construction of a 263 unit affordable, multifamily housing development to be known as The Flats at White Rock, located at 2825 and 2845 N Buckner Blvd, Dallas, Dallas County, Texas 75228			

Project Name	Owner	Principals	Amount Not to Exceed
Primrose at Sequoia Park	Primrose at Sequoia Park, LP, a Texas limited partnership	General Partner: Primrose at Sequoia Park GP, LLC, a Texas limited liability company	\$28,000,000
Costs – Acquisition/rehab of a 250 unit affordable, multifamily housing development to be known as Primrose at Sequoia Park, located at 1400 East University Drive, Denton, Denton County, Texas 76209			



Project Name	Owner	Principals	Amount Not to Exceed
Rosemont at Pecan Creek	Rosemont at Pecan Creek, LP, a Texas limited partnership	General Partner: Rosemont at Pecan Creek GP, LLC, a Texas limited liability company	\$31,000,000
Costs – Acquisition/rehab of a 264 unit affordable, multifamily housing development to be known as Rosemont at Pecan Creek, located at 3500 East McKinney, Denton, Denton County, Texas 76205			

Project Name	Owner	Principals	Amount Not to Exceed
River Trails Apartments	THF River Trails Preservation, LP, a Texas limited partnership	General Partner: THF River Trails Preservation GP, LLC, a Texas limited liability company	\$40,000,000
Costs – Acquisition/rehab of a 220 unit affordable, multifamily housing development to be known as River Trails Apartments, located at 2914 Roosevelt Avenue, San Antonio, Bexar County, Texas 78214			



August 12, 2020

Board of Directors &  
Mr. Bobby Wilkinson, Executive Director  
Texas Department of Housing & Community Affairs  
P.O. BOX 13941  
Austin, TX 78711-3941  
Via email to [info@tdhca.state.tx.us](mailto:info@tdhca.state.tx.us)

Dear Board Members:

RE: Letter in Opposition to TDHCA #20610-Proposed Terrace at Southern Oaks New Construction Project (4% application pending)

Dear TDHCA Board of Directors:

The Inclusive Communities Project (ICP) is a not-for-profit organization that works for the creation and maintenance of thriving racially and economically inclusive communities, expansion of fair and affordable housing opportunities for low-income families, and redress for policies and practices that perpetuate the harmful effects of discrimination and segregation. We approach our work from a Neighborhood Equity & Options frame. This frame is intent on facilitating equity in historically redlined and underserved neighborhoods and ensuring housing voucher renters are able to access low-income housing outside the inequitable racially isolated neighborhoods where they have long been steered. Since 2005, ICP's housing mobility counseling program has helped over four thousand households move to lower poverty, resource-rich areas, and the demand for assistance continues.

This proposal should be voted down because of its location. Too few public and private resources have been made available in the Southern Oaks neighborhood (and southern Dallas neighborhoods like it) yet the proposed new construction seeks to steer more low-income families with children to the area. The developer's application notes that in this area 67.5% of the children live in poverty which amounts to a greater percentage of children in poverty than in 98.1% of the country.

Public neglect of the site's location leaves area residents' health vulnerable. While concentrated poverty in historically Black and Latinx neighborhoods has been unyielding in Dallas, exposure to conditions that make Black and Latinx residents more vulnerable health-wise have continued. This type of exposure remains more rampant in this population than in low income white renting population. With a CDC Social Vulnerability Index of .9141 (with 10 indicating the highest level of vulnerability), the Southern Oaks neighborhood needs more public dollars and attention than added low-income housing. (See 2016 DCD SVI Index for census tract 86.04 available at <https://svi.cdc.gov/map.html>.)

**Inclusive Communities Project**

3301 Elm Street, Dallas, Texas 75226 \* office 214.939.9239 \* fax 214.939.9229 \* [www.inclusivecommunities.net](http://www.inclusivecommunities.net)

Despite the proposal's highlight that crime has decreased since 2019, the level of violent crime according to the application continues to fluctuate between four to five times the national median level. So the decrease has not made a significant difference. In fact, the proposed site is surrounded by three large affordable housing complexes where tenants are regularly victimized by crime that has not been effectively addressed. The developer's inclusion of the Dallas Police Department Chief's plan in the application is nothing more than a generalized city plan; it is not a plan specific to the site. (See discussion of crime as a contributing factor to disparities in "City of Dallas' Analysis to Impediments to Fair Housing Choice", July 2019.)

To support and award a new construction proposal, which intends to house children in such a high crime area, would be a repeat of the Sterlingshire Apartments legacy. In 2019 thirteen year old Malik Tyler was killed in the shadow of Sterlingshire Apartments due to the unaddressed violent crime that was minimized in that developer's application to TDHCA. Over ICP's 2015 objection Sterlingshire was built, and years later ICP has found itself helping residents who are desperate to move to somewhere safer.

Despite the crime, rent levels are proposed to be at \$1,163 per month, which is well above the area's average rent of \$866. This will make the area unaffordable to unsubsidized tenants in the area where the average household income is \$28,000. Voucher holders would be the only low income renters who could afford the complex. This is the same population, with whom ICP provided housing search assistance, who is already steered to such underserved neighborhoods. Such high rent levels are proposed while the players in the deal make upwards of millions (i.e. \$6,432,063 est. developer's profit).

For these reasons and in the interest of fair housing, ICP strongly objects to the Terrace at Southern Oaks proposal which would add over 300 family units to the already three large low-income complexes that already exists amidst governmental neglect, abuse and underinvestment. Such a concentration would never occur amidst a predominantly white homeowner neighborhood, and it should not occur here.

Sincerely,

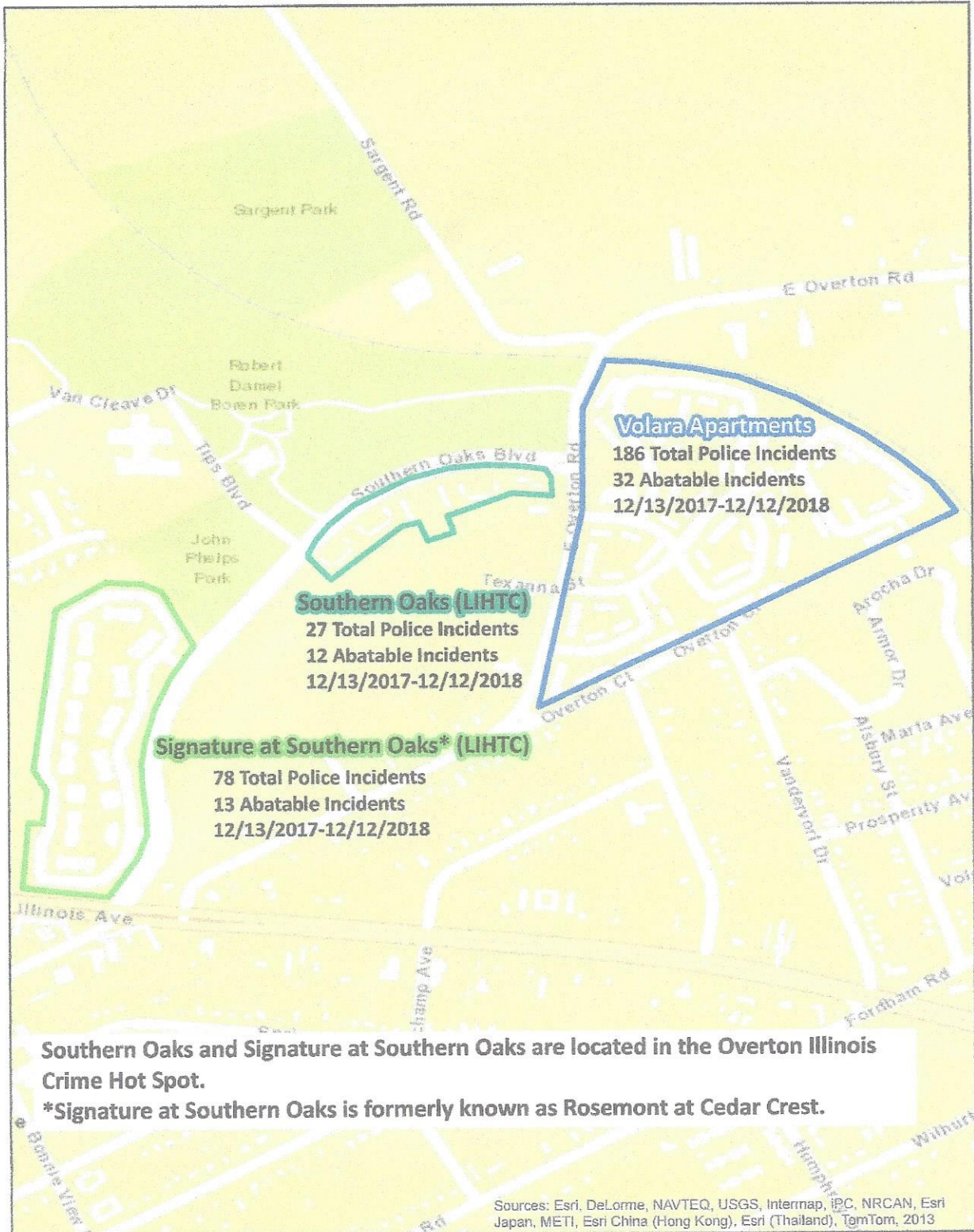


Demetria L. McCain  
President

Enclosure: Police Incidents Adjacent to Southern Oaks

CC: T.C. Broadnax, City Manager, City of Dallas  
Mayor Eric Johnson and City Council Members, City of Dallas  
Ann Lott, Vice President of Housing Initiatives, ICP  
Nicole Rolfe, Mobility Assistance Program Director, ICP

## Police Incidents at and Adjacent to Southern Oaks





**Carolyn King Arnold**  
Council Member  
District 4

February 2, 2021

Texas Department of Housing & Community Affairs

**Re: The Terrace at Southern Oaks**

To Whom It May Concern:

My name is Carolyn King Arnold, and I am the District 4 representative on the Dallas City Council. I have served this community for over 30 years – both as a member of the Dallas City Council and as a community activist. For decades, the southern sector of Dallas, particularly District 4, has been neglected and forgotten when considering new development in our city. We have an abundance of housing in our district, but the vast majority is old, dilapidated, and completely substandard. The residents of District 4 and the City of Dallas deserve better.

LDG Development is proposing to make an investment in District 4 by constructing 300 units of quality multifamily housing at 3300 Southern Oaks Blvd – a site that is already zoned for multifamily use but has still sat vacant for years. We need new, quality housing in District 4. New housing will serve as a catalyst for more quality development, which will improve resident's overall quality of life in District 4.

I understand the Department has concerns about the crime and poverty rates in the census tract of the proposed site. These issues are something I take very seriously. While crime and poverty are persisting issues in District 4, community leaders like myself are working to change this through programs such as Dallas 365 Safe. New development will only help in our efforts to lower the crime and poverty rates in District 4.

In closing, I want to state that I am in full support of LDG Development's proposal to construct The Terrace at Southern Oaks at 3300 Southern Oaks Blvd. LDG has built a reputation as one of the top multifamily developers in the nation. Once completed, I am confident The Terrace at Southern Oaks will set the standard for what all housing development should strive to be – not only in District 4, but throughout the City of Dallas.

Sincerely,

A handwritten signature in blue ink that reads "Carolyn King Arnold".

Carolyn King Arnold

1e

**BOARD ACTION REQUEST**  
**COMMUNITY AFFAIRS DIVISION**  
**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action on the Section 8 Program 2022 Streamlined Annual Public Housing Agency (PHA) Plan for the Housing Choice Voucher Program

**RECOMMENDED ACTION**

**WHEREAS**, the Texas Department of Housing and Community Affairs (the Department) Department operates as a PHA;

**WHEREAS**, 42 U.S.C §1437(c-1) (a) and (b) requires PHAs to submit an annual PHA Plan that has been made available for public comment; and

**WHEREAS**, any preferences used by a PHA must be delineated in the Plan, and the Department uses a preference in the implementation of its Project Access Program;

**Now, therefore, it is hereby**

**RESOLVED**, that the Department's 2022 Annual PHA Plan, which reflects a preference for Project Access eligible households, is hereby approved in the form presented to this meeting to be made available for public comment;

**FURTHER RESOLVED**, that if there are not substantive public comments received requiring reconsideration of the plan, staff is authorized and directed to file the plan as final with the U.S. Department of Housing and Urban Development (HUD) with no further Board review; and

**FURTHER RESOLVED**, that if there are material public comments, staff is directed to bring the plan, with such comments and any recommended revisions, back to this Board for reconsideration.

**BACKGROUND**

Section 511 of the Quality Housing and Work Responsibility Act of 1998 created the requirement for submission of PHA plans. The PHA Plan is a submission addressing specific policies, programs, and strategies for meeting local housing needs and goals for the forthcoming fiscal year. The Annual Plan, which is prepared and submitted to HUD every year, is very brief and provides information about the program operations and services for the upcoming fiscal year. The 2022 Annual Plan will continue to reflect a preference for Project Access; no other preferences are proposed.

The Department was recently awarded 798 Emergency Housing Vouchers (EHV) through the American Rescue Plan Act. The vouchers are directed for use to assist persons experiencing homelessness; at risk of homelessness; fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking; or those who are recently homeless and for whom providing rental assistance will prevent the family's homelessness or those having high risk of housing instability.

The Department aims to:

- Continue to expand the range and quality of housing choices available to participants in the PHA tenant-based assistance program as well as the Project-based Veteran Assistance Supportive Housing (VASH) program;
- Implementing HUDs revised guidance on COVID-19 HCV Waivers and Alternative Requirements; and
- Increase utilization of HCV program funds and apply for additional funding when available.

To seek public participation, the Department will appoint annually a Resident Advisory Board, which will consist of all tenants with active Section 8 vouchers, to review and comment on the proposed 2022 Annual Plan. The Plan will also be available at 221 East 11<sup>th</sup> Street, Austin, TX 78701, for review at the Department's Administrative Office on weekdays between 8:00 am and 5:00 pm Austin local time; and the Department's website at: [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us).

Upon Board approval, the Department will publish a notice 45 days prior to scheduling a public hearing to receive public comment on the Plan. If there are no substantive comments, the Plan will be submitted as approved today to HUD. If substantive comments are received, the Plan will be resubmitted to the Board for final approval.



<b>Streamlined Annual PHA Plan</b> <i>(HCV Only PHAs)</i>	U.S. Department of Housing and Urban Development Office of Public and Indian Housing	OMB No. 2577-0226 Expires 03/31/2024
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**Purpose.** The 5-Year and Annual PHA Plans provide a ready source for interested parties to locate basic PHA policies, rules, and requirements concerning the PHA's operations, programs, and services, including changes to these policies, and informs HUD, families served by the PHA, and members of the public of the PHA's mission, goals and objectives for serving the needs of low- income, very low- income, and extremely low- income families

**Applicability.** The Form HUD-50075-HCV is to be completed annually by **HCV-Only PHAs**. PHAs that meet the definition of a Standard PHA, Troubled PHA, High Performer PHA, Small PHA, or Qualified PHA do not need to submit this form. Where applicable, separate Annual PHA Plan forms are available for each of these types of PHAs.

**Definitions.**

- (1) **High-Performer PHA** – A PHA that owns or manages more than 550 combined public housing units and housing choice vouchers, and was designated as a high performer on both the most recent Public Housing Assessment System (PHAS) and Section Eight Management Assessment Program (SEMAP) assessments if administering both programs, or PHAS if only administering public housing.
- (2) **Small PHA** - A PHA that is not designated as PHAS or SEMAP troubled, that owns or manages less than 250 public housing units and any number of vouchers where the total combined units exceed 550.
- (3) **Housing Choice Voucher (HCV) Only PHA** - A PHA that administers more than 550 HCVs, was not designated as troubled in its most recent SEMAP assessment and does not own or manage public housing.
- (4) **Standard PHA** - A PHA that owns or manages 250 or more public housing units and any number of vouchers where the total combined units exceed 550, and that was designated as a standard performer in the most recent PHAS and SEMAP assessments.
- (5) **Troubled PHA** - A PHA that achieves an overall PHAS or SEMAP score of less than 60 percent.
- (6) **Qualified PHA** - A PHA with 550 or fewer public housing dwelling units and/or housing choice vouchers combined and is not PHAS or SEMAP troubled.

A.	PHA Information.																																			
A.1	<p>PHA Name: <span style="border: 1px solid black; padding: 2px;">Texas Department of Housing and Community Affairs</span> PHA Code: <span style="border: 1px solid black; padding: 2px;">TX901</span></p> <p>PHA Plan for Fiscal Year Beginning: (MM/YYYY): <span style="border: 1px solid black; padding: 2px;">01/2022</span></p> <p>PHA Inventory (Based on Annual Contributions Contract (ACC) units at time of FY beginning, above)</p> <p>Number of Housing Choice Vouchers (HCVs) <span style="border: 1px solid black; padding: 2px;">2487</span></p> <p>PHA Plan Submission Type: <input checked="" type="checkbox"/> Annual Submission <input type="checkbox"/> Revised Annual Submission</p> <p><b>Availability of Information.</b> In addition to the items listed in this form, PHAs must have the elements listed below readily available to the public. A PHA must identify the specific location(s) where the proposed PHA Plan, PHA Plan Elements, and all information relevant to the public hearing and proposed PHA Plan are available for inspection by the public. Additionally, the PHA must provide information on how the public may reasonably obtain additional information of the PHA policies contained in the standard Annual Plan but excluded from their streamlined submissions. At a minimum, PHAs must post PHA Plans, including updates, at the main office or central office of the PHA. PHAs are strongly encouraged to post complete PHA Plans on their official website.</p> <p><input type="checkbox"/> <b>PHA Consortia:</b> (Check box if submitting a joint Plan and complete table below)</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 25%;">Participating PHAs</th> <th style="width: 10%;">PHA Code</th> <th style="width: 25%;">Program(s) in the Consortia</th> <th style="width: 20%;">Program(s) not in the Consortia</th> <th style="width: 20%;">No. of Units in Each Program</th> </tr> </thead> <tbody> <tr> <td>Lead HA:</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	Participating PHAs	PHA Code	Program(s) in the Consortia	Program(s) not in the Consortia	No. of Units in Each Program	Lead HA:																													
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<b>B.</b>	<b>Plan Elements.</b>
<b>B.1</b>	<p><b>Revision of Existing PHA Plan Elements.</b></p> <p>a) Have the following PHA Plan elements been revised by the PHA since its last Annual Plan submission?</p> <p>Y N</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/> Statement of Housing Needs and Strategy for Addressing Housing Needs.  <input type="checkbox"/> <input checked="" type="checkbox"/> Deconcentration and Other Policies that Govern Eligibility, Selection, and Admissions.  <input type="checkbox"/> <input checked="" type="checkbox"/> Financial Resources.  <input type="checkbox"/> <input checked="" type="checkbox"/> Rent Determination.  <input type="checkbox"/> <input checked="" type="checkbox"/> Operation and Management.  <input type="checkbox"/> <input checked="" type="checkbox"/> Informal Review and Hearing Procedures.  <input type="checkbox"/> <input checked="" type="checkbox"/> Homeownership Programs.  <input type="checkbox"/> <input checked="" type="checkbox"/> Self Sufficiency Programs and Treatment of Income Changes Resulting from Welfare Program Requirements.  <input type="checkbox"/> <input checked="" type="checkbox"/> Substantial Deviation.  <input type="checkbox"/> <input checked="" type="checkbox"/> Significant Amendment/Modification.</p> <p>(b) If the PHA answered yes for any element, describe the revisions for each element(s):</p>
<b>B.2</b>	<b>New Activities.</b> – Not Applicable
<b>B.3</b>	<p><b>Progress Report.</b></p> <p>Provide a description of the PHA’s progress in meeting its Mission and Goals described in its 5-Year PHA Plan.</p>
<b>B.4</b>	<b>Capital Improvements.</b> – Not Applicable
<b>B.5</b>	<p><b>Most Recent Fiscal Year Audit.</b></p> <p>(a) Were there any findings in the most recent FY Audit?</p> <p>Y N N/A</p> <p><input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/></p> <p>(b) If yes, please describe:</p> <div style="border: 1px solid black; height: 40px; width: 100%;"></div>
<b>C.</b>	<b>Other Document and/or Certification Requirements.</b>
<b>C.1</b>	<p><b>Resident Advisory Board (RAB) Comments.</b></p> <p>(a) Did the RAB(s) have comments to the PHA Plan?</p> <p>Y N</p> <p><input type="checkbox"/> <input type="checkbox"/></p> <p>(b) If yes, comments must be submitted by the PHA as an attachment to the PHA Plan. PHAs must also include a narrative describing their analysis of the RAB recommendations and the decisions made on these recommendations.</p>
<b>C.2</b>	<p><b>Certification by State or Local Officials.</b></p> <p><a href="#">Form HUD 50077-SL</a>, <i>Certification by State or Local Officials of PHA Plans Consistency with the Consolidated Plan</i>, must be submitted by the PHA as an electronic attachment to the PHA Plan.</p>
<b>C.3</b>	<p><b>Civil Rights Certification/ Certification Listing Policies and Programs that the PHA has Revised since Submission of its Last Annual Plan.</b></p> <p>Form HUD-50077-ST-HCV-HP, <i>PHA Certifications of Compliance with PHA Plan, Civil Rights, and Related Laws and Regulations Including PHA Plan Elements that Have Changed</i>, must be submitted by the PHA as an electronic attachment to the PHA Plan.</p>
<b>C.4</b>	<p><b>Challenged Elements.</b> If any element of the PHA Plan is challenged, a PHA must include such information as an attachment with a description of any challenges to Plan elements, the source of the challenge, and the PHA’s response to the public.</p> <p>(a) Did the public challenge any elements of the Plan?</p> <p>Y N</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/></p> <p>If yes, include Challenged Elements:</p> <div style="border: 1px solid black; height: 40px; width: 100%;"></div>

**D. Affirmatively Furthering Fair Housing (AFFH).**

**D.1 Affirmatively Furthering Fair Housing (AFFH).**

Provide a statement of the PHA's strategies and actions to achieve fair housing goals outlined in an accepted Assessment of Fair Housing (AFH) consistent with 24 CFR § 5.154(d)(5). Use the chart provided below. (PHAs should add as many goals as necessary to overcome fair housing issues and contributing factors.) Until such time as the PHA is required to submit an AFH, the PHA is not obligated to complete this chart. The PHA will fulfill, nevertheless, the requirements at 24 CFR § 903.7(o) enacted prior to August 17, 2015. See Instructions for further detail on completing this item.

<p><b>Fair Housing Goal:</b></p> <p><u><i>Describe fair housing strategies and actions to achieve the goal</i></u></p> <p><b>Improve and Educate the Housing Choice Voucher (HCV) Section 8 Program Staff</b></p> <p>The Internal Fair Housing staff conducted a two-hour training. The training covered protected classes, reasonable accommodations, accessibility rules in multifamily properties, HUD guidance on the use of criminal records in housing transactions, and reviewed the Section 8 program administrative plan. Program area staff discussed specific concerns related to occupancy standards, and housing choice.</p>
<p><b>Fair Housing Goal:</b></p> <p><u><i>Describe fair housing strategies and actions to achieve the goal</i></u></p> <p>To reduce barriers to mobility for protected classes</p> <p>To improve housing choice and remove barriers to mobility the Department will make efforts to educate voucher holders on areas with good schools, amenities, and low poverty.</p>
<p><b>Fair Housing Goal:</b></p> <p><u><i>Describe fair housing strategies and actions to achieve the goal</i></u></p> <p>To increase availability of accessible units</p> <p>The Department operates the 811 Program; has continued to operate the Project Access program for persons with disabilities exiting institutions into the community; and has revised the multifamily rules to require that regardless of building type, all units accessed by the ground floor or by an elevator must comply with visitability standards.</p>

# Instructions for Preparation of Form HUD-50075-HCV Annual PHA Plan for HCV-Only PHAs

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## A. PHA Information. All PHAs must complete this section. (24 CFR §903.4)

A.1 Include the full **PHA Name**, **PHA Code**, **PHA Type**, **PHA Fiscal Year Beginning** (MM/YYYY), **Number of Housing Choice Vouchers (HCVs)**, **PHA Plan Submission Type**, and the **Availability of Information**, specific location(s) of all information relevant to the public hearing and proposed PHA Plan.

**PHA Consortia:** Check box if submitting a Joint PHA Plan and complete the table. ([24 CFR §943.128\(a\)](#))

## B. Plan Elements. All PHAs must complete this section. ([24 CFR §903.11\(c\)\(3\)](#))

### B.1 Revision of Existing PHA Plan Elements. PHAs must:

Identify specifically which plan elements listed below that have been revised by the PHA. To specify which elements have been revised, mark the “yes” box. If an element has not been revised, mark “no.”

**Statement of Housing Needs and Strategy for Addressing Housing Needs.** Provide a statement addressing the housing needs of low-income, very low-income and extremely low-income families and a brief description of the PHA’s strategy for addressing the housing needs of families who reside in the jurisdiction served by the PHA and other families who are on the Section 8 tenant-based assistance waiting lists. The statement must identify the housing needs of (i) families with incomes below 30 percent of area median income (extremely low-income); (ii) elderly families (iii) households with individuals with disabilities, and households of various races and ethnic groups residing in the jurisdiction or on the public housing and Section 8 tenant-based assistance waiting lists. The statement of housing needs shall be based on information provided by the applicable Consolidated Plan, information provided by HUD, and generally available data. The identification of housing needs must address issues of affordability, supply, quality, accessibility, size of units, and location. Once the PHA has submitted an Assessment of Fair Housing (AFH), which includes an assessment of disproportionate housing needs in accordance with 24 CFR 5.154(d)(2)(iv), information on households with individuals with disabilities and households of various races and ethnic groups residing in the jurisdiction or on the waiting lists no longer needs to be included in the Statement of Housing Needs and Strategy for Addressing Housing Needs. (24 CFR § 903.7(a)).

The identification of housing needs must address issues of affordability, supply, quality, accessibility, size of units, and location. ([24 CFR §903.7\(a\)\(2\)\(i\)](#)) Provide a description of the ways in which the PHA intends, to the maximum extent practicable, to address those housing needs in the upcoming year and the PHA’s reasons for choosing its strategy. ([24 CFR §903.7\(a\)\(2\)\(ii\)](#))

**Deconcentration and Other Policies that Govern Eligibility, Selection, and Admissions.** A statement of the PHA’s policies that govern resident or tenant eligibility, selection and admission including admission preferences for HCV. ([24 CFR §903.7\(b\)](#))

**Financial Resources.** A statement of financial resources, including a listing by general categories, of the PHA’s anticipated resources, such as PHA HCV funding and other anticipated Federal resources available to the PHA, as well as tenant rents and other income available to support tenant-based assistance. The statement also should include the non-Federal sources of funds supporting each Federal program, and state the planned use for the resources. ([24 CFR §903.7\(c\)](#))

**Rent Determination.** A statement of the policies of the PHA governing rental contributions of families receiving tenant-based assistance, discretionary minimum tenant rents, and payment standard policies. ([24 CFR §903.7\(d\)](#))

**Operation and Management.** A statement that includes a description of PHA management organization, and a listing of the programs administered by the PHA. ([24 CFR §903.7\(e\)](#)).

**Informal Review and Hearing Procedures.** A description of the informal hearing and review procedures that the PHA makes available to its applicants. ([24 CFR §903.7\(f\)](#))

**Homeownership Programs.** A statement describing any homeownership programs (including project number and unit count) administered by the agency under section 8y of the 1937 Act, or for which the PHA has applied or will apply for approval. ([24 CFR §903.7\(k\)](#))

**Self Sufficiency Programs and Treatment of Income Changes Resulting from Welfare Program Requirements.** A description of any PHA programs relating to services and amenities coordinated, promoted, or provided by the PHA for assisted families, including those resulting from the PHA’s partnership with other entities, for the enhancement of the economic and social self-sufficiency of assisted families, including programs provided or offered as a result of the PHA’s partnerships with other entities, and activities subject to Section 3 of the Housing and Community Development Act of 1968 (24 CFR Part 135) and under requirements for the Family Self-Sufficiency Program and others. Include the program’s size (including required and actual size of the FSS program) and means of allocating assistance to households. ([24 CFR §903.7\(l\)\(i\)](#)) Describe how the PHA will comply with the requirements of section 12(c) and (d) of the 1937 Act that relate to treatment of income changes resulting from welfare program requirements. ([24 CFR §903.7\(l\)\(iii\)](#)).

**Substantial Deviation.** PHA must provide its criteria for determining a “substantial deviation” to its 5-Year Plan. ([24 CFR §903.7\(r\)\(2\)\(i\)](#))

**Significant Amendment/Modification.** PHA must provide its criteria for determining a “Significant Amendment or Modification” to its 5-Year and Annual Plan.

If any boxes are marked “yes”, describe the revision(s) to those element(s) in the space provided.

- B.2 New Activities.** This section refers to new capital activities which is not applicable for HCV-Only PHAs.
- B.3 Progress Report.** For all Annual Plans following submission of the first Annual Plan, a PHA must include a brief statement of the PHA's progress in meeting the mission and goals described in the 5-Year PHA Plan. (24 CFR §903.11(c)(3), 24 CFR §903.7(r)(1))
- B.4 Capital Improvements.** This section refers to PHAs that receive funding from the Capital Fund Program (CFP) which is not applicable for HCV-Only PHAs
- B.5 Most Recent Fiscal Year Audit.** If the results of the most recent fiscal year audit for the PHA included any findings, mark "yes" and describe those findings in the space provided. (24 CFR §903.7(p))

**C. Other Document and/or Certification Requirements.**

- C.1 Resident Advisory Board (RAB) comments.** If the RAB had comments on the annual plan, mark "yes," submit the comments as an attachment to the Plan and describe the analysis of the comments and the PHA's decision made on these recommendations. (24 CFR §903.13(c), 24 CFR §903.19)
- C.2 Certification by State of Local Officials.** Form HUD-50077-SL, *Certification by State or Local Officials of PHA Plans Consistency with the Consolidated Plan*, must be submitted by the PHA as an electronic attachment to the PHA Plan. (24 CFR §903.15). Note: A PHA may request to change its fiscal year to better coordinate its planning with planning done under the Consolidated Plan process by State or local officials as applicable.
- C.3 Civil Rights Certification/ Certification Listing Policies and Programs that the PHA has Revised since Submission of its Last Annual Plan.** Provide a certification that the following plan elements have been revised, provided to the RAB for comment before implementation, approved by the PHA board, and made available for review and inspection by the public. This requirement is satisfied by completing and submitting form HUD-50077 ST-HCV-HP, *PHA Certifications of Compliance with PHA Plan, Civil Rights, and Related Laws and Regulations Including PHA Plan Elements that Have Changed*. Form HUD-50077-ST-HCV-HP, *PHA Certifications of Compliance with PHA Plan, Civil Rights, and Related Laws and Regulations Including PHA Plan Elements that Have Changed* must be submitted by the PHA as an electronic attachment to the PHA Plan. This includes all certifications relating to Civil Rights and related regulations. A PHA will be considered in compliance with the certification requirement to affirmatively further fair housing if the PHA fulfills the requirements of §§ 903.7(o)(1) and 903.15(d) and: (i) examines its programs or proposed programs; (ii) identifies any fair housing issues and contributing factors within those programs, in accordance with 24 CFR 5.154; or 24 CFR 5.160(a)(3) as applicable (iii) specifies actions and strategies designed to address contributing factors, related fair housing issues, and goals in the applicable Assessment of Fair Housing consistent with 24 CFR 5.154 in a reasonable manner in view of the resources available; (iv) works with jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement; (v) operates programs in a manner consistent with any applicable consolidated plan under 24 CFR part 91, and with any order or agreement, to comply with the authorities specified in paragraph (o)(1) of this section; (vi) complies with any contribution or consultation requirement with respect to any applicable AFH, in accordance with 24 CFR 5.150 through 5.180; (vii) maintains records reflecting these analyses, actions, and the results of these actions; and (viii) takes steps acceptable to HUD to remedy known fair housing or civil rights violations. impediments to fair housing choice within those programs; addresses those impediments in a reasonable fashion in view of the resources available; works with the local jurisdiction to implement any of the jurisdiction's initiatives to affirmatively further fair housing; and assures that the annual plan is consistent with any applicable Consolidated Plan for its jurisdiction. (24 CFR §903.7(o)).
- C.4 Challenged Elements.** If any element of the Annual PHA Plan or 5-Year PHA Plan is challenged, a PHA must include such information as an attachment to the Annual PHA Plan or 5-Year PHA Plan with a description of any challenges to Plan elements, the source of the challenge, and the PHA's response to the public.

**D. Affirmatively Furthering Fair Housing (AFFH).**

**D.1 Affirmatively Furthering Fair Housing.** The PHA will use the answer blocks in item D.1 to provide a statement of its strategies and actions to implement each fair housing goal outlined in its accepted Assessment of Fair Housing (AFH) consistent with 24 CFR § 5.154(d)(5) that states, in relevant part: "To implement goals and priorities in an AFH, strategies and actions shall be included in program participants' ... PHA Plans (including any plans incorporated therein) .... Strategies and actions must affirmatively further fair housing ...." Use the chart provided to specify each fair housing goal from the PHA's AFH for which the PHA is the responsible program participant – whether the AFH was prepared solely by the PHA, jointly with one or more other PHAs, or in collaboration with a state or local jurisdiction – and specify the fair housing strategies and actions to be implemented by the PHA during the period covered by this PHA Plan. If there are more than three fair housing goals, add answer blocks as necessary.

Until such time as the PHA is required to submit an AFH, the PHA will not have to complete section D., nevertheless, the PHA will address its obligation to affirmatively further fair housing in part by fulfilling the requirements at 24 CFR 903.7(o)(3) enacted prior to August 17, 2015, which means that it examines its own programs or proposed programs; identifies any impediments to fair housing choice within those programs; addresses those impediments in a reasonable fashion in view of the resources available; works with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement; and maintain records reflecting these analyses and actions. Furthermore, under Section 5A(d)(15) of the U.S. Housing Act of 1937, as amended, a PHA must submit a civil rights certification with its Annual PHA Plan, which is described at 24 CFR 903.7(o)(1) except for qualified PHAs who submit the Form HUD-50077-CR as a standalone document.

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This information collection is authorized by Section 511 of the Quality Housing and Work Responsibility Act, which added a new section 5A to the U.S. Housing Act of 1937, as amended, which introduced the Annual PHA Plan. The Annual PHA Plan provides a ready source for interested parties to locate basic PHA policies, rules, and requirements concerning the PHA's operations, programs, and services, and informs HUD, families served by the PHA, and members of the public for serving the needs of low- income, very low- income, and extremely low- income families.

Public reporting burden for this information collection is estimated to average 6.02 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not collect this information, and respondents are not required to complete this form, unless it displays a currently valid OMB Control Number.

**Privacy Act Notice.** The United States Department of Housing and Urban Development is authorized to solicit the information requested in this form by virtue of Title 12, U.S. Code, Section 1701 et seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality

### Housing Needs.

Based on information provided by the applicable Consolidated Plan, information provided by HUD, and other generally available data, make a reasonable effort to identify the housing needs of the low-income, very low-income, and extremely low-income families who reside in the jurisdiction served by the PHA, including elderly families, families with disabilities, and households of various races and ethnic groups, and other families who are on the public housing and Section 8 tenant-based assistance waiting lists. The identification of housing needs must address issues of affordability, supply, quality, accessibility, size of units, and location.

### Housing Need Analysis- Section 8

August 2021

When analyzing local housing markets and developing strategies for meeting housing challenges, HUD suggests the consideration of several factors. These factors include how much a household spends on housing costs, the physical condition of housing and whether or not the household is overcrowded.

An excess cost burden is identified when a household pays more than 30 percent of its gross income for housing costs. When so much is spent on housing, other basic household needs may suffer.

The measure of physical inadequacy is the number of units lacking complete kitchen and/ or plumbing facilities. While this is not a complete measures of physical inadequacy, the lack of plumbing and/ or kitchen facilities can serve as a strong indication of one type of housing inadequacy.

Overcrowded housing conditions may occur when a residence accommodates more than one person per each room in the dwelling. Overcrowding may indicate a general lack of affordable housing in a community where households have been forced to share space, either because other housing units are not available or because the units are too expensive.

The following table estimates the number of low-income households with housing needs for the 34 counties that comprise TDHCAs Section 8 service area. The figures are adjusted to 2017 levels based on population growth estimates.

Housing Needs for Section 8	Number
Population	3,628,377
Number of Individuals in Poverty	368,002
Number of Cost Burdened Households	150,978
Number of Overcrowded Households	19,648
Number of Substandard Housing Units	6,420

2015-2019 American Community Survey

The TDHCA waiting list is approximately 546 applications. The waiting list figure is a composite of several statewide jurisdictional waiting lists, as well as the Project Access waiting list.

Annual PHA Plan for Fiscal Year 2022 for  
Housing Choice Voucher Section 8 Program

**Expanding supply of affordable units [24 CFR 982.503]**

The Department will implement payment standards between 90% and 110%, with higher percentages in areas where market rents were high. Where there is high demand for rental units it can be challenging for a voucher holder to find a unit. Sufficient payment standards will aid in areas where voucher holders have had difficulty in finding acceptable units or affording units in more desirable areas. Higher FMRs provide additional choices and opportunities to tenants in highly competitive rental markets. In areas where market rents are higher, poverty levels are lower, schools are better and there are more opportunities for employment. Ensuring that a household's voucher provides enough assistance to house them is balanced with ensuring that the voucher is not over-subsidized.

HUD changed the effective date of the Payment Standard to be effective January 1<sup>st</sup> of every year, or within three months of the FMR effective date, whichever is earlier. The effective date is applicable both to HUD-required revisions and to discretionary revisions.

In addition, because the households accessing the new Emergency Housing Voucher (EHV) may face added challenges relating to credit or criminal history, the Department will establish a payment standard for each unit size at 120% of the published Small Area Fair Market Rent (SAFMR) for that unit size effective September 1<sup>st</sup> for EHV.

**Improve Performance and Processes**

The Department received a high performance rating for the 2019 SEMAP. The Department will continue to innovate and train staff on the latest housing policy and procedures. In addition to striving to remain a high performer, the Department will seek to ensure that the monthly HAP payments and monthly expenses are at 98% of the Annual Contributions Contract or that 98% of total unit months are leased each year. For the calendar year 2021, the Department has had an overall utilization rate of 99%. Some additional efforts are being made to increase voucher utilization for Near Elderly Disabled (NED), Tenant-Based VASH (T-VASH), and Mainstream (MS5) voucher holders. This year the Department anticipates opening its waiting list and will use new web-based tools to ease household access, and will implement a lottery process to equalize access to the program.

**Improve the quality of assisted housing**

The Department will improve the quality of the housing assessment by continuing to apply EIV's Income Information and Verification Reports (i.e. Multiple Subsidy Report, Identity Verification Report, Immigration Report, and Income Validation Tool Report). These reports will be monitored and reviewed monthly. If corrections are needed, staff will be required to correct and resubmit for another review.

**Improve and continue to build partnership with Centers for Independent Living, Veteran Support Services, Coordinating Centers of Care, and Victim Service Providers**

The Department continues to increase the number of leased vouchers utilized with our partnering agencies which are responsible for referring Project Access, MS5, NED, T-VASH and EHV voucher holders to the PHA for determining of eligibility for rental assistance.

**Increase assisted housing choices**

The Department will be providing mobility counseling at briefings to inform families and property owners of expanded housing choices and high opportunity areas. With the use of the agency housing database, gosection8 website, and other property unit registries, this will help our voucher holders seek landlords who own and operate decent, safe and affordable housing. The Department also has online portals called Assistance Connect and Waiting List - for applicants and landlords to communicate with staff and transmit documents as needed.

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**BOARD ACTION REQUEST**

**SINGLE FAMILY AND HOMELESS PROGRAMS DIVISION**

**SEPTEMBER 2, 2021**

Presentation, discussion and possible action on the appointment of Colonia Resident Advisory Committee members

**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**, pursuant to Tex. Gov't Code §2306.582, the Department is required to establish, operate, monitor and fund Colonia Self-Help Centers (CSHCs) in El Paso, Hidalgo, Starr, and Webb counties, and in Cameron County to serve Cameron and Willacy counties;

**WHEREAS**, in 2001 the Department established two additional CSHCs in Maverick and Val Verde counties, as authorized by Tex. Gov't Code §2306.582, and in 2021 HB 2893 (87th Regular Session) added a CSHC in Nueces County, to address the needs of colonias in those counties;

**WHEREAS**, pursuant to Tex. Gov't Code §2306.585 the Colonia Resident Advisory Committee (C-RAC) is required to advise the Department's Governing Board on the needs of colonia residents and activities to be undertaken through the CSHCs;

**WHEREAS**, pursuant to Tex. Gov't Code §2306.584 C-RAC members are required to be appointed by the Texas Department of Housing and Community Affairs Governing Board; and

**WHEREAS**, all C-RAC member terms expire on October 12, 2021;

**NOW, therefore, it is hereby**

**RESOLVED**, that the 16 Texas colonia residents named herein are hereby appointed to the C-RAC to represent their respective county in the CSHC Program for four-year terms that expire on September 2, 2025.

## BACKGROUND

Since 1995, the Department has been required to establish CSHCs under Tex. Gov't Code §2306.582 to provide on-site technical assistance to improve the quality of life for colonia residents located in five counties (El Paso, Hidalgo, Starr, Webb, and Cameron/Willacy). Additionally, the Department is authorized to establish other CSHCs if it determines it is necessary and appropriate. Since 1995, two additional CSHCs have been established in Maverick and Val Verde counties. HB 2893 (87th Regular Session) requires the establishment of a CSHC in Nueces County, and the Department is working with Nueces County to establish a CSHC on or after September 1, 2021, the effective date of the legislation.

Each county selects five colonias within their respective county to receive concentrated technical assistance in housing rehabilitation, new construction, surveying and platting, construction skills training, tool library access, credit and debt counseling, employment and financial skills development, grant preparation, infrastructure construction, contract-for-deed conversions, and capital access for mortgages and other improvements.

The Department's Governing Board is required under Tex. Gov't Code §2306.584 to appoint at least five persons who are residents of colonias to serve on the C-RAC. These members must reside in a colonia in a county designated to have a CSHC, and may not be a board member, contractor, or employee of, or have any ownership interest in an entity that is awarded a contract under the CSHC Program. Each county recommends individuals to the Department for C-RAC membership with input from local nonprofit organizations.

The C-RAC evaluates the needs of colonia residents; reviews programs and activities that are proposed for or operated through the CSHCs; and advises the Department's Governing Board in order for the CSHC Program to better serve colonia residents. The C-RAC is required to meet 30 days before any CSHC contract is scheduled to be awarded or amended by the Department's Governing Board and may meet at other times as needed. The C-RAC is currently composed of two persons from each participating county. The C-RAC term of service is four years and the term limits for all current C-RAC members end on October 12, 2021.

Each county has recommended two colonia residents to serve on the C-RAC with a term beginning October 13, 2021, and expiring on September 2, 2025. At this time because Nueces County is still establishing its CSHC, they have not yet identified C-RAC members. Approval of the following recommendations will allow the Department to carry out the statutory requirements of the CSHC Program and C-RAC:

**COLONIA RESIDENT ADVISORY COMMITTEE ROSTER**

<b>COUNTY</b>	<b>NAME</b>	<b>CITY</b>	<b>COLONIA</b>
Cameron	Belinda Vazquez	San Benito	Arroyo Colorado Estates
Cameron	Keila Martinez	Brownsville	Cameron Park
El Paso	Maria Vargas	El Paso	Agua Dulce
El Paso	Elizabeth Flores	El Paso	Horizon Units
Hidalgo	Yolanda Hernandez	Alamo	South Tower Colonia
Hidalgo	Cayetano Lopez	Mission	Linda Vista Estates
Maverick	Hilda Nohemi Chavez	Eagle Pass	Chula Vista
Maverick	Monica D. Avalos	Eagle Pass	Loma Linda
Starr	Norma Guzman	Garciasville	Garciasville
Starr	Jose Lino Ruiz, Jr.	Rio Grande City	La Casita
Val Verde	Rita Rodriguez	Del Rio	Cienegas Terrace
Val Verde	Rosa Maria Martinez	Del Rio	Val Verde Park Estates
Webb	Bella Garcia	Laredo	Colonia Los Altos
Webb	Elvira Torres	Laredo	Colonia Los Altos
Willacy	Jessica Garza	Sebastian	Sebastian
Willacy	Emma Gonzales	Sebastian	Sebastian

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**BOARD ACTION REQUEST**

**SINGLE FAMILY AND HOMELESS PROGRAMS DIVISION**

**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action on Colonia Self-Help Center Program Awards to Cameron County and Val Verde County in accordance with Tex. Gov't Code §2306.582 through Community Development Block Grant Funding

**RECOMMENDED ACTION**

**WHEREAS**, the Department is required to establish Colonia Self-Help Centers (CSHCs) in Cameron/Willacy, El Paso, Hidalgo, Starr, Nueces, and Webb counties;

**WHEREAS**, in 2001 the Department opened two additional CSHCs in Maverick and Val Verde counties as authorized by Tex. Gov't Code §2306.582 to address the needs of colonias in these counties;

**WHEREAS**, in accordance with Tex. Gov't Code §2306.585(b) the Department is required to meet with the Colonia Resident Advisory Committee (C-RAC) at least 30 days prior to the Board's consideration of a CSHC award;

**WHEREAS**, on July 21, 2021, the Department met with the C-RAC via videoconference to discuss funding proposals for Cameron and Val Verde counties, and the C-RAC recommended to award funds to these counties;

**WHEREAS**, these awards will make Community Development Block Grant (CDBG) funding available to serve Cameron County and Val Verde County colonias with the CSHC Program; and

**WHEREAS**, the Executive Award Review Advisory Committee (EARAC) reviewed the awards and compliance history, and recommends without conditions the CSHC Program awards to Cameron and Val Verde counties;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Executive Director is hereby authorized to make an award of CDBG funding under the CSHC Program to Cameron County in the amount of \$700,000 from Program Year 2020, and to Val Verde County in the amount of \$1,000,000 from Program Year 2020, as further described in Exhibits A and B.

## **BACKGROUND**

Since 1995, the Department has been required to establish CSHCs under Tex. Gov't Code §2306.582 to provide on-site technical assistance to improve the quality of life for colonia residents located in five counties (El Paso, Hidalgo, Starr, Webb, and Cameron/Willacy). Additionally, the Department is authorized to establish other CSHCs if it determines it is necessary and appropriate. Since 1995, two additional CSHCs have been established in Maverick and Val Verde counties. HB 2893 (87<sup>th</sup> Regular Session) requires the establishment of a CHSC in Nueces County, and the Department is working with Nueces County to establish a CSHC on or after September 1, 2021, the effective date of the legislation.

Each county selects five colonias within their respective county to receive concentrated technical assistance in housing rehabilitation, new construction, surveying and platting, construction skills training, tool library access, credit and debt counseling, employment and financial skills development, grant preparation, infrastructure construction, contract-for-deed conversions, and capital access for mortgages and other improvements.

The CSHCs are funded through a 2.5% set-aside (approximately \$1.76 million per year) of the annual Texas Community Development Block Grant (TxCDBG) non-entitlement allocation to the State of Texas. The Texas Department of Agriculture (TDA) receives the allocation from the U.S. Department of Housing and Urban Development (HUD), and TDA and TDHCA together manage TxCDBG funds and implement the CSHC Program through a Memorandum of Understanding.

TDHCA's Colonia Resident Advisory Committee (C-RAC) review proposals from participating counties that include a Performance Statement and Budget for the activities to be implemented in their respective designated colonias. The CSHC contracts have a term of four years per Tex. Gov't Code §2306.587, and a limit of \$1,000,000 in accordance with 10 TAC §25.5. Contracts are not granted to all CHSCs each year, and have staggered start dates, dependent on completion of prior contracts.

On July 21, 2021, the C-RAC convened via videoconference for presentations of proposals by Cameron County and Val Verde County. The C-RAC recommends award of a contract in the amount of \$700,000 to Cameron County and the award of a contract in the amount \$1,000,000 to Val Verde County, as further detailed in Attachments A and B to this item.

A Previous Participation Review was conducted for both awards, and the awards were approved by EARAC without condition on August 23, 2021. The four-year Contract Term for each county is anticipated to be October 1, 2021, through October 1, 2025.

**ATTACHMENT A**

**CAMERON COUNTY COLONIA SELF-HELP CENTER AWARD DESCRIPTION**

**Subrecipient:** Cameron County

**Contact:** The Honorable Eddie Treviño, Jr., Cameron County Judge

**Colonias:** Valle Hermosa (M0310162)  
Olmito (M0310111)  
Arroyo Colorado Estates (M0310011)  
Santa Maria (M0310135)  
Sebastian (M2450014)

Cameron County proposes the following housing and community development activities to benefit an estimated 3,955 persons, of which 2,986 or 75% are of low- to moderate-income:

<b>Performance Activity</b>	<b>Quantity</b>	<b>Budget</b>
<b>Public Service (10%)</b>		<b>\$70,000</b>
Tool Library	400 checkouts	
Solid Waste Removal	5 events	
Technology Access	400 visits	
HUD-Certified Homeownership Counseling	7 families	
<b>Reconstruction (not feasible for rehab)</b>	7 homes	<b>\$525,000</b>
<b>Administration (15%)</b>		<b>\$105,000</b>
<b>TOTAL</b>		<b>\$700,000</b>

**ATTACHMENT B**

**VAL VERDE COUNTY COLONIA SELF-HELP CENTER AWARD DESCRIPTION**

**Subrecipient:** Val Verde County

**Contact:** The Honorable Lewis G. Owens, Val Verde County Judge

**Colonias:** Rise Estates (M2330019)  
Val Verde Park (M2330012)  
Val Verde Park #2 (M2330013)  
Cienegas Terrace (M2330003)  
Town of Comstock (M2330011)

Val Verde County proposes the following housing and community development activities to benefit an estimated 4,938 persons, of which 4,938 or 100% are of low- to moderate-income:

<b>Performance Activity</b>	<b>Quantity</b>	<b>Budget</b>
<b>Public Service (10%)</b>		<b>\$100,000</b>
Tool Library	400 checkouts	
Solid Waste Removal	16 events	
Title Related Services	5 title corrections	
Technology Access	400 visits	
<b>Residential Rehabilitation</b>	7 homes	<b>\$375,000</b>
<b>Reconstruction (Not feasible for rehab)</b>	5 homes	<b>\$375,000</b>
<b>Administration (15%)</b>		<b>\$150,000</b>
<b>TOTAL</b>		<b>\$1,000,000</b>



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**BOARD ACTION REQUEST**

**SINGLE FAMILY AND HOMELESS PROGRAMS DIVISION**

**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action on a proposed amendment to a Colonia Self-Help Center Program Contract with Maverick County in accordance with 10 TAC Chapter 25, the Colonia Self-Help Center Program Rule

**RECOMMENDED ACTION**

**WHEREAS**, the Department is required to establish Colonia Self-Help Centers (CSHCs) in Cameron/Willacy, El Paso, Hidalgo, Nueces, Starr, and Webb counties;

**WHEREAS**, in 2001 the Department opened two additional CSHCs in Maverick and Val Verde counties as authorized by Tex. Gov't Code §2306.582 to address the needs of colonias in these counties;

**WHEREAS**, in accordance with Tex. Gov't Code §2306.585(b) the Department is required to meet with the Colonia Resident Advisory Committee (C-RAC) at least 30 days prior to the Board's consideration of any amendments to a CSHC contract;

**WHEREAS**, on July 21, 2021, the Department met with the C-RAC via videoconference to discuss proposed amendments to the Maverick County CSHC Contract 7219003, and the C-RAC recommended approval of the proposed amendments;

**WHEREAS**, Maverick County has demonstrated exemplary performance in their current CSHC Contract 7219003 and is meeting all contract benchmarks; and

**WHEREAS**, this amendment will make an additional \$500,000 in Community Development Block Grant (CDBG) funding available to serve Maverick County colonias with the CSHC Program;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Executive Director is hereby authorized to amend Maverick County's CSHC Program Contract 7219003 by increasing their award by \$500,000 of CDBG funding from Program Year 2018, as further described in Attachment A.

## BACKGROUND

Since 1995, the Department has been required to establish CSHCs under Tex. Gov't Code §2306.582 to provide on-site technical assistance to improve the quality of life for colonia residents located in five counties (El Paso, Hidalgo, Starr, Webb, and Cameron/Willacy). Additionally, the Department is authorized to establish other CSHCs if it determines it is necessary and appropriate. Since 1995, two additional CSHCs have been established in Maverick and Val Verde counties. HB 2893 (87<sup>th</sup> Regular Session) requires the establishment of a CSHC in Nueces County, and the Department is working with Nueces County to establish a CSHC on or after September 1, 2021, the effective date of the legislation.

Each county selects five colonias within their respective county to receive concentrated technical assistance in housing rehabilitation, new construction, surveying and platting, construction skills training, tool library access, credit and debt counseling, employment and financial skills development, grant preparation, infrastructure construction, contract-for-deed conversions, and capital access for mortgages and other improvements.

The CSHCs are funded through a 2.5% set-aside (approximately \$1.76 million per year) of the annual Texas Community Development Block Grant (TxCDBG) non-entitlement allocation to the State of Texas. The Texas Department of Agriculture (TDA) receives the allocation from the U.S. Department of Housing and Urban Development (HUD), and TDA and TDHCA together manage TxCDBG funds and implement the CSHC Program through a Memorandum of Understanding.

TDHCA's Colonia Resident Advisory Committee (C-RAC) reviews proposals from participating counties that include a Performance Statement and Budget for the activities to be implemented or amended in their respective designated colonias. The CSHC contracts have a term of four years per Tex. Gov't Code §2306.587, and a limit of \$1,000,000 in accordance with 10 TAC §25.5.

On July 21, 2021, the C-RAC convened via videoconference for a presentation of a proposal by Maverick County to amend their current contract by adding additional funding and activities. Although the maximum award amount for a CHSC Contract is \$1,000,000, 10 TAC §25.8(e)(3) allows for the Board to approve an award that exceeds this amount if funding is available, based on the exemplary performance of a CSHC. Maverick County is currently on month 16 of the 48-month contract with 21% of total contract budget expended. The County is on track to meet the month 20 milestone of 30% of total contract budget expended. Additionally, Maverick County has already initiated five of six reconstruction activities and three of four rehabilitation activities in their current Performance Statement. This amendment to increase funds will maintain Maverick County's continuity of services to address substandard housing in their targeted colonias.

Funding for the increased award is available from the 2018 allocation of CDBG, and the C-RAC recommends amending the contract by awarding an additional \$500,000 to Maverick County, as further detailed in Attachment A to this item.

A Previous Participation Review was conducted on Maverick County and the amendment to increase funds was approved by EARAC without condition on August 23, 2021.

**ATTACHMENT A**

**MAVERICK COUNTY COLONIA SELF-HELP CENTER PROGRAM AMENDMENT DESCRIPTION**

**Subrecipient:** Maverick County

**Contact:** The Honorable David R. Saucedo, Maverick County Judge

**Colonias:** Chula Vista 1-5 (M1620013)  
Lago Vista Subdivision (M1620038)  
Loma Bonita (M1620072)  
Loma Linda #1 (M1620044)  
South Elm Creek #1 (M1620065)

Maverick County proposes the following changes to their housing and community development activities based on the amendment increase. There is no change to the length of the four-year contract term. The contract will benefit an estimated 5,158 persons, of which 4,126 or 80% are of low- to moderate-income.

<b>Performance Activity</b>	<b>Original</b>	<b>Proposed Amended</b>	<b>Budget Increase</b>	<b>Amended Budget</b>
<b>Public Service (10%)</b>	\$100,000		\$50,000	<b>\$150,000</b>
Tool Library	400 checkouts			
Technology Access	400 visits			
Solid Waste Removal	4 events			
Computer Classes	10 classes			
Construction Classes	10 classes			
Title Services		5 activities		
<b>Rehabilitation</b>	4 homes \$270,000	8 homes \$470,000	\$200,000	<b>\$470,000</b>
<b>Reconstruction (Not feasible for rehab)</b>	6 homes \$480,000	9 homes \$655,000	\$175,000	<b>\$655,000</b>
<b>Administration (15%)</b>	\$150,000		\$75,000	<b>\$225,000</b>
<b>TOTAL</b>	<b>\$1,000,000</b>		<b>\$500,000</b>	<b>\$1,500,000</b>

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**BOARD ACTION REQUEST**

**SINGLE FAMILY AND HOMELESS PROGRAMS DIVISION**

**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action on proposed amendments to the 2022-2023 Texas Housing Trust Fund Biennial Plan and authorization to enter into a capacity building agreement with Habitat for Humanity Texas, Inc.

**RECOMMENDED ACTION**

**WHEREAS**, the General Appropriations Act (GAA) enacted by the 87<sup>th</sup> Legislature appropriated the Texas Department of Housing and Community Affairs (the Department) \$9,546,282 of State General Revenue for the Texas Housing Trust Fund (Texas HTF) 2022-2023 biennium;

**WHEREAS**, Rider 9(c) of the GAA requires the Department to provide a biennial report to the Legislative Budget Board, the House Appropriations committee, and the Senate Finance committee no later than October 1 detailing the Department's plan to expend funds from the Texas HTF;

**WHEREAS**, to promote transparency and the expeditious use of these funds, the Department publishes this biennial report detailing its plan for each year's expenditure of the Texas HTF biennial appropriation;

**WHEREAS**, the Board approved the 2022-2023 Texas HTF Biennial Plan on July 22, 2021; and

**WHEREAS**, the Department seeks to modify the use of funds to include an award of \$175,000 to Habitat for Humanity Texas, Inc., for the provision of capacity building services to increase utilization of the Texas Bootstrap Loan Program as authorized by Tex. Gov't Code 2306.758(c), conditioned on a final recommendation, or recommendation with conditions, from the Executive Award and Review Advisory Committee (EARAC);

**NOW, therefore, it is hereby**

**RESOLVED**, that the proposed amendments to the 2022-2023 Texas HTF Biennial Plan is approved and staff is authorized to enter into a contract with Habitat for Humanity Texas, Inc., and directed to submit the Texas HTF Biennial Plan, as amended, to appropriate legislative offices and take any other necessary actions to effectuate the foregoing.

## **BACKGROUND**

The Department proposes to amend the existing 2022-2023 Texas HTF Biennial Plan. The change pertains to establishing authority for staff to allocate up to \$175,000 for capacity building activities.

The Texas Legislature established the Texas HTF in 1993 to provide state general revenue for affordable housing activities. The program receives state appropriations, which include loan repayments from previous Texas HTF projects, to fund the Texas HTF. The Department awards funding in the form of grants and/or loans to nonprofits, units of local government, councils of government, local mental health authorities, other public agencies, and public housing agencies to serve low-income households. State statute does not direct the specific activities that are to be implemented but requires the publication of a plan that details how the Department will program and expend the funds. Over the years, the Department implemented a diversity of programs with Texas HTF resources to varying success. The Texas HTF has now evolved to focus on two successful primary programs: the statutorily required Texas Bootstrap Loan Program (Bootstrap Program) and the Amy Young Barrier Removal Program.

Tex. Gov't Code Subchapter FF, relating to the Owner-Builder Loan Program sets forth the statutory requirements for the Bootstrap Program; furthermore, Tex. Gov't Code 2306.758 outlines the specific funding requirements, including a requirement to utilize not less than \$3 million of available revenue for use for the Bootstrap Program, and includes authorization to set-aside up to 10% of these funds to be utilized for capacity building for tax-exempt organizations to enhance their ability to implement the Bootstrap Program.

TDHCA has received and considered a proposal from Habitat for Humanity Texas, Inc., seeking funding in the amount of up to \$175,000 to provide specific capacity building services to entities eligible to participate in the Bootstrap Program, included as Attachment B to this item. These services would include, but are not limited to, assistance in board development, assistance with application for status as a Bootstrap Administrator, development of homebuyer education materials and resources, assistance with administration of mortgage servicing activities, and training on construction requirements. The full scope and expected outcomes of the contract would be negotiated with Habitat for Humanity Texas prior to execution of a contract. If these funds are not fully utilized for this intended purpose, the funding would be made available for Bootstrap loan funds through reservation by eligible Bootstrap Program administrators.

The "Use of Funds" and "Amounts" for the 2022-2023 Biennial Funds for the Texas HTF Plan as originally approved by the Board on July 22, 2021, is proposed to be amended as follows:



**Estimated 2022-2023 Biennial Appropriated Funds for Texas Housing Trust Fund**

<b>Use of Funds</b>	<b>SFY 2022</b>	<b>SFY 2023</b>	<b>Amount</b>
<b>Total Biennial Appropriation<sup>1</sup></b>	<b>\$4,736,232</b>	<b>\$4,810,020</b>	<b>\$9,546,282</b>
Less 10% Administration for TDHCA	\$473,626	\$481,002	(\$954,628)
<b>Net Balance Available for TDHCA Programming</b>	<b>\$4,262,636</b>	<b>\$4,329,018</b>	<b>\$8,591,654</b>
<b>Programming Plan</b>			
<b>Owner-Builder Loan Program<sup>2</sup></b>	<b>\$2,835,432</b>	<b>\$2,835,432</b>	<b>\$5,670,864</b>
Bootstrap Loan Program Reservation System	\$2,660,432	\$2,835,432	(\$5,495,864)
Bootstrap Loan Program Capacity Building	\$175,000	\$0	(\$175,000)
<b>Amy Young Barrier Removal Program</b>	<b>\$1,427,204</b>	<b>\$1,493,586</b>	<b>(\$2,920,790)</b>
<b>Total Remaining to be Programmed</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Staff recommends approval of the proposed amendments to the 2022-2023 Texas HTF Biennial Plan for submission to the Legislative Budget Board, the House Appropriations committee, and the Senate Finance committee and an authorization to enter into a contract with Habitat for Humanity Texas, Inc., for an amount not to exceed \$175,000 to provide capacity building services to enhance the Bootstrap Program, contingent upon a recommendation or recommendation with conditions from EARAC.

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<sup>1</sup> This amount includes an estimate of \$2,400,000 per year in interest earnings and loan repayments. Up to \$250,000 will also be reserved from interest earnings and repayments for Single Family workout activities as further described herein.

<sup>2</sup> Section 2306.758 (d) of the Texas Government Code, at least \$3,000,000 each state fiscal year must be utilized for this purpose. Additional required funding will be made available from Bootstrap Program repayments.

**Texas Department of Housing and Community Affairs**  
2022-2023 Texas Housing Trust Fund Biennial Plan



Bobby Wilkinson, Executive Director  
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Approved by the Board of  
The Texas Department of Housing and Community Affairs  
on July 22, 2021 as amended on September 2, 2021

### **Introduction and Purpose**

During the Regular Session of the 87<sup>th</sup> Legislature, the Department was appropriated General Revenue for the Texas Housing Trust Fund (Texas HTF) in the amount of \$9,546,282 for the 2022-2023 Biennium. Rider 9(c) of the General Appropriations Act (GAA) requires the Department to provide an annual report to the Legislative Budget Board, the House Appropriation Committee, and the Senate Finance Committee no later than October 1<sup>st</sup> detailing the Department’s plan to expend funds from the Texas HTF. The Department generates this plan biennially to promote strategic long-term planning and the expeditious use of these funds.

The Texas HTF was established in 1991 by the 72nd Texas Legislature, Senate Bill 546, to provide loans, grants, or other comparable forms of assistance to income-eligible individuals and households to finance, acquire, rehabilitate and develop decent, safe and sanitary housing. Funding sources consist of appropriations or transfers made to the fund, unencumbered fund balances, and public or private gifts or grants.

### **Appropriation Details**

The Department annually receives loan repayments and accrued interest that contribute to the Texas HTF. Rider 8 of the GAA strategy A.1.3 and A.1.4, clarifies that an estimated \$2,400,000 per year in interest earnings and loan repayments are included in funds appropriated each year under the Texas HTF.

	<b>FY2022</b>	<b>FY2023</b>	<b>Total Biennium</b>
<b>Total Annual General Revenue Appropriation</b>	\$4,736,262	\$4,810,020	\$9,546,282

Rider 9(a) of the GAA requires that:

*“Out of funds appropriated above in Strategy A.1.3...and A.1.4,...all funds above those retained for administrative purposes in fiscal year 2022 and fiscal year 2023 shall be deposited in the Housing Trust Fund in the Texas Treasury Safekeeping Trust Company established under Government Code, Chapter 2306, during September of each fiscal year.”*

The Department shall withhold approximately \$954,628 (10%) for the biennium for Department administrative costs.

The total estimated biennial funding and usage are outlined in the following chart.

## Estimated 2022-2023 Biennial Funds for Texas Housing Trust Fund

Use of Funds	SFY 2022	SFY 2023	Amount
<b>Total Biennial Appropriation<sup>1</sup></b>	<b>\$4,736,232</b>	<b>\$4,810,020</b>	<b>\$9,546,282</b>
Less 10% Administration for TDHCA	\$473,626	\$481,002	(\$954,628)
<b>Net Balance Available for TDHCA Programming</b>	<b>\$4,262,636</b>	<b>\$4,329,018</b>	<b>\$8,591,654</b>
<b>Programming Plan</b>			
<b>Owner-Builder Loan Program<sup>2</sup></b>	<b>\$2,835,432</b>	<b>\$2,835,432</b>	<b>\$5,670,864</b>
Bootstrap Loan Program Reservation System	\$2,660,432	\$2,835,432	(\$5,495,864)
Bootstrap Loan Program Capacity Building	\$175,000	\$0	(\$175,000)
<b>Amy Young Barrier Removal Program</b>	<b>\$1,427,204</b>	<b>\$1,493,586</b>	<b>(\$2,920,790)</b>
<b>Total Remaining to be Programmed</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

### Biennial Funding and Allocation Considerations

Statutory requirements listed below direct how the funds may be programmed for use. Due to the demand for current Texas HTF activities, the proposed Texas HTF plan does not include any new activities.

#### Texas Bootstrap Loan Program

Tex. Gov't Code Section 2306.7581 establishes a transfer requirement for the Texas Bootstrap Loan Program, stating that the Department must dedicate at least \$3 million, which may include a set-aside of up to 10% for capacity building for eligible organizations, to the program each fiscal year from HOME funds, Texas HTF monies, or from funds appropriated by the legislature. The Department has determined that HOME funds are not the best resource to accomplish the goals of the Texas Bootstrap Loan Program because of the demand by nonparticipating jurisdictions, additional federal limitations, and extensive HOME Program reporting requirements. The Texas HTF is the most practical appropriated source available for the Department to meet the Bootstrap Program's statutory transfer requirement.

#### Eligible Entities to Receive Funds

Pursuant to Tex. Gov't Code Section 2306.202, the Department must target funds for specific types of eligible entities. Section 2306.202(a) states:

“In each biennium the first \$2.6 million available through the HTF for loans, grants, or other comparable forms of assistance shall be set aside and made available exclusively for local units of government, public housing authorities, and nonprofit organizations. Any additional funds may also be made available to for-profit organizations so long as at least 45 percent of available funds in excess of the first \$2.6 million shall be made available to nonprofit organizations for the purpose of acquiring, rehabilitating, and developing decent, safe, and sanitary housing. The remaining portion shall be distributed to nonprofit organizations,

<sup>1</sup> This amount includes an estimate of \$2,400,000 per year in interest earnings and loan repayments. Up to \$250,000 will also be reserved from interest earnings and repayments for Single Family workout activities as further described herein.

<sup>2</sup> Section 2306.758 (d) of the Texas Government Code, at least \$3,000,000 each state fiscal year must be utilized for this purpose. Additional required funding will be made available from Bootstrap Program repayments.

for-profit organizations, and other eligible entities.”

#### Regional Allocation Formula (RAF) and Geographic Dispersion

As specified in Tex. Gov’t Code Section 2306.111(d-1), funds are not required to be allocated according to the RAF if:

“(2) the funds or credits are allocated by the department primarily to serve Persons with Disabilities.”

The Amy Young Barrier Removal Program serves only Persons with Disabilities. However, as noted on page 6 of this plan, to promote geographic dispersion of the competitive Amy Young Barrier Removal Program funds, the funds will be released geographically in order to maximize opportunity for regions with historically low involvement to participate.

#### Texas HTF Plan Administration

In approving the Texas HTF plan, the Board authorizes staff to proceed with issuing Notices of Funding Availability (NOFA) and make any needed amendments to the NOFAs to expedite utilization of funds. The Board has also authorized staff to enter into a contract with a subrecipient service provider for provision of certain capacity building efforts to expand and improve the utilization of the Texas Bootstrap Loan Program. Funds may be committed and expended via contracts and reservation agreements. Texas HTF programs may utilize various income determination methods noted in the general program descriptions in the Texas HTF plan or outlined in the Texas HTF Rule.

Using no more than \$250,000 per biennium of the Texas HTF loan repayments and interest earnings *that exceed the requirements under Rider 8 of the GAA* (see Rider 8 of the GAA under "Appropriation Details" on page 2), the Texas HTF may be used to respond to unanticipated, unique challenges that may arise in the course of implementing approved Single Family program contracts, activities, or assets. For example, if a household has been displaced for the rehabilitation of their home, and the Department faces subsequent eligibility concerns with the contractor performing that rehabilitation, these funds could expedite the completion of the rehabilitation so that the household may return to a safe, completed home as soon as possible.

If a balance exists from the previous biennium, the Department shall transfer only the necessary amount to replenish this fund to a maximum balance of \$250,000 at the start of the biennium. The Department anticipates that the need to use Texas HTF excess loan repayments and interest earnings for Single Family Program workouts will be infrequent and used as a last resort only, such as when it poses severe practical challenges, or it is impossible to use federal funds. These funds will be for internal disposition, and neither households nor program administrators will be able to apply for these funds.

In approving the Texas HTF plan, the Board authorizes the use of any funds from loan repayments, interest earnings, deobligations, and any other additional Texas HTF funds as allowed by statute in excess of those funds required under Rider 8, to be programmed into current Department activities or activities approved in the Texas HTF Plan. Prior to any programming, the Department shall withhold 10% of such funds for Department administrative costs.

Lastly, in approving the Texas HTF plan, the Board authorizes the use of late fees collected from Texas HTF borrowers for Single Family asset management activities. These funds will allow the Department to budget for the necessary transactions that arise in the course of Single Family asset management, such as paying off first lien holders on delinquent single family properties on which the Department is in second or lower lien position; paying off taxing authorities to avoid tax foreclosure; securing and preparing abandoned properties to return to the marketplace; related travel and administrative costs, etc. The Texas HTF will utilize these late fees for Single Family asset management activities only when the appropriate solution cannot reasonably be addressed with other funds.

## **Texas Bootstrap Loan Program: \$5,670,864 from the 2022-2023 Appropriation**

**Program Description:** The Texas Bootstrap Loan Program (Bootstrap Program) makes funds available to state-certified Administrators of Nonprofit Owner-Builder Housing Programs, which include eligible nonprofit organizations and Colonia Self-Help Centers, to purchase or refinance real property on which to build or improve residential housing through self-help construction with very low-income households (Owner-Builders). The Bootstrap Program may also enter into an agreement with a nonprofit organization for provision of capacity building services to expand and enhance the utilization of the Bootstrap Program. Tex. Gov't Code Section 2306.7581(a-1) requires the Department to make at least \$3,000,000 available each fiscal year, of which not more than 10% may be utilized for capacity building activities, for the Bootstrap Program. Administrators of the Bootstrap Program perform origination of mortgage loans to households with income not exceeding 60% of Area Median Family Income (AMFI) or the statewide income limits, whichever is greater. Funding is available until August 31, 2023, or until all funding has been reserved.

**Maximum Loan Amount:** Bootstrap loans shall not exceed \$45,000 per household. Eligible entities must apply to access a reservation system that makes funds available on a first-come, first-served basis.

**Eligibility Requirement:** Owner-Builders must have a household income not exceeding 60% of the AMFI or the statewide income limits, whichever is greater; must have resided in Texas for the preceding six months; and must have successfully completed an Owner-Builder education class. Owner-Builders must agree to provide at least 65% of the labor necessary to build or rehabilitate the proposed housing by working through a state-certified Administrator. The Department will define household income limits in accordance with the U.S. Department of Housing and Urban Development HOME Investment Partnership Program Income Limits.

**Administrative Fees:** The Department will pay an administrative fee equal to 10% of the loan amount to Administrators upon project completion.

**Geographic Dispersion:** Two-thirds of the funds (approximately \$4,000,000) will be set aside for Owner-Builders with property in census tracts with median incomes not exceeding 75% of the state median income per the most recent statistics available. The remaining one-third (approximately \$2,000,000) will be released statewide. The RAF is not applicable to this funding due to the set-aside requirements of Tex. Gov't Code Section 2306.753(d). Furthermore, the remaining one-third of the fund balance does not exceed the \$3,000,000 ceiling cited in Tex. Gov't Code Section 2306.111(d-1)(3).

**Other Considerations:** If balances exist from previous Bootstrap funding cycles, those funds will be made available to Bootstrap activities. Funds accumulated in the Owner-Builder Revolving Loan funds may also be made available in the Texas HTF plan. This use of funds achieves the statutory requirements for funding the Bootstrap Program and for targeting nonprofit organizations. This activity achieves significant leveraging of other public and private funding sources, promotes the Department's mission and provides for repayment to the Texas HTF.

## **Amy Young Barrier Removal Program: \$2,920,790 from the 2022-2023 Appropriation**

**Program Description:** This program provides one-time grants of up to \$22,500 to Persons with Disabilities with household income not exceeding 80% of the AMFI or the statewide income limits, whichever is greater. This program funds home modifications that increase accessibility for homeowners, tenants, and members of their household who have a disability, in addition to correcting hazardous and unsafe housing conditions, as approved by the Department. Funding is available until August 31, 2023, or until all funding has been reserved.

**Maximum Assistance Amount:** One-time grants will not exceed \$22,500 per household. Eligible entities must apply to access a reservation system that makes funds available on a first-come, first-served basis adjusted for the geographic dispersion process noted below. The maximum number of reservations per Administrator is further detailed in the Program NOFA.

**Eligibility Requirements:** Administrators may include Units of General Local Government, Councils of Governments, Nonprofit Organizations, Local Mental Health Authorities, and Public Housing Authorities. Administrators must demonstrate competence in accessibility standards and applicable building codes further detailed in the Texas HTF Rule. Program beneficiaries must have a household income not exceeding 80% of the AMFI or the statewide income limits, whichever is greater. The Department will define household income limits in accordance with the U.S. Department of Housing and Urban Development HOME Investment Partnership Program Income Limits.

**Administrative Fees:** The Department will pay an administrative fee equal to 10% of the hard and soft costs to Administrators upon project completion.

**Geographic Dispersion:** The RAF does not apply to funds primarily serving Persons with Disabilities. However, the Texas HTF Rule promotes geographic dispersion to ensure that all rural and urban subregions have an opportunity to access funds before they must compete on a first-come, first-served basis with the rest of the state.

Each year of the biennium, each state region will receive at least \$100,000 (enough for four fully funded activities). The remaining funds shall be released geographically over time as prescribed by the Texas HTF Rule. Over the course of the biennium, any additional funds beyond the original program allocations that derive from Texas HTF loan repayments, interest earnings, deobligations, and other Texas HTF funds in excess of those funds required under Rider 8 (see page 4 of this plan) may be programmed to the current NOFA or made available statewide, and not geographically dispersed.





July 13, 2021

Bobby Wilkinson  
Executive Director  
Texas Department of Housing and Community Affairs  
P.O. BOX 13941  
Austin, TX 78711-3941

Dear Bobby,

Thank you for meeting with me this week. I believe, with the technical assistance from TDHCA staff and the capacity building from Habitat Texas staff, we can make a true difference in furthering home ownership in Texas.

“Capacity building” is a term bandied about by nonprofit leaders everywhere, but also one that few understand. Here is one of my favorite definitions:

*Capacity building is whatever is needed to bring a nonprofit to the next level of operational, programmatic, financial, or organizational maturity, so it may more effectively and efficiently advance its mission into the future. **Capacity building is not a one-time effort to improve short-term effectiveness, but a continuous improvement strategy toward the creation of a sustainable and effective organization.***

To lay the groundwork to increase participation in TDHCA’s Housing Trust Fund, we respectfully request \$175,000 to support capacity building efforts for nonprofits providing self-help housing using sweat equity.

Our goal at Habitat for Humanity Texas is to increase utilization of the Bootstrap and Amy Young Barrier Removal Programs to more markets in our small and mid-sized communities. To that end, we will devote substantial people and financial resources to increasing the number of Nonprofit Owner-Builder Housing Providers (or NOHP, which is the TDHCA-approved nonprofit eligible to access TDHCA funding) across the State by building the capacity of local organizations to participate in the Housing Trust Fund. Some of our activities will include:

#### **Board Development**

- Meet, in person when possible, with local Boards of Directors to explain the benefits of the TDHCA programs on their operations;
- Conduct strategic planning with local boards with an emphasis on using TDHCA programs.

#### **Local Operations Staff Support**

- Guide volunteers and organizations with limited staffing resources through the NOHP application process.

### **Homebuyer Support**

- Prepare financial literacy and homeowner college course material to be used locally so delinquencies and foreclosures are minimized;
- Develop online resources for homebuyers and homeowners.

### **Mortgage Services Activities**

- Audit mortgage portfolios to ensure ongoing capacity and integration with TDHCA requirements;
- Develop standardized policies and procedures to ensure legal compliance and seamless integration with TDHCA programs;
- Originate mortgages and prepare documents for Bootstrap Loans
- Loan servicing staff that can also help affiliates with timely collection of Bootstrap loans
- Development of webinar that includes TDHCA staff to teach affiliates – or any nonprofit self-help housing provider – how to process Bootstrap loans and ways Bootstrap funds can be used.

### **Construction Activities**

- Develop classes for construction activities in repair and rehabilitation, including Aging in Place, Americans with Disabilities Act and Texas Accessibility Standards compliance, in order to expand capacity to use TDHCA programs.

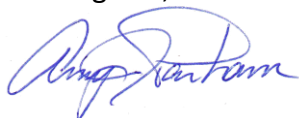
Additionally, our communications team will offer local NOHPs with custom communications plans that highlight the work of TDHCA's involvement in communities across Texas. This includes the following:

- Social media outreach;
- Media advisories and press releases in local newspapers, highlighting government and private nonprofits;
- Host ground-breakings and home dedications with state and local elected officials;
- Signage during construction that highlights TDHCA's partnership.

We know there is a need and benefit for affordable homeownership, and we know that we can expand the number of communities across Texas who benefit from the state's Housing Trust Fund and other TDHCA programs. Let's discuss next steps. We can make a difference together!

Let me close by thanking you and your staff for your work. We very much value your partnership.

Best regards,



Amy Ledbetter Parham  
Habitat for Humanity Texas CEO

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**BOARD ACTION REQUEST**

**SINGLE FAMILY AND HOMELESS PROGRAMS DIVISION**

**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action authorizing an extension to Neighborhood Stabilization Program 1 contract for City of Port Arthur

**RECOMMENDED ACTION**

**WHEREAS**, the Texas Department of Housing and Community Affairs (the Department) entered into Neighborhood Stabilization Program 1 (NSP) contract 77090000154 with the City of Port Arthur (the City), which expired on August 31, 2021;

**WHEREAS**, the City's NSP contract includes a land bank activity to convert vacant properties into their final eligible uses and has maintained the lot inventory since the NSP contract became effective on September 1, 2009;

**WHEREAS**, the City experienced delays in completing their land bank contractual obligations due to eligibility requirements, local market conditions, competing program demands, and capacity;

**WHEREAS**, the Department has requested from the U.S. Department of Housing and Urban Development (HUD) permission to remove the remaining undeveloped land bank properties in the City's portfolio from the NSP in accordance with HUD NSP policy guidance on land bank disposition;

**WHEREAS**, the City submitted a request for contract extension on August 11, 2021, and staff recommends authorization of the extension to facilitate the resolution of the Department's request to HUD for approval of the Department's land bank disposition plan for the City's remaining portfolio;

**WHEREAS**, the Department continues to work closely with the City to provide technical assistance towards contract completion and compliant disposition of the City's remaining land bank portfolio; and

**WHEREAS**, NSP contracts have exhausted all extensions that staff may authorize, and only the Governing Board may approve additional extensions;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Executive Director or his designee are hereby authorized,

empowered, and directed, for and on behalf of this Board to approve an extension of not more than one additional year to the City of Port Arthur's NSP contract 77090000154 to enable full, timely, and compliant contract completion, and in connection therewith to execute, deliver, and cause to be performed such amendments, documents, and other writings as they or any of them may deem necessary or advisable to effectuate the foregoing.

### **BACKGROUND**

The Neighborhood Stabilization Program (NSP) is a U.S. Department of Housing and Urban Development (HUD)-funded program authorized by H.R. 3221, the "Housing and Economic Recovery Act of 2008," as a supplemental allocation to the Community Development Block Grant (CDBG) Program through an amendment to the existing State of Texas 2008 CDBG Action Plan. The purpose of the program is to redevelop, or acquire and hold, abandoned and foreclosed properties in areas with the greatest need for arresting declining property values resulting from excessive foreclosures.

The Department established an NSP land bank portfolio of approximately 116 properties with the City. The City has experienced difficulties related to fulfilling eligibility requirements, local market conditions (including Hurricane Harvey recovery after 2017 and the impact of the coronavirus statewide), competing program demands, and lack of capacity. In 2019, the Department received technical assistance from HUD, through a third-party consultant, for disposition planning for the City's remaining undeveloped properties. In August 2021, TDHCA requested permission from HUD to remove approximately 61 remaining properties in the City's land bank portfolio from the NSP, and in accordance with the NSP Policy Alert "Guidance on Land Bank Disposition" dated November 25, 2014.

The properties TDHCA proposed for removal from the NSP met a National Objective for acquisition and the City expended less than \$25,000 for acquisition and improvements (excluding maintenance) on each remaining property proposed for removal. Disposing of the properties in a way that meets a National Objective for disposition has been challenging because the remaining lots are not suitable for residential development due to size or location. The Department requested removal of the properties from the NSP with no required reimbursement to TDHCA's NSP line of credit. If HUD grants the request, the Department would propose to allow the City to retain the lots for future development or other use outside of the NSP.

The Department will continue to provide technical assistance and work closely with the City to make the needed adjustments for compliant disposition of the land bank portfolio and next move towards NSP grant closeout.

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**BOARD ACTION REQUEST**

**PROGRAMS DIVISION**

**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action on an order proposing the repeal, and proposed 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 publication for public comment in 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 proposed through the repeal of the current rule and a simultaneous new rule to be proposed in its place; and

**WHEREAS**, such proposed rulemaking will be published in the *Texas Register* for public comment from September 17, 2021, through October 18, 2021, and subsequently returned to the Board for final adoption;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed actions herein in the form presented to this meeting, to be published in the *Texas Register* for public comment, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing including any requested revisions to the preambles.

**BACKGROUND**

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.



**Attachment 1: Preamble, including required analysis, for proposed 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) proposes 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 proposed 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 proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

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

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

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

1. The 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 are the rule changes 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 proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate 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 proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

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

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 17, 2021, to October 18, 2021, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email [bboston@tdhca.state.tx.us](mailto:bboston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, October 18, 2021.

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

§1.301 Previous Participation Reviews for Multifamily Awards and Ownership Transfers

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

§1.303 Executive Award and Review Advisory Committee (EARAC)

**Attachment 2: Preamble, including required analysis, for proposed 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) proposes 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 proposed 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 proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

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

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

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

1. The 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 proposed new sections and determined that the proposed 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 proposed 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 proposed new sections as to their possible effects on local economies and has determined that for the first five years the proposed new sections would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed new sections are in effect, the public benefit anticipated as a result of the new sections would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the new sections.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed new sections are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 17, 2021, to October 18, 2021, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email [bboston@tdhca.state.tx.us](mailto:bboston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, October 18, 2021.

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

## 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), ~~and~~ 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 PartTitle 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 PartTitle (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 PartTitle, 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 PartTitle (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 PartTitle or in the table provided at §10.625 of this PartTitle (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 UTxGMS Subpart E the Texas Single Audit Circular.

(c) Items Not Considered. When conducting a previous participation review the items in Paragraphs (1) through (10) 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; or

(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; or

(C) Within the three years immediately preceding the date of Application, any Person subject to previous participation review failed to respond during the Corrective Action Period 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 Part~~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~~Section~~ herein have the meaning assigned in the specific Chapters and Rules of this Part~~Title~~ that govern the program associated with the request, or assigned by federal or state laws. For this Section, the word Applicant means the entity that the Department's Board will consider for an award of funds or a Contract. As used in this Section, the term Single Audit relates specifically to the audit required by 2 CFR §200.501 or the Texas Single Audit Act~~UGMS Subpart E~~.

(c) Upon Department request, Applicant will be required to submit:

(1) A listing of the members of its board of directors, council, or other governing body as applicable or certification that the same relevant information has been submitted in accordance with §1.22 of this Subchapter (relating to Providing Contact Information to the Department), and if applicable with §6.6 of this Part~~Title~~ (relating to Subrecipient Contact Information and Required Notifications);

(2) A list of any multifamily Developments owned or Controlled by the Applicant that are monitored by the Department;

(3) Identification of all Department programs that the Applicant has participated in within the last three years;

(4) An Audit Certification Form for the Applicant or entities identified by the Applicant's Single Audit, or a certification that the form has been submitted to the Department in accordance with §1.403 of this Chapter (relating to Single Audit Requirements). If a Single Audit is only required by ~~UTxGMS~~ the State Single Audit Act and not by a federal requirement~~Subpart E~~, 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), ~~and 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 Part 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 ~~Part~~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.



11

**BOARD ACTION REQUEST**

**PROGRAMS DIVISION**

**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action on an order proposing the repeal, and proposed 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 publication for public comment in 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 revisions are being proposed through the repeal of the current rule and a simultaneous new rule to be proposed in its place; and

**WHEREAS**, such proposed rulemaking will be published in the *Texas Register* for public comment from September 17, 2021, through October 18, 2021, and subsequently returned to the Board for final adoption;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed actions herein in the form presented to this meeting, to be published in the *Texas Register* for public comment, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing including any requested revisions to the preambles.

**BACKGROUND**

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 proposed 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) proposes 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 proposed 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 proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

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

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

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed 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 are the rule changes 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 proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate 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 proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

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

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 17, 2021, to October 18, 2021, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email [bboston@tdhca.state.tx.us](mailto:bboston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, October 18, 2021.

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

§1.401 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 proposed 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) proposes 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 proposed 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 proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

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

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

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed 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 proposed new sections and determined that the proposed 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 proposed 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 proposed new sections as to their possible effects on local economies and has determined that for the first five years the proposed new sections would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed new sections are in effect, the public benefit anticipated as a result of the new sections would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the new sections.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed new sections are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 17, 2021, to October 18, 2021, to receive input on the proposed new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email [bboston@tdhca.state.tx.us](mailto:bboston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, October 18, 2021.

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

## 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 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.

(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. ~~Entities not subject to UGMS do not have to include information technology systems unless the item 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 funds where the entity is funded through a grant or Subrecipient Contract 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) ~~Uniform~~ Texas Grant Management Standards (~~UTxGMS~~)--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 ~~the Uniform Grant and Contract Management Standards~~ 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 UTxGMS 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, 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 ~~UTxGMS~~ 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 ~~(f)~~ 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 UTxGMS, 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.

(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 ~~on an annual basis~~ 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 ~~T~~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~~rule 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.

(f) 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 parttitle (relating to Contested Case Hearing Procedures). ~~(e) Right to Request a Hearing on Denial of Services or Benefits. As provided for in Tex. Gov't Code §2105.151 and §2105.154, an affected person who alleges that a Subrecipient has denied all or part of a service or benefit funded by funds under a program that is subject to this subchapter in a manner that is unjust, discriminatory, or without reasonable basis in law or fact may request and have a timely hearing provided by the Department in the Service Area of the Subrecipient, and the requested hearing will be an administrative hearing under Tex. Gov't Code Ch. 2001.~~

(gf) 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 parttitle (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 (relating to Termination and Reduction of Funding for CSBG Eligible Entities).



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**BOARD ACTION REQUEST**

**FAIR HOUSING, DATA MANAGEMENT AND REPORTING**

**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action on an order proposing amendments to 10 TAC, Chapter 10, Subchapter G, §10.801, Affirmative Marketing Requirements, and directing its publication for public comment 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**, 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; and

**WHEREAS**, upon Board approval, the proposed amendments will be published in the *Texas Register* and will be open for public comment from September 17, 2021, to October 18, 2021, and subsequently presented to the Board for final adoption;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed action herein in the form presented to this meeting, to be published in the *Texas Register* for public comment, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including any requested revisions to the 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).

Staff will, upon action by the Board, publish the proposed amendments in the *Texas Register*, and will accept public comment from September 17, 2021, to October 18, 2021. Staff will return to the Board for final adoption of the rules.

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

The Texas Department of Housing and Community Affairs (the Department) proposes amendments to 10 TAC, Subchapter G, Affirmative Marketing Requirements and Written Policies and Procedures, §10.801, Affirmative Marketing Requirements. The purpose of the proposed 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 proposed for action 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 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.**

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

1. The proposed 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 proposed 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 proposed amendments do not require additional future legislative appropriations.
4. The proposed 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 proposed amendments are not creating a new regulation.
6. The proposed amendments will not expand, limit, or repeal an existing regulation.
7. The proposed amendments will not increase or decrease the number of individuals subject to the rule's applicability; and
8. The proposed 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 proposed 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 proposed 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 proposed

are minor and add no costs to the property's operations. There are no rural communities subject to the proposed 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 proposed 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 proposed 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 proposed 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 proposed amendments are in effect, the public benefit anticipated as a result of the proposed 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 proposed 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.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held from September 17, 2021, to October 18, 2021, to receive input on the amended section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or email [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, October 18, 2021.

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 Some Developments may be required by their LURAs to market units specifically to veterans or other populations as part of their regular marketing activities.

(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) 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 placement in service as required under subsection (e)(1) of this section.

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**BOARD ACTION REQUEST**

**SINGLE FAMILY AND HOMELESS PROGRAMS DIVISION**

**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 20, Single Family Programs Umbrella Rule, and an order proposing new 10 TAC Chapter 20, Single Family Programs Umbrella Rule, and directing their publication for public comment 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**, the proposed new 10 TAC Chapter 20, Single Family Programs Umbrella Rule, updates definitions; removes information related to eligibility that is fully contained in separate rules governing each program, adds other requirements applicable to all Single Family Programs, updates and clarifies underwriting requirements for repayable loans, and creates consistency related to amendment approval and processing for Single Family Programs; and

**WHEREAS**, upon Board approval, the proposed new rule will be submitted for publication in the *Texas Register* to receive public comment, which will be accepted from September 17, 2021, through October 18, 2021.

**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 repeal of 10 TAC Chapter 20 and proposed new 10 TAC Chapter 20, regarding the Single Family Programs Umbrella Rule, in the form presented to this meeting, to be published in the *Texas Register* for public comment and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles.

## **BACKGROUND**

The purpose of repealing 10 TAC Chapter 20, Single Family Programs Umbrella Rule and proposing a new 10 TAC Chapter 20, is to update and clarify current definitions and rules, remove rules related to household eligibility that are fully contained within the rule for each Single Family Program, incorporate requirements that are common requirements for all Single Family Programs (including underwriting requirements for repayable mortgages loans) and streamline processes, particularly as they relate to contract amendments. Changes were made to most sections of the Chapter; therefore, the Department is repealing and proposing a new Chapter instead of amending the existing Chapter. Staff has summarized the significant changes proposed to be made to the Single Family Programs Umbrella Rule below. A blackline version with all changes is attached and will be available on the Department's website during the public comment period.

The Department held a virtual roundtable discussion on July 7, 2021, regarding the Single Family Umbrella Rule and other single family rules being presented under separate items at this meeting. Comments and suggestions received from the roundtable discussions were taken into consideration during the preparation of the proposed Single Family Programs Umbrella Rule as presented at this meeting.

The blackline proposed rule is attached to indicate to the Board and the public what is being changed. The significant updates proposed to 10 TAC Chapter 20 are:

- Definitions for Area Median Family Income, Borrower, CFR, Draw Request, and State Median Family Income are added, outdated definitions are removed;
- Household Eligibility Requirements removed. These requirements are outlined in detail in each rule for each program;
- Removes requirement of fair marketing plan analysis at contract closeout and requirement for submission of close-out analysis for future applications;
- Incorporates requirement to submit construction plans which is a common requirement for all single family programs;
- Removes non-applicability of inspection requirements to the Amy Young Barrier Removal Program;
- Codifies allowance of exceptions to the Texas Minimum Construction Standards for rehabilitation;
- Updates requirements for providers of inspection services;
- Removes reference to insufficient credit, which was previously included but not defined. Includes a conforming change removing requirements for mitigation of insufficient credit;
- Updates calculation of payments for deferred loans, including student loans, to better conform to Mortgagee Letter 2021-13 published by HUD on June 17, 2021;
- Clarifies that requirements for Department's subordination to leveraged loans applies to repayable leveraged loans only; and
- Streamlines amendment process for contract amendments otherwise permitted by program requirements.

**Attachment A: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 20, Single Family Programs Umbrella Rule**

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 20, Single Family Programs Umbrella Rule. The purpose of the proposed 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 proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the Department's Single Family Programs.

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

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

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

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

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of the Department's Single Family Programs.

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

8. The proposed 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 this proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate 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 proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

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

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 17, 2021, to October 18, 2021, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email HOME@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, October 18, 2021.

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

## **10 TAC Chapter 20, Single Family Programs Umbrella Rule**

§20.1 Purpose

§20.2 Applicability

§20.3 Definitions

§20.4 Eligible Single Family Activities

§20.5 Funding Notices

§20.6 Applicant Eligibility

§20.7 Household Eligibility Requirements

§20.8 Single Family Housing Unit Eligibility Requirements

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## **Attachment B: Preamble for proposed new 10 TAC Chapter 20, Single Family Programs Umbrella Rule**

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 20, Single Family Programs Umbrella Rule. The purpose of the proposed new sections is to implement a more germane rule and better align administration to federal and state requirements.

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

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

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

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

1. The proposed rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to administration of the Department's Single Family Programs.
2. The proposed new 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 proposed rule changes do not require additional future legislative appropriations.
4. The proposed rule changes will not result in an increase in fees paid to the Department nor a decrease in fees paid to the Department.
5. The proposed rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The proposed rule will not expand or repeal an existing regulation.
7. The proposed rule will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed 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 proposed 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, §2306.111.

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

2. There are approximately 60 rural communities currently participating in construction activities under Single Family Programs that are subject to the proposed rule for which no economic impact of the rule is projected during the first year the rule is in effect.

3. The Department has determined that because the rule serves to clarify and update existing requirements and does not establish new requirements for which there would be an associated cost, 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 proposed rule does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed rule has no economic effect on local employment because the rule serves to clarify and update existing requirements and does not establish new requirements or activities that may positively or negatively impact local economies.

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 participation in the Department's Single Family Programs is at the discretion of the local government or other eligible subrecipients, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Bobby Wilkinson, Executive Director, 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 a more germane rule that better aligns administration to federal and state requirements. There will not be any economic cost to any individuals required to comply with the new section because the processes described by the rule have already been in place through the rule found at this section 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 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 rule updates and clarifies existing requirements and does not impose new requirements.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 17, 2021, to October 18, 2021, to receive input on the new proposed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email [abigail.versyp@tdhca.state.tx.us](mailto:abigail.versyp@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, October 18, 2021.

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

## **CHAPTER 20 SINGLE FAMILY PROGRAMS UMBRELLA RULE**

### **§20.1 Purpose**

This ~~Chapter~~chapter sets forth the common elements of the Texas Department of Housing and Community Affairs' (the Department) single family Programs, which include the Department's HOME Investment Partnerships Program (HOME), ~~State~~Texas Housing Trust Fund (~~SHTF~~Texas HTF), Texas Neighborhood Stabilization Program (NSP), and Office of Colonia Initiatives (OCI) Programs and other single family Programs as developed by the Department. Single family Programs are designed to improve and provide affordable housing opportunities to low-income individuals and families in Texas and in accordance with Chapter 2306 of the Tex. Gov't Code and any applicable statutes and federal regulations.

### **§20.2 Applicability**

(a) This ~~Chapter~~chapter only applies to single family Programs. Program Rules may impose additional requirements related to any provision of this chapter. Where a Program Rule is less restrictive and ~~the item is not preempted by~~ federal law does not preempt the item, the provisions of this chapter will govern Program decisions.

~~(b) Excluded from this Chapter are~~(b) Activities performed under Chapter 27 (relating to Texas First Time Homebuyer Program Rule) and Chapter 28 (related to Taxable Mortgage Program) of this titlePart are excluded from this chapter.

### **§20.3 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings unless the context indicates otherwise. 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, the Program Rules, the Texas Administrative Code (TAC), or applicable federal regulations.



(1) Activity--The assistance provided to a specific Household or Administrator by which funds are used for acquisition, new construction, reconstruction, rehabilitation, refinance of an existing Mortgage, tenant-based rental assistance, or other Department approved Expenditure under a single family housing Program.

(2) Administrator--A unit of local government, Nonprofit Organization or other entity acting as a subrecipient, Developer, or similar organization that has an executed written Agreement with the Department.

(3) Affirmative Marketing Plan--HUD Form 935.2B or equivalent plan created in accordance with HUD requirements to direct specific marketing and outreach to potential tenants and homebuyers who are considered "least likely" to know about or apply for housing based on an evaluation of market area data. May be referred to as "Affirmative Fair Housing Marketing Plan" (AFHMP).

(4) Affiliate--If, directly or indirectly, either one Controls or has the power to Control the other or a third person Controls or has the power to Control both. The Department may determine Control to include, but not be limited to:

(A) Interlocking management or ownership;

(B) Identity of interests among family members;

(C) Shared facilities and equipment;

(D) Common use of employees; or

(E) A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

(5) Affiliated Party--A person or entity with a contractual relationship with the Administrator as it relates to a Program, the form of assistance under a Program, or an Activity.

(6) Agreement--Same as "Contract." May be referred to as a "Reservation System Agreement" or "Reservation Agreement" when providing access to the Department's Reservation System as defined in this chapter.

(7) Amy Young Barrier Removal Program--A program designed to remove barriers and address immediate health and safety issues for Persons with Disabilities as outlined in the Program Rule.

(8) Annual Income--The definition of Annual Income and the methods utilized to establish eligibility for housing or other types of assistance as defined under the Program Rule.

(9) Applicant--An individual, unit of local government, nonprofit corporation or other entity, as applicable, who has submitted to the Department or to an Administrator an Application for Department funds or other assistance.

(10) Application--A request for a Contract award or a request to participate in a Reservation System submitted by an Applicant to the Department in a form prescribed by the Department, including any exhibits or other supporting material.

~~(11)~~ (11) Area Median Family Income (AMFI)--The income limits published annually by the U.S. Department of Housing and Urban Development (HUD) for the Housing Choice Voucher Program that is used by the Department to determine the income eligibility of Households to participate in Single Family Programs.

~~(12)~~ Borrower--a Household that is borrowing funds from or through the Department for the acquisition, new construction and/or rehabilitation of the Household's Principal Residence.

~~(13)~~ Certificate of Occupancy--Document issued by a local authority to the owner of premises attesting that the structure has been built in accordance with building ordinances.

~~(14)~~ CFR--Code of Federal Regulations.

~~(15)~~ Combined Loan to Value (CLTV)--The aggregate principal balance of all the Mortgage Loans, including Forgivable Loans, divided by the appraised value.

~~(16)~~ Competitive Application Cycle--A defined period of time that Applications may be submitted according to a published Notice of Funding Availability (NOFA) that will include a submission deadline and selection or scoring criteria.

~~(17)~~ Concern--A policy, practice or procedure that has not yet resulted in a Finding, but if not changed will or may result in a Finding, or disallowed costs.

~~(18)~~ Contract--The executed written Agreement agreement between the Department and an Administrator performing an Activity related to a single family Program that describes performance requirements and responsibilities. May also be referred to as "Agreement."

~~(19)~~ Contract Term--The timeframe in which funds may be expended under the Contract or Agreement for certain administrative costs and for all the hard and soft costs of Activities, as further described in the Contract or Agreement.

(20) Control--The possession, directly or indirectly, of the power to direct or cause the direction of the management, operations or policies of any person or entity, whether through the ownership of voting securities, ownership interests, or by contract or otherwise.

~~(1721)~~ Debt--A duty or obligation to pay money to a creditor, lender, or person which can include car payments, credit card bills, loans, child support payments, and student loans.

~~(1822)~~ Debt-to-Income Ratio--The percentage of gross monthly income from Qualifying Income that goes towards paying off Debts and is calculated by dividing total recurring monthly Debt by gross monthly income expressed as a percentage.

~~(1923)~~ Deobligate--The cancellation of or release of funds under a Contract or Agreement as a result of expiration of, termination of, or reduction of funds under a Contract or Agreement.

~~(2024)~~ Developer--Any person, general partner, Affiliate, or Affiliated Party or affiliate of a person who owns or proposes a Development or expects to acquire control of a Development and is the person responsible for performing under the Contract with the Department.

~~(2125)~~ Development--A residential housing project for homeownership that consists of one or more units owned by the Developer during the development period and financed under a common plan which has applied for Department funds. This includes a project consisting of multiple units of housing that are located on scattered sites.

~~(2226)~~ Domestic Farm Laborer--Individuals (and the Household) who receive a substantial portion of their income from the production or handling of agricultural or aquacultural products.

~~(2327)~~ Draw--~~Funds requested~~ Request--a request submitted to the Department, by the ~~Administrator, approved by seeking reimbursement of Program funds for completing an expenditure relating to the Department and subsequently disbursed to the Administrator~~ Program.

~~(2428)~~ Enforcement Committee--The Committee as defined in Chapter 2 of this ~~title~~ Part (relating to Enforcement).

~~(2529)~~ Finding--An Administrator's material failure to comply with rules, regulations, the terms of the Contract, or to provide services under a 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 may jeopardize continued operations of the Administrator. A Finding includes the identification of an action or failure to act that results or may result in disallowed costs.

~~(2630)~~ Forgivable Loan--Financial assistance in the form of a Mortgage Loan that is not required to be repaid if the terms of the Mortgage Loan are met.

~~(2731)~~ HOME Program--A HUD funded Program authorized under the HOME Investment Partnerships Program at 42 U.S.C. §§12701 - 12839.

~~(2832)~~ Household--One or more persons occupying a rental unit or owner-occupied Single Family Housing Unit as their primary residence. May also be referred to as a "family" or "beneficiary."

~~(2933)~~ Housing Contract System (HCS)~~—~~—The electronic information system or systems that ~~is~~are part of the "central database" established by the Department to be used for tracking, funding, and reporting single family Contracts and Activities.— May also be known as Contract System.

~~(30) Housing Trust Fund or State Housing Trust Fund (SHTF)—State-funded Programs authorized under Chapter 2306 of Tex. Gov't Code.~~

~~(3134)~~ HUD--The United States Department of Housing and Urban Development or its successor.

~~(3235)~~ Improvement Survey--A boundary survey plus land improvements by a Texas surveyor with a surveyor's seal, license number, and signature, meeting the requirements of the Texas Board of Professional Land Surveying under Chapter 663, Part 29, Title 2 of the TAC, showing (at a minimum) the accompanying legal description; all boundaries clearly labeled with calls and distance found on the ground and per the legal description; the location of all improvements, structures, visible utilities, fences, or walls; any boundary or visible encroachments; all adjoinders and recording information; location of all easements, setback lines, and utilities; or other recorded matters affecting the use of the property.

~~(3336)~~ Life-of-Loan Flood Certification--Tracks the flood zone of the Single Family Housing Unit for the life of the Mortgage Loan.

~~(3437)~~ Limited English Proficiency (LEP)--Refers to persons who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.

~~(3538)~~ Loan Assumption--An agreement between the buyer and seller of Single Family Housing Unit that the buyer will make remaining payments and adhere to terms and conditions of an existing Mortgage Loan on the Single Family Housing Unit and Program requirements. A Mortgage Loan assumption requires written Department approval.

~~(3639)~~ Manufactured Housing Unit (MHU)--A structure that meets the requirements of Texas Manufactured Housing Standards Act, Chapter 1201 of the Texas Occupations Code or ~~FHA~~Federal Housing Administration (FHA) guidelines as required by the Department.

~~(3740)~~ Mortgage--Has the same meaning as defined in §2306.004 of the Tex. Gov't Code.

~~(3841)~~ Mortgage Loan--Has the same meaning as defined in §2306.004 of the Tex. Gov't Code.

~~(3942)~~ Neighborhood Stabilization Program (NSP)--A HUD-funded program authorized by HR3221, the "Housing and Economic Recovery Act of 2008" (HERA) and Section 1497 of the Wall Street Reform and Consumer Protection Act of 2010, as a supplemental allocation to the CDBG Program.

(4043) NOFA--Notice of Funding Availability or announcement of funding published by the Department notifying the public of available funds for a particular Program with certain requirements.

(4144) Nonprofit Organization--An organization in which no part of its income is distributable to its members, directors or officers of the organization and has a current tax exemption classification status from the Internal Revenue Service in accordance with the Internal Revenue Code.

(4245) Office of Colonia Initiatives--A division of the Department authorized under Chapter 2306 of Tex. Gov't Code, which acts as a liaison to the colonias and manages some Programs in the colonias.

(4346) Parity Lien--A lien position whereby two or more lenders share a security interest of equal priority in the collateral.

(4447) Persons with Disabilities--Any person who has a physical or mental impairment that substantially limits one or more major life activities; or has a record of such an impairment; or is being regarded as having such impairment. Included in this meaning is the term handicap as defined in the Fair Housing Act, and disability as defined by other applicable federal or state law.

(4548) Principal Residence--The primary Single Family Housing Unit that a Household inhabits. May also be referred to as "primary residence."

(4649) Program--The specific fund source from which single family funds are applied for and used.

(4750) Program Income--Gross income received by the Administrator or Affiliate directly generated from the use of single family funds, including, but not limited to gross income received from matching contributions under the HOME Program.

(4851) Program Manual--A set of guidelines designed to be an implementation tool for a single family Program ~~which allows the Administrator to search for terms, statutes, regulations, forms and attachments.~~ A Program Manual is developed by the Department and amended or supplemented from time to time.

(4952) Program Rule--Chapters of Part 1 of this title ~~Part~~ which pertain to specific single family Program requirements.

~~(50) Qualified Inspector--Defined by Program Rule or federal requirement.~~

(51)(53) Qualifying Income--The income used to calculate the ~~Applicant and co-Applicant's~~ Borrower's debt-to-income ratio and excludes the total of any income not received consistently for the past 12 months from the date of Application including, but not limited to, income from a full or part time job that lacks a stable job history, potential bonuses, commissions, and child support. Income received for less than 12 months such as retirement annuity or court ordered payments will be considered only if it is expected to continue at least 24 months in the foreseeable future.

~~(5254)~~ Reservation--Funds set-aside for a Household submitted through the Department's Reservation System.

~~(5355)~~ Reservation System--The Department's online tracking system that allows Administrators to reserve funds for a specific Household.

~~(5456)~~ Resolution--Formal action by a corporate board of directors or other corporate body authorizing a particular act, transaction, or appointment. Resolutions must be in writing and state the specific action that was approved and adopted, the date the action was approved and adopted, and the signature of person or persons authorized to sign resolutions. Resolutions must be approved and adopted in accordance with the corporate bylaws of the issuing organization.

~~(5557)~~ Reverse Mortgage--A Home Equity Conversion Mortgage insured by the FHA.

~~(5658)~~ Self-Help--Housing Programs that allow ~~low, very low, and extremely~~ low-income families to build or rehabilitate their Single Family Housing Units through their own labor or volunteers.

~~(5759)~~ Service-Area-- The geographical area where an Administrator conducts Activities under a Contract.

~~(60)~~ Single Family Housing Unit--A residential dwelling designed and built for a Household to occupy as its primary residence where single family Program funds are used for rental, acquisition, construction, reconstruction or rehabilitation Activities of an attached or detached housing unit, including Manufactured Housing Units after installation. May be referred to as a single family "home," "housing," "property," "structure," or "unit."

~~(5861)~~ State Median Family Income (SMI)--The median income for the state adjusted for household size and published annually by the U.S. Department of Housing and Urban Development (HUD).

~~(62)~~ TAC--Texas Administrative Code.

~~(5963)~~ Texas Housing Trust Fund (Texas HTF)—Funding source for state-funded Programs authorized under Chapter 2306 of Tex. Gov't Code.

~~(64)~~ TMCS--Texas Minimum Construction Standards ~~located at <http://www.tdhca.state.tx.us/single-family/training/index.htm>.~~

#### **§20.4 Eligible Single Family Activities**

(a) Availability of funding for and specific Program requirements related to the Activities described in subsection (b)(1) - (7) of this section are defined in each Program's Rules.

(b) Activity Types for eligible single family housing Activities include the following, as allowed by the Program Rule or NOFA:

- (1) Rehabilitation, or new construction of Single Family Housing Units;
- (2) Reconstruction of an existing Single Family Housing Unit on the same site;
- (3) Replacement of existing owner-occupied housing with a new MHU;
- (4) Acquisition of Single Family Housing Units, including acquisition with rehabilitation and accessibility modifications;
- (5) Refinance of an existing Mortgage or Contract for Deed mortgage;
- (6) Tenant-based rental assistance; and
- (7) Any other single family Activity as determined by the Department.

#### **§20.5 Funding Notices**

- (a) The Department will make funds available for eligible Administrators for single family activities through NOFAs, requests for qualifications (RFQs), request for proposals (RFPs), or other methods describing submission and eligibility guidelines and requirements.
- (b) Funds may be allocated through Contract awards by the Department or by Department authority to submit Reservations.
- (c) Funds may be subject to regional allocation in accordance with Chapter 2306 of the Tex. Gov't Code.
- (d) Eligible Applicants must comply with the provisions of the Application materials and funding notice and are responsible for the accuracy and timely submission of all Applications and timely correction of all deficiencies.

#### **§20.6 Administrator Applicant Eligibility**

- (a) Eligible Applicants ~~may include~~ seeking to administer a single family Program are limited to entities such as units of local government, Nonprofit Organizations, or other entities as further provided described in the Program Rule and/or NOFA; and
- (b) ~~An Applicant shall~~ (1) Shall be in good standing with the Department, Texas Secretary of State, Texas Comptroller of Public Accounts and HUD, as applicable.
- (c) ~~An Applicant shall~~ (2) Shall comply with all applicable state and federal rules, statutes, or regulations including those administrative requirements in ~~Chapter~~ Chapters 1 and 2 of this titlePart (relating to Administration and Enforcement).

~~(d) An Applicant must~~ (3) Must provide Resolutions in accordance with the applicable Program Rule.

~~(e)~~ The actions described in the following paragraphs (1) - (3) of this subsection may cause an Applicant and any Applications they have submitted, to administer a Single Family Program to be ineligible:

(1) Applicant did not satisfy all eligibility and/or threshold requirements described in the applicable Program Rule and NOFA;

(2) Applicant is debarred by HUD or the Department; or

(3) Applicant is currently noncompliant or has a history of noncompliance with any Department Program. Each Applicant will be reviewed by the Executive Award and Review Advisory Committee (EARAC) for its compliance history by the Department, as provided in §1.302 (relating to Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter) and §1.303 (relating to Executive Award and Review Advisory Committee (EARAC)) of this ~~title~~ Part. An Application submitted by an Applicant found to be in noncompliance or otherwise violating the rules of the Department may be recommended with conditions or not recommended for funding by EARAC.

~~(f)~~ The Department reserves the right to adjust the amount awarded based on the Application's feasibility, underwriting analysis, the availability of funds, or other similar factors as deemed appropriate by the Department.

~~(g)~~ The Department may decline to fund any Application to administer a Single Family Program if the proposed Activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications ~~which are~~ received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department reserves the right to negotiate individual components of any Application.

~~(h)~~ If an Applicant/Administrator is originating or servicing a Mortgage Loan, the Applicant/Administrator must possess all licenses required under state or federal law for taking the Application of and/or servicing a residential mortgage loan and must be in good standing with respect thereto, unless Applicant/Administrator is specifically exempted from such licensure pursuant to the applicable state and federal laws and regulations regarding residential mortgage loans.

### **~~§20.7~~ Household Eligibility Requirements**

~~(a) The method used to determine Annual Income will be provided in the Program Rule.~~

~~(b) A Household must occupy the Single Family Housing Unit as their Principal Residence for the entirety of the affordability period as established by the Program Rule. If the Household fails to do so, the Department may declare the Mortgage Loan in default and accelerate the note.~~

### **~~§20.8~~ §20.7 Single Family Housing Unit Eligibility Requirements**



(a) A Single Family Housing Unit must be located in the State of Texas.

(b) Real property taxes assessed on an owner-occupied Single Family Housing Unit must be current prior to the date of Mortgage Loan closing or effective date of the grant agreement. Delinquent property taxes will result in disapproval of the Activity unless one or more of the following conditions are satisfied:

(1) Household must be satisfactorily participating in an approved installment agreement in accordance with Texas Tax Code §33.02 with the taxing authority, and must be current for at least three consecutive months prior to the date of Application;

(2) Household must have qualified for an approved tax deferral plan agreement in accordance with Texas Tax Code §§33.06 or 33.065; or

(3) Household must have entered into an installment agreement under Texas Tax Code §§31.031 or 31.032, have made at least one payment under the agreement, and be current on the installment plan.

(c) A Single Family Housing Unit must not be encumbered with any liens which impair the good and marketable title as of the date of the Mortgage Loan closing or effective date of the grant agreement.

(d) Prior to any Department assistance, the owner must be current on any existing Mortgage Loans or home equity loans.

(e) Housing that is built through new construction or reconstruction must meet the requirements of Texas Gov't Code §2306.514 (relating to accessibility), 10 TAC Chapter 21 (relating to Energy Efficiency), and applicable building codes.— Plans submitted for housing under new construction or reconstruction must be prepared or certified by an architect or engineer licensed by the state of Texas.

**§20.98 Fair Housing, Waitlist Policy, Affirmative Marketing and Procedures, Homebuyer Housing Counseling, Denials, Notice to Applicants, Reasonable Accommodations, and Limited English Proficiency**

(a) Fair Housing. In addition to Chapter 1, Subchapter B of this ~~title~~Part (relating to Accessibility and Reasonable Accommodations), an Administrator must comply with all applicable state and federal rules, statutes, or regulations, involving accessibility including the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and the Architectural Barriers Act as well as state and local building codes that contain accessibility requirements; where local, state, or federal rules are more stringent, the most stringent rules shall apply. Administrators receiving Federal or state funds must comply with the Age Discrimination Act of 1975.

(b) Preferences. Administrators of the Amy Young Barrier Removal Program may have a preference prioritizing Households to prevent displacement from permanent housing, or to foster returning to permanent housing related to inaccessible features of the unit.

(c) Waitlist Policy. An Administrator receiving Federal funds must have a Waitlist Policy. The Waitlist Policy must be submitted to the Department each time the Administrator applies for a new contract or a new type of activity. The Administrator may submit a previously approved Waitlist Policy if no changes need to be made. The Waitlist Policy must be submitted at a minimum of every three years if the Administrator continues to accept new ~~applications~~Applications. An Administrator receiving Federal funds must submit a Waitlist Policy with an Affirmative Fair Housing Marketing Plan as described in §20.9(c)(8)(d), relating to Affirmative Marketing and Procedures.

(1) A Waitlist Policy must include any Department approved preferences used in selecting Applicants from the list. An Administrator that has defined preferences in its written waitlist procedures or tenant selection plans, as applicable, will employ preferences first and select Applicants from the waiting list of Applicants meeting that meet the defined preference, still using the neutral random selection process. An Administrator of a federally funded Program may only request to establish preferences that are included in Department planning documents, specifically the One Year Action Plan or Consolidated Plan, or as otherwise allowed for CDBG funded Activities. ~~EXAMPLE: A HOME Program Administrator has specific program requirements to assist one in every four Households at 30% area median family income. This Administrator should use a neutral random selection process to rank Applicants, and select going down the list. When the Administrator must assist a Household at or below 30% area median income they will then go down the list and select, in order, a Household at the 30% income level.~~

(2) An Administrator must accept Applications from possible eligible Applicants for a minimum of a 21 calendar day period. A first-come, first-served basis may not be ~~used when initially selecting among eligible Applicants.~~implemented during initial selection. At the close of the minimum 21 calendar day ~~application~~Application acceptance period, an Administrator must select ~~Applicants~~Applications through a neutral random selection process that the Administrator ~~has described in its written.~~Only after policies and procedures. After the Administrator has allowed for the minimum 21 calendar day period to accept ~~applications~~Applications and has used a neutral random selection process to assist Households, ~~may~~ the Administrator ~~then~~may accept ~~applications~~Applications on a first-come, first-served basis if funds remain in the current contract or Activity type. ~~A HOME Tenant Based Rental Assistance Reservation System Applicant or Administrator applying for disaster funds may request that the~~The Director of Programs, or designee, may approve an exemption from the 21 calendar day period and the neutral random selection process for Administrators of HOME disaster set-aside Tenant Based Rental Assistance, as necessary to respond to the disaster.

(d) Affirmative Marketing and Procedures. An Administrator receiving Federal funds must have an Affirmative Fair Housing Marketing Plan (AFHMP) and satisfy the requirements of this subsection. The AFHMP must be submitted to the Department each time the Administrator applies for a new contract or a new type of activity, and reflect marketing activities specific to the activity type. The Administrator may submit a previously approved AFHMP if no changes need to be made. The plan must be submitted

at a ~~minimum of every~~ least one time in any three-year period if the Administrator continues to accept new ~~applications~~ Applications.

(1) Administrators must use the AFHMP form on the Department's website, HUD Form 935.2B, or create an equivalent AFHMP that includes:

(A) Identification of the population "least likely to apply" for the Administrator's Program(s) without special outreach efforts. Administrators may use the Department's single family affirmative marketing tool to determine populations "least likely to apply." If Administrators use another method to determine the populations "least likely to apply" the AFHMP must provide a detailed explanation of the methodology used. Persons with Disabilities must always be included as a population least likely to apply.

(B) Identification of the methods of outreach that will be used to attract persons identified as least likely to apply. Outreach methods must include identification of a minimum of three organizations with whom the Administrator plans to conduct outreach, and whose membership or clientele consists primarily of protected class members in the groups least likely to apply. If the Administrator is unable to locate three such groups, the reason must be documented in the file.

(C) Identification of the methods to be used for collection of data and periodic evaluation to determine the success of the outreach efforts. If efforts have been unsuccessful, the Administrator's AFHMP should be revised to include new or improved outreach efforts.

(D) Description of the fair housing trainings required for Administrator staff, including delivery method, training provider and frequency. For programs involved in homebuyer transactions, training must include requirements of the Fair Housing Act relating to financing and advertising, expected real estate broker conduct, as well as redlining and zoning for all programs, and discriminatory appraisal practices.

(E) A description ~~for the provision~~ of applicable housing counseling programs and educational materials that will be offered to Applicants. An Administrator offering any TDHCA Mortgage Loan utilizing federal funds must require that ~~potential home purchasers~~ Households receive ~~homeownership~~ housing counseling ~~and education at~~ prior to the time assistance is approved date of the Mortgage Loan closing. Housing counseling may take place in-person or by telephone. Counseling may be provided online only if it is customized to the individual Household. Counseling must address pre- and/or post-purchase topics, as applicable to the Borrower's needs. A certificate of completion of counseling must be dated not more than 12 months ~~from~~ prior to the date of submission of Mortgage Loan ~~application~~ Application. For an Applicant who will receive construction assistance from a federally funded Program on or after August 1, ~~2020, homeownership~~ 2021, housing counseling must be provided by HUD-certified counselors working for agencies participating in HUD's Housing Counseling Program.

(2) Applicability.

(A) Affirmative marketing is required as long as an Administrator of federal funds is accepting ~~applications~~Applications or until all dwelling units are sold in the case of single family homeownership programs.

(B) An Administrator that currently has an existing list of Applicants and ~~are~~is not accepting new ~~Applicants~~Applications or establishing a waitlist ~~are~~is not required to affirmatively market until preparing to accept new Applications, but must develop a plan as described in this subsection. ~~EXAMPLE: An Administrator has an active HOME Reservation System Participation Agreement with a closed waiting list. The Administrator must develop an affirmative marketing plan, but does not have to affirmatively market that portion of its Program. The Administrator should serve its waitlist. When the Administrator is nearing the bottom of the waitlist it should begin to affirmatively market the program, open up the program to new Applicants, finish serving the existing Households on the waitlist, and all new Applicants will be held for 21 calendar days, and then selected based on the neutral random selection process as described in §20.9(b)(2), relating to Waitlist Policy.~~

(C) An Administrator providing assistance in more than one ~~service area~~Service Area must provide a separate plan for each market area in which the housing assistance will be provided.

~~(D) Administrator must conduct an analysis of the AFHMP at the close out of the contract or Activity and attach it to any subsequent AFHMP submitted for the same program.~~

~~(E)~~(D) Administrators must include the Equal Housing Opportunity logo and slogan on any commercial and other media used in marketing outreach.

~~(E)~~ Copies of all outreach and media ads must be kept and made available to the Department upon request.

(e) ~~Homebuyer~~Mobility Counseling. An Administrator offering homeownership or rental assistance that allows the Household to relocate from their current residence must provide the Household access to mobility counseling. For homeownership, mobility counseling may be included in ~~homeownership~~housing counseling and education trainings, and must cover the criteria noted in paragraphs (1) - (3) of this paragraph.

(1) Mobility counseling must, at a minimum, include easily understandable information that the Household can use in determining areas of opportunity within a ~~service area~~Service Area, which must at minimum include the following: which areas have lower poverty rates, average income information of different areas, school ratings, crime statistics, available area services, public transit, and other items the Administrator deems appropriate in helping the Household make informed choices when identifying housing.

(2) Mobility counseling may be offered online or in-person, and must be customized for the Household.

(3) An Administrator must collect signed certifications from Applicants acknowledging they have received mobility counseling. ~~Certifications may be collected as a standalone form or may be integrated into existing program forms.~~

(f) Denials. In the case of any Applicant's denial from a program, a letter providing the specific reason for the denial must be provided to the Applicant within ~~seven~~fourteen calendar days of the denial. Administrators must keep a record of all denied Applicants including the basis for denial. Such records must be retained for the record retention period described by the Agreement or other sources.

(g) Notice to Applicants. Administrator must provide Applicants with eligibility criteria, which shall include the procedures for requesting a reasonable accommodation to the Administrator's rules, policies, practices, and services, including but not limited to, as it relates to the Application process.

(h) A copy of all Reasonable Accommodation requests and the Administrator's compliant responses to such requests, in accordance with §1.204 of this ~~title~~Part (relating to Reasonable Accommodations), must be kept as stated in §1.409 of this ~~title~~Part (relating to Records Retention).

(i) Provisions Related to Limited English Proficiency.

(1) Administrator must have a Language Access Plan that ensures persons with Limited English Proficiency (LEP) have meaningful access and an equal opportunity to participate in services, activities, programs, and other benefits.

(2) Materials that are critical for ensuring meaningful access to an Administrator's major activities and programs, including but not limited to Applications, mortgage loan ~~applications~~Applications, consent forms and notices of rights, should be translated for any population considered least likely to apply that meets the threshold requirements of Safe Harbor LEP provisions as provided by HUD and published on the Department's website. Materials considered critical for ensuring meaningful access should be outlined in the Administrator's Language Access Plan.

(3) The Administrator is required to translate Vital Documents under Safe Harbor guidelines, they must include in their Language Access Plan how such translation services will be provided (e.g., whether the Administrator will use voluntary or contracted qualified translation services, telephonic services, or will identify bilingual staff that will be available to assist Applicants in completing vital documents and/or accessing vital services). If the Administrator plans to use bilingual staff in its translation services, contact information for bilingual staff members must be provided.

(4) The Language Access Plan must be submitted to the Department upon request and be available for review during monitoring visits. HUD and the Department of Justice have issued requirements to ensure meaningful and appropriate access to programs for LEP individuals.

(5) Administrators must offer reasonable accommodations information and Fair Housing rights information in both English and Spanish, and other languages as required by the inclusion of "least likely to apply" groups to reach populations identified as least likely to apply.

(j) ~~The plans noted in subsections (b)(1) and (d)(1) of this section~~ Waitlist Policy and AFHMP, any documentation supporting the plans, and any changes made to the plans, must be kept in accordance with recordkeeping requirements for the specific Program, and in accordance with 10 TAC §1.409.

**~~§20.109~~      Inspection Requirements for Construction Activities**

(a) The inspection requirements in this section are applicable to all construction activities, ~~except for the Amy Young Barrier Removal Program, to the extent funded with SHTE.~~

~~(1b)~~ Interim inspections of construction progress are required for a Draw ~~request~~ Request.

~~(2c)~~ Final inspections are required for all single family construction Activities. The inspection must document that the Activity is complete; meets all applicable codes, requirements, zoning ordinances; and has no known deficiencies related to health and safety standards. A copy of the final inspection report must be provided to the Department and to the Household.

~~(A) A copy of the final inspection report must be provided to the Department and to the Household.~~

~~(B) Administrator, or third party code or Qualified Inspector certification of compliance with the Minimum Energy Efficiency Requirements for Single Family Construction Activities under 10 TAC Chapter 21 is required, as applicable.~~

~~(b)~~ (d) New construction requirements.

(1) A Certificate of Occupancy shall be issued prior to final payment for construction, as applicable. In instances where the local jurisdiction does not issue a Certificate of Occupancy for the Activity undertaken, the Administrator must provide to the Department documentation evidencing that the Single Family Housing Unit ~~has passed all required building codes in accordance to~~ complies with subsection ~~(a)~~ (2c) of this section.

(2) Applicant must demonstrate compliance with Tex. Gov't Code §2306.514, "Construction Requirements for Single Family Affordable Housing," and applicable Program Rules.

~~(e)~~ Reconstruction requirements.

(1) The initial inspection must identify ~~all~~ substandard conditions listed in TMCS along with any other health or safety concerns, unless the unit has been condemned or in the case of a HOME and CSHC Activity, the unit to be reconstructed is an MHU.

(A) A copy of the initial inspection report must be provided to the Department and to the Household as applicable. The initial inspection may be waived if the local building official certifies that the extent of the subject property's substandard conditions is beyond repair, or the property has been condemned.

(B) ~~All substandard~~ Substandard conditions identified in the initial inspection report ~~shall be addressed in the work write-up and cost estimate in~~ must provide adequate detail to ~~document~~ evidence the need for reconstruction.

(2) A Certificate of Occupancy shall be issued prior to final payment for construction, as applicable. In instances where the local jurisdiction does not issue a Certificate of Occupancy for the Activity undertaken, the Administrator must provide to the Department documentation evidencing that the Single Family Housing Unit ~~has passed all required building codes in accordance~~ complies with subsection ~~(a)~~ (2c) of this section.

(3) Applicant must demonstrate compliance with Tex. Gov't Code §2306.514, "Construction Requirements for Single Family Affordable Housing," and applicable Program Rules.

~~(d)~~ Rehabilitation requirements.

~~(1) Single Family Housing Units that have been condemned by the Municipality, County, or the State are not eligible for rehabilitation.~~

(2) The initial inspection must identify all substandard conditions listed in TMCS, along with any other health and safety concerns.

(A) A copy of the initial inspection report must be provided to the Department and to the Household.

(B) All substandard conditions identified in the initial inspection report shall be addressed in the work write-up and cost-estimate ~~in adequate detail to ensure that all substandard conditions are properly corrected.~~

~~(23)~~ (23) Final inspections must document that all substandard and health and safety issues identified in the initial inspection have been corrected. ~~Also, all~~ All deficient items noted on the final inspection report must be corrected prior to approval of the final draw of funds Draw Request.

~~(34)~~ (34) Administrator shall meet the applicable requirements of the TMCS. ~~— Exceptions to specific provisions of TMCS requirements may be waived only through~~ granted in accordance with the TMCS exception request process provided in §20.16 of this chapter (relating to Appeals).

(45) Correction of cosmetic issues, such as paint, wall texture, etc., will not be required if acceptable to the Program as outlined in the Program Rule, or if utilizing a Self-Help Construction Program.

~~(e)~~ (eg) Inspector Requirements.

~~(1) Inspectors hired selected by the Administrator to verify compliance with this chapter must meet Program requirements as outlined~~ be certified by the Administrator to have sufficient professional certifications, relevant education or experience in the Program Rule, as applicable.

~~(2) Within city limits~~ a field directly related to home inspection, which may include but is not limited to installing, servicing, repairing or maintaining the structural, mechanical, plumbing and extraterritorial jurisdictions, municipal code inspectors shall conduct all inspections for local code requirements as applicable electrical systems found in Single Family Housing Units.

~~(3) For areas not within a city or an extraterritorial jurisdiction, all Qualified (2) Inspectors shall conduct inspections using applicable construction standards prescribed by the Department, and utilize Department-approved inspection forms and, checklists as applicable, and standards when conducting inspections.~~

~~(fh)~~ The Department reserves the right to reject any inspection report if, in its sole and reasonable determination, the report does not accurately represent the property conditions or if the inspector does not meet Program requirements. All related construction costs in a rejected inspection report may be disallowed until the deficiencies are adequately cured.

~~(g) A Single Family Housing Unit condemned by a unit of government will not be rehabilitated.~~

#### **§20.1110 Survey Requirements**

~~(a) The Amy Young Barrier Removal Program is excluded from the survey requirements in subsections (b) – (d),~~ to the extent funded with ~~SHTF~~ the Texas HTF.

(b) When Program funds are used for acquisition or construction, an Improvement Survey is required when:

(1) The rehabilitation project is enlarging the footprint; or

(2) The Activity is reconstruction, new construction, or acquisition of an existing home.

(c) If allowed by the Program Rules or NOFA, existing surveys for acquisition only activities may be used if the owner certifies that no changes were made to the footprint of any building or structure, or to any improvement on the Single Family Housing Unit, and the title company accepts the certification and survey.

(d) The Department reserves the right to determine the survey requirements on a per Activity basis if additional survey requirements would, at the sole discretion of the Department, benefit the Activity.

#### **§20.1211 Insurance and Title Requirements**

(a) The Amy Young Barrier Removal Program is excluded from this section, to the extent funded with ~~SHTF~~ the Texas HTF.



(b) Title Insurance Requirements. A "Mortgagee's Title Insurance Policy" is required for all Department Mortgage Loans, exclusive of subordinate lien Mortgage Loans for down payment assistance and closing costs.

(1) The title insurance policy shall be issued by an entity that is licensed and in good standing with the Texas Department of Insurance.

(2) The policy must be in the amount of the Mortgage Loan. The mortgagee named shall be: "Texas Department of Housing and Community Affairs."

(3) The policy must include survey deletion coverage.

(c) Title Reports.

(1) Title reports are acceptable only for grants ~~when title insurance is not available.~~

(2) Title reports must disclose the current ownership, easements, restrictions, and liens relating to the property, and include a search for judgements, mortgages or liens, affidavits, deed restrictions, building setback and easements, and any other factors which may impair the good and marketable title to the property.

(3) The preliminary title report may not be older than six months from the date of submission of the Activity to the Department.

(d) Builder's Risk. Builder's Risk (non-reporting form only) is required when the Department provides construction funds for a Single Family Housing Unit. At the end of the construction period, the binder must be endorsed to remove the "pending disbursements" clause.

(e) Hazard Insurance. If Department funds are provided in an amount that exceeds \$20,000, then:

(1) The Department requires property insurance for fire and extended coverage;

(2) Homeowner's policies or package policies that provide property and liability coverage are acceptable. All risk policies are acceptable;

(3) The amount of hazard insurance coverage should be no less than 100% of the current insurable value of improvements as of the date of Mortgage Loan closing or effective date of the grant agreement; and

(4) The Department must be named as a loss payee and mortgagee on the hazard insurance policy for any Activity receiving a Mortgage Loan from the Department.

(f) Flood Insurance. Flood insurance must be maintained for all structures located in special flood hazard areas as determined by the U.S. Federal Emergency Management Agency (FEMA).

(1) A Household may elect to obtain flood insurance even though flood insurance is not required. However, the Household may not be coerced or required to obtain flood insurance unless it is required in accordance with this section.

(2) Evidence of insurance, as required in this chapter, must be obtained prior to Mortgage Loan funding. A one year insurance policy must be paid. For Amortizing Mortgage Loans, a minimum of two months of reserves must be collected at the closing of the Mortgage Loan. The Department must be named as the loss payee on the policy.

**§20.1312 Loan, Lien and Mortgage Requirements for Activities**

~~(a) The term "Borrower" in this section means the Household that is borrowing funds from or through the Department for the acquisition, new construction and/or rehabilitation of a Principal Residence.~~

~~(b)~~ (a) The fees to be paid by the Department or Borrower upfront or through the closing must be reasonable for the service rendered, in accordance with the typical fees paid in the market place for such activities and:

(1) Fees charged by third party Mortgage lenders are limited to the greater of 2% of the Mortgage Loan amount or \$3,500, including but not limited to origination, loan application, and/or underwriting fees, and

(2) Fees paid to other parties that are supported by an invoice and/or reflected on the Closing Disclosure will not be included in the limit in paragraph (1) of this subsection.

~~(c)~~ (b) A Loan made by a third-party lender in conjunction with Mortgage Loan from a federal source must be fixed-rate and may not include pre-payment penalties, balloon payments, negative amortization, or interest-only periods.

~~(d)~~ (c) Mortgage Loan Underwriting Requirements. The requirements in this ~~paragraph~~ subsection (c) shall apply to all non-forgivable amortizing Mortgage Loans.

(1) Debt-to-Income Ratio. The Household's total Debt-to-Income Ratio shall not exceed 45% of Qualifying Income (unless otherwise allowed or dictated by a participating lender providing a fixed rate Mortgage Loan that is insured or guaranteed by the federal government or a conventional Mortgage Loan that adheres to the guidelines set by Fannie Mae and Freddie Mac.) A potential Borrower's spouse who does not apply for the Mortgage Loan will be required to execute the information disclosure form(s) and the deed of trust as a "non-purchasing" spouse. The "non-purchasing" spouse will not be required to execute the note. For credit underwriting purposes all debts and obligations of the primary potential Borrower(s) and the "non-purchasing" spouse will be considered in the potential Borrower's total Debt-to-Income Ratio.

(2) Credit Qualifications.

~~(A) Potential Borrowers must have a credit history that indicates reasonable ability and willingness to meet debt obligations. In order for the Department to make a reasonable determination, all Borrowers must provide a credit release form.~~ (A) The Department may utilize credit reports ~~if less~~ submitted by the Administrator that are not more than 90 days old as part of the Mortgage Loan ~~application~~ Application or may obtain tri-merge credit reports on all potential Borrowers submitted to the Department for approval at the time of Mortgage Loan ~~application~~ Application. In addition to the initial credit report, the Department may, at its discretion, obtain one or more additional credit reports before Mortgage Loan closing to ensure the potential Borrower still meets Program requirements. Acceptable outstanding debt means that all accounts are paid as agreed and are current.

(B) Unacceptable Credit. Applicants meeting one or more of the following criteria will not be qualified to receive a single family Mortgage Program Loan from the Department:

(i) A credit history reflecting payments on any open consumer, retail and/or installment account (e.g., auto loans, signature loans, payday loans, credit cards or any other type of retail and/or installment loan, with the exception of a medical account) which have been delinquent for more than 30 days on two or more occasions within the last 12 months and must be current for the six months immediately preceding the date of the Mortgage Loan ~~application~~ Application;

(ii) A foreclosure or deed-in-lieu of foreclosure or a potential Borrower in default on a mortgage at the time of the short sale any of which had occurred or been completed within the last 24 months prior to the date of Mortgage Loan ~~application~~ Application;

(iii) An outstanding Internal Revenue Service tax lien or any other outstanding tax liens where the potential Borrower has not entered into a satisfactory repayment arrangement and been current for at least 12 months prior to the date of Mortgage Loan ~~application~~ Application;

(iv) A court-created or court-affirmed obligation or judgment caused by nonpayment that is outstanding at the date of Mortgage Loan ~~application~~ Application or any time prior to closing of the Mortgage Loan;

(v) Any account (with the exception of a medical account that is delinquent or has been placed for collection) that has been placed for "collection," "profit and loss" or "charged off," or repossession within the last 24 months prior to the date of Mortgage Loan ~~application~~ Application;

(vi) Any reported delinquency on any government debt at the date of Mortgage Loan ~~application~~ Application;

(vii) A bankruptcy that has been filed within the past 24 months prior to the date of the Mortgage Loan;  
or

(viii) Any reported child support payments in arrears unless the potential Borrower has evidence of having met satisfactory payment arrangements for at least 12 months prior to the date of the Mortgage Loan.

(C) Mitigation for Unacceptable Credit. The following exceptions will be considered as mitigation to the unacceptable credit criteria in subparagraph (B) of this paragraph- (2) of this subsection (c).

(i) The potential Borrower is a Domestic Farm Laborer and receives a substantial portion of his/her income from the production or handling of agriculture or aquacultural products, and has demonstrated the ability and willingness to meet debt obligations as determined by the Department.

(ii) The potential Borrower provides documentation to evidence that the outstanding delinquency or unpaid account has been paid or settled or the potential Borrower has entered into a satisfactory repayment arrangement or debt management plan and been current for at least 12 consecutive months prior to the date of Mortgage Loan.

(iii) The potential Borrower submits to the Department a written explanation of the cause for the previous delinquency, which has since been brought current and is acceptable to the Executive Director or his or her designee.

(iv) Any and all outstanding judgments must be released prior to closing of Mortgaged Loan.

(v) If a potential Borrower is currently participating in a debt management plan, and the trustee or assignee provides a letter to the Department stating they are aware and agree with the potential borrower applying for a Mortgage Loan. If a potential Borrower filed a bankruptcy, the bankruptcy must have been discharged or dismissed more than 12 months prior to the date of Mortgage Loan ~~application~~Application and the potential Borrower has re-established good credit with at least one existing or new active consumer account or credit account that is in good standing with no delinquencies for at least 12 months prior to the date of Mortgage Loan ~~application~~Application.

(vi) If a Chapter 13 Bankruptcy was filed, a potential Borrower must have satisfactorily made 12 consecutive payments and obtain court trustee's written approval to enter into Mortgage Loan.

(D) Liabilities.

(i) The potential Borrower's liabilities include all revolving charge accounts, real estate loans, alimony, child support, installment loans, and all other debts of a continuing nature with more than 10 monthly payments remaining. Debts for which the potential borrower is a co-signer will be included in the total monthly obligations. For payments with 10 or fewer monthly payments remaining, there shall be no late payments within the past 12 months or the debt will be included into the Debt-to-Income Ratio calculation. Payments on installment debts which are paid ~~off~~in full prior to ~~funding~~the date of closing are not included for qualification purposes. Payments on all revolving debts ~~(e.g., including~~ credit cards,

payday loans, lines of credit, unsecured loans), and ~~certain types of~~ installment loans that ~~appear to be recurring in nature~~ have been opened within three months of closing a prior account with the same lender will be included in the Debt-to-Income Ratio calculation, even if the potential Borrower intends to pay off the accounts, ~~since the potential Borrower can reuse those credit sources~~, unless the account is paid off in full and closed. ~~If the credit report shows a~~ Any revolving account with an outstanding balance but no specific minimum payment, the reflected on the credit report and no monthly statement showing the required monthly payment must be will include a payment amount calculated as the greater of 5% of the outstanding balance or \$10. ~~If the potential Borrower provides a copy of the current statement reflecting the monthly payment that amount may be used for the Debt to Income Ratio calculation.~~

(ii) if a potential Borrower provides written evidence that a debt will be deferred at least 12 months from the date of closing, the debt will not be included in the Debt-to-Income Ratio calculation. Payments on any type of loan that have been deferred or have not yet commenced, including student loans and accounts in forbearance, will be calculated using ~~1.5%~~ 4.5% of the outstanding balance or monthly payment reported on the potential Borrower's credit report, whichever is less. Other types of loans with deferred payment will be calculated using the monthly payment shown on the potential Borrower's credit report. If the credit report does not include a monthly payment for the loan, the monthly payment shown in the loan agreement or payment statement will be utilized.

~~(E) Non-Traditional Credit and Insufficient Credit. If sufficient credit history is not evidenced based on subparagraph (A) of this paragraph, an Applicant must provide three lines of nontraditional credit such as utility payments, auto insurance, cell phone payments, child care or other credit, as approved by the Department, listed in their name and reflecting no more than one 30 day delinquency on payments due to nontraditional creditors within the last 12 months. The Non-Traditional Credit provided must not qualify as Unacceptable Credit as specified in subparagraph (B) of this paragraph.~~

~~(F)~~ (E) Equal Credit Opportunity Act. The Department and/or the Administrator on behalf of the Department will comply with all federal and state laws and regulations relating to the extension of credit, including the Equal Credit Opportunity Act (ECOA) (15 U.S.C. 1691 et seq.) and its implementing regulation at 12 CFR Part 1002 (Regulation B) when qualifying potential Borrower(s) to receive a single family Mortgage Loan from the Department.

~~(ed)~~ (ed) The Department reserves the right to deny assistance in the event that the senior lien conditions are not to the satisfaction of the Department, as outlined in the Program Rules.

~~(fe)~~ (fe) Lien Position Requirements.

(1) A Mortgage Loan made by the Department shall be secured by a first lien on the real property if the Department's Mortgage Loan is the largest Mortgage Loan secured by the real property; or

(2) The Department may accept a Parity Lien position if the original principal amount of the leveraged Mortgage Loan is equal to or greater than the Department's Mortgage Loan; or

(3) The Department may accept a subordinate lien position if the original principal amount of the leveraged Mortgage Loan is at least 55% of the combined repayable or amortized loans; however, liens related to other subsidized funds provided in the form of grants and non-amortizing Mortgage Loans, such as deferred payment or Forgivable Loans, must be subordinate to the Department's payable Mortgage Loan.

(~~g~~f) Loan Terms. All Mortgage Loan terms must meet all of the following criteria:

(1) May not exceed a term of 30 years;

(2) May not be for a term of less than five years; and

(3) Interest rate may be as low as 0% as provided in the Program Rules.

(~~h~~g) Loan Assumption. A Mortgage Loan may be assumable if the Department determines the potential Borrower assuming the Mortgage Loan is eligible according to the underwriting criteria of this section and complies with all Program requirements in effect at the time of the assumption.

(~~i~~h) Cash Assets. An Applicant with unrestricted cash assets in excess of \$25,000 must use such excess funds towards the acquisition of the property in lieu of loan proceeds. Unrestricted cash assets for this purpose are Net Family Assets defined in 24 CFR §5.603.

(~~j~~i) Appraisals.

(1) An appraisal is required by the Department on each property that is part of an acquisition Activity, except for down payment assistance only, prior to closing to determine the current market value.

(2) The appraisal must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation.

(3) The Appraiser must have an active and current license by the Texas Appraisal Licensing and Certification Board.

(~~k~~j) Combined Loan to Value. The Combined Loan to Value ratio of the property may not exceed 100% of the cost to acquire the property. The lien amounts of Forgivable Loans shall be included when determining the Combined Loan to Value ratio. The cost to acquire the property may exceed the appraised value only for an amount not to exceed the closing costs but in no case may result in cash back to the Borrower or exceed the limits under subsection (~~b~~)(1)a of this section.

(~~k~~) Escrow Accounts.

(1) An escrow account for real estate taxes, hazard and flood insurance premiums, and other related costs must be established if:

(A) The Department holds a first lien Mortgage Loan which is due and payable on a monthly basis to the Department; or

(B) The Department holds a subordinate Mortgage Loan and the first lien lender does not require an escrow account, ~~the Department will require an escrow account to be established.~~

(2) If an escrow account held by the Department is required under one of the provisions described in this subsection, (k), then the following provisions described in subparagraphs (A) - (F) of this paragraph (2) of this subsection (k) are applicable:

(A) The Borrower must contribute monthly payments to cover the anticipated costs, as calculated by the Department, of real estate taxes, hazard and flood insurance premiums, and other related costs as applicable;

(B) Escrow reserves shall be calculated based on land and completed improvement values;

(C) The Department may require up to two months of payment reserves for hazard and/or flood insurance, and property taxes to be collected at the time of closing to establish the required amounts in the escrow account;

(D) In addition, the Department may also require that the property taxes be prorated at the time of closing and those funds be deposited with the Department;

(E) The Borrower will be required to deposit monthly funds to an escrow account ~~with~~ managed by the Mortgage Loan servicer in order to pay for payment of the taxes and insurance on the property. This will ensure that funds are available to pay for the cost of real estate taxes, insurance premiums, and other assessments when they come due;

(F) These funds are included in the Borrower's monthly loan payment to the Department or to the Mortgage Loan servicer; and

(G) The Department will establish and administer the escrow accounts in accordance with the Real Estate Settlement and Procedures Act of 1974 (RESPA) under 12 U.S.C. §2601 and its implementing regulations at 12 CFR Part 1024 (Regulation X), as applicable.

~~(m)~~ Requirements for Originating Mortgage Loans for the Department.

(1) Any Administrator or staff member of an Administrator originating Mortgage Loans for the Department must be properly licensed and registered as a residential mortgage loan originator in accordance with Chapters 157 and 180 of the Texas Finance Code and its implementing regulations at

Chapter 81, Part 4 of Title 7 of the TAC, unless exempt from licensure or registration pursuant to the applicable state and federal laws and regulations regarding residential mortgage loans.

(A) The Department reserves the right to reject any Mortgage Loan ~~application~~Application originated by an Administrator or individual that is not properly licensed or registered.

(B) The Department will not reimburse any expenses related to a Mortgage Loan ~~application~~Application received from an Administrator or individual that is not properly licensed or registered.

(2) Only Administrators approved by the Department may issue initial mortgage disclosures, including the Loan Estimate and other integrated disclosures for Mortgage Loans made by the Department as required under RESPA, and its implementing Regulation X, the Dodd Frank Wall Street Reform and Consumer Protection Act (Dodd Frank) at 124 Stat.1375, the Truth in Lending Act (TILA) at 15 U.S.C. §1601 and its implementing regulations at 12 CFR §1026 (Regulation Z), and any applicable Texas laws, statutes, and regulations regarding consumer disclosures for residential mortgage loan transactions.

(A) The Department reserves the right to reject any ~~application for~~ Mortgage Loan Application and Loan Estimate submitted by an Administrator that has not received Department approval because the loan product as disclosed is not offered or the Borrower does not qualify for that loan product.

(B) The Department will not reimburse any expenses related to a Loan Estimate or Application received from an Administrator that does not have Department approval.

(3) Only an Administrator approved by the Department may issue final mortgage disclosures, including the Closing Disclosures and other integrated disclosures, for Mortgage Loans made by the Department as required under RESPA, ~~---~~Regulation X, Dodd Frank, TILA, Regulation Z), and any applicable Texas laws, statutes, and regulations regarding consumer disclosures for residential mortgage loan transactions.

(A) The Department reserves the right to reject any Closing Disclosure issued by an Administrator or title company without Department approval.

(B) The Department reserves the right to refuse to fund a Mortgage Loan with a Closing Disclosure that does not have Department approval.

(4) The Department will not allow disbursement of any portion of the Department's Mortgage Loan for acquisition until seller delivers to the Borrower a fully executed deed to the property. After execution of the deed, the deed must be recorded in the records of the county where the property is located.

(5) The first monthly mortgage payment upon closing of the Mortgage Loan with monthly scheduled payments will be due one full month after the last day of the month in which the Mortgage Loan closed. ~~For example, if the Mortgage Loan closed on May 10th or May 30th, the first Mortgage payment will be due July 1st.~~



(am) Principal Residence. Loans are only permitted for potential Borrowers who will occupy the property as their Principal Residence. The property must be occupied by the potential Borrower within the later of 60 days after Mortgage Loan closing or construction completion of the final Draw of Department funds for rehabilitation, whichever occurs last. It must remain the Household's Principal Residence as defined in the Mortgage Loan documents or in the case of Forgivable Loans, until the forgiveness period has concluded in accordance with the Mortgage documents.

(en) Life-of-Loan Flood Certifications will be required to monitor for FEMA flood map revisions and community participation status changes for the term of the Mortgage Loan.

(po) Requirements for Subordinating to a Refinanced Loan. The Department may consent to the refinancing of the Household's superior third-party lender mortgage and execute a subordination agreement when the following conditions are met:

- (1) Borrower is not refinancing into an adjustable rate mortgage;
- (2) Combined loan balances do not exceed 100% of appraised value;
- (3) There is no increase in principal or interest payments, with the exception made for Borrowers refinancing from a 30-year term to a shorter loan term;
- (4) The Borrower will not receive any proceeds from the transaction unless it is for overpayment of Borrower's costs;
- (5) All lienholders have consented to the refinancing; and
- (6) In the case of Reverse Mortgages insured by the federal government (e.g. Home Equity Conversion Mortgage insured by the Federal Housing Administration), all other requirements are met.

**§20.1413 Amendments to Written Agreements and Contracts**

(a) The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver amendments to any written Agreement or Contract that is not a Household commitment contract, provided that the requirements of this section are met unless otherwise indicated in the Program Rules.

(1) Time extensions. The Executive Director or his/her designee may grant up to a cumulative 12 months extension to the end date of any Contract unless otherwise indicated in the Program Rules. Any additional time extension beyond a cumulative 12 months granted by the Executive Director shall include a statement by the Executive Director identifying the unusual, non-foreseeable or extenuating circumstances justifying the extension. If more than a cumulative 12 months of extension is requested and the Department determines there are no unusual, non-foreseeable, or extenuating circumstances,

it will be presented to the Board for approval, approval with revisions, or denial of the requested extension.

(2) Award or Contract Reductions. The Department may decrease an award for any good cause including but not limited to the request of the Administrator, insufficient eligible costs to support the award, or failure to meet deadlines or benchmarks.

(3) Changes in ~~Household~~Households Served. Reductions in Contractual deliverables and the number of Households to be served shall require an amendment to the Contract. ~~Increases in Contractual deliverables and Households that do not shift funds, or cumulatively shift less than 10% of total award or Contract funds, shall be completed through an amendment to the Contract and be approved administratively.~~ If such amendment is not approved, the Applicant will have the right to appeal in accordance with §1.7 of this ~~title~~Part (relating to Appeals Process).

(4) Increases in Award and Contract Amounts.

~~(A) For a specific single family Program's Contract, the Department can award a cumulative increase of funds up to 50% of the original award amount.~~

~~(B)~~(A) Requests for increases in funding will be evaluated by the Department on a first-come, first-served basis to assess the capacity to manage additional funding, the demonstrated need for additional funding and the ability to expend the increase in funding within the Contract ~~period~~Term.

~~(C)~~(B) The considerations to approve an increase in funding shall include, at a minimum, fund availability, and Administrator's ability to continue to meet existing deadlines, benchmarks, and reporting requirements.

~~(D)~~(C) Increases in funds may come from Program funds, Deobligated funds, or Program Income.

~~(E)~~(D) Qualifying requests will be recommended to the Executive Director or his/her designee for approval.

~~(F)~~(E) The Board must approve requests for increases in Program funds in excess of ~~the cumulative increase threshold established in this subsection~~25% of the original Contract amount.

(5) The ~~single family Program Directors~~Division Director may approve Contract budget amendments that meet the requirements of paragraphs (A) – (D) of this subsection if:

~~(A) Funds must be available in a budget line item;~~

~~(B) The budget change(s) are less than 10% of the total Contract's budget;~~

~~(C) If units or Activities are desired to be increased, but~~move unexpended funds must be shifted from one eligible cost category to another budget line item in which units or Activities from that budget line item~~if the amendment would not have been completed; and~~impacted the award of funds

~~(D) The cumulative total of a Contract's budget modifications cannot exceed 10% of the original total Contract's budget amount.~~

(6) The Division Director may approve other amendments to a Contract or an Agreement, including amendments to the Administrator's ~~service area~~Service Area, benchmarks, or selection of Activities administered under a Contract or an Agreement, provided that the amendment would not have negatively impacted the priority of Board approved Applications.

(b) The Department may terminate a Contract in whole or in part if the Administrator does not achieve performance benchmarks as outlined in the Program Rule and/or Contract, or for any other reason in the Department's reasonable discretion.

(c) In all instances noted in this section, where an expected Mortgage Loan transaction is involved, Mortgage Loan documents will be modified accordingly at the expense of the Administrator/borrower.

#### **§20.1514 Compliance and Monitoring**

(a) The Department will perform monitoring of single family Program Contracts and Activities in order to ensure that applicable requirements of federal laws and regulations, and state laws and rules have been met, and to provide Administrators with clear communication regarding the condition and operation of these Contracts and Activities so they understand clearly, with a documented record, how they are performing in meeting obligations.

(1) The physical condition of assisted properties and Administrator's documented compliance with contractual and Program requirements may be subject to monitoring.

(2) The Department may contract with an independent third party to monitor an Activity for compliance with any conditions imposed by the Department in connection with the award of any Department funds, and appropriate state and federal laws.

(b) If an Administrator has Contracts for more than one single family Program, or other programs through the Department or the State, the Department may, at its discretion, coordinate monitoring of those programs with monitoring of single family Contracts under this chapter.

(c) In general, Administrators will be scheduled for monitoring based on federal or state monitoring requirements, or a risk assessment process including but not limited to: the number of Contracts administered by the Administrator, 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, and reports of fraud, waste and/or abuse. The risk assessment will also be used to determine which Administrators will have an onsite review, and which may have a desk review.

(d) The Department will provide an Administrator with written notice of any upcoming onsite or desk monitoring review, and such notice will be given to the Administrator by email to the Administrator's chief executive officer at the email address most recently provided to the Department by the Administrator. In general, a 30 calendar day notice will be provided. However, if a credible complaint of fraud is received, the Department reserves the right to conduct unannounced monitoring visits, or provide a shorter notice period. If the Department receives a complaint under §1.2 of this ~~title~~Part (relating to Department Complaint System to the Department), it will follow the procedures outlined therein instead of this section. It is the responsibility of the Administrator to maintain current contact information with the Department for the organization, key staff members, and governing body in accordance with §1.22 of this ~~title~~Part (relating to Providing Contact Information to the Department).

(e) Upon request, an Administrator 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, along with access to assisted properties.

(f) Post Monitoring Procedures. After the review, a written monitoring report will be prepared for the Administrator describing the monitoring assessment and any corrective actions, if applicable. The monitoring report will be emailed to the Administrator. 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.

(g) Administrator Response. If there are any Findings and/or Concerns of noncompliance requiring corrective action, the Administrator will be provided a 30 day corrective action period, which may be extended for good cause. In order to receive an extension, the Administrator must submit a written request to the Compliance Division within the corrective action period, stating the basis for good cause that the Administrator believes justifies the extension. In general, the Department will approve or deny the extension request within three business days. Failure to timely respond to a corrective action notice and/or failure to correct all Findings will be taken into consideration if the Administrator applies for additional funding and may result in suspension of the Contract, referral to the Enforcement Committee, or other action under this ~~title~~Part.

(h) Monitoring Close Out. After completion of the monitoring review, a close out letter will be issued to the Administrator. If the Administrator supplies evidence establishing continual compliance that negates the Finding of noncompliance, the issue of noncompliance will be rescinded. If the Administrator's response satisfies all Findings and Concerns noted in the monitoring letter, the issue of noncompliance will be noted as resolved. In some circumstances, the Administrator may be unable to secure documentation to resolve a Finding. In those instances, if there are mitigating circumstances, the Department may note the Finding is not resolved but may close the issue with no further action required. If the Administrator's response does not correct all Findings noted, the close out letter will identify the

documentation that must be submitted to correct the issue. Results of monitoring Findings may be reported to the EARAC for consideration relating to Previous Participation.

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

(1) If the issue is related to a federal program requirement or prohibition, Administrators may contact an applicable federal program officer for guidance, or request that the Department contact applicable federal program officer for guidance without identifying the Administrator.

(2) If the issue is related to a provision of the Contract or a requirement of the TAC, or a provision of UGMS, or TxGMS (as applicable), the Administrator may submit an appeal to the Executive Director consistent with §1.7 of this titlePart (relating to Appeals Process).

(3) An Administrator may request Alternative Dispute Resolution (ADR). An Administrator must send a proposal to the Department's Dispute Resolution Coordinator to initiate ADR pursuant to §1.17 of this titlePart (relating to Alternative Dispute Resolution).

(j) If an Administrator does not respond to a monitoring letter or fails to provide acceptable evidence of timely compliance after notification of an issue, the matter will be reported to the Department's Enforcement Committee for consideration of administrative penalties, full or partial cost reimbursement, or suspension.

(k) An Administrator must provide timely response to corrective action requirements imposed by other agencies. Administrator records may be reviewed during the course of monitoring or audit of the Department by HUD, the Office of the Inspector General, the State Auditor's Office, or others. If a Finding or Concern is identified during the course of a monitoring or audit by another agency, the Administrator is required to provide timely action and response within the conditions imposed by that agency's notice.

## **§20.1615 Appeals**

Appeal of Department staff decisions or actions will follow requirements in Program Rules and Chapter 1 of this titlePart (relating to Administration).

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**BOARD ACTION REQUEST**

**SINGLE FAMILY AND HOMELESS PROGRAMS DIVISION**

**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities, and an order proposing new 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities, and directing their publication for public comment 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**, pursuant to Tex. Gov't Code §2306.187, the Department is required to develop and adopt rules relating to Minimum Energy Efficiency requirements for new construction, reconstruction, and rehabilitation activities for Single Family dwellings;

**WHEREAS**, the proposed repeal of 10 TAC Chapter 21 and the proposed new 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities, are being made to include alternatives when Energy Star-certified Manufactured Housing Units are not available and clarify experience requirements for inspectors selected by Administrators; and

**WHEREAS**, upon Board approval, the proposed new rule will be submitted to the *Texas Register* to be released for public comment which will be accepted from September 17, 2021, through October 18, 2021.

**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 repeal of 10 TAC Chapter 21 and the proposed new 10 TAC Chapter 21, regarding Minimum Energy Efficiency Requirements for Single Family Construction Activities, in the form presented to this meeting, to be published in the *Texas Register* for public comment and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles.

## **BACKGROUND**

The purpose of repealing 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities and proposing a new 10 TAC Chapter 21 is to include flexibility for purchase of otherwise energy efficient units of manufactured housing when units that have Energy Star certification are either not available, or the cost of the units exceeds the resources available and reasonable alternatives could be made available. The proposed rule also clarifies the requirements for providers of energy efficiency inspection services selected by Administrators of single family programs.

The Department is repealing and proposing a new chapter instead of amending the existing chapter. -A black-line version with all changes is attached and will be available on the Department's website during the public comment period.

The Department held a virtual roundtable discussion on July 7, 2021, regarding the Minimum Energy Efficiency Requirements for Single Family Construction Activities and other single family rules being presented under separate items at this meeting. Comments and suggestions received from the roundtable discussions were taken into consideration during the preparation of the proposed rule as presented at this meeting.

The blackline proposed rule is attached to indicate to the Board and the public what is being changed.



**Attachment A: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities**

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities.

The purpose of the proposed 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 proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to existing minimum energy efficiency standards for Single Family Programs.

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

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

4. The proposed repeal does not result in an increase in fees paid to the Department or a decrease in fees paid to the Department.

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

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to existing minimum energy efficiency standards for Single Family Programs.

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

8. The proposed 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 this proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate 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 proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

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

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 17, 2021, to October 18, 2021, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email HOME@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, October 18, 2021.

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

## **CHAPTER 21 MINIMUM ENERGY EFFICIENCY REQUIREMENTS FOR SINGLE FAMILY CONSTRUCTION ACTIVITIES**

§21.1 Purpose

§21.2 General Requirements

§21.3 Definitions

§21.4 New Construction and Reconstruction Activities

§21.5 Manufactured Housing Unit Activities

§21.6 Rehabilitation Activities

## **Attachment B: Preamble for proposed new 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities**

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities. The purpose of the proposed new sections is to implement a more germane rule and provide flexibility in the event of limited supply of EnergyStar Certified Manufactured Housing Units.

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

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

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

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

1. The proposed rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to minimum energy efficiency requirements for the Department's Single Family Programs.
2. The proposed new 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 proposed rule changes do not require additional future legislative appropriations.
4. The proposed rule changes will not result in an increase in fees paid to the Department or a decrease in fees paid to the Department.
5. The proposed rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The proposed rule will not expand or repeal an existing regulation.
7. The proposed rule will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed 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 proposed 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 §2306.111.

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

2. There are approximately 60 rural communities currently participating in construction activities under Single Family Programs that are subject to the proposed rule for which no economic impact of the rule is projected during the first year the rule is in effect.

3. The Department has determined that because the rule serves to implement a more germane rule and provide flexibility in the event of limited supply of EnergyStar Certified Manufactured Housing Units, and does not establish new requirements for which there would be an associated cost, 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 proposed rule does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed rule has no economic effect on local employment because the proposed rule provides flexibility in the event of limited supply of EnergyStar Certified Manufactured Housing Units, and does not establish new requirements or activities that may positively or negatively impact local economies.

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 participation in the Department's Single Family Programs is at the discretion of the local government or other eligible subrecipients, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has also 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 a more germane rule that provides flexibility in the event of limited supply of EnergyStar Certified Manufactured Housing Units. There will not be any economic cost to any individuals required to comply with the new section because the processes described by the rule have already been in place through the rule found at this section 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 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 rule updates and clarifies existing requirements and does not impose new requirements.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 17, 2021, to October 18, 2021, to receive input on the new proposed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email [abigail.versyp@tdhca.state.tx.us](mailto:abigail.versyp@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, October 18, 2021.

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

## **CHAPTER 21 MINIMUM ENERGY EFFICIENCY REQUIREMENTS FOR SINGLE FAMILY CONSTRUCTION ACTIVITIES**

### **§21.1 Purpose**

(a) Tex. Gov't Code, §2306.187 requires that the Department develop and adopt rules relating to Minimum Energy Efficiency requirements for new construction, reconstruction, and rehabilitation activities in Single Family Programs.

(b) This chapter describes the Minimum Energy Efficiency Requirements for all single family construction activities, which includes the Department's HOME Investments Partnership Program (HOME), Texas Housing Trust Fund (Texas HTF), Neighborhood Stabilization Program (NSP), Office of Colonia Initiatives (OCI) Programs, and other single family ~~programs~~Programs as developed by the Department.

### **§21.2 General Requirements**

Unless otherwise noted, this chapter only applies to single family ~~programs~~Programs. Program rules may impose additional requirements related to any provision of this chapter. Elements of local residential building codes that require a greater degree of energy efficiency than this chapter, in part or in whole, shall also be followed.

### **§21.3 Definitions**

(a) Any capitalized terms that are defined in Tex. Gov't Code, ~~§ Chapter~~ Chapter 2306, and Chapter 1 of this ~~titlePart~~ (relating to Administration), Chapter 2 of this ~~titlePart~~ (relating to Enforcement), Chapter 20 of this ~~titlePart~~ (relating to Single Family Programs Umbrella Rule), or other applicable Department Program Rule, have, when capitalized, the meanings ascribed to them therein.

(b) The following words and terms, when used in this chapter, shall have the following meanings unless the context or the Notice of Funding Availability (NOFA) indicates otherwise.

(1) ENERGY STAR Certified Appliances, Equipment, and Products--Labeled appliances, equipment, and products that are independently certified to save energy without sacrificing features or functionality, meeting the US EPA's specifications for energy efficiency and performance.

(2) ENERGY STAR Certified Home--A new construction home that has earned the ENERGY STAR label and has undergone a process of inspections, testing, and verification to meet requirements set forth by the US EPA.

(3) ENERGY STAR Certified Manufactured Housing Unit--A manufactured home that has been designed, produced and installed by the home manufacturer to meet ENERGY STAR requirements for energy efficiency.

(4) RESNET--Residential Energy Services Network. RESNET is an independent, nonprofit organization established in 1995 to help homeowners reduce the cost of their utility bills by making their homes more

energy efficient. RESNET-certified Home Energy Systems Raters are required to inspect, test, and verify homes for ENERGY STAR certification.

(5) WaterSense Labeled Fixtures--Labeled products that are backed by independent, third-party testing and certification, meeting the US EPA's specifications for water efficiency and performance.

(6) US EPA--United States Environmental Protection Agency.

#### **§21.4 New Construction and Reconstruction Activities**

(a) Single family residential dwellings, as defined in §388.002 of the Texas Health and Safety Code, that are newly constructed or reconstructed shall comply with §388 of the Health and Safety Code (Texas Building Energy Performance Standards).

(b) Effective September 1, 2016, the Texas State Energy Conservation Office adopted the 2015 International Residential Code (Chapter 11) as the state-mandated energy code for all residential construction, which includes one- and two-family residences of three stories or less above grade.

#### **§21.5 Manufactured Housing Unit Activities**

(a) All Manufactured Housing Units installed as replacement for sub-standard housing shall be ENERGY STAR certified-; or

(b) In cases where the type of product is not ENERGY STAR, or if ENERGY STAR products are not reasonably available due to supply shortages or cost limitations, Administrators may select the highest rated product available, so long as the product delivers at least 10% energy savings in comparison to products meeting the minimum code.

#### **§21.6 Rehabilitation Activities**

(a) All Rehabilitation activities shall comply with this chapter.

(b) Certifications of compliance with this cChapter shall be conducted by the Administrator or a code or other Qualified Inspector,qualified inspector for release of final payment from the Department as outlined in the Program Rule. Inspectors selected by the Administrator to verify compliance with this chapter must be certified by the Administrator to have sufficient professional certifications, relevant education or experience in a field directly related to home inspection, which may include but is not limited to installing, servicing, repairing or maintaining the structural, mechanical, plumbing, and electrical systems found in Single Family Housing Units.

(c) If the proposed scope of work or the awarded construction contract for the Rehabilitation of an existing single family residential unit includes an item described in paragraphs (1) - (10) of this subsection, the specific requirement so noted in paragraphs (1) - (10) shall apply:

(1) Replacement or installation of central heating and cooling equipment and appliances shall be installed in accordance with the manufacturer's instructions and the requirements of Chapter 14 of the 2015 International Residential Code;

(2) Replacement or installation of duct systems serving heating, cooling and ventilation equipment shall be installed in accordance with the provisions of Chapter 16 of the 2015 International Residential Code;

(3) If central heating and cooling equipment is replaced or installed, attic insulation shall be installed or increased according to Chapter 11, Figure N1102.1.2 of the 2015 International Residential Code, including insulation covering the top plates of exterior walls. Eave baffles and access hatches shall be installed as specified in Chapter 11, Sections N1102.2.3- N1102.2.4 of the 2015 International Residential Code.

(4) If ductless heating and cooling systems (also known as mini-split, multi-split or variable refrigerant flow (VRF) heat pump systems) are replaced or installed, they shall be ENERGY STAR certified;

(5) If exhaust fans are replaced or installed in bathrooms or kitchens, they shall be ENERGY STAR certified and installed in accordance with Chapter 15 of the 2015 International Residential Code;

(6) If windows are installed, they shall be ENERGY STAR certified windows, meeting the U-factor and Solar Heat Gain Coefficient for the climate zone of the dwelling as identified in Chapter 11, Table N1102.1.2 of the 2015 International Residential Code;

(7) If doors are installed, they shall be ENERGY STAR certified doors;

(8) Electrical fixtures, equipment and appliances that are replaced or installed, where applicable, shall be ENERGY STAR certified products;

(9) Plumbing fixtures that are replaced or installed, where applicable, shall be WaterSense labeled products; and

(10) Domestic water heaters, storage and tankless, when replaced or installed, shall meet the Federal Energy Conservation Standards required by 10 CFR §430.32, as they may be revised from time to time.

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**BOARD ACTION REQUEST**

**SINGLE FAMILY AND HOMELESS PROGRAMS DIVISION**

**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, and an order proposing new 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, and directing their publication for public comment 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; and

**WHEREAS**, pursuant to Tex. Gov't Code §2306.752, the Department is required to establish, operate, monitor, and fund an Owner-Builder Loan Program to enable Owner-Builders to purchase or refinance real property on which to build new residential housing or improve existing residential housing, and the Texas Bootstrap Loan Program fulfills this statutory requirement;

**WHEREAS**, the proposed new 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, further clarifies program administration and Administrator certification requirements, and improves readability and consistency throughout with the re-ordering of phrases and updating of terms; and

**WHEREAS**, upon Board approval, the proposed new rule will be submitted to the *Texas Register* to be published for public comment, which will be accepted from September 17, 2021, through October 18, 2021.

**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 repeal of 10 TAC Chapter 24 and proposed new 10 TAC Chapter 24, regarding the Texas Bootstrap Loan Program, in the form presented to this meeting, to be published in the *Texas Register* for public comment and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles.

## **BACKGROUND**

The purpose of repealing 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule and proposing a new 10 TAC Chapter 24, is to update and clarify current definitions, align terminology with defined terms in the Single Family Umbrella Rule, remove rules that are duplicated either in this Chapter, or in 10 TAC Chapter 20, and refine the Administrator certification process. Changes are proposed for most sections in the Chapter; therefore, the Department proposes repeal and replacement instead of amending the existing chapter. Staff has summarized the significant changes proposed to the Texas Bootstrap Loan Program Rule below. A blackline version with all changes is attached and will be available on the Department's website during the public comment period.

The Department held a virtual roundtable discussion on July 7, 2021, regarding the Texas Bootstrap Loan Program Rule and other single family rules being presented under separate items at this meeting. Comments and suggestions received from the roundtable discussions were taken into consideration during the preparation of the proposed Texas Bootstrap Loan Program Rule as presented at this meeting.

The blackline proposed rule is attached to indicate to the Board and the public what is being changed. The significant updates proposed to 10 TAC Chapter 24 are:

- Definitions for New Construction, Rehabilitation, and Very Low Income are added; outdated, duplicative, or unutilized definitions are removed;
- Conforming change to common use of the defined term "Administrator" incorporated throughout;
- Rules duplicated in 10 TAC Chapter 20 struck throughout;
- Contents of §24.11, Types of Funding Transactions are moved to §24.5, Program Activities;
- Allows for initial title commitments to be 90 days old as of the date of submission rather than 30 days old, and clarifies that an updated commitment is required prior to closing; and
- Clarifies requirements for Administrator certification.

**Attachment A: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule**

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule. The purpose of the proposed 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 proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the Texas Bootstrap Loan Program.

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

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

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

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

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of the Texas Bootstrap Loan Program.

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

8. The proposed 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 this proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

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

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

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

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

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 17, 2021, to October 18, 2021, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email HOME@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, October 18, 2021.

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

## **10 TAC Chapter 24, Texas Bootstrap Loan Program Rule**

§24.1 Purpose

§24.2 Definitions

§24.3 Allocation of Funds

§24.4 Administrator Requirements

§24.5 Program Activities

§24.6 Prohibited Fees

§24.7 Distribution of Funds

§24.8 Criteria for Funding and Reservations

§24.9 Program Administration

§24.10 Owner-Builder Qualifications

§24.11 Property Guidelines and Related Issues

§24.12 Administrator Certification

## **Attachment B: Preamble for proposed new 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule**

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule. The purpose of the proposed new sections is to implement a more germane rule and better align administration to state requirements.

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

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

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

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

1. The proposed rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to administration of the Texas Bootstrap Loan Program
2. The proposed new 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 proposed rule changes do not require additional future legislative appropriations.
4. The proposed rule changes will not result in an increase in fees paid to the Department nor a decrease in fees paid to the Department.
5. The proposed rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The proposed rule will not expand or repeal an existing regulation.
7. The proposed rule will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed 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 proposed 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 §2306.111.

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

2. There are approximately 10 rural communities currently participating in the Texas Bootstrap Loan Program that are subject to the proposed rule for which no economic impact of the rule is projected during the first year the rule is in effect.

3. The Department has determined that because the rule serves to clarify and update existing requirements and does not establish new requirements for which there would be an associated cost, 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 proposed 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 proposed rule has no economic effect on local employment because the rule serves to clarify and update existing requirements and does not establish new requirements or activities that may positively or negatively impact local economies.

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 participation in the Texas Bootstrap Loan Program is at the discretion of the eligible subrecipients, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Bobby Wilkinson, Executive Director, 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 a more germane rule that better aligns administration to state requirements. There will not be any economic cost to any individuals required to comply with the new section because the processes described by the rule have already been in place through the rule found at this section 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 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 rule updates and clarifies existing requirements and does not impose new requirements.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 17, 2021, to October 18, 2021, to receive input on the new proposed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email [abigail.versyp@tdhca.state.tx.us](mailto:abigail.versyp@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, October 18, 2021.

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

## **CHAPTER 24 TEXAS BOOTSTRAP LOAN PROGRAM RULE**

### **§24.1 Purpose**

(a) This chapter clarifies the Texas Bootstrap Loan Program, administered by the Texas Department of Housing and Community Affairs (the Department), also known as the Owner-Builder Loan Program. The Texas Bootstrap Loan Program provides assistance to income-eligible individuals, families and households to purchase or refinance real property, on which to build new residential housing or improve existing residential housing. The Program is administered in accordance with Tex. Gov't Code, Chapter 2306, Subchapter FF, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 20 of this title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this title (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities), and Chapter 26 of this title (relating to Texas Housing Trust Fund Rule).

(b) The Texas Bootstrap Loan Program is a ~~Self-Help~~self-help housing construction Program ~~that is~~ designed to provide ~~very low income~~Very Low Income families an opportunity to help themselves attain homeownership or repair their existing homes ~~through sweat equity. All~~under applicable building codes and housing standards ~~are adhered to under this Program.~~

### **§24.2 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Other definitions may be found in Tex. Gov't Code, Chapter 2306, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 20 of this title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this title (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities), and Chapter 26 of this title (relating to Texas Housing Trust Fund Rule).

(1) Capital Recovery Fee--A charge or assessment imposed by a political subdivision against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. The term includes



amortized charges, lump-sum charges, contributions in aid of construction, and any other fee that functions as described by this definition.

(2) Loan Origination Agreement--A written agreement, including all amendments thereto between the Department and the ~~Participant~~Administrator that authorizes the ~~Participant~~Administrator to originate certain loans under the Texas Bootstrap Loan Program.

~~(3) NOHP--Nonprofit Owner Builder Housing Provider.~~

(3) New Construction--A Single Family Housing Unit that is newly built on a previously vacant lot that will be occupied by an Income Eligible Household.

(4) Owner-Builder--A person, other than a person who owns or operates a construction business and who owns or purchases a piece of real property through a warranty deed and deed of trust; or is purchasing a piece of real property under a Contract for Deed entered into before January 1, 1999; and who undertakes to make improvements to that property.

~~(5) Participant--An NOHP or Colonia Self Help Center that is certified by the Department to participate in the Program.~~

~~(6) Program--Texas Bootstrap Loan Program also known as the Owner Builder Loan Program.~~

~~(7) Self Help Housing Construction--The Self Help Housing process enables Owner Builders to Rehabilitate, Reconstruct or construct their own homes, usually working together in groups on other eligible Owner Builder's houses at the same time. Owner Builders use their own "sweat equity" to reduce the cost of their homes.~~

(5) Rehabilitation--The improvement, including reconstruction, or modification of an existing Single Family Housing Unit through an alteration, addition, or enhancement on the same lot.

(6) Very Low Income--Household income does not exceed the greater of 60% of the Area Median Family Income or 60% of the State Median Family Income, adjusted for Household size, in accordance with the current HOME Investment Partnerships Program income limits, as defined by HUD.

### **§24.3 Allocation of Funds**

(a) The Department administers all Texas Bootstrap Loan Program funds provided to the Department in accordance with Tex. Gov't Code, Chapter 2306, Subchapter FF.

(b) The Department may make loans for the Texas Bootstrap Loan Program from:

(1) Available funds in the Texas Housing Trust Fund established under Tex. Gov't Code, §2306.201; or

(2) Federal block grants that may be used for the purposes of this chapter.

(c) Each state fiscal year the Department shall transfer at least \$3 million (or another amount if so required by Tex. Gov't Code ~~and/or~~ the General Appropriations Act) to the Texas Bootstrap Loan Program from money received under federal block grants or from available funds in the Texas Housing Trust Fund.

(d) The Department may use up to 10% of Program funds available per state fiscal year to enhance the ability of tax-exempt organizations described by Tex. Gov't Code, §2306.755(a), to increase the number of such organizations that are able to implement the Program. The Department shall use that available revenue to provide financial assistance, technical training and management support.

#### **§24.4 ~~Participant~~ Administrator Requirements**

(a) Eligible ~~Participants~~ Administrators. The following organizations or entities are eligible to become ~~Participants in~~ Administrators of the Texas Bootstrap Loan Program:

(1) Colonia Self Help Centers established under Tex. Gov't Code, Chapter 2306, Subchapter Z; or

(2) ~~NOHPs~~ Nonprofit Organizations certified by the Department pursuant to Tex. Gov't Code, §2306.755.

(b) Eligibility requirements. The ~~Participant~~ Administrator must enter into a Loan Origination Agreement with the Department in order to be eligible to submit an Activity through the Reservation System. The ~~Participant~~ Administrator must have the capacity to administer and manage resources as evidenced by previous experience of managing state ~~and/or~~ federal programs.

#### **§24.5 Program Activities**

~~(a) Texas Bootstrap Loan Program funds may be used to finance affordable housing and promote homeownership through acquisition, new construction, reconstruction~~ New Construction, or rehabilitation (Rehabilitation) of single family residential housing. ~~All eligible organizations that satisfy the requirements of this chapter~~ Administrators may reserve funds by submitting a loan application on behalf of an Owner-Builder Applicant for the Texas Bootstrap Loan Program.

(b) Manufactured Housing Units are not eligible housing types for the Texas Bootstrap Loan Program.

(c) All Bootstrap Program Loans will be evidenced by a promissory note and will be secured by a lien on the subject property. The following Activities are permitted by the Department under the Program:

(1) Purchase Money Loans. All Program funds are used to finance the purchase of a single-family dwelling unit and/or a piece of real property. The Department makes a loan to the Owner-Builder and the Owner-Builder's repayment obligation begins immediately. In certain situations, eligible closing costs may be financed by the loan proceeds;

(2) Residential Construction Loans. This transaction is treated as a purchase money loan and is a one-time closing with the Owner-Builder. Construction period may be up to 12 months;

(3) Interim Construction (Closing with Administrator) Loans. Interim construction is a commercial transaction between the Administrator and the Department that is with respect to a specific Owner-Builder. The construction period may be up to 12 months. Once the construction of the home is completed, the closing with the Owner-Builder will take place as a purchase money loan; and

(4) Purchase of Mortgage Loans. The Department may purchase and take assignments from Mortgage lenders of notes and other obligations evidencing loans or interest in loans for purchase money transactions as described in paragraph (1) of this section or for residential construction transactions as described in paragraph (2) of this section.

#### **§24.6 Prohibited ActivitiesFees**

The fees described in paragraphs (1) - (8) of this section are prohibited Program ~~expenditures~~fees and may not be charged directly to the Owner-Builder; however, these ~~expenses~~fees may be charged as an allowable ~~cost~~fee by a third party lender or servicer for a Texas Bootstrap loan:

- (1) Payment of delinquent property taxes or related fees or charges on properties to be assisted with Texas Bootstrap Loan Program funds;
- (2) Loan origination fees;
- (3) Application fees;
- (4) Discount fees;
- (5) Underwriter fees;
- (6) Loan processing fees;
- (7) Loan servicing fees; and
- (8) Other fees not approved by the Department in writing prior to expenditure.

#### **§24.7 Distribution of Funds**

(a) Set-Asides. In accordance with Tex. Gov't Code §2306.753(d), at least two-thirds of the dollar amount of Program loans made in each fiscal year must be made to Owner-Builders whose real property is located in a census tract that has a median household income that is not greater than 75% of the median state household income for the most recent year for which statistics are available.

(b) Balance of State. The remaining one-third of the dollar amount of Program loans made may be made to Owner-Builders anywhere in the state.

(c) Loan Priority. The Department may allow a ~~Participant~~ Participant Administrator access to the Reservation System 24 hours prior to all other ~~Participants~~ Administrators for reservations for Owner-Builder Applicants that meet the following criteria:

(1) Annual household income is less than \$17,500; or

(2) Real property is located in a county ~~and/or~~ municipality that agrees in writing to waive the Capital Recovery Fees, building permit fee or other fees related to the house(s) to be built with the loan proceeds. Owner-Builder Applicant will not receive priority if there are none of the above fees imposed by the county ~~and/or~~ municipality or water supply company.

#### **§24.8 Criteria for Funding and Reservations**

(a) The Department will distribute Program funds in accordance with the Texas Housing Trust Fund (~~HTF~~ Texas HTF) Plan in effect at the time. The Department will publish an announcement for a NOFA in the Texas Register and post the NOFA on the Department's website. The rules referenced in §24.1 of this ~~chapter~~ Chapter (relating to Purpose) and the NOFA will establish and define the terms, conditions, and maximum Reservation amounts allowed per ~~Participant~~ Administrator. The Department may also set a deadline for receiving Reservations ~~and/or~~ Applications. The NOFA will indicate the approximate amount of available funds. The Department may increase the amount of funds made available through the NOFA from time to time without republishing the NOFA in the Texas Register. Such increases will be reflected on the Department's website.

(b) Any Reservation containing false information will be disqualified. The Department will review and process all Reservations in the order received.

(c) Reservations received by the Department in response to a NOFA will be handled as described in paragraphs (1) - (5) of this subsection.

(1) The Department will accept Reservations until all funds under the NOFA have been committed. The Department may limit the eligibility of Reservations in the NOFA.

(2) Each Reservation will be assigned a "received date" based on the date and time the Reservation was entered into the Texas Bootstrap Loan Program Reservation system. Each Reservation will be reviewed in accordance with the Program rules.

(3) Reservations must comply with all applicable Texas Bootstrap Loan Program requirements or regulations established in this chapter. Reservations that do not comply with such requirements may be disqualified. The ~~Participant~~ Administrator will be notified in writing of any cancelled ~~and/or~~ disqualified Reservations.

(4) If a Reservation contains deficiencies which, in the determination of the Department, require clarification or correction of information submitted at the time of the Reservation, the Department may request clarification or correction in the form of a deficiency notice to the Participant/Administrator. If the Participant/Administrator is unable to cure any deficiencies within ~~1514~~ calendar days, the Department may decline to fund the Reservation. The Department may provide one ~~15~~ 14 calendar - day extension to the curative deadline outlined in the deficiency notice.

(5) Prior to issuing an Applicant eligibility letter the Department may decline to fund any Reservation entered into the Reservation system if the proposed housing Activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Reservation which are entered, and may decide it is in the Department's best interest to refrain from committing the funds. If the Department has issued an Applicant eligibility letter to the Owner-Builder Applicant, but the Participant and/Administrator or Owner-Builder Applicant has not complied with all the Program rules and guidelines, the Department may suspend funding until the Participant and/Administrator or Owner-Builder Applicant has satisfied all requirements of the Program.

#### **§24.9 Program Administration**

(a) Pursuant to Tex. Gov't Code §2306.754(b), the Department shall not exceed \$45,000 in household assistance for any Texas Bootstrap Loan Program loan. If it is not possible for an Owner-Builder to purchase necessary real property and build or rehabilitate adequate housing for \$45,000, the Owner-Builder must obtain the additional amounts necessary from other sources, which may include other types of Department funds ~~with the exception of other State Housing Trust Funds, excluding Texas HTF~~.

(b) The Department shall make loans for Owner-Builder Applicants to enable them to:

(1) Build new residential housing, including the purchase or refinance of real property, if needed, on which to undertake such Activity; or

(2) Improve existing residential housing, including the purchase or refinance of real property, if needed, on which to undertake such Activity.

(c) Upon approval by the Department, the Participant/Administrator shall enter into, execute, and deliver to the Department the Loan Origination Agreement. The Department may terminate the Loan Origination Agreement in whole or in part if the Participant/Administrator has not performed as outlined in the Program Rule, NOFA, Loan Origination Agreement, ~~and/or~~ Program Manual.

(d) If the Owner-Builder Applicant qualifies for the Program, the Department will issue an Applicant eligibility letter which reserves up to \$45,000 in funds for 12 months from the date of the Applicant eligibility letter. The Owner-Builder Applicant will not be required to re-qualify if the Owner-Builder

Applicant closes by the expiration date on the Applicant eligibility letter. If an Owner-Builder Applicant does not close by the expiration date, the Owner-Builder Applicant must re-qualify for the Program; however, the Department may grant an extension of up to 180 days from the expiration date on the original Applicant eligibility letter. If the Owner-Builder Applicant fails to close on the loan after the extension is granted the Reservation ~~and/or~~ loan will be cancelled.

(e) Roles and responsibilities for administering the Program Contract. ~~Participants~~ Administrators are required to:

- (1) Qualify potential Owner-Builders for loans;
- (2) Provide Owner-Builder homeownership education classes;
- (3) Supervise and assist Owner-Builders to build ~~and/or~~ Rehabilitate housing;
- (4) Facilitate loans made or purchased by the Department under the Program; and
- (5) Implement and administer the Program on behalf of the Department.

(f) Loan Servicing Agreement. ~~If the Participant wishes to~~ Administrators may service the Program loans originated on behalf of the Department ~~it.~~ Administrators servicing Program loans on behalf of the Department must obtain prior approval and enter into a Loan Servicing Agreement loan servicing agreement with the Department. A Participant's approval to begin Loan servicing loans agreements may be reevaluated from time to time and/or to continue servicing loans is may be terminated at the written discretion of the Department.

(g) First Year Consultation Agreement. If the Department notifies the ~~Participant~~ Administrator that an Owner-Builder has failed to make a scheduled payment due under the Program loan, or other payments due under the Program loan documents, within the first 12 months of funding, the ~~Participant~~ Administrator must meet with the Owner-Builder and provide counseling to assist in bringing the payments current. After such consultation and in the event that the Department and ~~Participant~~ Administrator are not able to bring the Program loan current, the Department in accordance with its administrative rules, may apply appropriate graduated sanctions leading up to, but not limited to, deobligation of funds and future debarment from participation in the Program.

(h) Administrative Fee. The ~~Participant~~ Administrator will be granted a 10% ~~administration~~ administrative fee upon completion of the house and funding of each Mortgage loan.

(i) ~~Blueprints~~ Construction Plans. If the activity is ~~new construction~~, ~~Participant~~ New Construction or reconstruction, Administrator must submit a legible copy of the proposed ~~blueprints~~ construction plans for approval by the Department prior to the ~~Participant~~ Administrator accepting applications for Owner-

Builder Applicants. ~~Blueprints must include the construction requirements pursuant to Tex. Gov't Code §2306.514, and be prepared and executed by an architect or engineer licensed by the state of Texas.~~

(j) Work Write-up. If ~~Participant's Administrator's~~ activity is ~~rehabilitation,~~ Participant Rehabilitation, Administrator must adhere to TMCS and submit work write-ups and cost ~~estimations~~ estimates for Department approval prior to construction.

(k) Loan Program ~~requirements~~ Requirements. The Department may purchase or originate loans that conform to the lending parameters and the specific loan Program requirements as described in paragraphs (1) - ~~(76)~~ of this subsection:

~~(1) Pursuant to Tex. Gov't Code §2306.754(b), the maximum Texas Bootstrap Loan Program loan amount per Household shall not exceed \$45,000. If it is not possible for an Owner Builder to purchase necessary real property and build or rehabilitate adequate housing for \$45,000, the Owner Builder must obtain the additional amounts necessary from other sources, which may include other types of Department funds with the exception of other State Housing Trust Funds;~~

~~(2) Minimum loan amount is \$1,000;~~

(1) Minimum loan amount is \$1,000;

(2) Loan term may not exceed 30 years;

~~(3) Loan term may not exceed 30 years;~~

~~(4) Loan term may not be less than five years;~~

~~(5)~~ (4) Loan must be at zero percent (0% non-%) interest for the entire loan term;

~~(65)~~ When refinancing a Contract for Deed, the Department will not disburse any portion of the Department's loan until the Owner-Builder receives a deed to the property; and

~~(76)~~ Owner-Builder must have resided in Texas for the preceding six months prior to the date of loan application.

(l) Loan Assumption. A Program loan is assumable if the Department determines that the Owner-Builder Applicant complies with all Program requirements in effect at the time of the assumption.

~~(m) Forgivable Loan. The term for a Forgivable Loan may not exceed 15 years from the date of closing.~~

## **§24.10 Owner-Builder Qualifications**

The Owner-Builder must:

(1) Own or be purchasing a piece of real property ~~through~~ with the conveyance of said property evidenced by a warranty deed or Contract for Deed;

(2) ~~Not have an annual household income that exceeds 60% of the greater of the state or local area median family income~~ Be qualified as determined by HUD's current income table. Very Low Income. Eligibility Income is calculated utilizing the total Household income including all income (salary, tips, bonus, overtime, alimony, child support, benefits, etc.) received by the Owner-Builder Applicant, co-Applicant and ~~for~~ any other persons living in the home. ~~This income is used to determine whether the household income exceeds 60% of the Area Median Family Income or 60% of the State Median Family Income, adjusted for Household size, whichever is greater.~~ No income is excluded in this calculation.

(3) Execute a ~~Self-Help Agreement~~ self-help agreement committing to specify and satisfy one of the criteria provided for in subparagraphs (A) - (D) of this paragraph:

(A) Provide at least 65% of the labor necessary to build or rehabilitate the proposed housing through a state-certified ~~Participant~~ Administrator;

(B) Provide an amount of labor equivalent to 65% in connection with building or rehabilitating housing for others through a state-certified ~~Participant~~ Administrator;

(C) Provide through the noncontract labor of friends, family, or volunteers and through personal labor at least 65% of the labor necessary to build or rehabilitate the proposed housing through a state-certified ~~Participant~~ Administrator; or

(D) If due to a documented disability or other limiting circumstances the Owner-Builder cannot provide the amount of personal labor otherwise required, provide through the noncontract labor of friends, family or volunteers at least 65% of the labor necessary to build or rehabilitate the proposed housing through a state-certified ~~Participant~~ Administrator;

(4) Successfully complete an Owner-Builder homeownership education class prior to loan funding;

(5) Not have any outstanding judgments ~~and~~ or liens on the property; and

(6) ~~The Owner-Builder must occupy~~ Occupy the residence as a Principal Residence within 30 days of the end of the construction period or the closing of the loan, whichever is later. If the Owner-Builder fails to do so, the Department may declare the loan in default and accelerate the note. Any additional habitable structures must be removed from the property prior to closing; however, a portion of the structure may be utilized as storage upon the Department's written approval prior to closing.

#### **§24.11 ——— Types of Funding Transactions**

~~All Mortgage Loans will be evidenced by a promissory note and will be secured by a lien on the subject property. The following transaction types are permitted by the Department under the Program.~~



~~(1) Purchase Money. All Program funds are used to finance the purchase of a single family dwelling unit and/or a piece of real property. The Department makes a permanent loan to the Owner Builder and the Owner Builder's repayment obligation begins immediately. In certain situations, eligible closing costs may be financed by the loan proceeds.~~

~~(2) Residential Construction. This transaction is treated as a purchase and is a one time closing with the Owner Builder. Construction period may be up to 12 months.~~

~~(3) Interim Construction (Closing with Participant). Interim construction is a commercial transaction between the Participant and the Department that is with respect to a specific Owner Builder. The construction period may be up to 12 months. Once the construction of the home is completed, the closing with the Owner Builder will take place as a purchase money transaction.~~

~~(4) Purchase of Mortgage loans. The Department may purchase and take assignments from Mortgage lenders of notes and other obligations evidencing loans or interest in loans for purchase money transactions as described in paragraph (1) of this section or for residential construction transactions as described in paragraph (2) of this section.~~

#### **§24.12 Property Guidelines and Related Issues**

(a) A final appraisal is required by the Department on each property prior to loan closing.

~~(b) Loan to value ratio may not exceed 95% of the appraised value. The lien amounts of Forgivable Loans and/or Grants will not be included in the loan to value calculation.~~

~~(c) Combined loan to value ratio, which will be calculated to include the amounts of Forgivable Loans, may not exceed 100% of the appraised value.~~

~~(d) Improvement Surveys are required on each property.~~

~~(e) Category 1A (Texas Society of Professional Surveyors) lot surveys are required for all interim and residential construction loans. Upon Department approval a recorded subdivision plat may be used in lieu of lot surveys for interim construction loans only. Upon completion of construction an Improvement Survey must also be provided.~~

(f) Title Commitment.(b) Title Commitment.

(1) A copy of the preliminary title report including complete legal description and copies of covenants, conditions and restrictions, easements, and any supplements thereto is required. ~~The preliminary title report should not be more than 30 days old at the time the of submission or funding package is sent to the Department, and must list the Department's Loan.~~ not be more than 90 days old.

~~(g) Existing Property. A2) Title commitments must list the Department's Loan.~~

(3) The final title commitment or title report submitted to the Department to draft Loan documents should not be more than 30 days old at the time of the submission in order to remain valid and effective at the date of the loan closing.— Title commitments older than 90 days are no longer valid and must be updated prior to the date of loan closing.

(c) For acquisition of existing Single Family Housing Unit that will not be rehabilitated, a property inspection will be required to be completed by a professional an inspector licensed by the Texas Real Estate Commission for all existing properties. A copy of the inspection report must be submitted and any deficiencies listed on the report must be corrected prior to closing. Cosmetic issues such as paint, wall texture, etc. may not be required to be corrected if utilizing a Self-Helpself-help construction Program. A copy of the inspection report must be provided to the Owner-Builder Applicant and the Department. The Participant and/Administrator or the Owner-Builder Applicant will be responsible for the selection and/or the fee of the licensed inspector.

#### **§24.13 Nonprofit Owner-Builder Housing Program12 Administrator Certification**

~~(a) The term, Applicant, when used in this section, shall mean a Nonprofit Organization that is an NOHP or has submitted a request to the Department for certification as an NOHP in order to participate in the Texas Bootstrap Loan Program.~~

(a) An Administrator must be certified prior to execution of a loan origination agreement or a loan servicing agreement.— Administrator certification expires after three years, after which an Administrator must apply for recertification.

~~(b) Application Procedures for NOHP Initial Certification or NOHP Recertification. An entity requesting NOHP. Initial certification or a Participant requesting recertification must submit an Application prior to submitting an Application for the Texas Bootstrap Loan Program Reservation system. Initial NOHP certification for entities must meet all of the criteria listed in paragraphs (1) —(6) subsections (d) - (n) of this section.~~

~~(c) Recertification. Recertification for loan origination requires that an Administrator be in good standing with the Department.— Submission of the criteria listed subsections (d)-(j) of this subsection. NOHP recertification must occur every three years. NOHP recertification section is only required if any changes have occurred. Recertification for only the purposes of loan servicing activities will only requirerequires that the NOHP Administrator be in good standing with the Department and that they complete an annual recertification to the loan servicing agreement. NOHP recertification for loan origination requires that the NOHP be in good standing with the Department; submission of the criteria listed in paragraphs (1) —(6) of this subsection is only required if any changes have occurred.~~

(d) An Application for certification or recertification must be submitted in the format required by the Department.

(e) If the Applicant is a Nonprofit Organization, Applicant must demonstrate:

~~(1) The entity legal status must satisfy all~~ Applicant is registered and in good standing with Office of the Secretary of this paragraph:

~~(A) Must be organized~~ (State and the State Comptroller's Office as a nonprofit organization ~~corporation~~ under the Texas Business Code or a nonprofit organization under any other state not-for-profit/nonprofit statute as evidenced by charter or Certificate of Formation, or must be a Colonia Self Help Center;

~~(B) Must be registered and in good standing with the Office of the Secretary of State and the State Comptroller's Office to do business in the state of Texas;~~

~~(C) No part of the Nonprofit Organization's~~ (2) The net earnings of the Applicant may not inure to the benefit of any member, founder, contributor, or individual, as evidenced by charter or Certificate of Formation;

~~(D) Must have the following~~ 3) The Applicant has been granted 501(c)(3) tax-exempt status and a pending application for §501(c)(3) status cannot be used to comply with this requirement;

~~(i) by submission of~~ a current letter of determination from the Internal Revenue Service (IRS) under §501(c)(3), as a charitable, nonprofit corporation, or as a subordinate organization of a central nonprofit corporation under §501(c)(3) of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS dated 1986 or later. The exemption ruling must be effective on the date of the Application and must continue to be effective while certified as an NOHP; or Administrator.

~~(ii) classification as a subordinate of a central Nonprofit Organization under the Internal Revenue Code §501(c)(3), as evidenced by a current group exemption letter dated 1986 or later; and~~

~~(E) Must~~ (4) The Applicant have among its purposes the provision of decent housing that is affordable to low and moderate income people as evidenced by a statement in the organization's charter, Certificate of Formation, Resolutions, or Bylaws.

~~(2f) The entity~~ Applicant must:

~~(A) Conform~~ conform to the United States Generally Accepted Accounting Principles (GAAP) as evidenced by a:

~~(i) notarized statement by the Executive Director or chief financial officer of the organization in a form prescribed by the Department; or~~ or certification from a Certified Public Accountant.

~~(ii) certification from a Certified Public Accountant; and~~

~~(Bg) If the entity will be utilizing~~ Applicant proposes to provide interim or residential construction funds, it must provide an audited financial statement for the most recent fiscal year or a signed and dated financial statement for the period since last published audit. If the ~~entity~~ Applicant does not have audited financial statements or a signed and dated financial statement for the period since last published audit must provide a resolution from the Board of Directors that is signed and dated within 6 months from the date of ~~application~~ Application and certifies that the accounting procedures used by the organization conform to the GAAP. ~~Participants that are certified NOHPs and Administrators that~~ do not have audited financial statements or a signed and dated financial statement for the period since last published audit are restricted to only originating permanent loans and will be ineligible for any interim or residential construction loans, until the Department has reviewed the most current audited financial statements;

~~(C) Have a demonstrated~~ (h) The Applicant must demonstrate capacity of at least one year for carrying out Mortgage ~~loan~~ Loan origination and ~~Self Help~~ self-help housing construction Activities, as evidenced by resumes ~~and/or~~ statements that describe the experience of key staff members who have successfully completed projects similar to those to be assisted with Texas Bootstrap Loan Program funds; or contract(s) with consultant firms or individuals who have housing experience similar to projects to be assisted with Texas Bootstrap Loan Program funds, to train appropriate key staff of the organization. ~~If applying for NOHP recertification the organization is in good standing as determined by the Department, the organization will not be required to submit any additional information regarding experience.~~

~~(3) Must submit a current roster of all Board of Directors, including names and mailing addresses.~~

~~(4) A local or state government and/or public agency cannot qualify as an NOHP, but may sponsor the creation of an NOHP.~~

~~(5i) Religious or Faith-based Organizations (RFOs) may sponsor an NOHP Applicant if the NOHP Applicant meets all the requirements of this section. While the governing board of an NOHP Applicant sponsored by a religious or a faith-based organization remains subject to all other requirements in this section, the religious or faith based organization RFO may retain control over appointments to the board. Subparagraphs (A) – (C) of this paragraph also apply~~ Additionally, RFOs must comply with the following:

(A1) Housing developed must be made available exclusively for the residential use of Program beneficiaries, and must be made available to all persons regardless of religious affiliations or beliefs;

(B2) Texas Bootstrap Loan Program funds may never be used to support any explicitly religious activities such as worship, religious instruction, or proselytizing; and

(C3) Compliance with ~~subparagraphs (A) the above paragraphs (1) and (B) of this paragraph~~ (2) must be evidenced by the Bylaws, charter or Certificate of Formation.

~~(6) A Colonia Self-Help Center as defined under Tex. Gov't Code, Chapter 2306, Subchapter Z is not required to complete the NOHP Certification process as long as it provides a letter from the unit of local government demonstrating performance is in good standing.~~

(c)(j) Program Design. ~~Must~~ The Applicant must have policies for how the Owner-Builders participating in its ~~program~~Program will meet the ~~65% sweat equity requirement~~self-help requirements.

~~(d) Must~~(k) The Applicant must provide to the Department the number of houses they are proposing to build, type of proposed financing structure and construction timelines, to evidence its ability to carry out the Program.

~~(e) Must~~(l) The Applicant must provide copies of Program guidelines and homebuyer course curriculum to evidence its experience in qualifying potential Owner-Builders and in providing education classes, counseling and training.

~~(f) Must~~(m) The Applicant must be in compliance with 10 TAC §1.403, (relating to Single Audit Requirements), and 10 TAC §20.98, (relating to Fair Housing, Affirmative Marketing and Reasonable Accommodations),~~),~~ at the time of Application.

~~(g) Must~~(n) The Applicant must be in compliance with any existing Contracts awarded by the Department and is subject to the Department's Previous Participation Review process provided for in 10 TAC §1.302 (relating to Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter) and §1.303 (relating to Executive Award and Review Advisory Committee (EARAC)) of this ~~title~~Part.

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**BOARD ACTION REQUEST**

**SINGLE FAMILY AND HOMELESS PROGRAMS DIVISION**

**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 25, Colonia Self-Help Center Rule, and an order proposing new 10 TAC Chapter 25, Colonia Self-Help Center Rule, and directing their publication for public comment 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**, pursuant to Tex. Gov't Code §2306.582, the Department is required to establish, operate, monitor, and fund Colonia Self-Help Centers (CSHCs) in El Paso, Hidalgo, Starr, and Webb counties, and in Cameron County to serve Cameron and Willacy counties;

**WHEREAS**, in 2001 the Department opened two additional CSHCs in Maverick and Val Verde counties, as authorized by Tex. Gov't Code §2306.582, to address the needs of colonias in those counties;

**WHEREAS**, HB 2893 (87<sup>th</sup> Regular Session), which adds Nueces County to the listing of counties in which TDHCA must establish a Colonia Self-Help Center, and HB 1301 (87<sup>th</sup> Regular Session), which includes additional eligible public service activities, have both been passed into law, to be effective September 1, 2021;

**WHEREAS**, the proposed new 10 TAC Chapter 25, Colonia Self-Help Center Rule updates the rule to comply with new statutory requirements regarding the addition of Nueces County, increases the programmatic cap on assistance for construction activities, updates definitions and clarifies administrative requirements; and

**WHEREAS**, upon Board approval, the proposed new rule will be submitted to the *Texas Register* to be released for public comment which will be accepted from September 17, 2021, through October 18, 2021.

**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 repeal of 10 TAC Chapter 25 and proposed new 10 TAC Chapter 25, regarding the Colonia Self Help Center Rule, in the form presented to this meeting, to be published in the *Texas Register* for public comment and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles.

**BACKGROUND**

The purpose of repealing 10 TAC Chapter 25, Colonia Self-Help Center Rule, and proposing a new 10 TAC Chapter 25, is to update and clarify current definitions, align terminology with defined terms in the Single Family Umbrella Rule and federal requirements, include Nueces County as required by HB 2893, include new eligible activities as required by HB 1301, and increase program cost limitations for construction activities in response to rising costs nationally. Changes are proposed for numerous sections in the Chapter; therefore, the Department proposes repeal and replacement instead of amending the existing Chapter. Staff has summarized the significant changes proposed to the Colonia Self-Help Center Rule below. A blackline version with all changes is attached and will be available on the Department's website during the public comment period.

The Department held a virtual roundtable discussion on July 7, 2021, regarding the Colonia Self-Help Center Rule and other single family rules being presented under separate items at this meeting. Comments and suggestions received from the roundtable discussions were taken into consideration during the preparation of the proposed Texas Bootstrap Loan Program Rule as presented at this meeting.

The blackline proposed rule is attached to indicate to the Board and the public what is being changed. The significant updates proposed to 10 TAC Chapter 25 are:

- Nueces County is added to the counties in which a Colonia Self-Help Center must be established;
- Definitions related to income levels of households served and Rehabilitation are clarified; outdated, duplicative, or unutilized definitions are removed;
- Requirement to comply with Model Subdivision Rules adopted by the county is codified;
- Requirements related to activities that would trigger relocation or potentially violate the one-for-one replacement requirements is codified;
- The cost limitations for construction projects are increased to reflect rising construction costs; and
- Additional public service activities outlined in statutory changes are included as eligible activities.



**Attachment A: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 25, Colonia Self-Help Center Rule**

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 25, Colonia Self-Help Center Rule. The purpose of the proposed 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 proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the Colonia Self-Help Center Program.

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

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

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

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

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of the Colonia Self-Help Center Program.

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

8. The proposed 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 this proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate 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 proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

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

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 17, 2021, to October 18, 2021, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email HOME@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, October 18, 2021.

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

**10 TAC Chapter 25, Colonia Self-Help Center Rule**

- §25.1 Purpose and Services
- §25.2 Definitions
- §25.3 Eligible and Ineligible Activities
- §25.4 Colonia Self-Help Centers Establishment
- §25.5 Allocation, Deobligation and Termination, and Reobligation
- §25.6 Colonia Self-Help Center Application Requirements
- §25.7 Colonia Residents Advisory Committee Duties and Award of Contracts
- §25.8 Colonia Self-Help Center Contract Operation and Implementation
- §25.9 Administrative Thresholds
- §25.10 Expenditure Thresholds and Closeout Requirements

## **Attachment B: Preamble for proposed new 10 TAC Chapter 25, Colonia Self-Help Center Rule**

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 25, Colonia Self-Help Center Rule. The purpose of the proposed new sections is to include Nueces County and new public service activities as required by statutory changes to Tex. Gov't Code 2306 adopted by the 87<sup>th</sup> Texas legislature, to implement a more germane rule, and better align administration to federal and state requirements.

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

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

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

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

1. The proposed rule does not create or eliminate a government program, but it does extend eligibility of an existing program and call for the establishment of a Self-Help Center in Nueces County.
2. The proposed new 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 proposed rule changes do not require additional future legislative appropriations.
4. The proposed rule changes will not result in an increase in fees paid to the Department nor a decrease in fees paid to the Department.
5. The proposed rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The proposed rule can be considered to "expand" the existing regulations because the proposed rule requires the establishment of a Colonia Self-Help Center in Nueces County. However, this addition to the rule is necessary to ensure compliance with updates to Tex. Gov't Code 2306 adopted by the 87<sup>th</sup> Texas legislature.
7. The proposed rule will increase the number of individuals subject to the rule's applicability because the rule requires the establishment of a Colonia Self-Help Center in Nueces County, which adds individuals in that county's service area as possible beneficiaries of assistance that is subject to the regulations.
8. The proposed rule will not negatively affect the state's economy, and may be considered to have a positive effect on the state's economy because the establishment of an additional Colonia Self-Help Center will provide public benefit to residents of the county that were previously unserved by the Program.

### **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 proposed 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 §2306.111.

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

2. There are approximately 8 rural communities currently participating in construction activities under the Colonia Self-Help Center that are subject to the proposed rule for which there is no economic impact of the rule during the first year the rule is in effect. Although a new Colonia Self-Help Center is being established which would provide public benefit to additional persons, the total amount of funding available to all Colonia Self-Help Centers is unchanged, and the total number of housing units expected to be constructed is unchanged.

3. The Department has determined that because a public benefit to residents of Nueces County will be made available through the establishment of a Colonia Self-Help Center, there may be a possible positive economic effect on small or micro-businesses or rural communities, although the specific impact is not able to be quantified.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed 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 proposed rule may provide a possible positive economic effect on local employment because job training is a possible activity and because increased funding limitations for construction activities may create employment opportunities in the construction sector and supportive businesses; however, because the total amount of funding available for the Colonia Self-Help Center Program is not increased, there is no way to determine during rulemaking where the positive effects may occur. The impact is not able to be quantified for any given community.

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 participation in the Single Family HOME Program is at the discretion of the local government or other eligible subrecipients, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Bobby Wilkinson, Executive Director, 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 includes adding Nueces County as required by updates to Tex. Gov't Code ch. 2306 adopted by the 87th Texas legislature, implementation of a more germane rule, and better alignment to federal and state requirements There will not be any economic cost to any individuals required to comply with the new section because the processes described by the rule have already been in place through the rule found at this section 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 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 Colonia

Self-Help Center Program is a federally funded program, and no increase in the requirement to match federal funds is proposed in the rule.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 17, 2021, to October 18, 2021, to receive input on the new proposed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email [abigail.versyp@tdhca.state.tx.us](mailto:abigail.versyp@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, October 18, 2021.

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

## **CHAPTER 25 COLONIA SELF-HELP CENTER PROGRAM RULE**

### **§25.1 Purpose and Services**

The purpose of this Chapter is to establish the requirements governing the Colonia Self-Help Centers, created pursuant to Subchapter Z of Chapter 2306 of the Tex. Gov't Code, Chapter 1 of this TitlePart (relating to Administration), Chapter 2 of this TitlePart (relating to Enforcement), Chapter 20 of this TitlePart (relating to Single Family Programs Umbrella Rule), Chapter 21 of this TitlePart (relating to Minimum Energy Efficiency Requirements), and including the use and administration of all funds provided to the Texas Department of Housing and Community Affairs (the Department) by the legislature of the annual Texas Community Development Block Grant (CDBG) allocation from the U.S. Department of Housing and Urban Development (HUD). Colonia Self-Help Centers are designed to assist individuals and families of low-income and very low-income to finance, refinance, construct, improve, or maintain a safe, suitable home and otherwise improve living conditions in the designated Colonia service areas or in another area the Department has determined is suitable.

### **§25.2 Definitions**

The following words and terms, when used in this Chapter, shall have the following meanings unless the context or the Notice of Funding Availability (NOFA) indicates otherwise. Other definitions may be found in Chapter 2306 of the Tex. Gov't Code, Chapter 1 of this TitlePart (relating to Administration), Chapter 2 of this TitlePart (relating to Enforcement), Chapter 20 of this TitlePart (relating to Single Family Programs Umbrella Rule), and Chapter 21 of this TitlePart (relating to Minimum Energy Efficiency Requirements). Common definitions used under the CDBG Program are incorporated herein by reference.

(1) Beneficiary--A person or family benefiting from the Activities of a Colonia Self-Help Center Contract.

(2) Colonia Resident Advisory Committee (C-RAC)--As established by Tex. Gov't Code §2306.584, advises the Department's Governing Board regarding the needs of Colonia residents, appropriate and effective programs that are proposed or operated through the CSHCs, and activities that may be undertaken through the CSHCs to better serve the needs of Colonia residents.

(3) Colonia Self-Help Center (CSHC)--Those centers established by the Department through its authority under Tex. Gov't Code §2306.582.

(4) Colonia Self-Help Center Provider--An organization with which the Administrator has an executed Contract to administer Colonia Self-Help Center Activities.

(5) Community Action Agency--A political subdivision, combination of political subdivisions, or nonprofit organization that qualifies as an eligible entity under 42 U.S.C. §9902.

(6) Contract Budget--An exhibit in the Contract which specifies in detail the Contract funds by budget category, which is used in the Draw process. The budget also includes all other funds involved that are necessary to complete the Performance Statement specifics of the Contract.

(7) Direct Delivery Costs--Soft costs related to and identified with a specific housing unit. Eligible Direct Delivery Costs include:

(A) Preparation of work write-ups, work specifications, and cost estimates;

(B) Legal fees, recording fees, architectural, engineering, or professional services required to prepare plans, drawings or specifications directly attributable to a particular housing unit;

(C) Home inspections, inspections for lead-based paint, asbestos, termites, and interim inspections; and

(D) Other costs as approved in writing by the Department.

(8) Housing Assistance Guidelines (HAG)--The guidelines provided by the Unit of General Local Government that outline the process and procedures used to administer and implement the Colonia Self-Help Center Program. These guidelines cannot conflict with state statute, program rules, regulations and/or contract requirements.

(9) Implementation Manual--A set of guidelines designed by the Department as an implementation tool for the Administrator and/or Colonia Self-Help Center Subawardee that have been awarded Community Development Block Grant Funds, which provides terms, regulations, procedures, forms, and attachments.

(10) Income Eligible Household--

~~(A) Low--Household income households--households whose annual incomes do not exceed 80% of the median income of the area as determined by HUD Fair Market Rent Limits; does not exceed the limits established below:~~

~~((B) Very low income households--households whose annual incomes do not exceed 60% of the median family income for the area, as determined by HUD Fair Market Rent Limits; and~~

A) Extremely low income households--households~~Low Income--Households~~ whose annual incomes do not exceed 30% of the ~~median family income for the area~~Area Median Family Income in accordance with the current CDBG Program Income Limits, as defined by HUD;

(B) Low Income--Households whose annual incomes do not exceed 50% of the Area Median Family Income in accordance with the current CDBG Program Income Limits, as defined by HUD; and

(C) Moderate Income--Households whose annual incomes do not exceed 80% of the Area Median Family Income in accordance with the current CDBG Program Income Limits, as ~~determined~~defined by HUD--Fair Market Rent Limits.

(11) M Number--a several digit identification number, preceded by the letter "M" and assigned by the Texas Water Development Board to colonias that have been identified by the Office of the Attorney General of Texas.

(12) New Construction--A Single Family Housing Unit that is newly built by certified Community Housing Development Organizations (CHDOs) or Community Based Development Organizations (CBDOs) on a previously vacant lot that will be occupied by an Income Eligible Household.

(13) Performance Statement--An exhibit in the Contract which specifies in detail the scope of work to be performed.

(14) Public Service Activities--Activities other than New Construction, Reconstruction, and Rehabilitation activities that are provided by a Colonia Self-Help Center to benefit Colonia residents. These include, but are not limited to, construction skills classes, solid waste removal, tool lending library, technology classes, home ownership classes and technology access.

~~(15) Qualified Inspector--An individual that has been certified by the Administrator as having professional certifications, relevant education or a minimum of three years' experience in a field directly related to home inspection, which may include but is not limited to installing, servicing, repairing or maintaining the structural, mechanical, plumbing or electrical systems found in Single Family Housing Units, as evidenced by inspection logs, certifications, training courses or other documentation.~~

~~(16~~

(15) Reconstruction--The demolition and rebuilding of a Single Family Housing Unit on the same lot in substantially the same manner. The number of housing units may not be increased or decreased; however, the number of rooms may be increased or decreased dependent on the number of Household members living in the Single Family Housing Unit at the time of Application. Reconstruction of residential structures also permits replacing an existing substandard Manufactured Housing Unit with a new, site-built housing unit or a new ~~ENERGY STAR Certified~~ Manufactured Housing Unit.

~~(17)~~(16) Rehabilitation--The improvement or modification of an existing Single Family Housing Unit that is not a Manufactured Housing Unit through an alteration, addition, or enhancement on the same lot.

~~(18~~

(17) Unit of General Local Government (UGLG)--A city, town, county, or other general purpose political subdivision of the state.

### **§25.3 Eligible and Ineligible Activities**

(a) A CSHC may only serve Income Eligible Households in the targeted Colonias by:

- (1) Providing assistance in obtaining Loans or grants to build a home;
- (2) Teaching construction skills necessary to repair or build a home;
- (3) Providing model home plans;

- (4) Operating a program to rent or provide tools for home construction and improvement for the benefit of property owners in Colonias who are building or repairing a residence or installing necessary residential infrastructure;
- (5) Assisting to obtain, construct, access, or improve the service and utility infrastructure designed to service residences in a Colonia, including potable water, wastewater disposal, drainage, streets, and utilities;
- (6) Surveying or platting residential property that an individual purchased without the benefit of a legal survey, plat, or record;
- (7) Providing Housing Counseling related to all applicable single family activities that take place on or after August 1, 2020, and that satisfies HUD Counseling Requirements in 24 CFR Part 214;
- (8) Applying for Grants and Loans to provide housing and other needed community improvements;
- (9) Providing other services that the CSHC, with the approval of the Department, determines are necessary to assist Colonia residents in improving their physical living conditions such as Rehabilitation, Reconstruction, and New Construction, including help in obtaining suitable alternative housing outside of a Colonia area;
- (10) Providing assistance in obtaining Loans or grants to enable an Income Eligible Household to acquire fee simple title to property that originally was purchased under a Contract for Deed, contract for sale, or other executory contract;
- (11) ~~Provide~~Providing title-related services for unrecorded Contracts for Deed, clouded titles, property transfers, intestate estates, and other title ownership matters;
- (12) Providing access to computers, the internet and computer training; ~~and~~
- (13) Providing monthly programs to educate Income Eligible Households on their rights and responsibilities as property owners-;
- (14) Assisting with measures to secure employment;
- (15) Assisting with establishment or expansion of a small business;
- (16) Assisting with development of professional skills; and
- (17) Education in management of personal finances and achieving financial literacy.

(b) Ineligible Activities- include:

- (1) Rehabilitation (excluding Reconstruction) of an MHU; and
- (2) Any Activity not allowed by the Housing and Community Development Act of 1974 (42 U.S.C. §§5301, et seq-) is ineligible for funding-).

(c) A CSHC will only provide grants, financing, or Mortgage Loan services for New Construction, Reconstruction, and Rehabilitation of a home in a Colonia that is connected to a Department-approved source of potable water and wastewater disposal.

#### **§25.4 Colonia Self-Help Centers Establishment**

(a) Pursuant to Section 2306.582 of the Tex. Gov't Code, the Department has established CSHCs in ~~El Paso, Hidalgo, Starr, Webb, Cameron~~ (also serves Willacy), El Paso, Hidalgo, Maverick, and Nueces, Starr, Val Verde, and Webb Counties.

(b) The Department has designated:



- (1) Appropriate staff in the Department who are designated to assist the CSHCs in understanding the requirements of the Program, provide training, and access CDBG funding to enable the CSHCs to carry out Programs;
- (2) Five Colonias in each service area are to be identified by the UGLG to receive concentrated attention from the CSHCs in consultation with the C-RAC; and
- (3) A geographic area for the services provided by each CSHC.

(c) The Department shall make a reasonable effort to secure:

- (1) Contributions, services, facilities, or operating support from the county commissioner's court of the county in which a CSHC is located which it serves to support the operation of that CSHC; and
- (2) An adequate level of CDBG funds to provide each CSHC with funds for low interest Mortgage financing, Grants for Self-Help Programs, a revolving loan fund for septic tanks, a tool lending program, and other Activities the Department determines are necessary.

(d) Consistent with federal rules and regulations, as provided for in the General Appropriations Act, the CSHC in El Paso shall provide technology and computer access to residents of targeted colonias. Any CSHC may establish a technology center to provide internet access to Colonia residents.

#### **§25.5 Allocation, Deobligation and Termination, and Reobligation**

(a) Allocation.

(1) The Department distributes CSHC funds to UGLGs from the 2.5% set-aside appropriated to the Department from the annual CDBG allocation to the state of Texas.

(2) The Department shall allocate no more than \$1 million per CSHC award except as provided by this ~~Chapter~~chapter. If there are insufficient funds available from any specific program year to fully fund an Application, the awarded Administrator may accept the amount available at that time and wait for the remaining funds to be committed upon the Department's receipt of the CDBG set-aside allocation from the next program year.

(3) A baseline award will first be calculated for a CSHC beginning at \$500,000 (or a lesser amount as provided for in paragraph (2) of this subsection). The Department will add to the baseline award up to an additional \$100,000 for each Expenditure Threshold that has been met on the current CSHC Contract, as defined in §25.10 of this ~~Chapter~~chapter (relating to Expenditure Thresholds and Closeout Requirements). An additional amount up to \$100,000 may be added for an accepted Application submitted by the deadline. An Administrator may request that the Board add additional funds to a baseline award, despite the failure to meet one or more Expenditure Thresholds. To add funds to a CSHC Contract being considered for award, the Board must find that the failure to meet each Expenditure Threshold requirement was principally related to factors beyond the control of the Administrator. If the Board decides to award these additional funds in whole or in part, it must also determine that the award of these funds to the Administrator does not create a substantial risk to the State of recapture of CDBG funds by HUD.

(b) Deobligation and Termination.

(1) At any point in which an Administrator has missed one of the Expenditure Thresholds required in §25.10 of this ~~Chapter~~chapter, the Department will send a notification of possible deobligation. An Administrator will have

the opportunity to submit a mitigation plan that outlines how it will bring the Contract back into compliance, and how it will ensure that subsequent Expenditure Thresholds can be achieved. If the Department approves the mitigation plan, it will take no further action on deobligation at that time. If the Department receives no response, or if the mitigation plan is insufficient to be approved by the Department, the Department will send notice to the Administrator and the UGLG official to announce the initiation of deobligation proceedings and to identify the Administrator's rights under Tex. Gov't Code, Chapter 2105 and 10 TAC §1.411 (relating to Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code). Approval of such action will be presented to the Department's Board.

(2) At any point in which the Department has determined that a Contract should be terminated for violation of program requirements, the Department will send a notification of possible termination of Contract. A Subrecipient will have the opportunity to submit a mitigation plan that outlines how it will bring the Contract back into compliance. If the Department approves the mitigation plan, it will take no further action on termination at that time. If the Department receives no response, or if the mitigation plan is insufficient to be approved by the Department, the Department will send notice to the Administrator and the UGLG official to announce the initiation of deobligation proceedings and to identify the Administrator's rights under Tex. Gov't Code, Chapter 2105 and 10 TAC §1.411 (relating to Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code). Approval of such action will be presented to the Department's Board.

(3) During the time that a deobligation or termination process is pending, the Department may reduce an Administrator's Contract by up to 24.99% of the Contract and may publish a Request for Administrators (RFA) to identify another UGLG to implement the CSHC Program in the affected service area. No award to a respondent of an RFA will be made in an amount greater than 24.99% of the original Administrator's Contract until the process provided by Tex. Gov't Code, Chapter 2105 has been completed. Once that process is completed, an Administrator awarded a Contract through the RFA may receive up to the maximum award available, subject to funding availability.

(c) Reobligation.

(1) When funds become available from the proceedings of subsection (b) of this section, they will be held for a period of at least 90 days while an RFA for the service area is initiated. Unless debarred by HUD or the Department, a prior Administrator is not precluded from applying under an RFA for this service area.

(2) In all cases, funds for a given service area will continue to be allocated to that service area unless no acceptable respondents are identified. Only in such cases that no qualified provider can be identified for a given service area will funds available for that area be reissued to other CSHC Contracts for other service areas.

## **§25.6 Colonia Self-Help Center Application Requirements**

(a) At least three months prior to the expiration of its current Contract, or when 90% of the funds under the current Contract have been expended, whichever comes first, the current Administrator may submit its Application to the Department.

~~(b) If an Application is received from a CSHC~~ The Department will prioritize funding to CSHCs whose Contracts are reaching expiration before funding CSHCs that ~~is~~ are requesting additional funds, at approximately the same time that an application is received from a CSHC whose funding for an existing Contract is reaching expiration, the

~~Department will prioritize funds first to ensure continuity to a CSHC whose Contract is reaching that is not nearing~~ expiration. Among all other non-expiring Applications, the Department shall review Applications on a first-come, first-served basis. Recommendations for award will be made until all CSHC funds for the current program year and deobligated CSHC funds are committed.

(c) Each Application must utilize the Department's forms and documents where applicable, and include:

- (1) Evidence of the submission of the Administrator's current Single Audit, if applicable;
- (2) A Colonia identification form and the M number assigned by the Texas Water Development Board for each Colonia to be served, including all required documentation as identified on the form;
- (3) A boundary map for each of the five designated Colonias;
- (4) A description of the method of implementation. For each Colonia to be served by the CSHC, the Administrator shall describe the services and Activities to be delivered.
- (5) A proposed Performance Statement which must include the number of Colonia residents estimated to be assisted from each Activity, the Activities to be performed (including all Sub-Activities under each budget line item), and the corresponding budget;
- (6) A proposed Contract Budget which must adhere to the following limitations:
  - (A) The Administration line item may not exceed 15% of the total Contract;
  - (B) ~~At~~The Public Services Activities line item must be at least 8% but not more than 10% of the total Contract ~~must be used for the Public Service Activities;~~
  - (C) For UGLGs self-administering the Program, Direct Delivery Costs for all New Construction and Reconstruction Activities cannot exceed 10% per unit provided by the CSHC Program. Direct Delivery Costs for Rehabilitation are limited to 15% per unit provided by the CSHC Program.
- (7) The CSHC's Proposed Housing Assistance Guidelines, which must include an Affirmative Fair Housing Marketing Plan as described under Chapter 20 of this ~~title~~Part and all program parameters for Rehabilitation, Reconstruction, or New Construction;
- (8) Evidence of model subdivision rules adopted by the County;
- (9) Written policies and procedures, as applicable, for:
  - (A) Solid waste removal;
  - (B) Construction skill classes;
  - (C) Homeownership classes;
  - (D) Technology access, including any technology hardware inventory purchased with CSHC funds;
  - (E) Homeownership assistance; and/or
  - (F) Tool lending library, including any library inventory purchased with CSHC funds. All CSHCs are required to operate a tool lending library;
- (10) Authorized signatory form and direct deposit authorization;
- (11) UGLG resolution authorizing the submission of the Application and appointing the primary signatory for all Contract documents;
- (12) Acquisition report (even if there is no acquisition activity);
- (13) Certification of exemption for HUD funded projects;
- (14) Initial disclosure report for the Texas Department of Agriculture;
- (15) All forms required ~~forms needed~~ for a Previous Participation Review under §1.302 of this ~~title~~Part (relating to Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter); and

(16) All ~~required~~ forms required by §20.98 of this ~~title~~Part (relating to Fair Housing, Affirmative Marketing and Reasonable Accommodations).

(d) Upon receipt of the Application, the Department will perform an initial review to determine whether the Application is complete and that each Activity meets a national objective as required by §104(b)(3) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(b)(3)).

(e) The Department may reduce the funding amount requested in the Application in accordance with ~~subsection~~ §25.5(a) of this chapter. Should this occur, the Department shall notify the appropriate Administrator before the Application is submitted to C-RAC for review, comments and approval. The Department and the Administrator will work together to jointly agree on the performance measures and proposed funding amounts for each Activity.

~~(f)~~ The Department shall execute a four-year Contract with the Administrator, unless the award is for more than the Administrator's proportional allocation. If the Administrator requirements are completed prior to the end of the ~~four-year~~ Contract Term, the Administrator may submit a new Application. Contract extensions may be granted for up to six months by the Department.

(g) The Department may decline to fund any Application if the Activities do not, in the Department's sole determination, represent a prudent use of CSHC funds. The Department is not obligated to proceed with any action pertaining to any Application which is received, and may decide it is in the Department's best interest to refrain from pursuing any selection process.

#### **§25.7 Colonia ~~Residents~~Resident Advisory Committee Duties and Award of Contracts**

(a) The Board shall appoint one committee member to represent each of the counties in which a CSHC is located to serve on the C-RAC. The members of the C-RAC shall be selected from lists of candidates submitted to the Department by local nonprofit organizations and the Commissioners Court of the county in which a CSHC is located. Each committee member:

- (1) Must be a resident of a Colonia in the county the member represents;
- (2) May not be a board member, contractor, or employee of the Administrator;
- (3) May not have any ownership interest in an entity that is awarded a Contract under this ~~Chapter~~chapter; and
- (4) ~~Must undergo~~ May not be listed on the Department's previous participation review ~~federal- or state suspended or debarment list and cannot~~ must not be in default on any Department obligation.

(b) The C-RAC members' terms will expire every four years. C-RAC members may be reappointed by the Board; however, the Board shall review and reappoint members at least once every four years. In the event that a C-RAC member is unable to complete the four-year ~~term~~Contract Term, Counties may propose an eligible candidate to be appointed by the Board to fulfill the remainder of the term.

(c) The Department may also select to have an alternate member from the list for each county in the event that the primary member is unable to attend meetings.

(d) The C-RAC shall advise the Board regarding:

- (1) The housing needs of Colonia residents;
- (2) Appropriate and effective programs that are proposed or are operated through the CSHCs; and
- (3) Activities that might be undertaken through the CSHCs to serve the needs of Colonia residents.

(e) The C-RAC shall advise the Office of Colonia initiatives coordinator ~~Initiatives~~ as provided by §775.005 of the Tex. Gov't Code.

(f) Award of Contracts.

(1) The Department will schedule C-RAC meetings for the review of satisfactorily completed CSHC applications from Administrators. The C-RAC shall meet no less than 30 days prior to the board meeting at which the Board is scheduled to award a CSHC Contract, and may meet at other times as needed.

(2) Any Administrator whose Application is being considered at the C-RAC meeting must be present to answer questions that C-RAC may have.

(3) After the C-RAC makes a recommendation on an Application, the recommendation will then proceed through the Department's award process.

(g) Reimbursement to C-RAC members for their reasonable travel expenses in the manner provided by §25.9(1) of this ~~Chapter~~ chapter (relating to Administrative Thresholds) ~~is allowable and~~ shall be paid by the Administrator or Administrators whose Applications were considered at the meeting.

## **§25.8 Colonia Self-Help Center Contract Operation and Implementation**

(a) The Department shall contract with an UGLG for the operation of a CSHC. The UGLG may subaward the activity to a Nonprofit Organization, Community Action Agency, or Housing Authority that has demonstrated the ability to carry out all or part of the functions of a CSHC. The UGLG must perform the requirements of a pass-through entity, as further described in 2 CFR §200.332 and TxGMS.

(b) The Administrator is required to complete an environmental review in accordance with 24 CFR Part 58, and receive the Authority to Use Grant Funds from the Department before:

- (1) Any commitment of CDBG funds (i.e., execution of a legally binding Agreement and expenditure of CDBG funds) for Activities other than those that are specifically exempt from environmental review; and
- (2) Any commitment of non-CDBG funds associated with the scope of work in the Contract that would have an adverse environmental impact (i.e., demolition, excavating, etc.) or limit the choice of alternatives (i.e., acquisition of real property, Rehabilitation of buildings or structures, etc.).

(c) Request for Payments. The Administrator shall submit a properly completed request for reimbursement, as specified by the Department, at a minimum on a quarterly basis; however, the Department reserves the right to request more frequent reimbursement requests as it deems appropriate. The Department shall determine the reasonableness of each amount requested and shall not make disbursement of any such payment request until the Department has reviewed and approved such request. Payments under the Contract are contingent upon the

Administrator's full and satisfactory performance of its obligations under the Contract. The Department may reduce a request for payment if documentation is insufficient or the performance is unsatisfactory.

(1) \$2,500 is the minimum amount for a Draw to be processed, unless it is the final Draw request. If an Administrator fails to submit a draw for 12 consecutive months the Contract may be subject to termination for failure to meet the Contract obligations.

(2) Draw requests will be reviewed to comply with all applicable laws, rules and regulations. The Administrator is responsible for maintaining a complete record of all costs incurred in carrying out the Activities of the Contract.

(3) Draw requests for all housing Activities will only be reimbursed upon satisfactory completion of types of Activities (e.g., all plumbing completed, entire roof is completed, etc.), consistent with the construction contract.

(4) The Administrator will be the principal contact responsible for reporting to the Department and submitting Draw requests.

(d) Reporting. The Administrator shall submit to the Department reports on the operation and performance of the Contract on forms as prescribed by the Department. Quarterly Reports shall be due no later than the tenth calendar day of the month after the end of each calendar quarter. The Administrator shall maintain and submit to the Department up-to-date accomplishments in quarterly reports identifying quantity and cumulative data including the expended funds, Activities completed and total number of Beneficiaries. Processing of draws may be suspended until the Administrator's quarterly reports are submitted and approved by the Department. If an Administrator fails to submit Activity data within a 24-consecutive-month period, the Contract may be subject to termination for failure to meet the Contract obligations.

(e) Amendments. The Department's executive director or its designee, may authorize, execute, and deliver amendments to any Contract.

(1) One Contract Extension of no more than six months may be granted beyond the four-year Contract period.

(2) Changes in ~~beneficiaries~~Beneficiaries. Any changes ~~into~~ increase contractual deliverables and ~~beneficiaries~~Beneficiaries shall require a Contract amendment.

(3) The Department, at its discretion and in coordination with an Administrator, may increase a Contract Budget amount and the number of Activities and ~~beneficiaries~~Beneficiaries to be assisted based on the availability of CSHC funds, the exemplary performance in the implementation of an Administrator's current Contract, and the time available in the four-year Contract period. Upon Board approval, the cap on the maximum Contract amount may be exceeded if the terms of this paragraph are met by the Administrator.

(f) Participating Households must provide at least 15% of the labor necessary to construct or Rehabilitate the Single Family Housing Unit by contributing the labor personally and/or through non-contract labor assistance from family, friends, or volunteers. Volunteer hours at the CSHC may also fulfill the 15% labor requirement.

(g) Program funds can be used for Rehabilitation, Reconstruction or New Construction. Assistance may be provided in the form of a grant or a forgivable loan to the household. Additional funds from other sources may be leveraged with Program funds. Program funds cannot exceed the following limits:

(1) Program funds for Rehabilitation cannot exceed ~~\$60~~75,000 in Program funds per unit per Income Eligible Household.

(2) Program funds for Reconstruction or New Construction cannot exceed \$~~75~~100,000 in Program funds per unit per Income Eligible Household.

(3) An additional \$5,000 in Program funds is available for properties with non-functioning and/or unpermitted cesspools or septic tanks that need replacement with an appropriately sized on-site sewage facility, or connection to a Department-approved source of potable water and wastewater disposal.

(h) All Direct Delivery Costs must be eligible and based on actual expenses for the specific housing unit. Subawardees acting on behalf of an UGLG shall incorporate Direct Delivery Costs into its bid proposals.

(i) Prior to Department approval of CSHC construction activity, the CSHC must document that existing on-site sewage facilities (septic systems) have been inspected by a Texas Commission on Environmental Quality-authorized agent to determine if the system is in substantial compliance with Health & Safety Code, Chapter 366 and the rules adopted under that chapter. Cesspools that have not been previously permitted are unacceptable and must be replaced by an appropriately sized on-site sewage facility or the home must be connected to a Department-approved source of potable water and wastewater disposal.

(j) New Construction, Reconstruction, and Rehabilitation activities.— An Administrator under the CSHC Program must adhere to ~~TDHCA's~~the Inspection Requirements for Construction Activities under Chapter 20 of this Part and the Minimum Energy Efficiency Requirements for Single Family Construction Activities under Chapter 21 of this TitlePart.

~~(k) Inspections. A Qualified Inspector shall conduct all inspections with respect to applicable construction standards and documentation protocol prescribed by the Department.~~

(1) New Construction Requirements.

(A) No initial inspection is required, however building construction plans must be submitted to the Department for approval.

(B) A Certificate of Occupancy is acceptable confirmation of meeting construction requirements. If the activity occurs in a jurisdiction that does not issue Certificates of Occupancy, a Qualified Inspector shall inspect the property applying all applicable construction standards and forms prescribed by the Department.

(2) Reconstruction Requirements.

(A) The initial inspection must identify all substandard conditions as described by Texas Minimum Construction Standards (TMCS) and any health or safety concerns that are beyond repair; confirm that a governmental entity has condemned the unit; or identify the unit as an MHU that will not be rehabilitated. The work write-up and cost estimate shall address all substandard conditions in sufficient detail to justify the need for reconstruction.

(B) A Certificate of Occupancy is acceptable confirmation of meeting construction requirements. If the activity occurs in a jurisdiction that does not issue Certificates of Occupancy, a Qualified Inspector shall inspect the property applying all applicable construction standards and forms prescribed by the Department.

(C) Administrator must demonstrate compliance with §2306.514 Tex. Gov't Code, "Construction Requirements for Single Family Affordable Housing".

(3) Rehabilitation Requirements.

(A) The initial inspection must identify all substandard conditions as described by TMCS and any health or safety concerns. The work write-up and cost estimate shall address all substandard conditions in sufficient detail.

(B) The final inspection shall document that all elements incorporated into the contracted work-write up have been addressed satisfactorily prior to the final draw request.

(k) Primary residences being assisted with any construction activities (Rehabilitation, Reconstruction and New Construction) must:

(1) Comply with adopted Model Subdivision Rules for the county in which assistance is being provided; and

(2) Have only one Single Family Housing Unit per property that is being used as living space.— If additional structures are located on the same property and utilized for living space, temporarily or otherwise, this property is not eligible.— Relocation assistance is not an eligible expense under the CSHC Program.

(l) The Administrator's initial HAG, as well as any amendments to the HAG, shall be approved by commissioners' court and the Department prior to implementation.

(m) Residents shall have access to all Public Service Activities identified in the Contract on at least one weekday each week, for a period long enough to provide access to activities after the typical workday.

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(n) The purchase of new tools, new computers and computer equipment, if included in the approved budget, shall ~~only~~ occur within the first 24 months of the Contract Term. ~~Any purchases~~ Purchase of these items after 24 months must be approved by the Department in writing prior to purchase.

### **§25.9 Administrative Thresholds**

Administrative Draw request. Administrative Draw requests are funded out of the portion of the Contract budget specified for administrative cost (administration line item of the Contract budget). These costs are not directly associated with an Activity. The administration line item will be disbursed as described in paragraphs (1) - (8) of this section:

(1) Threshold 1. The initial administrative Draw request allows up to 10% of the administration line item may be drawn down prior to the start of any project Activity included in the Performance Statement of the Contract (provided that all Pre-Draw requirements, as described in the Contract, for administration have been met). Subsequent administrative funds will be reimbursed in proportion to the percentage of the work that has been completed as identified in paragraphs (2) - (8) of this section.

(2) Threshold 2. Up to an additional 15% (25% of the total) of the administration line item to be drawn down after a start of project Activity has been demonstrated. For the purposes of this threshold, if Davis-Bacon labor standards are required for a given Program Activity, the "start of project Activity" is evidenced by the submission of a start of construction form. If labor standards are not required on a given project Activity that has commenced (and for which reimbursement is being sought), the submission of a Draw request that includes sufficient back-up documentation for expenses of non-administrative project Activities evidences a start of project Activity. Direct Delivery Costs charges will not constitute a start of project Activity.

(3) Threshold 3. Up to an additional 25% (50% of the total) of the administration line item may be drawn down after compliance with the 20-month threshold requirement has been demonstrated as described in §25.10 of this chapter (relating to Expenditure Thresholds and Closeout Requirements).

(4) Threshold 4. Up to an additional 25% (75% of the total) of the administration line item may be drawn down after compliance with the 32-month threshold requirement has been demonstrated as described in §25.10 of this chapter.



(5) Threshold 5. Up to an additional 15% (90% of the total) of the administration line item may be drawn down after compliance with the 44-month threshold requirement has been demonstrated as described in §25.10 of this chapter (relating to Expenditure Thresholds and Closeout Requirements).

(6) Threshold 6. Up to an additional 5% (95% of the total) of the administration line item may be drawn down upon receipt of all required close-out documentation.

(7) Threshold 7. The final 5% (100% of the total), less any administrative funds reserved for audit costs as noted on the Project Completion Report of the administration line item, may be drawn down following receipt of the programmatic close-out letter issued by Department.

(8) Threshold 8. Any funds reserved for audit costs will be released upon completion and submission of an acceptable audit. Only the portion of audit expenses reasonably attributable to the Contract is eligible.

### **§25.10 Expenditure Thresholds and Closeout Requirements**

(a) Administrators must meet the expenditure threshold requirements described in paragraphs (1) - (4) of this subsection. If an Administrator fails to expend and submit expenditure documentation by the due date, the deobligation process outlined in §25.5 of this chapter may be initiated. A Contract may also be subject to termination for failure to meet the Contract obligations, and the Department may elect not to provide future funds to the Administrator. In such cases, the Administrator will be notified in writing of the processes described in Tex. Gov't Code, Chapter 2105 and §1.411 of this TitlePart (relating to Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code). These thresholds will be proportionally reduced when the Contract Term is less than four years, although if reasonable for the proposed Activities the Department may allow a longer proportional period for the Environmental Assessment and the 30% reimbursement request.

(1) Six-Month Threshold. An Environmental Assessment that meets the environmental clearance requirements of the Contract must be submitted to the Department within six months from the start date of the Contract;

(2) Twenty-Month Threshold. The Administrator must have expended and submitted for reimbursement to the Department at least 30% of the total CSHC funds awarded within 20 months from the start date of the Contract;

(3) Thirty-two-Month Threshold. The Administrator must have expended and submitted for reimbursement to the Department at least 60% of the total CSHC funds awarded within 32 months from the start date of the Contract; and

(4) Forty-four-Month Threshold. The Administrator must have expended and submitted for reimbursement to the Department at least 90% of the total CSHC funds awarded within 44 months from the start date of the Contract.

(b) For purposes of meeting a threshold in this section, "expended and submitted" means that a Draw request was received by the Department, is complete, and all costs needed to meet a threshold are adequately supported. The Department will not be liable for a threshold violation if a Draw request is not received by the threshold date.

(c) The final Draw ~~request~~Request and complete closeout documents must be submitted no later than 60 days after the end of the Contract end dateTerm. If closeout documents are not received by this deadline, the remaining Contract balance may be subject to Deobligation as the Department's liability for such costs will have expired. If an Administrator has reserved funds in the project completion report for a final Draw ~~request~~Request, the Administrator has 90 days after the end of the Contract end dateTerm to submit the final Draw ~~request~~Request,

with the exception of the Department's portion of audit costs which may be reimbursed upon submission of the final Single Audit, but no later than one year after the end of the Contract Term.

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**BOARD ACTION REQUEST**

**SINGLE FAMILY AND HOMELESS PROGRAMS DIVISION**

**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 26, Texas Housing Trust Fund Rule, and an order proposing new 10 TAC Chapter 26, Texas Housing Trust Fund Rule, and directing their publication for public comment 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**, pursuant to Tex. Gov't Code §2306.202, the Department is required to use the Housing Trust Fund to provide loans, grants, or other comparable forms of assistance to local units of government, public housing authorities, nonprofit organizations and income-eligible individuals, families, and households to finance, acquire, rehabilitate, and develop decent, safe and sanitary housing;

**WHEREAS**, the proposed new 10 TAC Chapter 26, Texas Housing Trust Fund Rule further clarifies program administration, updates terminology and promotes alignment with the Single Family Umbrella Rule, codifies existing requirements, and incorporates the requirements of the Texas Minimum Construction Standards into the Amy Young Barrier Removal Program; and

**WHEREAS**, upon Board approval, the proposed new rule will be submitted to the *Texas Register* to be released for public comment which will be accepted from September 17, 2021, through October 18, 2021;

**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 repeal of 10 TAC Chapter 26 and proposed new 10 TAC Chapter 26, regarding the Texas Housing Trust Fund Rule, in the form presented to this meeting, to be published in the *Texas Register* for public comment and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles.

## **BACKGROUND**

The purpose of repealing 10 TAC Chapter 26, Texas Housing Trust Rule, and proposing a new 10 TAC Chapter 26, Texas Housing Trust Fund Rule, is to further clarify program administration, update terminology and promote alignment with the Single Family Umbrella Rule, codify existing requirements, and incorporate the requirements of the Texas Minimum Construction Standards into the Amy Young Barrier Removal Program.—Changes are proposed for most sections in both Subchapters; therefore, the Department proposes repeal and replacement instead of amending the existing Chapter. Staff has summarized the significant changes proposed to the Texas Housing Trust Fund Rule below. A blackline version with all changes is attached and will be available on the Department’s website during the public comment period.

The Department held a virtual roundtable discussion on July 7, 2021, regarding the Texas Housing Trust Fund Rule and other single family rules being presented under separate items at this meeting. Comments and suggestions received from the roundtable discussions were taken into consideration during the preparation of the proposed Texas Bootstrap Loan Program Rule as presented at this meeting.

The significant updates proposed to 10 TAC Chapter 26 are:

- Unutilized definition for Qualified Inspector is removed;
- Conflict of Interest requirement is now included, which had previously been required of subrecipients in their contracts only;
- Minimum time that funds are held for subregions and regions during a NOFA period is reduced from 90 days to 30 days;
- The term of Amy Young Barrier Removal Program Reservation Agreements is established as not greater than 24 months;
- Reservation submission requirements and review process are clarified;
- Requirements related to property standards that are now included in Texas Minimum Construction Standards are removed; and
- A requirement for the building contractor to provide information related to their required one-year warranty and any warranty information provided by the manufacturer or installer to the assisted household is added.

**Attachment A: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 26, Texas Housing Trust Fund Rule**

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 26, Texas Housing Trust Fund Rule. The purpose of the proposed 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 proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the Texas Housing Trust Fund.
2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.
3. The proposed repeal does not require additional future legislative appropriations.
4. The proposed repeal does not result in an increase in fees paid to the Department, nor a decrease in fees paid to the Department.
5. The proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration the Texas Housing Trust Fund.
7. The proposed repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed 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 this proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

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

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

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

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

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 17, 2021, to October 18, 2021, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email HOME@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, October 18, 2021.

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

## **10 TAC Chapter 26, Texas Housing Trust Fund Rule**

### **SUBCHAPTER A          GENERAL GUIDANCE**

- §26.1 Purpose
- §26.2 Definitions
- §26.3 Allocation of Funds
- §26.4 Use of Funds
- §26.5 Prohibited Activities
- §26.6 Administrator Eligibility and Requirements
- §26.7 Conflict of Interest

SUBCHAPTER B            AMY YOUNG BARRIER REMOVAL PROGRAM

- §26.20            Amy Young Barrier Removal Program Purpose
- §26.21            Amy Young Barrier Removal Program Definitions
- §26.22            Amy Young Barrier Removal Program Geographic Dispersion
- §26.23            Amy Young Barrier Removal Program Administrative Requirements
- §26.24            Amy Young Barrier Removal Program Reservation System Requirements
- §26.25            Amy Young Barrier Removal Program Household Eligibility Requirements
- §26.26            Amy Young Barrier Removal Program Property Eligibility Requirements
- §26.27            Amy Young Barrier Removal Program Construction Requirements
- §26.28            Amy Young Barrier Removal Program Project Completion Requirements



## **Attachment B: Preamble for proposed new 10 TAC Chapter 26, Texas Housing Trust Fund Rule**

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 26, Texas Housing Trust Fund Rule. The purpose of the proposed new sections is to implement a more germane rule and better align administration to state requirements.

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

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

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

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

1. The proposed rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to administration of the Texas Housing Trust Fund.
2. The proposed new 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 proposed rule changes do not require additional future legislative appropriations.
4. The proposed rule changes will not result in an increase in fees paid to the Department nor a decrease in fees paid to the Department.
5. The proposed rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The proposed rule will not expand or repeal an existing regulation.
7. The proposed rule will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed 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 proposed 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, §2306.111.

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

2. There are approximately 20 rural communities currently participating in the Texas Housing Trust Fund that are subject to the proposed rule for which no economic impact of the rule is projected during the first year the rule is in effect.

3. The Department has determined that because the rule serves to clarify and update existing requirements and does not establish new requirements for which there would be an associated cost, 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 proposed rule does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed rule has no economic effect on local employment because the rule serves to clarify and update existing requirements and does not establish new requirements or activities that may positively or negatively impact local economies.

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 participation in the programs funded with the Texas Housing Trust Fund is at the discretion of the eligible subrecipients, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Bobby Wilkinson, Executive Director, 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 a more germane rule that better aligns administration to state requirements. There will not be any economic cost to any individuals required to comply with the new section because the processes described by the rule have already been in place through the rule found at this section 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 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 rule updates and clarifies existing requirements and does not impose new requirements.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 17, 2021, to October 18, 2021, to receive input on the new proposed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email [abigail.versyp@tdhca.state.tx.us](mailto:abigail.versyp@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, October 18, 2021.

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

## **CHAPTER 26 TEXAS HOUSING TRUST FUND RULE**

### **§26.1 Purpose**

This chapter clarifies the administration of the Texas Housing Trust Fund Program ~~(Texas HTF or SHTF)~~. The ~~SHTF~~Texas HTF provides loans, grants or other comparable forms of assistance to income-eligible individuals, families and households. The ~~SHTF~~Texas HTF is administered in accordance with Tex. Gov't Code, Chapter 2306, Chapter 20 of this ~~titlePart~~ (relating to Single Family Programs Umbrella Rule), and Chapter 24 of this ~~titlePart~~ (relating to Texas Bootstrap Loan Program Rule).

### **§26.2 Definitions**

~~(a)~~

~~(Definitions may be found in Tex. Gov't Code, Chapter 2306; Chapter 1 of this ~~titlePart~~ (relating to Administration), Chapter 2 of this ~~titlePart~~ (relating to Enforcement), Chapter 20 of this ~~titlePart~~ (relating to Single Family Programs Umbrella Rule), Chapter 21 of this ~~titlePart~~ (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities), and Chapter 24 of this ~~titlePart~~ (relating to Texas Bootstrap Loan Program Rule), unless the context or the Notice of Funding Availability (NOFA) indicates otherwise.~~

~~(b) Qualified Inspector—Certified by the Administrator that the individual has professional certifications, relevant education or a minimum of three years of experience in a field directly related to home inspection, which may include but is not limited to installing, servicing, repairing or maintaining the structural, mechanical, plumbing and electrical systems found in Single Family Housing Units, as evidenced by inspection logs, certifications, training courses or other documentation.~~

### **§26.3 Allocation of Funds**

(a) The Department administers all ~~SHTF~~Texas HTF funds provided to the Department in accordance with Tex. Gov't Code, Chapter 2306. The Department may solicit gifts and grants to endow the fund.

(b) Pursuant to Tex. Gov't Code §2306.202(b), use of the ~~SHTF~~Texas HTF is limited to providing:

- (1) Assistance for individuals and families of low and very low income;
- (2) Technical assistance and capacity building to nonprofit organizations engaged in developing housing for individuals and families of low and very low income;
- (3) Security for repayment of revenue bonds issued to finance housing for individuals and families of low and very low income; and
- (4) Subject to the limitations in Tex. Gov't Code §2306.251, the Department may also use the fund to acquire property to endow the fund.

(c) Set-Asides. In accordance with Tex. Gov't Code §2306.202(a) and program guidelines:

(1) In each biennium, the first \$2.6 million available through the ~~SHFF~~Texas HTF for loans, grants, or other comparable forms of assistance shall be set aside and made available exclusively for Local Units of Government, Public Housing Authorities, and Nonprofit Organizations;

(2) Any additional funds may also be made available to for-profit organizations provided that at least 45% of available funds, as determined on September 1 of each state fiscal year, in excess of the first \$2.6 million shall be made available to Nonprofit Organizations; and

(3) The remaining portion shall be distributed to Nonprofit Organizations, for-profit organizations, and other eligible entities, pursuant to Tex. Gov't Code §2306.202.

#### **§26.4 Use of Funds**

(a) Use of additional or Deobligated Funds. In the event the Department receives additional funds, such as loan repayments, donations or interest earnings, the Department will redistribute the funds in accordance with the ~~SHFF~~Texas HTF plan in effect at the time the additional funds become available.

(b) Reprogramming of Funds. If funding for a program is undersubscribed or funds not utilized, within a timeframe as determined by the Department, remaining funds may be reprogrammed at the discretion of the Department consistent with the Texas HTF plan in effect at the time.

(c) Use of excess loan repayments and interest earnings. The ~~SHFF~~Texas HTF may be used to respond to unanticipated challenges that may arise in the course of implementing approved single family Program Contracts, activities, or assets that are not readily addressed with federal funds. In the event that ~~SHFF~~Texas HTF loan repayments and interest earnings exceed the requirements under the ~~SHFF~~Texas HTF interest earnings and loan repayments Rider in the General Appropriations Act, up to \$250,000 per biennium of these excess ~~SHFF~~Texas HTF loan repayments and interest earnings may be used for this purpose. If a balance exists from the previous biennium, the Department shall transfer only the necessary amount to replenish this fund to a maximum balance of \$250,000 at the start of the biennium. These funds may be used as described in this subsection.

(1) Funds are to be used for internal disposition.

(2) Neither Households nor Program Administrators are eligible to apply for these funds.

(3) Any funds used under this subsection requires authorization of the Executive Director.

(4) Uses for the funds must meet at least one of the following criteria:

(A) For Households previously assisted by the Department with Department funds, for which the Department has confirmed that further work is still required, and for which the original source of funds is no longer able to be used; or

(B) Properties previously owned by Households assisted by the Department, having been foreclosed upon by the Department, and requiring additional carrying costs or improvements to sell the property or transfer the property for an affordable purpose.

#### **§26.5 Prohibited Activities**

(a) Persons receiving or benefiting from ~~SHFF~~Texas HTF funds, as determined by the Department, may not be currently delinquent or in default with child support, government loans, or any other debt owed to the State of Texas.

(b) The activities described in paragraphs (1) - (8) of this subsection are prohibited in relation to the origination of a ~~SHHF~~State Texas HTF loan, but may be charged as an allowable cost by a third party lender for the origination of all other loans originated in connection with ~~an~~a Texas HTF loan:

- (1) Payment of delinquent property taxes or related fees or charges on properties to be assisted with ~~SHHF~~State Texas HTF funds;
- (2) Loan origination fees;
- (3) Application fees;
- (4) Discount fees;
- (5) Underwriter fees;
- (6) Loan processing fees;
- (7) Loan servicing fees; and
- (8) Other fees not approved by the Department in writing prior to expenditure.

### **§26.6 Administrator Eligibility and Requirements**

Administrator must enter into a written Agreement with the Department in order to be eligible to access the ~~State~~State Texas Housing Trust Fund.

### **§26.7 Conflict of Interest**

In addition to the conflict of interest requirements in UGMS or TXGMS (as applicable to the Contract), no person who is an employee, agent, consultant, officer, trustee, director, member of a governing board or other oversight body, elected official or appointed official of the Administrator who exercises or has exercised any functions or responsibilities with respect to Texas HTF activities under the State Act, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from a Texas HTF assisted activity, or have an interest in any Texas HTF Contract, subcontract or agreement or the proceeds hereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

## **SUBCHAPTER B          AMY YOUNG BARRIER REMOVAL PROGRAM**

### **§26.20 Amy Young Barrier Removal Program Purpose**

The Amy Young Barrier Removal Program (the Program or AYBRP) provides one-time grants in combined Hard and Soft Costs to Persons with Disabilities in a Household qualified as Low-Income. Grant limits per household will be identified in the Notice of Funding Availability- (NOFA). Grants are for home modifications that increase accessibility; and eliminate ~~life threatening hazards and correct unsafe~~substandard conditions.

### **§26.21 Amy Young Barrier Removal Program Definitions**

The following words and terms used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise. Other definitions are found in Tex. Gov't Code, Chapter 2306,

Chapter 1 of this ~~titlePart~~ (relating to Administration), Chapter 2 of this ~~titlePart~~ (relating to Enforcement), Chapter 20 of this ~~titlePart~~ (relating to Single Family Programs Umbrella Rule), Chapter 21 of this ~~titlePart~~ (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities), and Chapter 26, Subchapter A of this ~~titlePart~~ (relating to Texas Housing Trust Fund Rule).

(1) ~~Administration~~Administrative Fee--Funds equal to 10% of the Project Costs (combined Hard and Soft Costs) paid to an Administrator upon completion of a project.

(2) Hard Costs--Site-specific costs incurred during construction, including but not limited to: general requirements, building permits, jobsite toilet rental, dumpster fees, site preparation, demolition, construction materials, labor, installation equipment expenses, etc.

(3) Low-Income--Household income does not exceed the greater of 80% of the Area Median Family Income or 80% of the ~~Statewide~~State Median Family Income Limits, adjusted for Household size, in accordance with the current HOME Investment Partnerships Program income limits, as defined by HUD.

(4) Project Costs--Program funds (combined Hard and Soft Costs) that directly assist a Household.

(5) ~~Reservation Agreement~~System Participant (RSP)--Administrator who has executed a written Agreement including all amendments thereto ~~between~~with the Department and Administrator that ~~authorizes~~allows for participation in the Administrator to reserve funds under the AYBRP.

~~(6) Reservation Setups~~The submission of all required documents to the online Reservation System in order to reserve Program funds for an eligible HouseholdSystem.

(7) Soft Costs--Costs related to and identified with a specific Single Family Housing Unit other than construction costs, per §20.3 of this ~~titlePart~~, (relating to Definitions).

## **§26.22 Amy Young Barrier Removal Program Geographic Dispersion**

(a) The process to promote geographic dispersion of program funds is as follows:

(1) For a published period not ~~to exceed 90 calendar days~~less than 30 days and in accordance with the NOFA, each state region will be allocated funding amounts for its rural and urban subregions. During this initial period, these funds may be reserved only for Households located in these rural and urban subregions;

(2) After the initial release of funds under paragraph (1) of this subsection, each state region will combine any remaining funds from its rural and urban subregions into one regional balance for a second published period not to exceed 90 calendar days. During this second period, these funds may be reserved only for Households located in that state region; and

(3) After no more than 180 calendar days following the initial release date, any funds remaining across all state regions will collapse into one state-wide pool. For as long as funds are available, these funds may be reserved for any Households anywhere in the state on a first-come, first-served basis.

(b) If any additional funds beyond the original program allocations that derive from Texas HTF loan repayments, interest earnings, deobligations, and/or other ~~SHFT~~Texas HTF funds in excess of those funds required under Rider 8 or the Department's appropriation made under the General Appropriations Act may be ~~placed directly into a state-wide pool for reservation~~reprogrammed at the discretion of the Department.

## **§26.23 Amy Young Barrier Removal Program Administrative Requirements**

(a) To participate in the Program, an eligible participant must first be approved as an Administrator by the Department through the submission of a Reservation System Access Application. Eligible participants include, but are not limited to: Colonia Self-Help Centers established under Tex. Gov't Code, Chapter 2306, Subchapter Z; Councils of Government; Units of Local Government; Nonprofit Organizations; Local Mental Health Authorities and Public Housing Authorities. An eligible participant may be further limited by NOFA.

(b) The Applicant must enter into a ~~Reservation~~ RSP Agreement (Agreement) with the Department in order to be eligible to reserve funds for the Amy Young Barrier Removal Program.

(1) A Nonprofit Organization must submit a current letter of determination from the Internal Revenue Service (IRS) under §501(c)(3), a charitable, nonprofit corporation, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective throughout the ~~agreement period~~ term of the RSP Agreement to access the Reservation System.

(2) A private Nonprofit Organization must be registered and in good standing with the Office of the Secretary of State and the State Comptroller's Office to do business in the State of Texas.

(3) The Applicant must demonstrate at least two years of capacity and experience in housing rehabilitation in Texas. The Applicant will be required to provide a summary of experience that must describe the capacity of key staff members and their skills and experience in client intake, records management, and managing housing rehabilitation. It must also describe organizational knowledge and experience in serving Persons with Disabilities.

(4) The Applicant must provide evidence of adherence to applicable financial accountability standards, demonstrated by an audited financial statement by a Certified Public Accountant for the most recent fiscal year. For a Nonprofit Organizations that does not yet have audited financial statements, the Department may accept a resolution from the Board of Directors that is signed and dated within the six months preceding the Application and that certifies that the procedures used by the organization conform to the requirements in 10 TAC §1.402, (relating to Cost Principles and Administrative Requirements).

(5) An Applicant must submit a current roster of all Board Members, Council Members, Commissioners, or other Members of its legal governing body, including names and mailing addresses.

(6) The Applicant must submit a resolution from the ~~Board of Directors, Council, Commissioners, or other legal~~ Applicant's direct governing body that authorizes the submission of the Application and is signed and dated within the six months preceding the date of application submission. The resolution must ~~state that the legal governing body has approved the Applicant to access the Reservation System for TDHCA's Amy Young Barrier Removal Program; and must designate~~ include the name and title of the individual authorized to execute a ~~written Reservation System Access~~ RSP Agreement.

(7) The Applicant's history will be evaluated in accordance with 10 TAC Chapter 1, Subchapter A, §1.302 and §1.303, (relating to Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter, and Executive Award and Review Advisory Committee (EARAC), respectively). Access to funds may be subject to terms and conditions.

(8) If applicable, the Applicant must submit copies of executed contracts with consultants or other organizations that are assisting in the implementation of the applicant's ~~AYBR~~ PAYBR Program activities. The Applicant must provide a summary of the consultant or other organization's experience in housing rehabilitation and/or serving Persons with Disabilities.

(c) Administrators must follow the processes and procedures as required by the Department through its governing statute (Chapter 2306 of the Government Code), Administrative Rules (Texas Administrative Code, Title 10, Part 1), Reservation Agreement, Program Manual, forms, and NOFA.

#### **§26.24 Amy Young Barrier Removal Program Reservation System Requirements**

~~(a) The Department will not process a Reservation Setup or draw for any Administrator with a past due Single Audit or pending Audit Certification Form.~~

~~(b) Reservation Setups~~(a) Terms of Agreement. The term of an RSP Agreement will not exceed the lesser of 36 months, or the term limitation defined in the NOFA. Execution of an RSP Agreement does not guarantee the availability of funds under a reservation system. Reservations submitted under an RSP agreement will be subject to the provisions of this chapter in effect as of the date of submission by the Administrator.

(b) Limit on Number of Reservations. The limitation on the number of Reservations will be established in the NOFA.

(c) Administrator must remain in good standing with the Department and the state of Texas. If an Administrator is not in good standing, participation in the Reservation System will be suspended and may result in termination of the RSP Agreement.

(d) Reservations will be processed in the order submitted on the Reservation System. Submission of a Reservation Setup consisting of support documentation on behalf of a Household does not guarantee funding.

~~(c) If an Administrator submits a Reservation Setup for a Household that is incomplete or missing any of the required forms as prescribed by the current setup instructions, the Reservation Setup will be set back to "pending" status and funds will be released for reservation.~~

~~(d) If support documentation for a Reservation Setup for a Household needs correction or additional information, the Department will notify the Administrator of the deficiencies. If any deficiencies remain uncured within 10 calendar days after notification has been sent to the Administrator, the Department may cancel the Household's Reservation.~~

~~(e)~~

(e) Reservations may be submitted in stages, and shall be processed through each stage as outlined in the Program Manual.

(f) Administrator must submit a substantially complete request for each stage of the Reservation as outlined in the Program Manual. Administrators must upload all required information and verification documentation in the Contract System. Requests determined to be substantially incomplete will not be reviewed and may be disapproved by the Department. If the Department identifies administrative deficiencies during review, the Department will allow a cure period of 14 calendar days beginning at the start of the first day following the date the Administrator is notified of the deficiency. If any administrative deficiencies remain after the cure period, the Department, in its sole discretion, may disapprove the request. Disapproved requests shall not constitute a Reservation of Funds.



(g) If a Household is determined to be eligible for assistance from the Department, the Department will reserve up to the maximum award amount permitted under the NOFA in Project Costs and an ~~Administration~~Administrative Fee equal to 10% of the combined Hard and Soft costs in the ~~Housing~~ Contract System on behalf of the Household, funding permitting.

### **§26.25 Amy Young Barrier Removal Program Household Eligibility Requirements**

(a) At least one Household member shall meet the definition of Persons with Disabilities.

(b) The assisted Household ~~shall not have Household income that exceeds 80% of Area Median Family~~must be qualified as Low Income.

(c) The assisted Household's liquid assets shall not exceed \$~~20~~25,000. Liquid assets are considered to be cash deposited in checking or savings accounts, money markets, certificates of deposit, mutual funds or brokerage accounts; the net value of stocks or bonds that may be easily converted to cash; and the net cash value calculated utilizing the appraisal district's market value for any real property that is not a principal residence. Funds in tax deferred accounts for retirement or education savings (e.g., Individual Retirement Accounts, 401Ks, 529 plans) and whole life insurance policies are excluded from the liquid assets calculation.

(d) The Household may be ineligible for the program if there is debt owed to the State of Texas, including a tax delinquency; a child support delinquency; a student loan default; or any other delinquent debt owed to the State of Texas.

### **§26.26 Amy Young Barrier Removal Program Property Eligibility Requirements**

(a) Owner-occupied homes are eligible for Program assistance. In owner-occupied homes, the owner of record must reside in the home as their permanent residence unless otherwise approved by the Department. If the property is family-owned and the owner of record is deceased or not a Household member, the Department may deem the property renter-occupied unless satisfactory documentation is provided to the Department that confirms otherwise.

(b) Certain rental units are eligible for Program assistance and must meet the following requirements:

(1) In rental units, all Household occupants, including the Person with Disability, must be named on the Program intake application and ~~Household Income Certification~~household income certification.

(2) The owner of record for the property shall provide a statement allowing accessibility modifications to be made to the property.

(c) The following rental properties are ineligible for Program assistance:

(1) Property that is or has been developed, owned, or managed by that Administrator or an Affiliate;

(2) Rental units in properties that are financed with any federal funds or that are subject to 10 TAC Chapter 1, Subchapter B, §1.206 (relating to Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1973);

(3) Rental units that have ~~life-threatening hazards or~~substandard and unsafe conditions identified in the initial inspection. Program funds may not be used to correct ~~hazardous~~substandard or unsafe conditions in rental units, but may be used for accessibility modifications only after the ~~life-threatening~~

~~hazards substandard~~ and unsafe conditions have been corrected ~~by the property owner~~ at the property owner's expense; or

(4) Rental units owned by a property owner who is delinquent on property taxes associated with the property occupied by the Household.

## **§26.27 Amy Young Barrier Removal Program Construction Requirements**

(a) Inspections.

(1) Initial inspection arranged by the Administrator is required and must identify the accessibility modifications needed by the Person with Disability; assess and document the condition of the property; and identify all deficiencies ~~that constitute life-threatening hazards and unsafe conditions~~. listed in the Texas Minimum Construction Standards (TMCS).

(2) Final inspection arranged by the Administrator is required and must verify, assess and document that all construction activities have been repaired, replaced and/or installed in a professional manner consistent with all applicable building codes and Program requirements, and as required in the Work Write-Up as described in subsection (e) of this section.

~~(3) Initial and final inspections must be completed by a Qualified Inspector.~~

~~(4) All On-Site Sewage Facilities (OSSF or septic system) shall be inspected by a Texas Commission on Environmental Quality authorized agent to determine if the system is in substantial compliance with Health & Safety Code, Chapter 366, and the rules adopted under that chapter, unless waived by the Department on a case-by-case basis.~~

(b) A Manufactured Housing Unit may be eligible for Program assistance if it was constructed on or after January 1, 1995. The Department may allow Manufactured Housing Units older than January 1, 1995, to receive only exterior accessibility modifications (i.e., ramps, handrails, concrete flatwork) as long as the Administrator can verify that the unit itself will be free of hazardous and unsafe conditions.

(c) Construction standards.

~~(1) Administrators must follow all applicable sections of their local building codes and ordinances, pursuant to Section 214.212 of the Local Government Code. Where local codes do not exist, the 2015 International Residential Code (IRC), including Appendix J for Existing Buildings and Structures, is the applicable code for the Program.~~

~~(1) Administrators must follow the requirements of TMCS.~~

2) Accessibility modifications shall be made with consideration ~~of the design standards established by the to 2010 American Disability Act (ADA) Standards. Any variation, but may vary from 2010~~ the ADA Standards must be documented by the Administrator as necessary in order to meet the disability related specific accessibility needs of the Person with a Disability household as requested and agreed to by the assisted household.

(3) Administrators must adhere to Chapter 21 of this ~~title Part~~, (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities).

(4) Administrators and/or subcontractors must honor a twelve-month warranty on all completed items in their scope of work.

(d) ~~Life-threatening hazards and unsafe~~ Substandard conditions.

(1) Administrators may make repairs to eliminate ~~life-threatening hazards and correct~~substandard, unsafe conditions in the housing unit as long as no more than 25% of the Project Hard Costs budget is utilized for this purpose, unless otherwise approved by the Department.

~~(2) Life threatening hazards and unsafe conditions include, but are not limited to: faulty or damaged electrical systems; faulty or damaged gas fueled systems; faulty, damaged or absent heating and cooling systems; faulty or damaged plumbing systems, including sanitary sewer systems; faulty, damaged or absent smoke, fire and carbon monoxide detection/alarm systems; structural systems on the verge of collapse or failure; environmental hazards such as mold, lead-based paint, asbestos or radon; serious pest infestation; absence of adequate emergency escape and rescue openings and fire egress; and the absence of ground fault circuit interrupters (GFCI) and arc fault circuit interrupters (AFCI) in applicable locations.~~

~~(3)~~(2) If the work write-up addresses any of the following line items, the percentage of Project Hard Costs devoted to eliminating ~~life-threatening hazards and correctings~~substandard, unsafe conditions may only exceed 25% by the amount of the following line item's cost: emergency escape, rescue openings and fire egress; ground fault circuit interrupters (GFCI); arc fault circuit interrupters (AFCI); and smoke, fire and carbon monoxide detection/alarm systems. The combination of these line items plus the correction of any other unsafe conditions cannot exceed 40% of Project Hard Costs budget.

~~(4)~~(3) All areas and components of the housing must be free of ~~life-threatening hazards and unsafe conditions at project completion~~all identified deficiencies listed in the initial inspection except that correction of cosmetic issues, such as paint, wall texture, etc., will not be required if acceptable to the Household.

(e) Work-Write Ups. The Department shall review work-write ups (also referred to as "scope of work") and cost estimates prior to the Administrator soliciting bids.

(f) Bids. The Department shall review all line item bids Administrator selects for award prior to the commencement of construction. Lump sum bids will not be accepted.

(g) Change orders. An Administrator seeking a change order must obtain written Department approval prior to the commencement of any work related to the proposed change. Failure to get prior Departmental approval may result in disallowed costs.

### **§26.28 Amy Young Barrier Removal Program Project Completion Requirements**

(a) The Administrator has 90 calendar days from the date the Department approves the line item contract bid the Administrator selected for award to complete all construction activities and submit the Project and Administrative ~~draw request~~Draw Request, with required supporting documentation, in the Housing Contract System for reimbursement by the Department. The Department may grant a one-time, 30-calendar day extension to the Project completion deadline. The Department may grant additional extensions due to extenuating circumstances that are beyond the Administrator's control.

~~(b)~~(b) The Administrator must submit evidence with the final Draw that the builder has provided a one-year warranty specifying at a minimum that materials and equipment used by the contractor will be new and of good quality unless otherwise required, the work will be free from defects other than those

inherent in the work as specified, and the work will conform to the requirements of the contract documents.

(c) The Administrator must provide the Household all warranty information for work performed by the builder and any materials purchased for which a manufacturer or installer's warranty is included in the price.

(d) The Department will reimburse the Administrator in one, single payment after the Administrator's successful submission of the Project and Administrative ~~draw request~~ Draw Request per Department instructions. Interim ~~draws will~~ Draws may not be permitted. The Department reserves the right to delay ~~draw~~ Draw approval in the event that the Household expresses dissatisfaction with the work completed in order to resolve any outstanding conflicts between the Household, and the Administrator and its subcontractors.

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**BOARD ACTION REQUEST**  
**COMMUNITY AFFAIRS DIVISION**  
**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 6, Community Affairs Programs; an order proposing new 10 TAC Chapter 6, Community Affairs Programs; and directing that they be published for public comment 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**, the Department has identified the need to revise 10 TAC Chapter 6 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**, upon authorization of this item, the proposed rule actions will be published in the *Texas Register* for public comment from September 17, 2021, through October 18, 2021;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed actions herein in the form presented to this meeting, to be published in the *Texas Register* for public comment, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing including any requested revisions to the preambles.

**BACKGROUND**

Staff is recommending proposed revisions to 10 TAC Chapter 6 to improve clarity, reorganize subdivisions within the rules, to 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 for LIHWAP are anticipated to be

Comprehensive Energy Assistance Program (CEAP) subrecipients. 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.

Staff released the proposed revisions to the network of CA subrecipients on May 20, 2021, to garner stakeholder input and answer any questions prior to bringing a draft to the Board. Staff received and considered all input, some of which resulted in changes to the proposed rules reflected herein.

While the proposed rules reflect changes as blackline revisions to the current rules, the changes will be submitted to the *Texas Register* as a proposed repeal and proposed new rule. Staff will, upon action by the Board, publish the proposed rules in the *Texas Register* for public comment from September 17, 2021, through October 18, 2021. Staff will return to the Board for final adoption of the rules.

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

The Texas Department of Housing and Community Affairs (the Department) proposes 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 proposed repeal is to eliminate outdated rules that warrant revision while adopting new updated rules 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.**

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

1. The proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption of this chapter regarding the administration of Community Affairs programs.
2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce workload to a degree that any existing employee positions are eliminated.
3. The proposed repeal does not require additional future legislative appropriations.
4. The proposed 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 proposed repeal is not creating a new regulation, except that they are being replaced by new rules simultaneously to provide for revisions.
6. The proposed 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 proposed repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed 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 proposed repeal and determined that the proposed 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 proposed 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 proposed 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 proposed 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 proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

g. REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 17, 2021, to October 18, 2021, to receive input on the proposed repealed chapter. Written comments may be mailed to the Texas Department of Housing and Community Affairs, Gavin Reid, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to [gavin.reid@tdhca.state.tx.us](mailto:gavin.reid@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, October 18, 2021.

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 proposed new 10 TAC Chapter 6 Community Affairs Programs**

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC 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 proposed new chapter is to update the rules to provide greater clarity for Subrecipients while administering Community Affairs programs (i.e., CSBG, LIHEAP, LIHWAP, and DOE WAP).

Tex. Gov't Code §2001.0045(b) does not apply to the rules proposed for action 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. This revision is being proposed to update, streamline, and make clearer the rules governing the administration of Community Affairs programs. The Department does not anticipate any costs associated with this proposed rule action. Compliance with the proposed rules are intended to ensure adherence to federal statute while operating federal grants.

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

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

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

1. The proposed 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 proposed new rules do not require a change in work that would require the creation of new employee positions, nor are the proposed new rules significant enough to reduce workload to a degree that eliminates any existing employee positions.
3. The proposed rule does not require additional future legislative appropriations.
4. The proposed rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The proposed rule is not creating new regulations, except that it is replacing rules being repealed simultaneously to provide for revisions.
6. The proposed rule will not expand, limit, or repeal existing regulations.
7. The proposed rule will not increase or decrease the number of individuals subject to the rule's applicability.

8. The proposed rules 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 the proposed 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 Chapter §2306, Subchapter E.

1. The Department has evaluated the proposed 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 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 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 proposed 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 rules as to their possible effect on local economies and has determined that for the first five years the proposed 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 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 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. REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 17, 2021, to October 18, 2021, to receive input on the proposed new chapter. Written comments may be mailed to the Texas Department of Housing and Community Affairs, Gavin Reid, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or email to [gavin.reid@tdhca.state.tx.us](mailto:gavin.reid@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, October 18, 2021.

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

*[Note that these rules are shown in blackline form below for the purpose of the posting of Board materials but will be shown as clean proposed new language when submitted to the Texas Register.]*

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

### **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. Subchapter A 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~~ Part (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 Part 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-Part~~ (relating to Administration), Chapter 2 of this ~~title-Part~~ (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 ~~S~~service ~~A~~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 ~~§6.307 and §6.406~~this chapter or by Contract. ~~(relating to Subrecipient Requirements for Customer Eligibility Criteria and Establishing Priority for Eligible Households and Subrecipient Requirements for Establishing Priority for Eligible Households and Customer Eligibility Criteria, respectively), as applicable.~~

(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 ~~N~~natural ~~D~~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 annual gross income (as defined by the applicable program)~~, determined by dividing a Household's annual home energy costs by the Household's ~~annual gross income~~ 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 ~~C~~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.

(364) 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 Assistance Program (LIHWAP)—An HHS funded temporary program.

(385) 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 under §§1315, 1521, 1541, or 1542 of Title 38, United States Code, or under §306 of the Veterans' and Survivors' Pension Improvement Act of 1978. Benefit letters under 38 U.S.C. §§1315, 1541, and 1542 must include language indicating dependency and indemnity compensation. Benefit letters under 38 U.S.C. §1521 must indicate that it is for a veteran's pension, rather than for a service connected disability.

(396) 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.

(3407) 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.

(4138) 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.

(4239) Observation--A notable policy, practice or procedure observed through the course of monitoring.

(439) 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.

(441) 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.

(452) 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.

(463) 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).

(485) Population Density--The number of persons residing within a given geographic area of the state.

(496) 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.

(4507) Production Schedule--The estimated monthly and quarterly performance targets and Expenditures for a Contract Termperiod. The Production schedule must be signed by the applicable approved signatory and approved by the Department in writing.

(518) 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.

(5249) 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.

(530) 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).

(544) 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.

(552) Reobligate/Reobligation--The reallocation of Deobligated funds to other Subrecipients or back to the Department for allowable uses.

(~~563~~) Service Area--The geographical area where a Subrecipient must provide services under a Contract.

(~~576~~) 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.

(~~585~~) State--The State of Texas or the Department, as indicated by context.

(~~596~~) Subcontractor--A person or an organization with whom the Subrecipient contracts with to provide services.

(~~5607~~) Subrecipient--An organization that receives federal funds passed through the Department to operate the CSBG, CEAP, DOE WAP, and/or LIHEAP program(s).

(~~6158~~) Supplemental Security Income (SSI)--A means tested program run by the Social Security Administration.

(~~6259~~) System for Award Management (SAM)--Combined federal database that includes the Excluded Parties List System (EPLS).

(~~630~~) Systematic Alien Verification for Entitlements (SAVE)--Automated intergovernmental database that allows authorized users to verify the immigration status of applicants.

(~~644~~) 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 Part 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.

(~~662~~) 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.

(~~673~~) 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 ~~Community Affairs~~ 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 §6.119 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 titlePart (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 titlePart, (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 in §6.2(b)(3) of this subchapter (relating to Definitions) 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 but not the excluded income listed in subsection (d) of this section. Income is to be based on the 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.

(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), SNAP, WIC, and 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 in income may not be deducted from income);
- (20) Income of Household members under 18 years of age including payment to Cchildren 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) 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. 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.

(F) One-time employment income should be added to the total after the income has been annualized.

(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, 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 ~~Documentation-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-Part~~ (relating to Providing Contact Information to the Department), Subrecipient will notify the Department through the ~~CA~~-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-Part~~, 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 ~~Community Affairs~~-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 ~~CA~~ 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 ~~CA~~ 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~~ Part (relating to Subrecipient Requirements).

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

(a) Subrecipient must submit the Monthly Performance and Expenditure Report through the ~~Community Affairs~~ Contract System not later than the fifteenth day of each month following the reported month of the Contract ~~Period~~ 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~~Part, (relating to Debarment from Participation in Programs Administered by the Department).

### **§6.8 Potential Applicant/Applicant/Customer Denials and Appeals, Denial of Service, and Complaints Rights**

(a) ~~Appeals. LIHEAP Subrecipients and CSBG Eligible Entities must adhere to all of Chapter 1, Subchapter D, §1.411 of this Part (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 Appeals. This section does not apply to entities that only receive Discretionary CSBG funds.~~

(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, an ~~appeals~~ process wherein the Executive Director makes a final decision on whether to concur or disagree with the ~~appeal~~complaint.

~~(c) Subrecipient shall establish a denial of service complaint procedure to address written complaints from program applicants/customers whose application for assistance is denied or not acted upon with reasonable promptness. At a minimum, for persons who receive a denial of service, the procedures described in paragraphs (1)–(8) of this subsection shall be included:~~

~~(1) Subrecipient shall provide a written denial of assistance notice to applicant 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 Subrecipient's written policy. This notification shall include written notice of the right of a hearing, the timeframe the applicant has to respond to an appeal, and specific reasons for the denial by program. The Subrecipient may adopt a policy about the timeframe the applicant has to respond to the notice but Subrecipient must provide at least 20 calendar days to respond, unless Subrecipient will lose access to the funds within the next 30 calendar days and then only 10 calendar days is required. The applicant wishing to appeal a decision must provide written notice to Subrecipient within 20 calendar days of receipt of the denial notice.~~

~~(2) A Subrecipient must establish an appeals committee composed of at least three persons. Subrecipient shall maintain documentation of appeals in their customer files.~~

~~(3) Subrecipient shall hold a private appeal hearing (unless otherwise required by law) either virtually, by phone, or in person in an accessible location within 150 calendar business days after the Subrecipient received the appeal request from the applicant and must provide the applicant notice in writing of the time/location of the hearing at least seven calendar days before the appeal hearing.~~

~~(4) Subrecipient shall record the hearing.~~

~~(5) The hearing shall allow time for a statement by Subrecipient staff with knowledge of the case.~~

~~(6) The hearing shall allow the applicant at least equal time, if requested, to present relevant information contesting the decision.~~

~~(7) Subrecipient shall notify applicant of the decision in writing within three calendar days. The Subrecipient shall mail the notification by close of business on the third calendar day following the decision (three-day turn-around).~~

~~(8) If the denial is solely based on income eligibility, the provisions described in paragraphs (2)–(7) of this subsection do not apply, but the applicant may request a recertification of income eligibility based on initial documentation provided at the time of the original application. The recertification will be an analysis of the initial calculation based on the documentation received with the initial application for services and will be performed by an individual other than the person who performed the initial determination. If the recertification upholds the denial based on income eligibility documents provided at the initial application, the applicant must be notified in writing.~~

~~(d) If the applicant is not satisfied with Subrecipient's decision, the applicant may further appeal the decision in writing to the Department within 10 calendar days of notification of an adverse decision.~~

~~(e) Applicants/customers 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.~~

~~(f) The hearing under subsection (ed) 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 title (relating to Contested Case Hearing Procedures).~~

~~(g) If the applicant/customer appeals to the Department, the Subrecipient's funds that could be pledged to that Household should remain unencumbered until the Department completes its decision.~~

## **§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.**

### **§6.101 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~~ Part (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-Part~~ (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-Part~~ (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-Part~~ (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 Part~~ 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 ~~Community Affairs~~ 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 Part~~ (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 subparagraph (2) 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;

(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 ~~Community Affairs~~ 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 CSBG Strategic Plan, Community Assessment, and Community Action Plan, and Strategic 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 the CSBG Act Organizational Standards, each Eligible Entity must submit a CAP Community Action Plan on an annual basis. The CAP Community Action Plan must comply with Department requirements and is required to be submitted on or before a date specified by the Department, to the Department by a date directed by the Department, for approval prior to execution of a Contract.

(e) The CAP shall be derived from the Community Assessment and at a minimum include a budget, a description of the delivery of case management services, in accordance with the National Performance Indicators, and include a Performance Statement that describes the services, programs, activities, and planned outcomes to be delivered by the organization.

(f) The CAP must take into consideration the outcomes expected by previous CAPs. If past outcomes were not achieved as reported in the CA Contract System, or outcomes exceed the targeted goals, the Subrecipient must assess the reasons for the variance in outcomes, determine what will be done differently if continuing to include those outcome goals, and identify how any of issues or obstacles will be mitigated or addressed. An effective CAP should be constantly monitored and adjusted to optimize achievement of results consistent with CSBG Act goals.

(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 the CAP both require Department approval; those that do not meet the Department's requirements as articulated in these rules, in federal guidance, or in Subrecipient's Contract, and in Department guidance will be required to be revised until they meet the Department's satisfaction.

(h) 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.

(i) 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.

(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.

~~(c) Every three years each Eligible Entity shall complete a Community Assessment (may also be called "Community Needs Assessment" or CNA), upon which the annual CAP will be based. Guidance on the content and requirements of the Community Assessment will be released by the Department. Information related to the Community Assessment shall be submitted to the Department on or before a date specified by the Department in the previous year's Contract. The Community Assessment will require, among other things, that the top five needs of the Service Area are identified.~~

(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.

~~(e) The CAP shall be derived from the Community Assessment and at a minimum include a budget, a description of the delivery of case management services, in accordance with the National Performance Indicators, and include a Performance Statement that describes the services, programs, activities, and planned outcomes to be delivered by the organization.~~

~~(f) The CAP must take into consideration the outcomes expected by previous CAPs. If past outcomes were not achieved as reported in the CA Contract System, or outcomes exceed the targeted goals, the Subrecipient must assess the reasons for the variance in outcomes, determine what will be done differently if continuing to include those outcome goals, and identify how any of issues or obstacles will be mitigated or addressed. An effective CAP should be constantly monitored and adjusted to optimize achievement of results consistent with CSBG Act goals.~~

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

~~(h) 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.~~

~~(i) 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.~~

~~(j) At least every five years, each Eligible Entity shall develop a Strategic Plan using the full ROMA cycle or a comparable system. The Strategic Plan shall meet the requirements of CSBG Organizational Standards (specifically Organization Standards 4.3, 6.1–6.5, and 9.3) and meet the requirements in the Department's Strategic Plan guidance. The Strategic Plan shall be submitted to the Department on or before a date specified by the Department in the Contract.~~

**(k)** 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 CSBG Community Assessment, Community Action Plan, and Strategic 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, which include the same components as those described in subparagraphs (A) - (L) of this paragraph.

(A) Self-Sufficiency Customer Questionnaire to assess a customer's status in the areas of employment, job skills, education, income, housing, food, utilities, Cehild care, Cehild 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-Part~~ (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; and

(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; and

(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~~ Part (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. No board member may participate in the selection, award, or administration of a Subcontract supported by CSBG funds if the board member has the following financial or personal interests in the entity or person selected to perform a Subcontract:~~

~~(1) The board member;~~

~~(2) Any member of his/her family related within three degrees of consanguinity, adoption, or by marriage;~~

~~(3) The board member's partner or Household member; or~~

~~(4) Any entity or person which employs or is about to employ any of the individuals described in paragraphs (1)–(3) of this subsection. 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 as-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 as the interim Executive Director for the position, the board member does not vote during the period for which they serve as the interim Executive Director 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. ~~In no event~~ Except as allowed under §6.211(d) of this subchapter (relating to Interim Appointments) ~~shall~~ the board shall not allow ~~25% or more of either the~~ public, private, or low-income sector board positions 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 ~~rule-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 employee's 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.
- (4) 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, due 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 person with a medical condition requires 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. Examples of life-sustaining equipment include, but are not limited to, kidney dialysis machines, oxygen concentrators, and cardiac monitors. 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 affirmstate that such a device is required in the Dwelling Unit to sustain life 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 reprocure 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 (ba) or (cb) of this section is at risk of not being met.

(ba) 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.

(cb) 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.

(de) 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.

(ed) A Subrecipient which has had funds Deobligated under subsection (ba) or (cb) of this section that fully Expends 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 (ba) or (cb) 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.

(fe) The cumulative balance of the funds made available through subsection (ed) 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.

(gf) In no event will involuntary Deobligations that occur through subsection (ba) or (cb) 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.

(hg) 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 §6.110 of this chapter (relating to Compliance Monitoring) or otherwise notify the Subrecipient in accordance with §1.411 of this title Part (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 Sservice Aarea 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 ~~Department formatted~~ Service Delivery Plan (SDP), which includes information on how they plan to implement CEAP in their Sservice Aarea. ~~The Department will notify CEAP Subrecipients when the SDP template and the annual updated forms are posted on the Department's website.~~ 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; ~~and~~ 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 (385) 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)(2),(4), (5) and (7) (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~~~~8,200~~ 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~~~~1,600~~ per Component;

(2) Households with Incomes ~~of over~~ ~~54~~0% to 75% of Federal Poverty Guidelines may receive an amount not to exceed \$~~2,300~~~~1,500~~ per Component; and

(3) Households with Incomes ~~of over~~ ~~75~~6% to at or below 150% of Federal Poverty Guidelines may receive an amount not to exceed \$~~2,200~~~~1,400~~ per Component.

(f) Service and Repair of existing heating and cooling units. Households may receive up to \$~~7,500~~~~5,000~~ 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~~<sup>5,000</sup>. 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) Subrecipient shall provide only the types of assistance described in paragraphs (1) - (9) of this subsection with funds from CEAP. 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.

(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, ~~and up to two utility disconnection notice payments~~ as long as the cost does not exceed the maximum annual benefit for the Utility Assistance Component. ~~The first bill~~ payment may cover two separate fuel sources.

(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. ~~The first bill~~ payment may cover two separate fuel sources.

~~(2) Payment to vendors may only include one energy bill payment per month except in the case of paragraphs (1)(B) and (C) of this subsection;~~

~~(3) Needs assessment and energy conservation tips, coordination of resources, and referrals to other programs;~~

~~(4) 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;~~

(54) 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;

(65) 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;

(76) 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;

(87) 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

(98) 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 (65) 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 ~~(118)~~ of this subsection:

(1) Payment of utilities or fuel bills and utility bill deposits necessary to retain heating or cooling.

~~(2) Temporary Shelter in the limited instances that supply of power to the Dwelling Unit is disrupted causing a temporary evacuation.~~

~~(23)~~ 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.

~~(4) 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.~~

~~(5) Costs for transportation (i.e., 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.~~

~~(36)~~ Utility reconnection costs.

~~(47)~~ Blankets, as tangible benefits to keep individuals warm.

~~(58)~~ 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.

~~(69)~~ 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®. In cases where the type of unit is not Energy Star®, or if Energy Star® 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, ~~which require performance of electrical work for proper installation,~~ requires prior written approval from the Department.

~~(719)~~ Purchase of fans. The number, type, size and cost of these items may not exceed the minimum needed to resolve the crisis.

~~(811)~~ 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.

(d) Subrecipient may request a waiver from the Executive Director or designee for the 18 and 48-hour timeframes ~~do not apply~~ in the case of a Natural Disaster. The Executive Director or designee may grant a waiver if good cause is found.

(e) 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~~\$5,000 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's benefit limit for the duration of the ~~Contract~~ Term period.

### **§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~~<sup>\$5,000</sup> 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 part (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 ~~v~~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~~ [Part](#) (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-Part~~ 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--~~Consistent with 10 CFR §440.18(e)(2), 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 ~~was~~ has not been partially weatherized in the previous 15 years under a federal program during the period September 30, 1975, through September 30, 1994, 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 ~~R~~reobligation of ~~D~~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 ~~S~~service ~~A~~area and takes into account certain special needs of individual ~~S~~service ~~A~~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;

(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.

(7) The sum of the county allocation within each Subrecipient Sservice Aarea 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 ~~funds are awarded~~ Awarded Funds to that same Subrecipient having made the request, but alternatively could mean that the ~~funds may be awarded~~ 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 Sservice Aarea using the allocation formula in §6.303 of this ~~title-Part~~ (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 ~~unless excepted under subsection (o) of this section.~~

(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 copy of the written notice will be sent to the Board of Directors or other governing body of the Subrecipient by the Department at least 10 calendar days after the notice to the Executive Director has been released.~~ A Notification will not be sent, and the steps in this section not triggered, if an Amendment increasing funds ~~by at least 20%~~ 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 ~~unless excepted under subsection (e) of this section.~~

(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 ~~Period~~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-Part~~ (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 ~~will-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) Notification of Deobligation will not be required to be sent to a Subrecipient, and a Mitigation Action Plan will not be required to be provided to the Department, if any one or more of the following exceptions are satisfied:~~

~~(1) The total cumulative unit production for the Subrecipient, based on the monthly report as reported in the Community Affairs Contract System, is at least 75% of the total cumulative number of units to be completed as of the end of the month according to the Subrecipient's forecast unit production within the Production Schedule for the time period applicable (i.e. cumulative through the month for which reporting has been made).~~

~~(2) The total cumulative expenditures for the Subrecipient, based on the monthly report as reported in the Community Affairs Contract System, is at least 75% of the total cumulative estimated expenditures to be expended as of the end of the month according to the Subrecipient's forecast expenditures within the Production Schedule for the time period applicable (i.e., cumulative through the month for which reporting has been made).~~

~~(3) The Subrecipient's monthly reports as reported in the Community Affairs Contract System, for the prior two months, as required under the Contract, reflects unit production that is 80% or more of the expected unit production amount to be completed as of the end of the month according to the Subrecipient's forecast unit production within the Production Schedule.~~

(p) 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.

(q) 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 for Eligible Households and Customer Eligibility 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.

(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, eligibility and priority criteria to increase the energy efficiency of dwellings owned or occupied by Low Income persons who are particularly vulnerable such as the Elderly, Persons with Disabilities, Families with Young Children, Households with High Energy Burden, and Households with High Energy Consumption.

~~(db)~~ Subrecipient shall determine applicant income eligibility in compliance with §6.4 of this chapter (relating to Income Determination).

~~(ee)~~ 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).

~~(fe)~~ Social Security numbers are not required for applicants.

~~(ge)~~ 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. ~~A Public Organization 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.

~~(hf)~~ 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~~ Part (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) Subrecipients 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 Subrecipients that propose 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 Subrecipients 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~~ Part (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(e) and (f) of this subchapter (relating to Subrecipient Requirements for Establishing Priority for Eligible Households and Customer Eligibility Criteria).

(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 listed in paragraphs (1) - (6) of this subsection: (Forms available on the Department's website.)

(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 with 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. ~~15% of total expenditures for Materials, Labor, Program Support, and Health and Safety at the end of the Contract Term. Health and Safety expenditures with LIHEAP WAP may not exceed 20% of total expenditures for Materials, Labor, Program Support, and Health and Safety at the end of the Contract Term.~~

(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 HOUSEHOLD WATER ASSISTANCE PROGRAM**

### **§6.401 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.

### **§6.402 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.

### **§6.403 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.

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**BOARD ACTION REQUEST**  
**COMMUNITY AFFAIRS DIVISION**  
**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action ratifying staff's action to submit one or more Registrations of Interest to the U.S. Department of Housing and Urban Development a request for additional Veterans Affairs Supportive Housing vouchers within Kerr, Bandera, Medina, Fort Bend and Galveston counties, and if successfully awarded by HUD, authority to make those additional vouchers available through a competition as project-based vouchers

**RECOMMENDED ACTION**

**WHEREAS**, on July 14, 2021, the U.S. Department of Housing and Urban Development (HUD) released Notice PIH 2021-21(HA) (the Notice) announcing the availability of approximately 6,000 new Veterans Affairs Supportive Housing (VASH) vouchers and providing the opportunity for Public Housing Authorities (PHAs) to register their interest in being recipients of those HUD-VASH vouchers;

**WHEREAS**, the HUD-VASH vouchers require that the Department of Veterans Affairs (VA) ensure the provision of case management and clinical services by the local Veterans Assistance Medical Center (VAMC) in conjunction with the vouchers, and therefore requires that a PHA's registration of interest include a letter of support from partnering VAMCs;

**WHEREAS**, the Texas Department of Housing and Community Affairs (TDHCA or the Department) operates as a PHA in its administration of its Housing Choice Voucher Program (HCVP), is also currently a recipient of both tenant-based and project-based HUD-VASH vouchers, and has the appropriate expertise and systems to perform such work;

**WHEREAS**, the VAMCs with which the Department has an existing relationship provided the required letters of support for TDHCA to submit Registrations of Interest for Kerr, Bandera, Medina, Fort Bend and Galveston counties;

**WHEREAS**, the deadline for Registrations of Interest to be submitted to HUD was August 31, 2021, so staff proceeded with the submissions without Board authority, based on the Board's prior support of staff requests to pursue VASH vouchers, and with the understanding that should the Board not ratify the action, staff will promptly rescind its Registrations of Interest; and

**WHEREAS**, the Notice provides PHAs that are recipients of VASH vouchers with an opportunity to project-base its tenant-based VASH vouchers, and as such, staff is also requesting authority that, if awarded, the new VASH vouchers, as well as any unissued prior tenant-based VASH vouchers, be made available through a



geographically limited competition focused on existing tax credit properties as further described in this item;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Board hereby ratifies staff's action to submit a Registrations of Interest to HUD;

**FURTHER RESOLVED**, that if HUD makes an award of HUD-VASH vouchers from this Notice to the Department, the Department is authorized to proceed with accepting such an award; and

**FURTHER RESOLVED**, that staff is authorized to make the new vouchers received, as well as any unissued prior tenant-based VASH vouchers, available through a geographically limited competition focused on existing tax credit properties as further described in this item and consistent with applicable rules and policies.

**BACKGROUND**

On July 14, 2021, HUD released Notice PIH 2021-21, regarding the Registration of Interest for HUD-VASH Vouchers. HUD-VASH vouchers are administered in partnership with the Department of Veterans Affairs and enable homeless veterans and their families to access affordable housing with an array of supportive services. The Department of Veterans Affairs (VA) ensures the provision of case management and clinical services through local Veterans Assistance Medical Centers (VAMCs). Any submissions of interest from a PHA must include a Support Letter from the specific VAMC that would be providing such services.

The Department operates as a PHA in its administration of its HCVP. The Department has several components to its program: the provision of vouchers within a 34-county jurisdiction (map provided below); the provision of vouchers anywhere in the state for its Project Access Program; and the provision of VASH vouchers, tenant-based in Fort Bend and Galveston counties, and project-based at Freedom's Path in Kerrville. The Department only operates statewide in its Project Access Program; therefore pursuit of HUD-VASH vouchers previously and in this request have been limited to the 34-county jurisdiction. When this Notice was released, staff reached out to the existing VAMCs with which we operate our current VASH vouchers to determine if they would be interested in requesting additional vouchers. Because the veterans in these counties qualifying for VASH often struggle to find units, staff has proposed that any vouchers received will be made available as project-based vouchers.

In identifying properties to possibly receive these project-based allocations, staff would release a Notice of Funding Availability (NOFA) seeking properties. To streamline administration of this effort, properties eligible to receive a project-based allocation would be limited to those in the Department's Housing Tax Credit portfolio and meet the additional following requirements. These requirements, in large part, have been used by the Department in determining property

eligibility for the 811 Program. The requirements noted below will be expanded upon and the NOFA will encompass all applicable program requirements.

#### Key Proposed Requirements for Project-Based VASH Properties

- Properties must be within 10 miles of a VAMC.
- The Development received an award of tax credits in or after 2002.
- Units may not be receiving another project-based or operating subsidy.
- The project-based Units must be dispersed across the property.
- The Development has already completed construction, has placed in service and has certificates of occupancy on all units.
- The most current vacancy report as reflected in CMTS evidences that the Development maintained at least 85 percent physical occupancy for a period of at least 3 consecutive months.
- Based on the most recent UPCS inspection performed by the Department, the Development received a score of at least 80 on its most recent TDHCA, REAC inspection and all compliance issues associated with that inspection have been resolved.
- The Development is operating in accordance with the accessibility requirements of Section 504, the Rehabilitation Act of 1973 (29 U.S.C. Section 794), as specified under 24 C.F.R. Part 8, Subpart C, or operating under the 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" Federal Register 79 FR 29671.

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NOT LATER THAN  
THE THIRD DAY  
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**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**SEPTEMBER 2, 2021**

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

20018	The Park Tower	Fort Worth
20042	Commons at St. Anthony	Amarillo
20075	New Hope Housing Savoy	Houston
20083	Lakeview Preserve	Irving
20114	3300 Caroline Street	Houston
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**, staff executed a Carryover Allocation Agreement with each Development Owner that included a certification from the Development Owner that documentation regarding the 10% Test would be submitted by July 1, 2021 (which was subsequently extended until September 30, 2021), and that each building for which the allocation was made would be placed in service by December 31, 2022;

**WHEREAS**, the Department received requests to extend the placement in service deadlines from the Development Owners, and staff determined that an extension of the 10% Test deadline was appropriate for those needing an extension;

**WHEREAS**, other than in situations covered by force majeure, the Department lacks authority to extend federal deadlines for placement in service; and

**WHEREAS**, the precipitating events described in the requests meet the requirements for force majeure events described in 10 TAC §11.6(5);

**NOW, therefore, it is hereby**

**RESOLVED**, the requests for treatment of the Developments under an application of the force majeure rule is approved, with the 2021 Qualified Allocation Plan and Uniform

Multifamily Rules, and the 2021 Program Calendar applicable to the Developments for the purposes of the force majeure event;

**FURTHER RESOLVED**, that the Department may issue to each Development Owner a 2021 Carryover Agreement, with the extended 10% Test deadline of July 1, 2022 and 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**

Awards of Competitive (9%) Housing Tax Credits to the Developments listed above were approved by the Board in July 2020. Staff executed Carryover Allocation Agreements with the Development Owners that included a certification from the Development Owner that documentation for the 10% Test would be submitted by July 1, 2021 (which was subsequently extended until September 30, 2021), and, 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, 2022. The Department received requests from certain Development Owners 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. Staff determined that an extension of the 10% Test deadline was appropriate under these circumstances for those that need an extension.

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).

The President declared a national disaster for the COVID-19 Pandemic; and declared a statewide disaster for Texas for Winter Storm Uri, which affected the state in February of 2021. In one case, development completion was also affected by changes in laws, rules and regulations. Development Owners have

communicated to staff and to this Board how the two presidentially declared disasters have resulted in delays in local municipalities' processing and delivery of financial contracts, supplier failures, materials shortages that have led to price increases, and labor shortages.

Staff has determined that there is sufficient evidence of "sudden and unforeseen circumstances outside the control of the Development Owner", as described in 10 TAC §11.6(5), for the Department to treat the Developments under an application of the force majeure rule. If the Board grants the request to consider these force majeure events, the Development Owners will return the awarded credits and execution of a 2021 Carryover Allocation Agreement will result in a new award and a new placed in service date of December 31, 2022 for the Developments, with a new 10% Test deadline of July 1, 2022. The 2021 Qualified Allocation Plan and Uniform Multifamily Rules will be applicable to the Developments for the purposes of the force majeure event.

If the Board denies any of the requests regarding the force majeure events, the date by which the Development must be placed in service will remain as December 31, 2022. Because the Development Owner has anticipated 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 subregion from which they were originally awarded, pursuant to 10 TAC §11.6(2), related to returned credits. If there are pending Applications on the 2021 waiting list from the relevant subregion, the next Application would be awarded, assuming there are enough credits to make the award. If there are not enough credits in the subregion to make an award, the credits will go into the statewide collapse and contribute the next award.

Staff recommends the Board approve the extended 10% Test deadline and the requests for treatment under an application of the force majeure rule for the listed Developments.

20018

The Park Tower

Force Majeure Request

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**SEPTEMBER 2, 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 20018 The Park Tower in Fort Worth

**RECOMMENDED ACTION**

**WHEREAS**, an award of Competitive (9%) Housing Tax Credits in the amount of \$1,462,830 to 20018 The Park Tower (the Development) was approved by the Board in July 2020;

**WHEREAS**, staff executed a Carryover Allocation Agreement with the Development Owner on December 16, 2020, 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, 2022, and the 10% Test would be submitted by July 1, 2021 (which was subsequently extend to September 30, 2021);

**WHEREAS**, on August 10, 2021, the Department received a request to extend the placement in service deadline and the September 30, 2021 10% Test deadline;

**WHEREAS**, other than in situations covered by force majeure, 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 2021 Qualified Allocation Plan and Uniform Multifamily Rules, and the 2021 Program Calendar applicable to the Development for the purposes of the force majeure event;

**FURTHER RESOLVED**, that the Department may issue a 2021 Carryover Agreement, with the extended 10% Test deadline of July 1, 2022 and 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 \$1,462,830 in Competitive (9%) Housing Tax Credits to the Development was approved by the Board in July 2020. The Development proposed the New Construction of 90 Units for the general, mixed income population in Fort Worth. Staff executed a Carryover Allocation Agreement with the Development Owner on December 16, 2020, 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, 2022, and documentation for the 10% Test would be submitted by July 1, 2021 (which was subsequently extended to September 30, 2021). On August 10, 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, and to extend the 10% Test deadline.

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).

### **Presidentially Declared Major Disasters**

Of the circumstances listed in the rule, the request indicates that force majeure might be triggered by a presidentially declared major disaster: the national emergency of the COVID-19 Pandemic and related disruptions. Per the request, the disaster has resulted in:

Materials shortages and cost increases: per the request, economic conditions continued to worsen at the end of 2020 through the 2nd Quarter of 2021 due to the Coronavirus Pandemic. Labor shortages affected production of goods and caused material supplies to be scarce and far more expensive.

The request includes a letter from the Development Owner explaining the difficulties they encountered trying to secure labor and materials. 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 \$1,462,830 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, and documentation for the 10% Test would be submitted by July 1, 2022. For the purposes of the force majeure event, the 2021 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 December 31, 2022. Because the Development Owner anticipates not meeting the placed in service deadline on December 31, 2022, the credits are expected to be returned. If the Development Owner returns the credits, the credits would first be made available in the subregion from which they were originally awarded, pursuant to 10 TAC §11.6(2), related to returned credits; in this case Region 3, Urban. There are pending Elderly Applications on the waiting list from that subregion that were previously not awarded. The credits would go to that subregion and the next Application, which requests \$1,095,000 would be awarded.

Staff recommends the Board approve the 10% Test extension and the request for treatment of The Park Tower under an application of the force majeure rule.





August 10, 2021

VIA EMAIL: [asset.management@tdhca.state.tx.us](mailto:asset.management@tdhca.state.tx.us)

Mr. Mark Fugina  
Senior Asset Manager  
Texas Dept. of Housing & Community Affairs  
221 E. 11<sup>th</sup> Street  
Austin, TX 78701-2410

RE: Force Majeure Request for 2021 Housing Tax Credits, The Park Tower – TDHCA# 20018

Dear Mr. Fugina,

On behalf of HTG Jacksboro, LLC (the “Owner”), please accept this correspondence as our formal request for an allocation of 2021 housing tax credits in exchange for the return of the 2020 credits, pursuant to §11.6(5) of the 2020 Qualified Allocation Plan (“QAP”) for TDHCA# 20018, The Park Tower.

Due to unforeseen program allocation circumstance, The Park Tower received a Commitment notice for 9% housing tax credits nearly four months (117 days) following the July 23, 2020 Board Meeting in which awards were announced. This four-month delay pushed pre-development activities to begin at the end of 2020. Economic conditions continued to worsen at the end of 2020 through the 2<sup>nd</sup> Quarter of 2021 due to the Coronavirus Pandemic. Labor shortages affected production of goods and caused material supplies to be scarce and far more expensive. Supply-chain challenges are just now starting to resolve but continue to require vigilance in design efforts and to ensure materials are available for timely delivery to not further impact placed in service regulatory timelines.

The delayed award coupled with the circumstances of supply-chain delays surrounding the Coronavirus Pandemic, has caused The Park Tower’s equity investor, the National Equity Fund (NEF), to raise concerns regarding The Park Tower meeting its current regulatory mandated Placed in Service deadline of December 31<sup>st</sup>, 2022. We have been working through certain design revisions to reduce construction cost impacts and have had to push our closing to November 2021. After discussions with the design team and multiple general contractors, we have also been advised to not only prepare for higher construction cost for materials, but also increased construction period. We are now preparing for a 16-month construction period up from 12-months contemplated at application.

Pursuant to section 11.6(5) of the 2020 QAP, we respectfully request the exchange of credits due to Force Majeure events caused by the Coronavirus pandemic, which is a “presidentially declared disaster” and has impacted suppliers, materials, and labor.

If staff has any questions, please contact Val Deleon via email at [valentind@htgf.com](mailto:valentind@htgf.com) or directly at 512-417-0985.

Sincerely,

**HTG JACKSBORO, LLC,**  
a Texas limited liability company

By: **HTG JACKSBORO MEMBER, LLC,**  
a Florida limited liability company,  
its managing member

By:   
\_\_\_\_\_  
Matthew Rieger, Manager

CC: Marnie Holloway



August 10, 2021

VIA EMAIL: [asset.management@tdhca.state.tx.us](mailto:asset.management@tdhca.state.tx.us)

Mr. Mark Fugina  
Senior Asset Manager  
Texas Dept. of Housing & Community Affairs  
221 E. 11<sup>th</sup> Street  
Austin, TX 78701-2410

RE: Request for extension, 10% Test, The Park Tower – TDHCA# 20018

Dear Mr. Fugina,

On behalf of HTG Jacksboro, LLC (the “Owner”), please accept this correspondence as formal request to extend the due date for the 10% Test Documentation Delivery as stated in §11.2(a) of the 2020 Qualified Allocation Plan (“QAP”) for the above-mentioned development.

The Park Tower, a proposed 90-unit development for families in Fort Worth, received a Commitment notice of 9% housing tax credits on November 17, 2020, nearly four months (117 days) after the July Board meeting where awards were originally made (July 23, 2020). At the July 23<sup>rd</sup> TDHCA Board meeting, The Park Tower was on the approved “waitlist” and would only receive a commitment after an awardee in Fort Worth was unable to secure appropriate zoning in November of 2020.

During the period between July 23<sup>rd</sup> and November 17<sup>th</sup>, pre-development activities had ceased on The Park Tower and it was not until the executed Commitment Notice was uploaded to the TDHCA serv-u account did pre-development activities resume. Additionally, during the period between July 23<sup>rd</sup> and November 17<sup>th</sup>, the national Coronavirus Pandemic caused delays in materials and significantly increased construction pricing of raw materials. The substantial increase to cost necessitated that additional time and effort be contemplated in the design process to ensure the development remained financially feasible. As staff is aware, the land acquisition is the largest driver for meeting the 10% Test threshold and the delays have pushed closing on the financing and the land until October of 2021.

Based on the reasoning above and force majeure provisions in the QAP, we respectfully request a new 10% Test Documentation Delivery date of **November 1, 2021**, and that no penalty be assigned to any future tax credit applications pursuant to §11.9(f)(1) of the 2020 QAP relating to Factors Affecting Scoring and Eligibility.

If staff has any questions, please contact Val Deleon via email at [valentind@htgf.com](mailto:valentind@htgf.com) or directly at 512-417-0985.

Sincerely,

**HTG JACKSBORO, LLC,**  
a Texas limited liability company

By: **HTG JACKSBORO MEMBER, LLC,**  
a Florida limited liability company,  
its managing member

By:   
\_\_\_\_\_  
Matthew Rieger, Manager

20042

The Commons at St.  
Anthony's

Force Majeure Request

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**SEPTEMBER 2, 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 20042 The Commons at St. Anthony's in Amarillo

**RECOMMENDED ACTION**

**WHEREAS**, an award of Competitive (9%) Housing Tax Credits in the amount of \$1,500,000 to 20042 The Commons at St. Anthony's (the Development) was approved by the Board in July 2020;

**WHEREAS**, staff executed a Carryover Allocation Agreement with the Development Owner on October 21, 2020, 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, 2022, and documentation for the 10% Test would be submitted by July 1, 2021 (which was subsequently extend to September 30, 2021);

**WHEREAS**, on July 19, 2021, the Department received a request to extend the placement in service deadline, and staff determined that an extension of the 10% Test deadline was appropriate;

**WHEREAS**, other than in situations covered by force majeure, 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 2021 Qualified Allocation Plan and Uniform Multifamily Rules, and the 2021 Program Calendar applicable to the Development for the purposes of the force majeure event;

**FURTHER RESOLVED**, that the Department may issue a 2021 Carryover Agreement, with the extended 10% Test deadline of July 1, 2022 and 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 \$1,500,000 in Competitive (9%) Housing Tax Credits to the Development was approved by the Board in July 2020. The Development proposed the Adaptive Reuse of a historic structure for the New Construction of 124 Units for the Elderly population in Amarillo. Staff executed a Carryover Allocation Agreement with the Development Owner on October 21, 2020, 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, 2022, and documentation for the 10% Test would be submitted by July 1, 2021 (which was subsequently extended to September 30, 2021). On July 19, 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).

### **Presidentially Declared Major Disasters**

Of the circumstances listed in the rule, the request indicates that force majeure might be triggered by two presidentially declared major disasters: the national emergency of the COVID-19 Pandemic and related disruptions, and the winter storms that hit Texas in February of 2021. Per the request, these disasters have resulted in:

Materials shortages and cost increases: per the request, unprecedented cost overruns, increases of materials and labor, and the decreased availability of contractors have seriously impacted the feasibility of the development. The Development has experienced significant cost overruns due to steeply rising material prices, snarled supply chains and staffing. This includes but is not limited to materials such as PVC pipe, Copper, Tapered Insulation, Drywall, and Framing materials. The demand for these products continues

while the labor force has been slowed or shut down at times which continues to drive the increased costs with no short-term relief in sight.

As a historic preservation, The Commons at St. Anthony's has had to rely on multi-agency communication to keep the design and development process moving forward. The pandemic caused response delays from both the Texas Historic Commission and National Park Service that impacted key dates within the construction document finalization which in turn extended the overall development timeline.

Per the request, the Development Owner intends to apply to TDHCA for a direct loan under its current notice of funding availability for the National Housing Trust Funds. Since those funds cannot be used on developments that have begun construction, the Owner cannot begin construction until TDHCA makes these funds available later in 2021.

The request includes letters from the general contractors explaining the difficulties they encountered trying to secure labor and materials. 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 \$1,500,000 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, and documentation for the 10% Test would be submitted by July 1, 2022. For the purposes of the force majeure event, the 2021 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 December 31, 2022. Because the Development Owner anticipates not meeting the placed in service deadline on December 31, 2022, the credits are expected to be returned. If the Development Owner returns the credits, the credits would first be made available in the subregion from which they were originally awarded, pursuant to 10 TAC §11.6(2), related to returned credits; in this case Region 1, Urban. There are no pending Applications on the waiting list from that subregion, so the credits would go to the statewide collapse and would contribute to the next award.

Staff recommends the Board approve the 10% Test extension and the request for treatment of The Commons at St. Anthony's under an application of the force majeure rule.



# KRS Housing, LLC

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Honorable Kent R. Hance

July 19, 2021

Ms. Marni Holloway  
Director of Multifamily Finance  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78701

Re: The Commons at St. Anthony's (TDHCA #20042), Amarillo, Potter County

Dear Ms. Holloway,

The Commons at St. Anthony's (#20042) is a 2020 award of 9% Housing Tax Credits in Region 1 Urban. Pursuant to the QAP, the placement in service deadline is December 31, 2022. I am contacting you today to request an extension of the Placement in Service deadline under 10 TAC §11.6(5), Credit Returns Resulting from Force Majeure Events.

Background Information:

The Commons at St. Anthony's is located in the City of Amarillo in Potter County, Texas which has been and is still directly impacted by the COVID pandemic and the Texas Winter Storms – both Presidentially declared disaster areas as Texas SEVERE WINTER STORMS (4586-DR-TX) and Texas COVID-19 PANDEMIC (DR-4485-TX.) See attached **Exhibit A**.

The Development has experienced “sudden and unforeseen circumstances” due to the ripple effect of the Presidentially declared disasters of the COVID-19 Pandemic and the Severe Winter Storms. The result is unprecedented cost overruns, increases of materials, labor and the decreased availability of contractors which have seriously impacted the feasibility of the development. The future progress of the Development will necessitate changes to the financing structure and require us to pursue measures to further reduce the gap in financing which have all had significant impacts on the original timeline for the Development. The two disasters also impacted the timeline by the sheer simplicity of operating in a pandemic with social distancing mandates and comfort levels causing communication lags that would sometimes last for weeks.

The most severe Force Majeure events directly impacting the Development are:

- The Development has experienced significant cost overruns due to steeply rising material prices, snarled supply chains and staffing. Please see letters from both the Prime General Contractor (Commonwealth Construction Corporation) and Main General Contractor (Kelly Wood Company.) See attached **Exhibit B**.
- With the early trade engagement on the project, the construction team anticipated 7-8 weeks to commence construction after drawings were issued on April 9, 2021. The project is currently 60 days delayed from that anticipated schedule. See attached **Exhibit C**.

# KRS Housing, LLC

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Honorable Kent R. Hance

- As a historic preservation, the Common's at St. Anthony's has had to rely on multi-agency communication to keep the design and development process moving forward. As communicated to TDHCA staff early-on with the 10% Test Extension request (**Exhibit D**), the pandemic caused response delays from both the Texas Historic Commission and National Park Service that impacted key dates within the construction document finalization which in turn extended the overall development timeline. The historic nomination was initially expected to be heard by the Texas Historic Commission State Board of Review on May 16, 2020 but was delayed to September 12, 2020 because of the early impact COVID-19 had on THC and NPS operations. This was a costly delay of time – one that was out of our reasonable control and nothing that could have been reasonably anticipated. The compounding delay in the historic review process also impacted the preparation of detailed Part 2 & B rehabilitation plans to be submitted to the National Park Service and Texas Historical Commission for construction approval.
- In order to save the project and refresh it into a financially viable Development, the Applicant will be pursuing funding under the TDHCA MFDL NOFA 2021-3 for National Housing Trust Fund dollars. Before the Development can close with the investor and lender, the application for funding must be submitted with a good indication of award. It is our understanding that award recommendations will be taken to the TDHCA Board no earlier than September 2<sup>nd</sup>, but most likely at the October board meeting.

Layered on top of the unforeseen circumstances of the pandemic and severe weather are several additional issues that only added to the breaking-point in the overall timeline for the Development:

- The property Seller is a neighborhood advisory association, a non-profit organization without staff that is run by its volunteer Board of Directors. Day-to-day management of all matters related to the building had been handled on a voluntary basis by an agent for the Seller until early August 2020 when its services were terminated by the Seller. Then, the Seller's Board of Directors changed membership. The removal of the agent by the Seller was a decision made beyond the control of the Applicant and one in which the Applicant was not consulted. The change caused a significant delay in amending purchase agreements, getting City plat documents signed, getting National Park Service applications signed, and receiving access to the building. The Owner was diligent in their communication and was finally able to get the required signatures, but this ownership change definitely caused a significant loss of days at a critical point in the development timeline. See **Exhibit E**.
- In conversations with City of Amarillo building and safety review it was determined that a portion of the adjacent surgical center would need to be removed to create more separation between buildings. The surgical center is located on an adjacent tract. The development applied for a variance for this requirement, but it was not granted. This change required replatting the site to add the City of Amarillo required strip as well as amending the original purchase contract to add this strip of land. The decision to add the strip of land was completely unforeseen.

# KRS Housing, LLC

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Honorable Kent R. Hance

- The timeline for the mold and asbestos abatement along with the demolition was confirmed to be longer than originally estimated. Adding this increase in time to the 16-month construction timeline (that has always been the case) adds to the critical nature of this placement in service extension.
- Multiple large projects – Amazon warehouse, Texas Tech renovations, etc. – are utilizing subs up from the surrounding area. Even contractors from other parts of the state and even out-of-state have proven slow to respond due to high-demand. When the project finally did get solid bids, there was a several month impact on the timeline.

## Request:

While it was every intention for the Owner and Development to meet the placement in service deadline of December 31, 2022, we now can foresee that this is not possible due to the delays noted above. We request that the Owner be permitted to return the Tax Credits and that TDHCA reallocate the Tax Credits to the Owner in the current year in accordance with §11.6(5) of the QAP. The Owner and Development meet all of the requirements in Section 11.6(5) in that:

- 1) The events that caused the delay (i.e. the pandemic, winter freeze, construction market supply and pricing turmoil that impacted design and development, agency approvals, site control, schedule of values, investor and lender closing and gap funding) occurred before issuance of 8609s and were sudden, unforeseen circumstances outside the control of the Development Owner.
- 2) The delays were not caused by willful negligence or acts of Owner, any Affiliate, or any other Related Party. The Owner is experienced with a long history in the LIHTC program and the co-developer partner Commonwealth Development and historic consultant MacRostie Historic Advisors LLC – both have extensive experience with historic renovation and construction. The events causing the delay were unprecedented and all parties did their absolute maximum to problem solve and expedite the multiple unexpected hurdles.
- 3) The Owner has provided evidence of the Force Majeure Events (See **Exhibit A**) and a more detailed explanation of the delays that were a result of the Force Majeure Event, see **Exhibits B-D**.
- 4) Though there was little that could be done to mitigate an unprecedented pandemic, a severe winter freeze or a construction market tumult, the Owner took all reasonable steps to minimize or mitigate any delays. The Owner remained diligent with communication – pursuing a variety of alternative communication methods and contacts to alleviate each milestone delay. The Owner was also proactive in sharing their delays with TDHCA in the 10% extension submitted to TDHCA on March 22, 2022 (**Exhibit D**) and those delays have been compounded in the four short months since.
- 5) The Force Majeure threatens to prevent the Owner from meeting the Place in Service requirements of the original allocation.
- 6) The requested current year Carryover Agreement would allocate the same amount of Tax Credits as those that would be returned.

# KRS Housing, LLC

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Honorable Kent R. Hance

- 7) The Development continues to be financially feasible with the concurrent Application for an award of National Housing Trust Fund dollars through the 2021-3 NOFA. There has not been any insurance proceeds received related to the Force Majeure event.

Therefore, we respectfully request approval of this Force Majeure request. If you have any questions or would like to discuss these items further, please do not hesitate to contact me directly at ??????.

Sincerely,



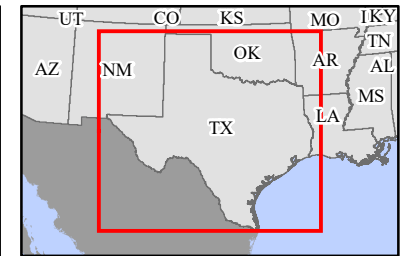
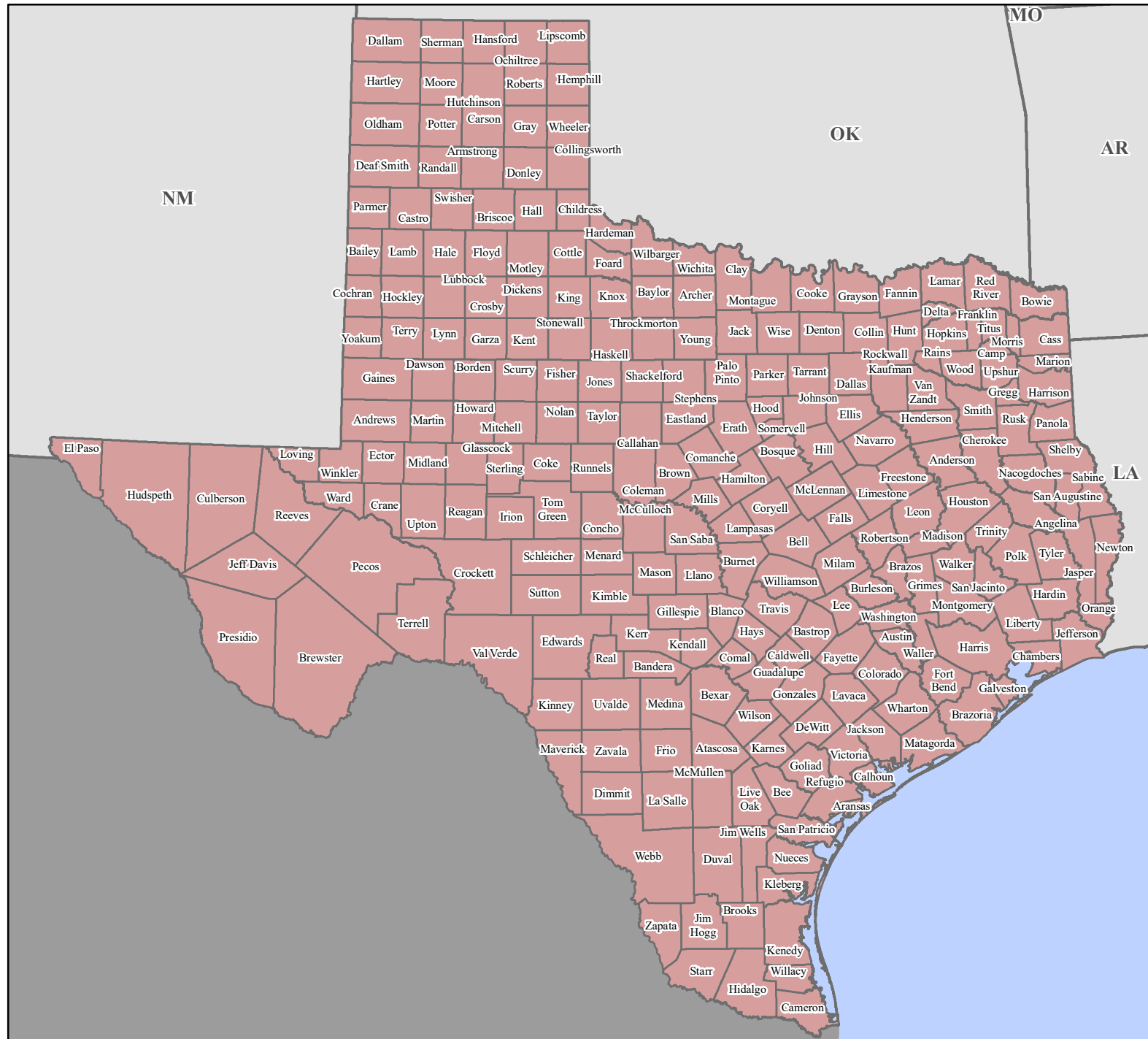
Representative of St. Anthony's Amarillo Housing 20, LP  
The Honorable Kent Hance  
KRS Housing LLC, Managing Member  
[khance@hslawmail.com](mailto:khance@hslawmail.com)

Cc: Rene Ruiz (via email)  
Alena Morgan (via email)  
Dan Kroetz (via email)  
Jennifer Hicks (via email)

# FEMA-4485-DR, Texas Disaster Declaration as of 03/11/2021



FEMA



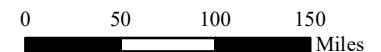
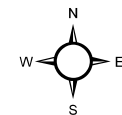
**Data Layer/Map Description:**  
The types of assistance that have been designated for selected areas in the State of Texas.

### Designated Counties

Individual Assistance and Public Assistance (Category B)

**Individual Assistance:**  
Individual Assistance limited to the Crisis Counseling Program and COVID-19 Funeral Assistance under Other Needs Assistance in all areas in the State of Texas.

**Public Assistance:**  
Emergency protective measures (Category B), not authorized under other Federal statutes, including direct federal assistance, for all areas in the State of Texas.



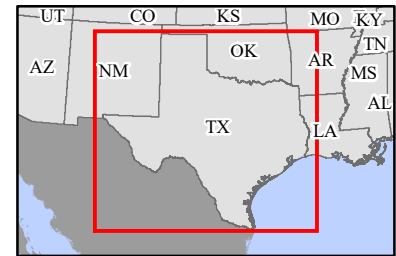
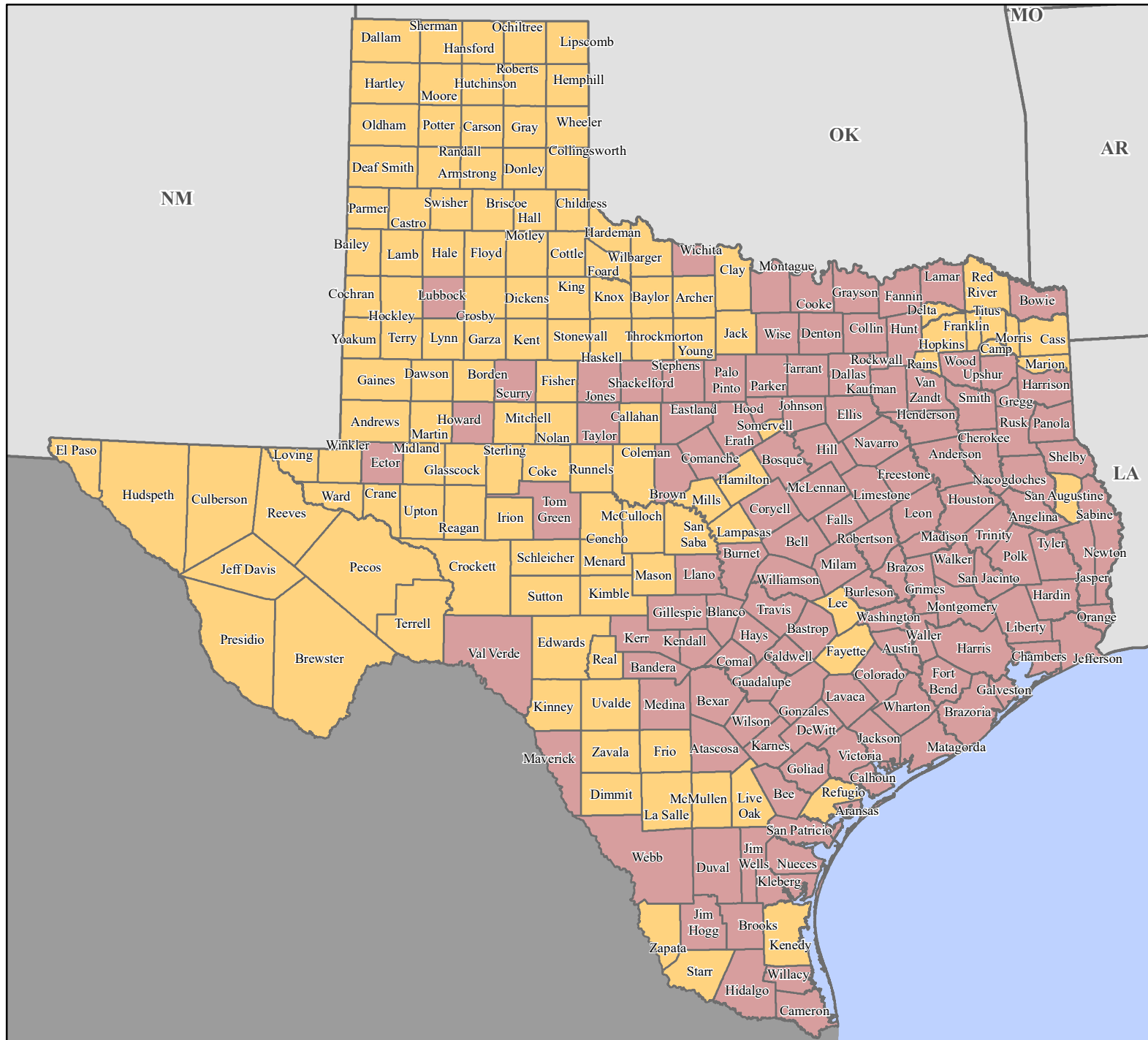
### Data Sources:

FEMA, ESRI;  
Initial Declaration: 03/25/2020  
Disaster Federal Registry Notice:  
Amendment #2: 03/11/2021  
Datum: North American 1983  
Projection: Lambert Conformal Conic

# FEMA-4586-DR, Texas Disaster Declaration as of 06/25/2021



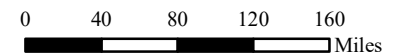
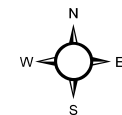
## FEMA



**Data Layer/Map Description:**  
 The types of assistance that have been designated for selected areas in the State of Texas.

All areas within the State of Texas are eligible for assistance under the Hazard Mitigation Grant Program.

- Designated Counties**
- Public Assistance (Category B)
  - Individual Assistance and Public Assistance (Category B)



**Data Sources:**  
 FEMA, ESRI;  
 Initial Declaration: 02/19/2021  
 Disaster Federal Registry Notice:  
 Amendment #4: 06/24/2021  
 Datum: North American 1983  
 Projection: Lambert Conformal Conic



# EXHIBIT B

## COMMONWEALTH CONSTRUCTION CORPORATION (CCC)

PO Box 1658, Fond du Lac, WI 54936 | 24 South Brooke Street, Fond du Lac, WI 54935

Phone: 920.922.8170 | Fax: 920.922.8171

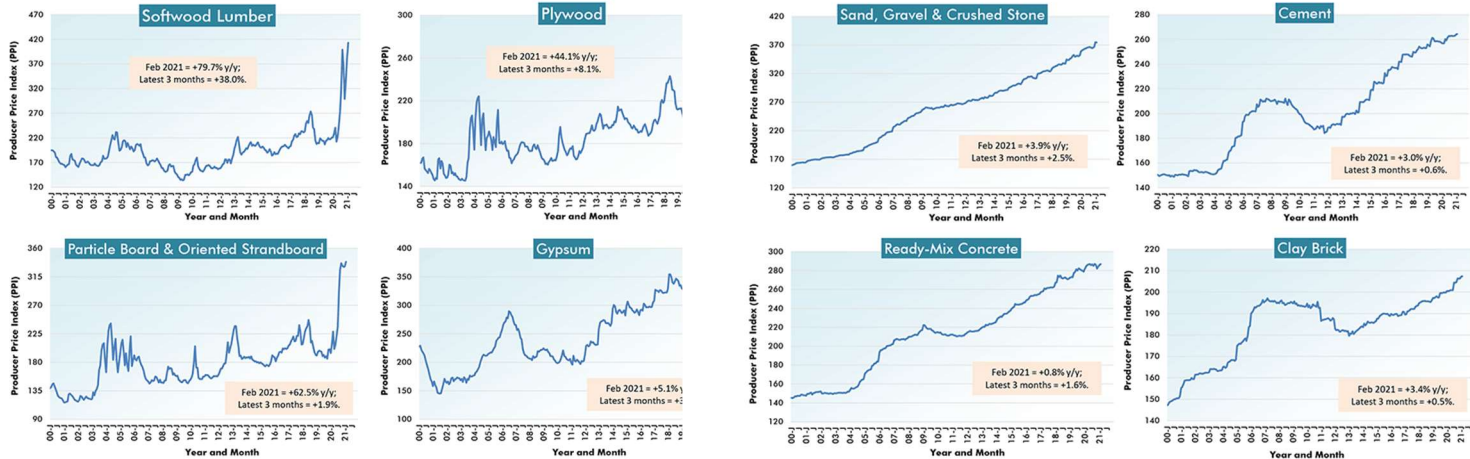
Common @ St Anthony- Amarillo, TX

7/16/2021

To whom it may concern:

During the bidding process for the Commons @ St. Anthony, we ran into many challenges finding subs to bid our project. There are multiple large projects going on in the Amarillo area such as an Amazon Warehouse, Texas Tech Renovation, PAMEX and Hotel Renovations using subs up from not only the Amarillo area but the surrounding communities as well, including Lubbock, Clovis, Pampa. The common response we got from further communities such as Oklahoma City and Dallas was “there is more than enough work within a 30-mile radius, so there is no need to travel that far”. We even solicited the help of several local general contractors in hopes of gaining more interest from the local subcontractor pool, including Kelly Wood Construction, S&B Services and Straley Construction Consultants. We also turned to out-of-state subs such as Silgo Construction that specialize in Rehab projects and they were unable to entice their traveling contractors to bid this project due to their current workload.

Once we did receive bids for the project, the price of materials had sky-rocketed and remain on the rise. This includes but is not limited to materials such as PVC pipe, Copper, Tapered Insulation, Drywall, and Framing materials. The demand for these products continues while the labor force has slowed or shut down at times which continues to drive the increased costs with no short-term relief in sight. Below are some charts on costs.



07/16/2021

Ms. Marni Holloway  
Director of Multifamily Finance  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78701



RE: The Commons at St. Anthony's (TDHCA #20042), Amarillo, Potter County

Dear Ms. Holloway,

I am writing to help illustrate how progress with the Commons at Saint Anthony project has been materially impeded this year.

The winter storms of February 2021 have had a notable and lasting effect on construction in Amarillo. Current projects in progress came to a halt and a considerable portion of the local construction workforce was needed to repair the extensive damages caused by this unprecedented event. The labor shortage coupled with the inability to receive materials has affected local contractors exponentially on both current and upcoming projects.

A significant amount of the Amarillo construction work force is currently tied up in several large projects; the scope of which do not typically occur simultaneously. Some of those notable projects include a \$90M Texas Tech School of Veterinary Medicine, the final eighteen schools of a \$104M AISD bond election, construction of several new school campuses from a \$197M bond election in Canyon (*19 miles away*), and a new 1 million square-foot distribution center for Amazon. Additionally, there is also a new \$54M district courthouse as well as a \$20M renovation a historic building into a hotel currently being constructed within a mile of the project site.

According to the June 2021 Amarillo economic report, most local businesses still report trouble finding employees. A distance of 260 miles to the nearest major metropolitan area makes recruitment of new tradesmen into the workforce difficult. The local Unemployment Rate has dropped to 3.9% and reflects the tightness of the job market and shortage of job applicants.

We have incurred increasing shortages and witnessed substantial price inflation of common construction materials this year. We are hopeful that this will subside and have already seen the retraction of lumber prices beginning to occur.

Due to the conditions stated above, many subcontractors have been unable to provide competitive pricing for the Commons at Saint Anthony project. We took the steps of soliciting bids from outside of the Amarillo trade area to help mitigate the labor shortage issue, however the travel distance reduced interest and increased costs for those who did provide pricing.

We are hopeful that the additional time will permit these factors to come in line and allow this project to be come into fruition as a benefit to our community. Please do not hesitate to contact me if you have any questions or need anything further.

Respectfully,

Casey O. Wood  
President



**EXHIBIT C**

ID	Task Mod	Task Name	Duration	Start	Finish	Predecessors	Resource Names	J	Half 2, 2 J
1		<b>Commons At St. Anthonys</b>	<b>427 days</b>	<b>Mon 11/1/21</b>	<b>Tue 6/20/23</b>				
2		<b>Site Mobilization</b>	<b>35 days</b>	<b>Mon 11/1/21</b>	<b>Fri 12/17/21</b>				
3		Clear and Grub Site	5 days	Mon 11/1/21	Fri 11/5/21				
4		Stake Site	4 days	Wed 11/3/21	Mon 11/8/21	3FS-3 days			
5		Silt Fence /Tracking Pads	7 days	Thu 11/4/21	Fri 11/12/21	3FS-2 days			
6		Site Trailer	3 days	Tue 11/9/21	Thu 11/11/21	4			
7		Site Utilities	20 days	Tue 11/9/21	Mon 12/6/21	4			
8		Site temp fence	4 days	Mon 11/15/21	Thu 11/18/21	5			
9		Separation Fence	15 days	Mon 11/15/21	Fri 12/3/21	5,8SS			
10		Demo:asphalt,concrete,CMU,stairs	10 days	Mon 12/6/21	Fri 12/17/21	9			
11		<b>Exterior Building Work</b>	<b>215 days</b>	<b>Mon 2/21/22</b>	<b>Fri 12/16/22</b>				
12		Roof Demolition	20 days	Mon 2/21/22	Fri 3/18/22	8,18FS-40 days			
13		Roof	30 days	Mon 3/14/22	Fri 4/22/22	12FS-5 days			
14		Windows	20 days	Mon 4/25/22	Fri 5/20/22	13			
15		Exterior Facades	150 days	Mon 5/23/22	Fri 12/16/22	14			
16		<b>Interior Renovation</b>	<b>363 days</b>	<b>Mon 11/29/21</b>	<b>Wed 4/19/23</b>				
17		<b>General</b>	<b>265 days</b>	<b>Mon 11/29/21</b>	<b>Fri 12/2/22</b>				
18		Hazard Abatement	100 days	Mon 11/29/21	Fri 4/15/22	9FS-5 days			
19		Interior Demolition	80 days	Mon 3/7/22	Fri 6/24/22	18FS-30 days			
20		Interior Rough Carpentry	60 days	Mon 6/27/22	Fri 9/16/22	19			
21		Elevator installation	55 days	Mon 9/19/22	Fri 12/2/22	20			
22		<b>Level 5 and Penthouse</b>	<b>70 days</b>	<b>Tue 9/6/22</b>	<b>Mon 12/12/22</b>				
23		Framing	10 days	Tue 9/6/22	Mon 9/19/22	19,20FS-9 days			
24		MEP Rough In	20 days	Tue 9/20/22	Mon 10/17/22	13,20FS-30 days,23			
25		FP Rough In	7 days	Tue 10/4/22	Wed 10/12/22	24FS-10 days			
26		Insulation	5 days	Tue 10/18/22	Mon 10/24/22	24,25			
27		Sheetrock	15 days	Tue 10/25/22	Mon 11/14/22	26			
28		Texture/Paint	20 days	Tue 11/15/22	Mon 12/12/22	27FS-5 days,29FS-3 days			
29		Underlayment and level floors	8 days	Tue 11/8/22	Thu 11/17/22	27FS-5 days			
30		<b>Finishes Level 5</b>	<b>50 days</b>	<b>Fri 12/16/22</b>	<b>Thu 2/23/23</b>				
31		Install Flooring (20 day cure Gypcrete)	12 days	Fri 12/16/22	Mon 1/2/23	29FS+20 days			
32		Install Cabinets and Tops / Range Hood	7 days	Tue 1/3/23	Wed 1/11/23	31			
33		Trim and Doors	7 days	Tue 1/10/23	Wed 1/18/23	28,32FS-2 days			

ID	Task Name	Duration	Start	Finish	Predecessors	Resource Names		Half 2, 2
34	MEP/FP Trim	5 days	Thu 1/19/23	Wed 1/25/23	32,33			
35	Appliances	2 days	Tue 1/24/23	Wed 1/25/23	34FF			
36	Carpet/Shelving/Mirrors	11 days	Thu 1/26/23	Thu 2/9/23	34			
37	Life Safety Test/ Clean Units	5 days	Thu 1/26/23	Wed 2/1/23	34			
38	CCC Punch /Complete	5 days	Fri 2/10/23	Thu 2/16/23	36			
39	M&A Punch /Complete	5 days	Fri 2/17/23	Thu 2/23/23	38			
40	<b>Level 4</b>	<b>70 days</b>	<b>Tue 9/20/22</b>	<b>Mon 12/26/22</b>				
41	Framing	10 days	Tue 9/20/22	Mon 10/3/22	23			
42	MEP Rough In	20 days	Tue 10/4/22	Mon 10/31/22	41			
43	FP Rough In	7 days	Tue 10/18/22	Wed 10/26/22	42FS-10 days			
44	Insulation	5 days	Tue 11/1/22	Mon 11/7/22	42,43			
45	Sheetrock	15 days	Tue 11/8/22	Mon 11/28/22	44			
46	Texture/Paint	20 days	Tue 11/29/22	Mon 12/26/22	45FS-5 days,47FS-3 days			
47	Underlayment and level floors	8 days	Tue 11/22/22	Thu 12/1/22	45FS-5 days			
48	<b>Finishes Level 4</b>	<b>49 days</b>	<b>Fri 12/30/22</b>	<b>Wed 3/8/23</b>				
49	Install Flooring (20 day cure Gypcrete)	12 days	Fri 12/30/22	Mon 1/16/23	47FS+20 days			
50	Install Cabinets and Tops	7 days	Tue 1/17/23	Wed 1/25/23	49			
51	Trim and Doors	7 days	Tue 1/24/23	Wed 2/1/23	46,50FS-2 days			
52	MEP/FP Trim	5 days	Thu 2/2/23	Wed 2/8/23	50,51			
53	Appliances	2 days	Tue 2/7/23	Wed 2/8/23	52FF			
54	Carpet/Shelving/Mirrors	11 days	Thu 2/9/23	Thu 2/23/23	52			
55	Life Safety Test/ Clean Units	5 days	Thu 2/9/23	Wed 2/15/23	52			
56	CCC Punch /Complete	5 days	Fri 2/24/23	Thu 3/2/23	54			
57	M&A Punch /Complete	4 days	Fri 3/3/23	Wed 3/8/23	56			
58	<b>LVL 5 corridor</b>	<b>52 days</b>	<b>Tue 10/18/22</b>	<b>Wed 12/28/22</b>				
59	MEP Rough In	5 days	Tue 10/18/22	Mon 10/24/22	24			
60	FP Rough In	5 days	Fri 10/21/22	Thu 10/27/22	59FS-2 days			
61	Insulation	2 days	Fri 10/28/22	Mon 10/31/22	59,60			
62	Sheetrock	10 days	Tue 11/1/22	Mon 11/14/22	61			
63	Texture/Paint	10 days	Tue 11/15/22	Mon 11/28/22	62			
64	ACT Ceilings	7 days	Tue 11/29/22	Wed 12/7/22	63			
65	Flooring	7 days	Thu 12/8/22	Fri 12/16/22	64			
66	CCC Punch /Complete	4 days	Mon 12/19/22	Thu 12/22/22	65			

ID	Task Mod	Task Name	Duration	Start	Finish	Predecessors	Resource Names	J	Half 2, 2 J
67		<b>M&amp;A Punch /Complete</b>	<b>4 days</b>	<b>Fri 12/23/22</b>	<b>Wed 12/28/22</b>	<b>66</b>			
68		<b>Level 3</b>	<b>70 days</b>	<b>Tue 10/4/22</b>	<b>Mon 1/9/23</b>				
69		Framing	10 days	Tue 10/4/22	Mon 10/17/22	41			
70		MEP Rough In	20 days	Tue 10/18/22	Mon 11/14/22	69			
71		FP Rough In	7 days	Tue 11/1/22	Wed 11/9/22	70FS-10 days			
72		Insulation	5 days	Tue 11/15/22	Mon 11/21/22	70,71			
73		Sheetrock	15 days	Tue 11/22/22	Mon 12/12/22	72			
74		Texture/Paint	20 days	Tue 12/13/22	Mon 1/9/23	73FS-5 days,75FS-3 days			
75		Underlayment and level floors	8 days	Tue 12/6/22	Thu 12/15/22	73FS-5 days			
76		<b>Finishes Level 3</b>	<b>49 days</b>	<b>Fri 1/13/23</b>	<b>Wed 3/22/23</b>				
77		Install Flooring (20 day cure Gypcrete)	12 days	Fri 1/13/23	Mon 1/30/23	75FS+20 days			
78		Install Cabinets and Tops	7 days	Tue 1/31/23	Wed 2/8/23	77			
79		Trim and Doors	7 days	Tue 2/7/23	Wed 2/15/23	74,78FS-2 days			
80		MEP/FP Trim	5 days	Thu 2/16/23	Wed 2/22/23	78,79			
81		Appliances	2 days	Tue 2/21/23	Wed 2/22/23	80FF			
82		Carpet/Shelving/Mirrors	11 days	Thu 2/23/23	Thu 3/9/23	80			
83		<b>Life Safety Test/ Clean Units</b>	<b>5 days</b>	<b>Thu 2/23/23</b>	<b>Wed 3/1/23</b>	<b>80</b>			
84		CCC Punch /Complete	5 days	Fri 3/10/23	Thu 3/16/23	82			
85		<b>M&amp;A Punch /Complete</b>	<b>4 days</b>	<b>Fri 3/17/23</b>	<b>Wed 3/22/23</b>	<b>84</b>			
86		<b>LVL 4 corridor</b>	<b>52 days</b>	<b>Tue 11/1/22</b>	<b>Wed 1/11/23</b>				
87		MEP Rough In	5 days	Tue 11/1/22	Mon 11/7/22	42			
88		FP Rough In	5 days	Fri 11/4/22	Thu 11/10/22	87FS-2 days			
89		Insulation	2 days	Fri 11/11/22	Mon 11/14/22	87,88			
90		Sheetrock	10 days	Tue 11/15/22	Mon 11/28/22	89			
91		Texture/Paint	10 days	Tue 11/29/22	Mon 12/12/22	90			
92		ACT Ceilings	7 days	Tue 12/13/22	Wed 12/21/22	91			
93		Flooring	7 days	Thu 12/22/22	Fri 12/30/22	92			
94		<b>CCC Punch /Complete</b>	<b>4 days</b>	<b>Mon 1/2/23</b>	<b>Thu 1/5/23</b>	<b>93</b>			
95		<b>M&amp;A Punch /Complete</b>	<b>4 days</b>	<b>Fri 1/6/23</b>	<b>Wed 1/11/23</b>	<b>94</b>			
96		<b>Level 2</b>	<b>70 days</b>	<b>Tue 10/18/22</b>	<b>Mon 1/23/23</b>				
97		Framing	10 days	Tue 10/18/22	Mon 10/31/22	69			
98		MEP Rough In	20 days	Tue 11/1/22	Mon 11/28/22	97			
99		FP Rough In	7 days	Tue 11/15/22	Wed 11/23/22	98FS-10 days			

ID	Task Mod	Task Name	Duration	Start	Finish	Predecessors	Resource Names	J	Half 2, 2 J
100		Insulation	5 days	Tue 11/29/22	Mon 12/5/22	98,99			
101		Sheetrock	15 days	Tue 12/6/22	Mon 12/26/22	100			
102		Texture/Paint	20 days	Tue 12/27/22	Mon 1/23/23	101FS-5 days,103FS-3 days			
103		Underlayment and level floors	8 days	Tue 12/20/22	Thu 12/29/22	101FS-5 days			
104		<b>Finishes Level 2</b>	<b>49 days</b>	<b>Fri 1/27/23</b>	<b>Wed 4/5/23</b>				
105		Install Flooring (20 day cure Gypcrete)	12 days	Fri 1/27/23	Mon 2/13/23	103FS+20 days			
106		Install Cabinets and Tops	7 days	Tue 2/14/23	Wed 2/22/23	105			
107		Trim and Doors	7 days	Tue 2/21/23	Wed 3/1/23	102,106FS-2 days			
108		MEP/FP Trim	5 days	Thu 3/2/23	Wed 3/8/23	106,107			
109		Appliances	11 days	Wed 2/22/23	Wed 3/8/23	108FF			
110		Carpet/Shelving/Mirrors	11 days	Thu 3/9/23	Thu 3/23/23	108			
111		Life Safety Test/ Clean Units	5 days	Thu 3/9/23	Wed 3/15/23	108			
112		CCC Punch /Complete	5 days	Fri 3/24/23	Thu 3/30/23	110			
113		<b>M&amp;A Punch /Complete</b>	<b>4 days</b>	<b>Fri 3/31/23</b>	<b>Wed 4/5/23</b>	<b>112</b>			
114		<b>LVL 3 corridor</b>	<b>52 days</b>	<b>Tue 11/15/22</b>	<b>Wed 1/25/23</b>				
115		MEP Rough In	5 days	Tue 11/15/22	Mon 11/21/22	70			
116		FP Rough In	5 days	Fri 11/18/22	Thu 11/24/22	115FS-2 days			
117		Insulation	2 days	Fri 11/25/22	Mon 11/28/22	115,116			
118		Sheetrock	10 days	Tue 11/29/22	Mon 12/12/22	117			
119		Texture/Paint	10 days	Tue 12/13/22	Mon 12/26/22	118			
120		ACT Ceilings	7 days	Tue 12/27/22	Wed 1/4/23	119			
121		Flooring	7 days	Thu 1/5/23	Fri 1/13/23	120			
122		<b>CCC Punch /Complete</b>	<b>4 days</b>	<b>Mon 1/16/23</b>	<b>Thu 1/19/23</b>	<b>121</b>			
123		<b>M&amp;A Punch /Complete</b>	<b>4 days</b>	<b>Fri 1/20/23</b>	<b>Wed 1/25/23</b>	<b>122</b>			
124		<b>Level 1</b>	<b>70 days</b>	<b>Tue 11/1/22</b>	<b>Mon 2/6/23</b>				
125		Framing	10 days	Tue 11/1/22	Mon 11/14/22	97			
126		MEP Rough In	20 days	Tue 11/15/22	Mon 12/12/22	125			
127		FP Rough In	7 days	Tue 11/29/22	Wed 12/7/22	126FS-10 days			
128		Insulation	5 days	Tue 12/13/22	Mon 12/19/22	126,127			
129		Sheetrock	15 days	Tue 12/20/22	Mon 1/9/23	128			
130		Texture/Paint	20 days	Tue 1/10/23	Mon 2/6/23	129FS-5 days,131FS-3 days			
131		Underlayment and level floors	8 days	Tue 1/3/23	Thu 1/12/23	129FS-5 days			
132		<b>Finishes Level 1</b>	<b>49 days</b>	<b>Fri 2/10/23</b>	<b>Wed 4/19/23</b>				

ID	Task Mod	Task Name	Duration	Start	Finish	Predecessors	Resource Names	J	Half 2, 2 J
133		Install Flooring - LVP	12 days	Fri 2/10/23	Mon 2/27/23	131FS+20 days			
134		Install Cabinets and Tops	7 days	Tue 2/28/23	Wed 3/8/23	133			
135		Trim and Doors	7 days	Tue 3/7/23	Wed 3/15/23	130,134FS-2 days			
136		MEP/FP Trim	5 days	Thu 3/16/23	Wed 3/22/23	134,135			
137		Appliances	11 days	Wed 3/8/23	Wed 3/22/23	136FF			
138		Carpet/Shelving/Mirrors	11 days	Thu 3/23/23	Thu 4/6/23	136			
139		Life Safety Test/ Clean Units	5 days	Thu 3/23/23	Wed 3/29/23	136			
140		CCC Punch /Complete	5 days	Fri 4/7/23	Thu 4/13/23	138			
141		<b>M&amp;A Punch /Complete</b>	<b>4 days</b>	<b>Fri 4/14/23</b>	<b>Wed 4/19/23</b>	<b>140</b>			
142		<b>LVL 2 corridor</b>	<b>52 days</b>	<b>Tue 11/29/22</b>	<b>Wed 2/8/23</b>				
143		MEP Rough In	5 days	Tue 11/29/22	Mon 12/5/22	98			
144		FP Rough In	5 days	Fri 12/2/22	Thu 12/8/22	143FS-2 days			
145		Insulation	2 days	Fri 12/9/22	Mon 12/12/22	143,144			
146		Sheetrock	10 days	Tue 12/13/22	Mon 12/26/22	145			
147		Texture/Paint	10 days	Tue 12/27/22	Mon 1/9/23	146			
148		ACT Ceilings	7 days	Tue 1/10/23	Wed 1/18/23	147			
149		Flooring	7 days	Thu 1/19/23	Fri 1/27/23	148			
150		<b>CCC Punch /Complete</b>	<b>4 days</b>	<b>Mon 1/30/23</b>	<b>Thu 2/2/23</b>	<b>149</b>			
151		<b>M&amp;A Punch /Complete</b>	<b>4 days</b>	<b>Fri 2/3/23</b>	<b>Wed 2/8/23</b>	<b>150</b>			
152		<b>LVL 1 corridor</b>	<b>52 days</b>	<b>Tue 12/13/22</b>	<b>Wed 2/22/23</b>				
153		MEP Rough In	5 days	Tue 12/13/22	Mon 12/19/22	126			
154		FP Rough In	5 days	Fri 12/16/22	Thu 12/22/22	153FS-2 days			
155		Insulation	2 days	Fri 12/23/22	Mon 12/26/22	153,154			
156		Sheetrock	10 days	Tue 12/27/22	Mon 1/9/23	155			
157		Texture/Paint	10 days	Tue 1/10/23	Mon 1/23/23	156			
158		ACT Ceilings	7 days	Tue 1/24/23	Wed 2/1/23	157			
159		Flooring	7 days	Thu 2/2/23	Fri 2/10/23	158			
160		<b>CCC Punch /Complete</b>	<b>4 days</b>	<b>Mon 2/13/23</b>	<b>Thu 2/16/23</b>	<b>159</b>			
161		<b>M&amp;A Punch /Complete</b>	<b>4 days</b>	<b>Fri 2/17/23</b>	<b>Wed 2/22/23</b>	<b>160</b>			
162		<b>Site Work</b>	<b>115 days</b>	<b>Mon 12/19/22</b>	<b>Fri 5/26/23</b>				
163		Site Concrete	50 days	Mon 12/19/22	Fri 2/24/23	2,11			
164		Final Grade Asphalt Prep	40 days	Mon 1/30/23	Fri 3/24/23	163FS-20 days			
165		Asphalt and Street Repair	35 days	Mon 3/13/23	Fri 4/28/23	164FS-10 days			

ID	Task Mod	Task Name	Duration	Start	Finish	Predecessors	Resource Names	J	Half 2, 2 J
166		Striping /Signage	4 days	Thu 4/27/23	Tue 5/2/23	165FF+2 days			
167		Landscaping	55 days	Mon 2/27/23	Fri 5/12/23	163			
168		Asphalt Blue Top	1 day	Mon 5/1/23	Mon 5/1/23	165			
169		CCC Punch /Complete	5 days	Mon 5/15/23	Fri 5/19/23	167			
170		M&A Punch /Complete	5 days	Mon 5/22/23	Fri 5/26/23	169			
171									
172		Final inspections	15 days	Thu 4/20/23	Wed 5/10/23	16			
173		Fire Safety System Inspection	10 days	Thu 4/20/23	Wed 5/3/23	16			
174		TCO	1 day	Thu 5/11/23	Thu 5/11/23	172,173			
175		CO	2 days	Mon 5/29/23	Tue 5/30/23	162,174			
176		Tenant Move ins	15 days	Wed 5/31/23	Tue 6/20/23	175			

# KRS Housing, LLC

---

Honorable Kent R. Hance

March 22, 2021

Mr. Bobby Wilkinson  
Executive Director  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78701-2410

DELIVERY BY EMAIL: [Bobby.Wilkinson@tdhca.state.tx.us](mailto:Bobby.Wilkinson@tdhca.state.tx.us) and [asset.management@tdhca.state.tx.us](mailto:asset.management@tdhca.state.tx.us)

**Re: Commons at St. Anthony's, TDHCA #20042  
10% Test Report Submittal Extension Request**

Dear Mr. Wilkinson:

The Commons at St. Anthony's will be a 124 senior apartment development located in Amarillo within a portion of the historic St. Anthony's Hospital, a building dating back to the early 1900's and the first hospital to serve Amarillo. I request a ninety (90) day extension to the July 1, 2021 10% Test submittal deadline due to the following factors that were beyond the reasonable control of the Applicant and could not have been reasonably anticipated. KRS Housing, LLC is the General Partner of the Applicant – St. Anthony's Amarillo Housing 20, LP.

The property Seller is a neighborhood advisory association, a non-profit organization without staff that is run by its volunteer Board of Directors. Day-to-day management of all matters related to the building had been handled on a voluntary basis by an agent for the Seller until early August 2020 when its services were terminated by the Seller. Then, the Seller's Board of Directors changed membership. The removal of the agent by the Seller was a decision made beyond the control of the Applicant and one in which the Applicant was not consulted. Additional time has been spent educating the new Board about the real estate purchase agreement, the rehabilitation architectural plans, the various approval processes, and future cooperative necessities. The change in Seller representation and Board membership has also increased the time needed to receive Seller approval of key design and approval instruments. In addition, gaining access to the building has proven challenging and limited to times convenient for the volunteer agent and then the volunteer neighborhood Directors. Access to the building for key measurements and third-party professionals is critical to keep the project on our targeted timeline.

The historic nature of the Development requires additional project design review by the Texas Historical Commission (THC) and U.S. National Park Service (NPS); a time-consuming process not applicable to new construction or renovation projects. These extra layers of review were initially factored into the overall Development timeline by co-Developer Commonwealth Development and historic consultant MacRostie Historic Advisors LLC – who both have extensive experience with historic renovation and construction; however, the early onset of the pandemic and travel restrictions caused a real impediment to forward

progress on this process. On-site physical inspections of the building were essential to document its historic character for the THC and NPS. Also, given the age of the building, no building plans were available to the architect – only a very old scan without dimensions. Detailed field building dimensional verification had to be conducted to create base architectural plans from which to design the rehabilitation. Travel to the site, however, was mostly prohibited throughout much of 2020 because of the COVID-19 pandemic, making coordination among the design team and historic consultants more difficult. The National Register of Historic Places nomination was submitted to the THC on February 7, 2020; BEFORE submitting the 9% tax credit application to TDHCA. This was considered to be a very early submittal of the historic nomination, but the Historic Places nomination review got bogged down by initial COVID-19 office shut downs and then at-home nomination reviews being performed by THC and NPS staff. Archive libraries at Texas universities needed to research the building history were closed and inaccessible. The historic nomination was initially expected to be heard by the THC State Board of Review on May 16, 2020 but was delayed to September 12, 2020 because of the early impact COVID-19 had on THC and NPS operations. This was a costly delay of time – one that was out of our reasonable control and nothing that could have been reasonably anticipated. The following notice was issued by the NPS April 1, 2020:

*From the National Park Service (NPS):*

*The Technical Preservation Services (TPS) office remains open, with TPS staff primarily teleworking from home at this time. TPS staff can continue to be reached by phone and email. Review of tax incentive applications by our office and the State Historic Preservation Offices (SHPO) continues (including Part 1 applications and appeals), but please note that TPS and SHPO staff may not have immediate access to applications and project files during this period. Many SHPO offices are also operating remotely during this period with limited or no access to their offices and mail, so please consult with your SHPO office should you have questions concerning their specific current operations before submitting any tax incentive applications.*

*TPS continues to review hard-copy applications at this time, but please anticipate that there will be some additional delays in review.*

The compounding delay in the review process impacted the preparation of detailed Part 2 & B rehabilitation plans to be submitted to the NPS and THC for construction approval. Work cannot begin on the hazardous materials abatement and demolition until the NPS and THC approve the rehabilitation plans. Furthermore, the financing and purchase closing will not occur before NPS and THC approve the Part 2 & B plans. This architectural plan development and approval delay has subsequently pushed the March 2021 projected closing date later into 2021. Assuming the typical NPS rehabilitation plan approval time, the closing is anticipated to occur by June 1, 2021. There remains, however, outstanding risk that the closing could be delayed further by the NPS. The chance of insufficient time to incur the needed expenses and submit the 10% test report by July 1, 2021 is great enough to necessitate requesting a 10% test extension.

The projected construction duration is sixteen months; therefore, meeting the December 31, 2022 placed in service date is not in jeopardy. The first year in which tax credits will be claimed is 2023.



March 23, 2021

Page 3

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In summary, for the many causes of delay discussed above that were beyond the Applicant's reasonable control and could not have been reasonably anticipated, I respectfully request a ninety (90) day extension to the 10% test submittal deadline. I also request that, as Executive Director, you may make a determination that granting the extension will not warrant a point reduction in future 9% LIHTC rounds per §11.9(f) of the Qualified Allocation Plan. In addition, this extension request is being filed more than thirty (30) days prior to the July 1<sup>st</sup> deadline and therefore no fee is due with the request.

I appreciate your consideration in this matter and request that you contact me should you need additional information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kent R. Hance".

Kent R. Hance

Manager of General Partner Managing Member of St. Anthony's Amarillo Housing 20, LP

**EXHIBIT E**

**Exhibit E**

Delays caused by Neighborhood Association terminating management agent relationship and relying on a voluntary board of directors:

- February 18, 2021      Revised Plat application submitted to Neighborhood Association for review and signature
  
- March 10, 2021      The NPS Part 2 Application and the THC Part B Tax Credit Rehab Application sent to neighborhood association for signature with a return Fed-Ex envelope.
  
- March 15, 2021      After an on-site meeting with Commonwealth Development, the neighborhood association had agreed to the location of the new lot line
  
- March 16, 2021      The neighborhood association said they were seeking legal representation
  
- March 23, 2021      Another email based on conversations to get the plat app and the Part B apps signed.
  
- April 6, 2021      Confirmation that the applications were signed by the neighborhood.

**45-DELAY to the Development Timeline**

**jennifer@truecasa.net**

---

**From:** Craig Alter <c.alter@commonwealthco.net>  
**Sent:** Tuesday, March 16, 2021 9:44 AM  
**To:** Kent Hance  
**Cc:** Jack P. Driskill; jennifer@truecasa.net; Alexandro Contreras; Darlene Metz; Dan Kroetz; Kevin Sturgeon  
**Subject:** FW: St. Anthony's Revised Subdivision Plat  
**Attachments:** image015.jpg

Kent:  
I simply want to bring these issues to your attention so you are aware.

The revised subdivision plat application to move the lot lines as we have discussed with the neighborhood association cannot be filed without including a NHAA representative signature or the NHAA approval to allow the surveyor to act as agent. The subdivision application was delivered to NHAA by the surveyor a couple of weeks ago and has not been returned. Per the message below, NHAA is waiting to have legal representation before signing the application or giving the surveyor authority to submit it.

I had also sent the National Park Service Part 2 Rehabilitation Application and the Texas Historical Commission Part B Tax Credit Rehabilitation Application to Mildred on March 10, 2021 for her signature with a return FedEx envelope. She has not returned the documents, my email, or phone call. Perhaps the NHAA is also waiting to execute these until they have legal counsel.

Craig

**CRAIG B. ALTER**  
VICE PRESIDENT OF DEVELOPMENT | THE COMMONWEALTH COMPANIES

---




11612 BEE CAVES ROAD, BLDG. 2, SUITE 152, AUSTIN, TX 78738  
DIRECT: 512-956-5432  
CELL: 512-563-3225  
[C.ALTER@COMMONWEALTHCO.NET](mailto:C.ALTER@COMMONWEALTHCO.NET)  
[WWW.COMMONWEALTHCO.NET](http://WWW.COMMONWEALTHCO.NET)  
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 Please consider the environment before printing this email. Thank you.

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**From:** Jay Parker <jparker.nhaa@gmail.com>  
**Sent:** Tuesday, March 16, 2021 9:24 AM  
**To:** Craig Alter <c.alter@commonwealthco.net>  
**Cc:** ken McEntire <kmcentire@beyondmapping.com>; Melodie N. Graves <mgraves24@actx.edu>; Mildred Darton <mjcornish@att.net>; Ben Marshall <b.marshall@madesigninc.net>; Brian Redig <b.redig@madesigninc.net>; jennifer@truecasa.net; Kevin Sturgeon <k.sturgeon@commonwealthco.net>; Alexandro Contreras

<AContreras@hslawmail.com>

**Subject:** Re: St. Anthony's Revised Subdivision Plat

We are a day or two away from acquiring legal representation regarding this project. Please hold on completing your submission until our attorney review is complete.

Respectfully,

J. Parker

On Mon, Mar 15, 2021, 6:29 PM Craig Alter <[c.alter@commonwealthco.net](mailto:c.alter@commonwealthco.net)> wrote:

Ken:

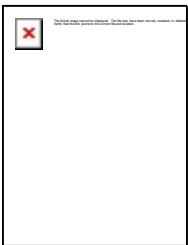
Please proceed with filing the subdivision replat application. Ben Marshall met with NHAA representative Jay Parker on site to review the lot line relocation. It is our understanding, Mr. Parker understood and accepted the lot line revision as proposed.

Thank you,

Craig

**CRAIG B. ALTER**

VICE PRESIDENT OF DEVELOPMENT | THE COMMONWEALTH COMPANIES



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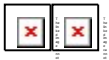
DIRECT: 512-956-5432

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---

**From:** ken McEntire <[kmcentire@beyondmapping.com](mailto:kmcentire@beyondmapping.com)>  
**Sent:** Monday, February 22, 2021 5:15 PM  
**To:** Craig Alter <[c.alter@commonwealthco.net](mailto:c.alter@commonwealthco.net)>  
**Subject:** Re: St. Anthony's Revised Subdivision Plat

Sounds good.

Thanks for the update

**[Ken McEntire, RPLS](#)**

**Director of Survey Division**



3501 South Georgia Street, Suite A

Amarillo, Texas, 79109

(806) 467-3777

Firm #10194246

On Mon, Feb 22, 2021 at 4:54 PM Craig Alter <[c.alter@commonwealthco.net](mailto:c.alter@commonwealthco.net)> wrote:

Ken,

We are planning to discuss the plat with the NHAA representatives this week and then can provide direction on filing the revised plat.

Please contact me should you have any questions.

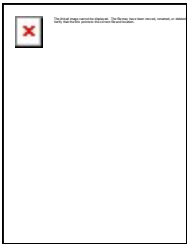
Thanks,

Craig

**CRAIG B. ALTER**

VICE PRESIDENT OF DEVELOPMENT | THE COMMONWEALTH COMPANIES

---



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**From:** ken McEntire <[kmcentire@beyondmapping.com](mailto:kmcentire@beyondmapping.com)>

**Sent:** Monday, February 22, 2021 1:39 PM

**To:** Craig Alter <[c.alter@commonwealthco.net](mailto:c.alter@commonwealthco.net)>

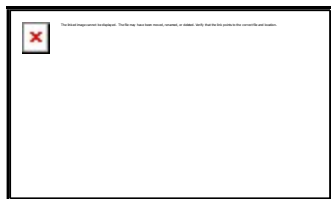
**Cc:** Brian Redig <[b.redig@madesigninc.net](mailto:b.redig@madesigninc.net)>; Ben Marshall <[b.marshall@madesigninc.net](mailto:b.marshall@madesigninc.net)>; Kevin Sturgeon <[k.sturgeon@commonwealthco.net](mailto:k.sturgeon@commonwealthco.net)>; Darlene Metz <[d.metz@commonwealthco.net](mailto:d.metz@commonwealthco.net)>; Kent Hance <[khance@hslawmail.com](mailto:khance@hslawmail.com)>; Alexandro Contreras <[AContreras@hslawmail.com](mailto:AContreras@hslawmail.com)>; Jerri Glover <[jerri.glover@gmail.com](mailto:jerri.glover@gmail.com)>; Mildred Darton <[mjcornish@att.net](mailto:mjcornish@att.net)>; [mgraves24@actx.edu](mailto:mgraves24@actx.edu)

**Subject:** Re: St. Anthony's Revised Subdivision Plat

I have corrected the application. Do we have an update on the review of the preliminary plat? Does it appear that the revised boundary is where you are wanting it? Also, what is the status of the application?

**Ken McEntire, RPLS**

**Director of Survey Division**



3501 South Georgia Street, Suite A

Amarillo, Texas, 79109

(806) 467-3777

Firm #10194246

On Thu, Feb 18, 2021 at 9:35 AM Craig Alter <[c.alter@commonwealthco.net](mailto:c.alter@commonwealthco.net)> wrote:

Ken:

St. Anthony's Legacy & Redevelopment Corp. is no longer agent for NHAA and should be removed from the subdivision application.

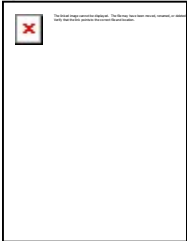
Thanks,

Craig

**CRAIG B. ALTER**

VICE PRESIDENT OF DEVELOPMENT | THE COMMONWEALTH COMPANIES

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**From:** ken McEntire <[kmcentire@beyondmapping.com](mailto:kmcentire@beyondmapping.com)>  
**Sent:** Thursday, February 18, 2021 9:29 AM  
**To:** Craig Alter <[c.alter@commonwealthco.net](mailto:c.alter@commonwealthco.net)>  
**Cc:** Brian Redig <[b.redig@makesigninc.net](mailto:b.redig@makesigninc.net)>; Ben Marshall <[b.marshall@makesigninc.net](mailto:b.marshall@makesigninc.net)>; Kevin Sturgeon <[k.sturgeon@commonwealthco.net](mailto:k.sturgeon@commonwealthco.net)>; Darlene Metz <[d.metz@commonwealthco.net](mailto:d.metz@commonwealthco.net)>; Kent Hance <[khance@hslawmail.com](mailto:khance@hslawmail.com)>; Alexandro Contreras <[AContreras@hslawmail.com](mailto:AContreras@hslawmail.com)>; Jerri Glover <[jerri.glover@gmail.com](mailto:jerri.glover@gmail.com)>; Mildred Darton <[mjcornish@att.net](mailto:mjcornish@att.net)>  
**Subject:** Re: St. Anthony's Revised Subdivision Plat

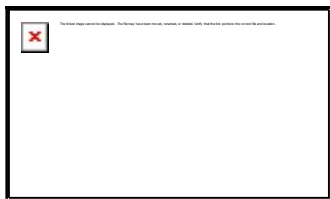


See attached recorded plat, preliminary plat and the revised survey with background to verify the location of the new boundary lines as well as the plat application.

Thanks,

**[Ken McEntire, RPLS](#)**

**Director of Survey Division**



3501 South Georgia Street, Suite A

Amarillo, Texas, 79109

(806) 467-3777

Firm #10194246

On Wed, Feb 17, 2021 at 6:08 PM Craig Alter <[c.alter@commonwealthco.net](mailto:c.alter@commonwealthco.net)> wrote:

Ken:

In response to your ownership question, the property is still owned by NHAA. The recently elected President is Jerri Glover (email above) and the past President, now Vice President, is Mildred Darton. Please send the plat application to them for review and signature. Please also send all of us an exhibit showing the approved subdivision lot line compared to the revised lot line location.

Jerri and Mildred, I would be happy to discuss the revised subdivision plat with you at your convenience. The revised subdivision plat is needed in response to the Amarillo City development rules.

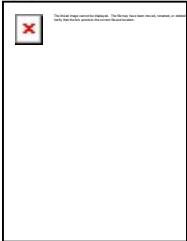
Thank you.

Craig

**CRAIG B. ALTER**

VICE PRESIDENT OF DEVELOPMENT | THE COMMONWEALTH COMPANIES

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**jennifer@truecasa.net**

---

**From:** Craig Alter <c.alter@commonwealthco.net>  
**Sent:** Tuesday, March 23, 2021 2:53 PM  
**To:** j.peterson2426@gmail.com  
**Cc:** Kent Hance; jennifer@truecasa.net  
**Subject:** FW: St. Anthony's Application Documents  
**Attachments:** OwnerPart2SubmittalAuthorForMD\_3-10-21.pdf; OwnerPart2SubmittalAuthor\_3-4-21.pdf; PartBDescriptionOfRehabTHC\_3-4-21.pdf; Part2DescriptionOfRehabNPS,v2\_3-3-21.pdf; ReplatApplication,NoSig.pdf; ExistingProposedLotLineExhibit\_2-25-21.pdf

Joseph:

Thank you for your call today. Below is my follow-up email to Melodie stating Mildred agreed to execute or get the documents executed. I'll also forward to you my email to Mildred.

Attached are the letters addressed to Melodie and Mildred with requested Owner's signature place at the bottom acknowledging no objection to us submitting the rehabilitation construction plans to the National Park Service (NPS) for approval. The Texas Historical Commission (THC) Part B and the NPS Part 2 applications for rehabilitation are attached. The Owner representative should sign the THC Part B form on page 2 below my signature. I request the executed letter and THC Part B form be returned to me. Please use blue ink when signing the documents.

Also attached are the subdivision plat application which needs the Owner printed name and signature on page 5 and the exhibit showing the original and revised subdivision plat lines (original is the red line and revised is the heavy black dashed line). Please have this executed and returned to me in the same envelope as above.

Please contact me should you have any questions about these documents.

Thank you for your assistance.

Craig

**CRAIG B. ALTER**

VICE PRESIDENT OF DEVELOPMENT | THE COMMONWEALTH COMPANIES



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---

**From:** Craig Alter <c.alter@commonwealthco.net>

**Sent:** Wednesday, March 10, 2021 5:26 PM

**To:** Melodie N. Graves <mgraves24@actx.edu>

**Cc:** Mildred Darton <mjcornish@att.net>

**Subject:** St. Anthony's Application Documents

Melodie:

You may disregard my previous emails requesting that you execute documents related to National Park Service and Texas Historical Commission rehabilitation tax credit applications. After speaking with Mildred, I sent the needed documents to her today for her execution and return of original documents to me.

Mildred:

Please execute the documents you receive in blue ink.

Thank you both for your help.

Craig

**CRAIG B. ALTER**

VICE PRESIDENT OF DEVELOPMENT | THE COMMONWEALTH COMPANIES



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**jennifer@truecasa.net**

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**From:** Craig Alter <c.alter@commonwealthco.net>  
**Sent:** Tuesday, March 23, 2021 2:58 PM  
**To:** j.peterson2426@gmail.com  
**Cc:** Kent Hance; jennifer@truecasa.net  
**Subject:** FW: St. Anthony's Preservation Applications  
**Attachments:** OwnerPart2SubmittalAuthor\_3-4-21.pdf; Part2DescriptionOfRehabNPS\_3-3-21.pdf; Part2DescriptionOfRehabTHC\_3-4-21.pdf

Below is the follow-up email to Melodie requesting return of the documents with her signature.

**CRAIG B. ALTER**

VICE PRESIDENT OF DEVELOPMENT | THE COMMONWEALTH COMPANIES



11612 BEE CAVES ROAD, BLDG. 2, SUITE 152, AUSTIN, TX 78738

DIRECT: 512-956-5432

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[C.ALTER@COMMONWEALTHCO.NET](mailto:C.ALTER@COMMONWEALTHCO.NET)

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Please consider the environment before printing this email. Thank you.

---

**From:** Craig Alter  
**Sent:** Wednesday, March 10, 2021 3:53 PM  
**To:** Melodie N. Graves <mgraves24@actx.edu>  
**Cc:** Mildred Darton <mjcornish@att.net>; Beth Jacob <bjacob@mac-ha.com>; Darlene Metz <d.metz@commonwealthco.net>; Jay Parker <jparker.nhaa@gmail.com>; Ben Marshall <b.marshall@madesigninc.net>  
**Subject:** FW: St. Anthony's Preservation Applications

Dear Melodie:

I am following up on the message below to see if you have had the opportunity to review the attached documents and ask if you have any questions? We are ready to submit the rehabilitation plans to the National Park Service and Texas Historical Commission but cannot do so without including the attached documents with your signature added to the letter on Commonwealth letterhead and the THC Part 2 Description of Rehabilitation application (revised from below email message with my signature).

Please return the two executed documents this week to enable our submittal. Feel free to contact me should you have any questions.

Thank you,  
Craig

**CRAIG B. ALTER**

VICE PRESIDENT OF DEVELOPMENT | THE COMMONWEALTH COMPANIES



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**From:** Craig Alter <[c.alter@commonwealthco.net](mailto:c.alter@commonwealthco.net)>

**Sent:** Thursday, March 04, 2021 2:16 PM

**To:** Melodie N. Graves <[mgraves24@actx.edu](mailto:mgraves24@actx.edu)>

**Cc:** Mildred Darton <[mjcornish@att.net](mailto:mjcornish@att.net)>; Kent Hance <[khance@hslawmail.com](mailto:khance@hslawmail.com)>; [jennifer@truecasa.net](mailto:jennifer@truecasa.net); Alexandro Contreras <[AContreras@hslawmail.com](mailto:AContreras@hslawmail.com)>; Darlene Metz <[d.metz@commonwealthco.net](mailto:d.metz@commonwealthco.net)>; Kevin Sturgeon <[k.sturgeon@commonwealthco.net](mailto:k.sturgeon@commonwealthco.net)>; Brian Redig <[b.redig@maesigninc.net](mailto:b.redig@maesigninc.net)>

**Subject:** St. Anthony's Preservation Applications

Melodie:

Commonwealth's architect, M+A Design, in consultation with the project historic consultants, has prepared construction plans for the renovation of the senior apartment portion of the hospital. The National Park Service and Texas Historical Commission construction plan applications need acknowledgement the property owner does not object to the applications being filed. Please sign the attached letter which will accompany the National Park Service application and sign the attached Texas Historical Commission application under my name and return both to me by email. We will submit the applications upon receiving executed documents. Also attached is the National Park Service rehabilitation application for your records.

Should you have any questions, please contact me.

Thank you,  
Craig

**CRAIG B. ALTER**

VICE PRESIDENT OF DEVELOPMENT | THE COMMONWEALTH COMPANIES



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20075

New Hope Housing Savoy  
Force Majeure Request

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**SEPTEMBER 2, 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 20075 New Hope Housing Savoy in Houston

**RECOMMENDED ACTION**

**WHEREAS**, an award of Competitive (9%) Housing Tax Credits in the amount of \$1,471,869 to 20075 New Hope Housing Savoy (the Development) was approved by the Board in July 2020;

**WHEREAS**, staff executed a Carryover Allocation Agreement with the Development Owner on October 30, 2020, 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, 2022, and documentation for the 10% Test would be submitted by July 1, 2021 (which was subsequently extend to September 30, 2021);

**WHEREAS**, on August 9, 2021, the Department received a request to extend the placement in service deadline, and staff determined that an extension of the 10% Test deadline was appropriate;

**WHEREAS**, other than in situations covered by force majeure, 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 2021 Qualified Allocation Plan and Uniform Multifamily Rules, and the 2021 Program Calendar applicable to the Development for the purposes of the force majeure event;

**FURTHER RESOLVED**, that the Department may issue a 2021 Carryover Agreement, with the extended 10% Test deadline of July 1, 2022 and 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 \$1,471,869 in Competitive (9%) Housing Tax Credits to the Development was approved by the Board in July 2020. The Development proposed the New Construction of 120 Units for Supportive Housing population in Houston. Staff executed a Carryover Allocation Agreement with the Development Owner on October 30 16, 2020, 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, 2022, and documentation for the 10% Test would be submitted by July 1, 2021 (which was subsequently extend to September 30, 2021). On August 9, 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. Staff found it appropriate to extend the deadline for the 10% Test deadline.

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).

### **Presidentially Declared Major Disasters**

Of the circumstances listed in the rule, the request indicates that force majeure might be triggered by a presidentially declared major disaster: the national emergency of the COVID-19 Pandemic and related disruptions. Per the request, the disaster has resulted in:

Materials shortages and cost increases: per the request, since application submission in 2020, the construction industry has experienced extraordinary volatility due to the pandemic, and this has created a significant financial impact to the NHH Savoy development.

The request includes a letter from the Development Owner explaining the difficulties they have encountered since receiving the award. 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 \$1,471,869 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, and documentation for the 10% Test would be submitted by July 1, 2022. For the purposes of the force majeure event, the 2021 Qualified Allocation Plan and Uniform Multifamily Rules will be applicable to the Development for the purposes of the force majeure event.

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 December 31, 2022. Because the Development Owner anticipates not meeting the placed in service deadline on December 31, 2022, the credits are expected to be returned. If the Development Owner returns the credits, the credits would first be made available in the subregion from which they were originally awarded, pursuant to 10 TAC §11.6(2), related to returned credits; in this case Region 6, Urban. There are pending Applications on the waiting list from that subregion. The next Application requests \$1,022,258, which is less than the amount of credits that would be returned.

Staff recommends the Board approve the 10% Test extension and the request for treatment of New Hope Housing Savoy under an application of the force majeure rule.



New Hope Housing

August 9, 2021

Marni Holloway, Multifamily Finance Director  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, TX 78701

Re: Return of 2020 credits and request for 2021 allocation of credits pursuant to Section 11.6(5) Force Majeure for New Hope Housing Savoy (#20075)

Dear Marni,

Pursuant to §11.6(5) of the 2020 Qualified Allocation Plan, New Hope Housing (“NHH”) and its CHDO affiliate, Houston Area Community Development Corporation (“HACDC”), respectfully request an allocation of 2021 credits in exchange for the return of our 2020 credits for the New Hope Housing Savoy development. This is not a request for additional tax credits.

Since application submission in 2020, the construction industry has experienced extraordinary volatility due to the pandemic, and this has created a significant financial impact to the NHH Savoy development. As a result, New Hope Housing has had to raise additional soft sources to bridge this gap – presently estimated to be around \$4.5MM in added hard costs.

At application, NHH/HACDC conservatively projected a 20-month build schedule. Closing in the second half of 2021 makes PIS for 120 units by the existing deadline of December 31, 2022 infeasible, even by aggressive construction standards. Given the unpredictability of the market, our longstanding General Contractor, Camden Builders, is unwilling to execute a contract in good faith that delivers the project by the 2022 deadline. Finally, our syndicator, National Equity Fund, has expressed an unwillingness to close on the project unless it receives a so-called “credit refresh,” allowing the construction timeline flexibility to deliver the project by the middle of 2023 at the latest.

Given this confluence of unforeseeable external forces, the project necessitates a credit refresh to remain viable. And as you know all too well, the need for Supportive Housing for families is greater now than it ever has been. NHH is one of the few developers in Texas filling that need.

Section 11.6(5) states, “Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner: ... national emergency ... supplier failures; or materials or labor shortages.” The Covid-19 pandemic, a declared a national emergency has caused extreme shortages and volatility in lumber and other construction commodity markets, as well as in labor availability. The pandemic’s impact to the construction market was entirely unforeseeable, as many anticipated the cost of construction to level off or even decline in the wake of the economic shutdown. No one could have predicted the amount of volatility recently experienced by developers. NHH is working diligently to absorb this impact and to continue serving its mission of housing Texans experiencing the greatest need.

New Hope Housing delivers on its promises, and with TDHCA’s partnership and support, we can continue to do so. We respectfully request that TDHCA look favorably upon New Hope Housing Savoy and award this development 2021 tax credits, in exchange for the return of its 2020 credits. We remain grateful to you, and I hope you will reach out directly if you have any additional questions.

With appreciation,

A handwritten signature in black ink, appearing to read "Emily Abeln", with a long horizontal flourish extending to the right.

Emily Abeln  
VP, Real Estate Development  
Corporate Secretary  
713.220.9708  
[emily@newhopehousing.com](mailto:emily@newhopehousing.com)

20083

Lakeview Preserve  
Force Majeure Request

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**SEPTEMBER 2, 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 20083 Lakeview Preserve in Irving

**RECOMMENDED ACTION**

**WHEREAS**, an award of Competitive (9%) Housing Tax Credits in the amount of \$1,500,000 to 20083 Lakeview Preserve (the Development) was approved by the Board in July 2020;

**WHEREAS**, staff executed a Carryover Allocation Agreement with the Development Owner on October 13, 2020, 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, 2022, and the 10% Test would be submitted by July 1, 2021 (which was subsequently extend to September 30, 2021);

**WHEREAS**, on July 21, 2021, the Department received a request to extend the placement in service deadline, and staff determined that an extension of the 10% Test deadline was appropriate;

**WHEREAS**, other than in situations covered by force majeure, 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 2021 Qualified Allocation Plan and Uniform Multifamily Rules, and the 2021 Program Calendar applicable to the Development for the purposes of the force majeure event;

**FURTHER RESOLVED**, that the Department may issue a 2021 Carryover Agreement, with the extended 10% Test deadline of July 1, 2022 and 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 \$1,500,000 in Competitive (9%) Housing Tax Credits to the Development was approved by the Board in July 2020. The Development proposed the New Construction of 84 Units for the general population in Irving. Staff executed a Carryover Allocation Agreement with the Development Owner on October 13, 2020, 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, 2022. On July 21, 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).

### **Presidentially Declared Major Disasters**

Of the circumstances listed in the rule, the request indicates that force majeure might be triggered by the presidentially declared major disaster, particularly the national emergency of the COVID-19 Pandemic and related disruptions. Per the request, this disaster has resulted in:

Labor shortages and supplier failures: per the request, remote work by the City of Irving's Development Department, required by the pandemic, caused several months of delays in receiving necessary approvals. Further, the selected general contractor advised the Development Owner that it was losing personnel in the Texas market and would not be undertaking the project.

The request included letters from the Development Owner and the Engineer describing labor and permitting delays. 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 \$1,500,000 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, and documentation for the 10% Test would be submitted by July 1, 2022. For the purposes of the force majeure event, the 2021 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 December 31, 2022. Because the Development Owner anticipates not meeting the placed in service deadline on December 31, 2022, the credits are expected to be returned. If the Development Owner returns the credits, the credits would first be made available in the subregion from which they were originally awarded, pursuant to 10 TAC §11.6(2), related to returned credits; in this case Region 3, Urban. There are pending Elderly Applications on the waiting list from that subregion that were previously not awarded. The credits would go to that subregion and the next Application, which requests \$1,095,000 would be awarded.

Staff recommends the Board approve the request for treatment of Lakeview Preserve under an application of the force majeure rule.





600 Congress Avenue, Suite 2200  
Austin, Texas 78701-2748  
Telephone: 512-305-4700  
Fax: 512-305-4800  
www.lockelord.com

Cynthia L. Bast  
Direct Telephone: 512-305-4707  
Direct Fax: 512-391-4707  
cbast@lockelord.com

July 21, 2021

**VIA EMAIL DELIVERY**

Marni Holloway  
Alena Morgan  
Mark Fugina  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701-2410

Re: Lakeview Preserve (the "**Property**")  
TDHCA File No. 20083

Greetings:

We represent MHP Region 3 II, LLC, a Texas limited liability company ("**Owner**"), which received a commitment of low-income housing tax credits ("**Tax Credits**") in the 2020 9% competitive cycle. Given current conditions in the construction market, Wells Fargo is requiring owners/developers to have a placement in service date at least 3 months after the anticipated construction completion date. See Exhibit A. Owner's anticipated construction schedule, delayed by factors outside Owner's control, and adding three months, results in a construction complete date beyond the federal placement in service date of December 31, 2022.

**Relief Sought**

On request of Wells Fargo, and based upon delays that were outside of Owner's control, Owner submits this request to return the Tax Credits and that TDHCA reallocate the Tax Credits in the current year pursuant to the "Force Majeure" provisions in Section 11.6(5) of the 2021 Qualified Allocation Plan (the "**QAP**").

### **Detailed Description of Delays**

Owner's engineer establishes that remote work by the City of Irving's Development Department, required by the pandemic, caused several months of delays in receiving necessary approvals. See Exhibit B.

In a letter attached as Exhibit C, Owner describes how it diligently pursued construction matters needed for closing, entering into a preconstruction agreement in October 2020, shortly after receipt of a final Tax Credit commitment. In February 2021, almost four (4) months later, the general contractor advised Owner that it was losing personnel in the Texas market and would not be undertaking the project. Owner promptly contacted two (2) other general contractors, who began work. Those general contractors submitted bids in May 2021, a new general contractor was selected, and Owner and the new general contractor worked to promptly enter into a contract with the new general contractor. Owner asserts the loss of its general contractor, due to market conditions, delayed the construction schedule by approximately two (2) months.

### **Factors for Consideration**

In accordance with Section 11.6(5) of the QAP, we believe Owner meets TDHCA's requirements for the relief sought, in that:

1. The delays imposed by: (a) the pandemic-induced remote work of the City of Irving Development Department and (b) the loss of general contractor due to market conditions are "force majeure" events that have materially impeded Owner's ability to engage in construction activity.
2. As noted in this letter, Owner could not have reasonably anticipated the impact of the pandemic when it submitted the Application in February 2020, nor could it have anticipated the pandemic's impact on the construction marketplace.
3. Owner endeavored to mitigate the situation by entering into a preconstruction agreement early in the process, diligently pursuing responses from the City of Irving, and promptly seeking a new general contractor when the committed general contractor withdrew.
4. Owner believes there is a reasonable likelihood that it will not be able to meet the placement in service deadline because of the delays experienced.
5. The Property continues to be financially viable.

We believe Owner has satisfied TDHCA's requirements for a reallocation of Tax Credits under Section 11.6(5) of the QAP and requests that this matter be considered at the September

2, 2021 Board meeting with a recommendation for approval. If additional information is required, please feel free to contact us.

Sincerely,



Cynthia L. Bast

cc: McDowell Housing Partners

Exhibit A - Wells Fargo Letter

Exhibit B - Engineer Letter

Exhibit C - Lakeview Construction Dates Impacting PIS

# **EXHIBIT A**

July 19, 2021

Christopher Shear  
Managing Director - COO  
McDowell Housing Partners  
601 Brickell Key Drive, Suite 700,  
Miami, FL 33131

**Re: Placed in Service Requirement – MHP Region 3 II, LLC**

Dear Mr. Shear,

On January 22, 2021, Wells Fargo Affordable Housing Community Development Corporation (“Wells Fargo”) issued an Equity Term Sheet expressing interest in purchasing a 99.99% interest in MHP Region 3 II, LLC, which was subsequently accepted. As part of the terms and conditions of the term sheet, Wells Fargo requires no less than 90 days of cushion from the required placed in service date listed on the Carryover Allocation. The term sheet further requires the developer will need to receive an extension or refresh of credits from the State Tax Credit Allocating Agency prior to closing in order for us to receive credit approval. As the current construction schedule does not provide for a 90-day cushion, an extension of the Placed in service date or refresh of credits is required for our investment in this transaction.

Sincerely,

*Matthew Parkhill*

Matthew Parkhill  
Managing Director  
Wells Fargo Community Lending & Investment  
301 South College Street, 17th Floor  
Charlotte, NC 28288 MAC D1053-170  
Office: (704)-715-6122  
Cell: (704)-301-0838  
Matthew.D.Parkhill@wellsfargo.com

Together we'll go far



# **EXHIBIT B**



**CARNEY**  
ENGINEERING  
COMPANY, PLLC

July 19, 2021

McDowell Housing Partners  
Attn: Anna Padilla  
Sr. Development Manager  
601 Brickell Key Drive, Suite 200  
Miami, FL 33131

Re: Lakeview Preserve Apartments  
2800 S. MacArthur Boulevard  
Irving, Texas

The purpose of this letter is to identify permitting delays caused by third parties.

During most of 2020 and the early months of 2021, the City of Irving Development Department personnel was working remotely. The conditions of working remotely made it extremely difficult for City Personnel to review the drawings and provide the necessary permits required for closing. Also, our development required a USACE (U.S. Army Corps of Engineers) permit, a lengthy process that is processed through the City and reviewed by the USACE. The Site Development Permit process commenced in August 2020. The Civil permit application was submitted in mid-November 2020. The first round of City comments was received in mid-February 2021. It is important to note that a process which usually takes 30 days to complete, took approximately 90 days (almost three times the normal duration). Subsequent reviews encountered difficulty and delay due to the backlog in the City created by working remotely which created scheduling conflicts between City Departments. The Site Development Permit Approval was received from the City of Irving June 24, 2021 – almost eight months after the initial permit submittal request was made.

Additionally, we requested a thorough review of the development plans from the USACE and City so we could receive a letter of approval from them. This provided us with backup to demonstrate the Proposed Development was reviewed and demonstrate that it was determined there would be NO ADVERSE IMPACT to the surrounding properties. This review took over 6 months due to an internal change in Fee Structure (for the CDC Application) and the overall review process.

We trust this provides you with the information needed at this time. Please contact us with any questions or comments.

Respectfully Submitted

T. Craig Carney, PE  
Carney Engineering, PLLC  
FIRM No. F-5033



# **EXHIBIT C**





July 17, 2021

Cynthia Bast  
Locke Lord LLP  
600 Congress Ave, Suite 2200  
Austin, TX 78701  
Ph: 512-305-4707

RE: Lakeview Preserve Construction Bidding Timeline

Dear Ms. Bast:

The purpose of this letter is to communicate the timeline of construction bidding operations for the above referenced project as follows:

**10/26/2020:** Execution of Preconstruction Agreement with Kaufman Lynn Construction (KL) to provide preconstruction services, including estimating and bidding operations.

**11/11/2020:** Receipt of KL's estimate for Schematic Design Set.

**10/26/20 through 1/20/21:** Permit Set Bid Date scheduled for **3/10/21** based on receipt of Permit Set on 1/27/21.

**1/14/21:** Receipt of KL's estimate for Design Development (50%) Set.

**2/3/21:** Permit Set Bid Date pushed to **3/19/21** due to Permit Set documents pushing out by A/E to 2/5/21.

**2/19/21:** KL informs MHP that they have lost key personnel in the Texas market and will not be taking on another unrelated MHP project (City Heights).

**2/24/21:** Permit Set Bid Date pushed to **3/23/21** due to Permit Set documents pushing out by A/E to 2/9/21.

**2/25/21:** KL informs MHP they will no longer be bidding on Lakeview Preserve or another other Texas market deals at this time.

**2/26/21:** MHP discusses bidding with another GC, NRP Construction whom is contracted to build City Heights for MHP. NRP states they need time to get up to speed with KL's preconstruction work and will need a minimum of 6 weeks to bid once they start (TBD).

**3/1/21:** Broaddus Construction and MHP discuss bidding on project. Broaddus begins reviewing project to consider bidding.



**3/8/21:** NRP's update on bidding is that they are still reviewing KL's preconstruction work and cannot commit to a bid date yet.

**3/8/21:** Draft JV and construction agreements transmitted to Broaddus for review and their consideration to bid.

**3/22/21:** GC bid due dates set as follows: NRP: **4/16/21** / Broaddus **4/21/21**.

**4/17/21:** Due to sitework subcontractor feedback on costs specific to earthwork, NRP's bid due date pushes to 4/30/21.

**4/21/21:** Revised Geotech issued to NRP and Broaddus for distribution to sitework subcontractor market.

**5/5/21:** GC bids received from NRP and Broaddus.

**5/5/21-5/21/21:** Bid review. Broaddus is low and responsive bidder.

**5/24/21 through 6/8/21:** Contract negotiation and finalization with Broaddus.

**6/8/21:** Submission of GC Contract package to Plan and Cost Review.

In closing, the overall construction bidding timeframe was delayed by almost 2 months (from 3/10/21 to 5/5/21) primarily due to delays to the Permit Set documents by the design team and due to the original GC (Kaufman Lynn) dropping out of the Texas market on 2/25/21.

Please let me know if you have any questions.

Thank You,

A handwritten signature in black ink, appearing to read "Jessie Reyes", is written over a horizontal line. The signature is stylized and loops back under the line.

---

Jessie Reyes  
VP of Construction

cc: Ana Padilla, McDowell Housing Partners  
Chris Shear, McDowell Housing Partners

20114

3300 Caroline Street

Force Majeure Request

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**SEPTEMBER 2, 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 20114 3300 Caroline Street in Houston

**RECOMMENDED ACTION**

**WHEREAS**, an award of Competitive (9%) Housing Tax Credits in the amount of \$1,494,004 to 20114 3300 Caroline Street (the Development) was approved by the Board in July 2020;

**WHEREAS**, staff executed a Carryover Allocation Agreement with the Development Owner on November 2, 2020, 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, 2022, and documentation for the 10% Test would be submitted by July 1, 2021 (which was subsequently extend to September 30, 2021);

**WHEREAS**, on April 27, 2021, the Department received a request to extend the placement in service deadline, and staff determined that an extension of the 10% Test deadline is appropriate;

**WHEREAS**, other than in situations covered by force majeure, 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 2021 Qualified Allocation Plan and Uniform Multifamily Rules, and the 2021 Program Calendar applicable to the Development for the purposes of the force majeure event;

**FURTHER RESOLVED**, that the Department may issue a 2021 Carryover Agreement, with the extended 10% Test deadline of July 1, 2022 and 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 \$1,494,004 in Competitive (9%) Housing Tax Credits to the Development was approved by the Board in July 2020. The Development proposed the New Construction of 149 Units for the Supportive Housing population in Houston. Staff executed a Carryover Allocation Agreement with the Development Owner on November 2, 2020, 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, 2022, and documentation for the 10% Test would be submitted by July 1, 2021 (which was subsequently extended to September 30, 2021). On April 27, 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. Staff determined that an extension of the 10% Test deadline was appropriate.

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).

### Changes in Law, Rules, or Regulations

Of the circumstances listed in the rule, the request indicates that force majeure might be triggered by a change in law, rules, and regulations by the City of Houston. Per the request:

The Houston City Council passed a walkable places ordinance to be effective October 1, 2020, which required Owner to redesign the site. The impact of the ordinance is a complete redesign which took two (2) months. Despite the redesign, Owner was able to maintain the unit count, the unit size, and all common area amenities.

The request also describes delays on the part of the City of Houston and Harris County in processing documents related to development financing. While the request does not mention the presidentially declared major disasters mentioned in other requests, these same issues of delayed processing exist for those other requests.

The request includes a letter from the Development Owner explaining the difficulties they encountered redesigning their site layout and their ongoing efforts to secure financing contracts. 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 \$1,494,004 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, and documentation for the 10% Test would be submitted by July 1, 2022. For the purposes of the force majeure event, the 2021 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 December 31, 2022. Because the Development Owner anticipates not meeting the placed in service deadline on December 31, 2022, the credits are expected to be returned. If the Development Owner returns the credits, the credits would first be made available in the subregion from which they were originally awarded, pursuant to 10 TAC §11.6(2), related to returned credits; in this case Region 6, Urban. There are pending Applications on the waiting list from that subregion. The next Application requests \$1,022,258, which is less than the amount of credits that would be returned.

Staff recommends the Board approve the 10% Test extension and the request for treatment of 3300 Carolyn Street under an application of the force majeure rule.



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Cynthia L. Bast  
Direct Telephone: 512-305-4707  
Direct Fax: 512-391-4707  
cbast@lockelord.com

April 27, 2021

**VIA EMAIL DELIVERY**

Marni Holloway  
Alena Morgan  
Lucy Trevino  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701-2410

Re: 3300 Caroline Street (the "**Property**")  
TDHCA File No. 20114

Ladies:

We represent Magnificat Permanent Affordable, LLC, a Texas limited liability company ("**Owner**"), which received a commitment of low-income housing tax credits ("**Tax Credits**") in the 2020 9% competitive cycle. On February 1, 2021, we submitted a request to amend Owner's application for Tax Credits (the "**Application**"), to present a change in the site plan necessitated by the City's passage of a walkable places ordinance, and a change in the capital structure to include the receipt of Harris County CDBG-DR funds. A copy of that letter is attached as Exhibit A (the "**Amendment Request**"). In the Amendment Request, we identified circumstances, beyond Owner's control, that delayed the development of the Property. TDHCA's Board approved the Amendment Request on February 11, 2021.

**Relief Sought**

The delays described in the Amendment Request have continued and compounded, jeopardizing the 18-month construction schedule identified in the Application. Owner's syndicator, Hudson Housing Capital, has advised that its investor requires a three-month cushion in the construction schedule and may not be able to close unless Owner receives relief on the date for placement in service. See Exhibit B. Owner submits this request to return the Tax Credits and that TDHCA reallocate the Tax Credits in the current year pursuant to the "Force Majeure" provisions in Section 11.6(5) of the 2021 Qualified Allocation Plan (the "**QAP**").

### **Detailed Description of Delays**

***City of Houston Walkable Places Ordinance.*** As described in the Amendment Request, the Houston City Council passed a walkable places ordinance to be effective October 1, 2020, which required Owner to redesign the site. These changes delayed the development process by at least two (2) months.

***City of Houston CDBG-DR Funds.*** Owner received a conditional commitment for CDBG-DR funds from the City of Houston on February 24, 2020. In August 2020, Owner signed a letter of intent and agreed to pay for the City's legal costs to generate documents. However, the City's procurement of counsel was delayed, and issues arose between the City and the Texas General Land Office ("**GLO**"). Owner regularly followed up with the City and finally received a first draft of the City's funding documents the week of April 19, 2021. This delay in the production of documents, which was outside Owner's control, resulted in a delay of at least six (6) months thus far. Because the delays with the City are ongoing, the final impact remains unknown.

***Harris County CDBG-DR Funds.*** As reported in the Amendment Request, Owner applied for CDBG-DR funds from Harris County in January 2020 and received an award in August 2020. After regular contact from Owner to Harris County, a conditional award letter was received on April 12, 2021, with terms that are not appropriate for permanent supportive housing. Negotiation of terms is underway. Some, but not all, funding documents have been produced. This delay from Harris County is outside Owner's control, has resulted in a delay of at least six (6) months, and is ongoing. Thus, its ultimate impact remains unknown.

***Coordination Between City of Houston and Harris County.*** Coordination of funding between the City of Houston and Harris County has been surprisingly difficult. Simply scheduling a call between Owner and the City and County to discuss coordination has taken several months. At this moment, both the City and County want to pay for the same budget items, and neither are willing to pay for soft costs. Each is working with GLO independently, without talking to the other. Given the urgency of this work, Owner has engaged two former City employees to facilitate the communication, and regular calls are scheduled. Owner is using its best efforts to effect coordination between the two governmental entities to make the transaction possible.

***Houston Housing Authority Section 8 Contract.*** Although the Houston Housing Authority approved Owner for a project-based Section 8 Contract in April 2020, it just submitted the package to HUD in April 2021. HUD typically requires sixty (60) days to respond. If all goes perfectly, this contract could be ready for a closing in June.



With an 18-month construction schedule, Owner would need to close on all of its financing by June 2021 to place the Property into service by December 2022. The parties are striving to meet that mark, reviewing and negotiating documents as they become available. However given the ongoing delays from the City and County, Owner's syndicator is understandably reticent to make the investment without an assurance that the Tax Credits will not be lost because of a further delay by one of the governmental entities, which makes it impossible to complete the Property in time for the placement in service deadline.

### **Factors for Consideration**

In accordance with Section 11.6(5) of the QAP, we believe Owner meets TDHCA's requirements for the relief sought, in that:

1. The delays imposed by the City of Houston and Harris County are "force majeure" events that have materially impeded Owner's ability to engage in construction activity.
2. As noted in the Amendment Request and this letter, Owner could not have reasonably anticipated the adoption of a walkable streets ordinance when it submitted the Application, nor could it have anticipated how long it would take for the City of Houston and Harris County to make its CDBG-DR funds and documents available, particularly when the CDBG-DR program is intended for urgent relief and has been administered by those governmental entities previously.
3. Owner has endeavored to mitigate the delays by expended additional funds to engage consultants and others to aggressively seek action from the City and County.
4. Owner has kept TDHCA informed as to its challenges and progress.
5. Owner believes there is a reasonable likelihood that it will not be able to meet the placement in service deadline because of the delays experienced.
6. The Property continues to be financially viable. Additional expenditures associated with these delays have been accommodated in the revised development budget that was submitted with the Amendment Request.

We believe Owner has satisfied TDHCA's requirements for a reallocation of Tax Credits under Section 11.6(5) of the QAP and requests that this matter be considered at the May 13, 2021 Board meeting with a recommendation for approval. If additional information is required, please feel free to contact us.

Sincerely,

A handwritten signature in blue ink that reads "Cynthia L. Bast". The signature is written in a cursive style.

Cynthia L. Bast

cc: NHP Foundation

# **EXHIBIT A**



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Direct Fax: 512-391-4707  
cbast@lockelord.com

February 1, 2021

**VIA EMAIL DELIVERY**

Marni Holloway  
Alena Morgan  
Lucy Trevino  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701-2410

Re: 3300 Caroline Street (the "**Property**")  
TDHCA File No. 20114

Ladies:

We represent Magnificat Permanent Affordable, LLC, a Texas limited liability company ("**Owner**"), which received a commitment of low-income housing tax credits ("**Tax Credits**") in the 2020 9% competitive cycle. Pursuant to 10 TAC §10.405(a), Owner seeks to amend its Tax Credit application (the "**Application**"), as a result of circumstances that were unanticipated and outside Owner's control. The changes proposed will not have a material adverse effect on the Property; nor would the changes have impacted the award of Tax Credits to the Property, if they had been made during the competitive cycle. In addition, some of the circumstances that have led to the requirement for an amendment also impact Owner's timeline for closing. Owner took points in the Application for "readiness to proceed," and has a deadline of February 20, 2021. Owner will be unable to meet that deadline and seeks a waiver of any penalties that would otherwise be imposed on it for the 2021 application cycle.

On January 25, 2021, you received an email from Owner, with updated exhibits to its Application and an updated site plan. Please note the following:

Tab 17 - The submission should have included a revised Development Narrative for Tab 17. That is now attached.

Tabs 24, 25, and 29 - Despite an indication in the email that these exhibits changed, they did not.

Tab 31 - The email should have noted changes to Tab 31.

Tab 35 - With the receipt of CDBG-DR funds from Harris County, the Application should be updated to include the County's funding commitment. At the current time no funding commitment is available. The only documentation for the commitment is found on Harris County's website, with a screen shot attached.

### **Amendment Request**

Two primary factors influenced the need for this amendment: (1) the need to comply with Houston's newly enacted walkable places ordinance and (2) the availability of Harris County CDBG-DR funds.

***Walkable Places Ordinance.*** In August 2020, after Owner had received its Tax Credit award, the Houston City Council approved a walkable places ordinance to be effective as of October 1, 2020. The ordinance requires buildings to be closer to the streets, with parking spaces moved to the interior. The neighborhood for the Property was designated as one of three areas for the pilot program. The impact of the ordinance is to change Owner's site plan to move the parking that was originally located off San Jacinto to be located off Francis. Owner could not simply "flip" the parking and building or rotate the building to comply with the ordinance. Instead, a complete redesign was required, and took two (2) months. Despite the redesign, Owner was able to maintain the unit count, the unit size, and all common area amenities.

The redesign also required Owner to focus on development costs. Owner repriced the revised drawings with Block Construction, and the total construction contract has decreased by \$1,210,321.

***Harris County CDBG-DR Funding.*** Owner applied for CDBG-DR funds in Harris County's second round RFP, prior to submitting its Application. Without knowing whether those funds would be available, Owner presented the Application without the County's funds. This required Owner to assume it would have permanent debt, a seller loan from Magnificat Homes, a contribution from Magnificat Homes, and a substantial deferred developer fee. Owner received notice of its receipt of the CDBG-DR funds from Harris County in August 2020, after the Tax Credits had been awarded. The award was subject to GLO approval, so Owner did not address it at the time the Commitment Notice was returned, because the nature of the funds was too uncertain at the time. While the award is still subject to GLO approval, Owner feels it is prudent to submit this information about the increase in funding before it gets too late in TDHCA's process to timely amend the Application. With the CDBG-DR funds, Owner is able to present a project without any permanent debt and with the developer fee fully paid. In addition, rather than asking Magnificat Homes to cobble together the funds to provide supportive services, Owner determined it would be best to establish a reserve for the provision of supportive services throughout the Compliance Period. Magnificat Homes is an experienced

provider of supportive housing; and current costs for running similar properties are approximately \$5,600 per unit per year. Thus, Owner has chosen to set aside \$5,726,654 as a reserve for supportive services, which calculates as approximately 42% of the funds that will be needed for supportive services during the Compliance Period. Magnificat Homes has committed to fund approximately \$2,410,000 for such reserve<sup>1</sup>. The remainder of the reserve will be funded with Housing Tax Credit equity proceeds.

Combining the changes in Development Costs derived from the redesign process and the changes in financing sources, Owner presents an updated Sources and Uses. We trust TDHCA will see that the Property itself has changed very little and the Application scoring has not changed at all. The changes to financing, while substantial, provide stability and feasibility for the long term, ensuring that the maintenance and services required for this Property will be available in the long term.

### **Waiver Request**

Owner took points on its Application for “readiness to proceed,” with a deadline that was automatically extended to February 20, 2021, per 10 TAC §11.9(c)(8)(C). Owner will be unable to meet that deadline and seeks TDHCA’s waiver of any penalty for its applications in the 2021 competitive cycle. Owner’s inability to close by February 20, 2021 is beyond Owner’s reasonable control, could not have been reasonably anticipated, and is based upon the following:

***Walkable Places Ordinance.*** When Owner applied for Tax Credits in early 2020, it could not have anticipated that the Houston City Council would pass the walkable places ordinance to be effective October 1, 2020, nor could Owner have anticipated the impact the ordinance would have on its design and development process. As noted above, redesigning the site delayed the development of the Property by about two (2) months.

***Funding Delays with City of Houston and Harris County.*** As noted at TDHCA’s January Board meeting for agenda item 1(d), nine applicants that had received funding commitments from the City of Houston experienced delays in the process because of ongoing issues between the City and the General Land Office. As of today’s date, Owner has not received draft funding documents from the City.

---

<sup>1</sup> Owner will make an up-front ground lease payment to Magnificat to acquire the land upon which the Property will be constructed. Magnificat will make \$2,410,000 of those proceeds available to Owner to bridge any delays in funding on the draws from the City and County CDBG loans. After construction, Magnificat will contribute the \$2,410,000 to the supportive services reserve. Another portion of the ground lease payment will be used by Magnificat to pay Owner for the cost of constructing office space in the Property, which will be utilized by Magnificat.

Additionally, even though Owner applied for the Harris County CDBG-DR funds in January 2020, the funds were not awarded until August 2020. At this time, GLO approval for the County's award has not been confirmed, so no commitment letter has been received.

***Delays with Houston Housing Authority for Section 8 Contract.*** Although the Houston Housing Authority approved Owner for a project-based Section 8 Contract in April 2020, the Houston Housing Authority has yet to finalize the process or provide documents for this critical subsidy. Once the housing authority commences the process, Owner expects it will take approximately two (2) months to conclude.

We believe the staff and Board will conclude that delays in Owner's ability to close were not reasonably foreseeable or within Owner's control, as was concluded for other similarly situated applicants in Region 6.

Please approve both the amendment request and the waiver request and let us know if any additional information is required.

Sincerely,

A handwritten signature in blue ink that reads "Cynthia L. Bast". The signature is written in a cursive style and is contained within a light blue rectangular border.

Cynthia L. Bast

cc: NHP Foundation

## **3300 Caroline Street**

9% Tax Credit Application Tab 17  
Development Narrative - Attachment  
Supportive Housing Program

NHP Foundation (NHPF) and Magnificat Houses, Inc. (MHI) will jointly develop 3300 Caroline Street, as a new-construction 149-unit Supportive Housing Program development in Midtown Houston. The following information is intended to address each of the questions raised in Tab 17 Development Narrative regarding the Supportive Housing Program.

MHI is a local 501(c)(3) service organization serving homeless residents in the Houston area for the past 52 years. Their programs address many needs in the community including: Meals, Housing Mental Health & Wellness, Training for Employment, Community Building and Personal Guidance. Their current housing programs include both emergency and permanent supportive housing for up to 140 men and women in 16 homes. The transformational residential program helps those struggling with poverty, chronic homelessness, addictions, re-entry after incarceration and mental illness.

MHI will provide the supportive services for 3300 Caroline Street for the 149 residents to meet all of the requirements of the Qualified Allocation Plan (as certified in the application) which will address, other things, case management, skills in keeping housing, mental health and addiction services. The target residents will include: Residents in need of specialized and specific non-medical services in order to maintain housing or transition into independent living and will include:

- a. Homeless or Persons at-risk of homelessness
- b. Persons with physical, intellectual, and/or development disabilities
- c. Persons unable to secure permanent housing elsewhere due to high barriers
- d. Persons with Special Housing Needs (alcohol and/or drug additions, VAWA protections, HIV/AIDS, Veterans with Disabilities)

In addition to services provided by MHI, there will be some services by referral linkages, as described in the Comprehensive Services Plan. A Plan will be posted in the community's office and accessible to residents.

The development will include the following amenities to serve the residents:

1. Training Room
2. Business Center
3. Reading Room
4. Meeting Room
5. Dining Room
6. Kitchen
7. Theater
8. 3 offices
9. Social Service Open Area



**TAB 17**

In addition to the general supportive services offered by MHI, the development will provide:

1. Weekly substance abuse meetings
2. Career Training
3. Twice Monthly arts, crafts and other recreational activity
4. Twice Monthly social events
5. Onsite Notary
6. Annual Tax Preparation Program
7. Annual Health Fair
8. Part-time resident services coordinator with a dedicated office

MHI maintains an annual budget of \$1.2 million and will expand their operations with the new facility. Their programs are currently funded through several sources including:

- |   |     |
|---|-----|
| 1. Corporate Donations                  | 4%  |
| 2. Faith Based Donations                | 20% |
| 3. Foundations and Government Donations | 32% |
| 4. Individual Donations                 | 44% |

MHI has consistently maintained its funding base and typically has a minimum of one year's operating budget on hand as a reserve. Some of the government and foundation supporters have been Al Clay Foundation, Ferrell Foundation, Stirling Turner Foundation, Brown Foundation, Scanlan Foundation, Harris County Jail Diversion, TDHCA ESG grants and HUD Continuum of Care (CoC) grants. Two current grants include the ESG grant from TDHCA for \$85,000 and the CoC grant for \$350,000.

With a 15-year Tax Credit Compliance Period and a commitment to fill 80% of the building with Tier 1 homeless residents, the Applicant carefully considered available sources to provide the level of services necessary. The Coalition for the Homeless was not in a position to make a 15-year commitment to fund this property, and ongoing funding from HUD is uncertain. Therefore, it was determined that it would be in the best interest of NHP, MHI, the investors, and the residents, for the property to establish a healthy reserve for the costs of the supportive services. Based on other properties serving a Tier 1 population which are being funded through the Houston/HUD Continuum of Care, MHI has estimated that the total cost for complete supportive services on the property will be approximately \$5600 per unit per year, with inflationary adjusters. The reserve is sized to equal approximately 46% of the current anticipated cost of providing full social services at this property. We anticipate the balance will be made up from higher section 8 rents and CoC grants. In addition, NHP, as a Controlling party in the transaction, will honor its commitment to services by ensuring that every resident has access to an onsite case manager and access to needed services.

<b>Magnificat</b>			
Cost Per Unit	\$	5,600	
Units		149	
<b>Annual</b>	<b>\$</b>	<b>834,400</b>	
<b>15 years</b>		<b>12,516,000</b>	
SocS Reseves		5,726,654	46%

## TAB 17

In order to fund this reserve, the Applicant will use the following sources: MHI will receive funds at closing in the form of an up-front ground lease payment for the property in the amount of \$6,960,000. MHI will use \$2,410,000 of the ground lease payment to bridge delays in funding the construction draws under the City and County CDBG loan and approximately \$1,443,285 of the payment to pay Applicant to build out office space on the site, which will be used by MHI. After the need for bridge funds has concluded, MHI will use \$2,410,000 of the ground lease payment to fund the supportive services reserve. The balance of the reserve will be funded by Housing Tax Credit equity capital.

The property will have a long-term Section 8 Project Based Housing Assistance Payment contract through the Housing Authority for 100% of the units (see letter from the Housing Authority). Resident feedback has been obtained at the community meeting held on January 18, 2020 (see attached sign-in sheet). In addition, the site is located less than ½ mile from regularly scheduled public transportation (see attached map) and at least 10% of the units meet the 2010 ADA standards.

Residents will be able to provide feedback through their case manager who reports to MHI or to the Property Manager who reports to NHPF. Anonymous surveys and focus groups will be taken annually, and a suggestion box will always be available.

There will be Tenant Selection Criteria in accordance with section 11.1(d)(122)( E)(VI) as well as written eviction policy and appeal process.

There is a resident on the applicant's Board and it commits to continuing having a resident on its board.

**TAB 35**

**Harris County Affordable Rental Housing Program - Recommended Second Round RFA Projects as of 12/28/2020**

#	Project Number	Project Name	Project Organization	Pct.	Project Type	Population Served	Location	Total Units	Harris County CDBG-DR Assisted Units	Recommended CDBG-DR Funds	Total Project Cost	Date Commissioner Court Approved Application Submission to GLO	Date of GLO Affirmatively Furthering Fair Housing (AFFH) Approval	Date Project Awarded by GLO	Date of Commissioners Court Contract Approval
1	D2017-086	HAY Campus	The HAY Center Foundation	1	New Construction	Homeless Youth / Young Adults Aging Out of Foster Care	3131 Gulf Freeway, Houston, Texas 77003	50	50	\$20,000,000	\$29,717,884	7/14/2020	11/6/2020	Pending	Pending
2	D2017-087	Temenos IV	Temenos Permanent Affordable, LLC	1	New Construction	Homeless	1703-1711 Gray Street, Houston, Texas 77003	95	49	\$11,000,000	\$31,361,298	7/14/2020	11/6/2020	Pending	Pending
3	D2017-088	The Residences at Arbor Oaks	The Residences at Arbor Oaks, LP	3	New Construction	Families	Southwest Corner of Grant Road and Jones Road, Harris County, Texas 77429	192	98	\$12,000,000	\$37,310,476	7/14/2020	10/26/2020	11/6/2020	Pending
4	D2017-089	3300 Caroline	Magnificat Permanent Affordable, LLC	1	New Construction	Homeless	3300 Caroline St., Houston, Texas	149	149	\$8,538,278	\$36,368,758	8/11/2020	Pending	Pending	Pending
5	D2017-090	First Met Apartments	HCHA Redevelopment Authority, Inc.	4	New Construction	Seniors	29° 53'56.11"N 95° 32'51.68"W	157	85	\$18,368,382	\$36,162,647	8/11/2020	11/6/2020	12/26/2020	Pending
<b>Totals</b>								<b>643</b>	<b>431</b>	<b>\$69,906,660</b>	<b>\$170,921,063</b>				

# **EXHIBIT B**

---

# HUDSON

## HOUSING CAPITAL

April 20, 2021

Bobby Wilkinson  
Executive Director  
Texas Department of Housing and Community Affairs  
221 E. 11<sup>th</sup> Street  
Austin, TX 78701

RE: Magnificat Permanent Affordable, LLC  
20114 – 3300 Caroline Street Apartments

Mr. Wilkinson:

We strongly support a request by The NHP Foundation and Magnificat Houses, Inc. to extend the placed in service deadline on 3300 Caroline Apartments prior to partnership closing. Our investors require a cushion of at least 3 months from the projected construction completion date and the placed in service deadline, which we do not currently have given the 18-month construction schedule. Without adequate cushion, we may not receive investor approval to close, which would jeopardize the feasibility of this important supportive housing development in Houston.

Should you need any further assistance, please feel free to contact me with any questions at (212) 218-4446 or via email at [josh.lappen@hudsonhousing.com](mailto:josh.lappen@hudsonhousing.com).

Sincerely,



Joshua Lappen  
Vice President  
Hudson Housing Capital, LLC

20192  
Arbor Park  
Force Majeure Request

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**SEPTEMBER 2, 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 20192 Arbor Park in Austin

**RECOMMENDED ACTION**

**WHEREAS**, an award of Competitive (9%) Housing Tax Credits in the amount of \$1,500,000 to 20192 Arbor Park (the Development) was approved by the Board in July 2020;

**WHEREAS**, staff executed a Carryover Allocation Agreement with the Development Owner on October 12, 2020, 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, 2022, and documentation for the 10% Test would be submitted by July 1, 2021 (which was subsequently extend to September 30, 2021);

**WHEREAS**, on June 13, 2021, the Department received a request to extend the placement in service deadline, and staff determined that an extension of the 10% Test deadline was appropriate;

**WHEREAS**, other than in situations covered by force majeure, 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 Arbor Park under an application of the force majeure rule is approved, with the 2021 Qualified Allocation Plan and Uniform Multifamily Rules, and the 2021 Program Calendar applicable to the Development for the purposes of the force majeure event;

**FURTHER RESOLVED**, that the Department may issue a 2021 Carryover Agreement, with the extended 10% Test deadline of July 1, 2022 and 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 \$1,500,000 in Competitive (9%) Housing Tax Credits to the Development was approved by the Board in July 2020. The Development proposed the New Construction of 147 Units for an Elderly, mixed income population in Austin. Staff executed a Carryover Allocation Agreement with the Development Owner on October 12, 2020, 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, 2022, and documentation for the 10% Test would be submitted by July 1, 2021 (which was subsequently extend to September 30, 2021). On June 13, 2021, the Department received a request from the Development Owner to extend the placement in service deadline from December 31, 2022, to December 31, 2023, under the provisions of 10 TAC §11.6(5) related to Credits Returns Resulting from Force Majeure Events. Staff determined that an extension of the 10% Test deadline was appropriate.

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).

### **Presidentially Declared Major Disaster**

Of the circumstances listed in the rule, the request indicates that force majeure might be triggered by a presidentially declared major disaster, particularly the national emergency of the COVID-19 Pandemic and related disruptions. Per the request, the pandemic has resulted in:

Materials shortages and cost increases: per the request, the pandemic has caused extreme shortages in the lumber market as well as in other construction commodity and labor markets which has drastically increased construction costs to an infeasible level. The result, in this particular case, is that beginning construction on Arbor Park with the pricing received impossible, even when deferring 100% of the developer fee. The Development Owner has had great difficulty getting reliable construction cost bids due to the historically high cost of lumber and other scarce materials. Hard costs are more than \$4m over what was submitted with the tax credit application back in March of 2020.



Per the request, the Development Owner intends to apply to TDHCA for a direct loan under its current notice of funding availability for the National Housing Trust Fund. Since those funds cannot be used on developments that have begun construction, the Owner cannot begin construction until TDHCA makes these funds available later in 2021.

The request includes a letter from the Development Owner describing the increased costs. 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 \$1,500,000 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, and documentation for the 10% Test would be submitted by July 1, 2022. For the purposes of the force majeure event, the 2021 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 December 31, 2022. Because the Development Owner anticipates not meeting the placed in service deadline on December 31, 2022, the credits are expected to be returned. If the Development Owner returns the credits, the credits would first be made available in the subregion from which they were originally awarded, pursuant to 10 TAC §11.6(2), related to returned credits; in this case Region 7, Urban. There are pending Applications on the waiting list from that subregion. The next Application requests \$1,500,000, which is the amount of credits that would be returned.

Staff recommends the Board approve the 10% Test extension and the request for treatment of Arbor Park under an application of the force majeure rule.



July 13, 2021

VIA EMAIL ([leeann.chance@tdhca.state.tx.us](mailto:leeann.chance@tdhca.state.tx.us))

Lee Ann Chance, Senior Asset Manager  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, TX 78701

Re: Request for 2021 allocation of credits pursuant to Section 11.6(5) Force Majeure  
Arbor Park (#20192)

Dear Lee Ann:

This letter serves as a formal request for an allocation of 2021 credits in exchange for the return of our 2020 credits for the above-mentioned development, pursuant to Section 11.6(5) of the 2020 Qualified Allocation Plan.

We are requesting this exchange of credits at this time because our investor, the National Equity Fund, is concerned about closing this transaction in the fourth quarter of 2021, when we only have until December 2022 to complete construction on this 147-unit development. Our construction period will be at least approximately 15 months, so in order to make the original placed in service extension, we would need to close no later than September 30<sup>th</sup> of this year. Closing by September 30<sup>th</sup> is impossible because we have had great difficulty getting reliable construction cost bids due to the historically high cost of lumber and other scarce materials. I just received final pricing last week, and our hard costs are more than \$4m over what we submitted with our tax credit application back in March of 2020. Due to these unexpectedly high cost increases, we intend to apply to TDHCA for a direct loan under its current notice of funding availability for national housing trust funds. I understand that those funds cannot be used on developments that have begun construction, which means that we cannot begin construction until TDHCA makes these funds available, which I understand to be in the October to December 2021 timeframe. If we close on that direct loan in November 2021, for example, we will have insufficient time to complete construction in time for the December 31, 2022 place in service deadline.

Section 11.6(5), which defines "force majeure" as ". . . national emergency or insurrection; . . . ; supplier failures; or materials or labor shortages." In this case, the Covid-19 pandemic, which has been deemed a national emergency, has caused extreme shortages in the lumber market as well as in other construction commodity and labor markets which has drastically increased construction costs to an infeasible level. The result, in this particular case, is that beginning construction on Arbor Park with the pricing I received last week is simply impossible, even when deferring 100% of the developer fee. Additional soft funds from TDHCA will make this transaction feasible but awards under the current multifamily direct loan notice of funding availability are not guaranteed. And, if TDHCA does award additional soft funds to this development, it will take another 3-5 months to reach construction loan closing, hence the need for more time.

Based on the foregoing, we respectfully request that TDHCA award this development 2021 credits, in exchange for the return of its 2020 credits. Should you have any questions or need any more information, please contact me at (512) 328-3232 ext. 4505 or [JanineS@dmacompanies.com](mailto:JanineS@dmacompanies.com). Thank you for your consideration.

Sincerely,

DMA DEVELOPMENT COMPANY, LLC

A handwritten signature in blue ink, appearing to read "Janine Sisak". The signature is fluid and cursive, with a large initial "J" and a long horizontal stroke at the end.

Janine Sisak  
Senior Vice President/General Counsel

cc: Marni Holloway

20204

Heritage Seniors

Force Majeure Request

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**SEPTEMBER 2, 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 20204, Heritage Senior Residences in Houston

**RECOMMENDED ACTION**

**WHEREAS**, an award of Competitive (9%) Housing Tax Credits in the amount of \$1,437,311 to 20204 Heritage Senior Residences (the Development) was approved by the Board in July 2020;

**WHEREAS**, staff executed a Carryover Allocation Agreement with the Development Owner on October 12, 2020, 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, 2022;

**WHEREAS**, on June 8, 2021, the Department received a request to extend the placement in service deadline;

**WHEREAS**, other than in situations covered by force majeure, 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 2021 Qualified Allocation Plan and Uniform Multifamily Rules, and the 2021 Program Calendar applicable to the Development 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 \$1,437,311 in Competitive (9%) Housing Tax Credits to the Development was approved by the Board in July 2020. The Development proposed the New Construction of 135 Units for an Elderly, mixed income population in Houston. Staff executed a Carryover Allocation Agreement with the Development Owner on October 12, 2020, 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, 2022. On June 8, 2021, the Department received a request from the Development Owner to extend the placement in service deadline from December 31, 2022, to December 31, 2023, 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).

### **Presidentially Declared Major Disaster**

Of the circumstances listed in the rule, the request indicates that force majeure might be triggered by a presidentially declared disaster, particularly the national emergency of the COVID-19 Pandemic and related disruptions. Per the request, the pandemic has resulted in:

Materials shortages and cost increases: per the request, costs for building materials including lumber, steel, and PVC, have increased substantially since Owner filed the Application. The cost of building materials increased even more after the start of 2021; lumber alone resulted in a \$1,500,000 increase from January 22 to the pricing received on February 24.

Per the request, in addition to the COVID-19 Pandemic, in February, 2021, the President declared a major disaster in certain Texas counties as a result of the winter storm that hit Texas. The storm resulted in labor shortages as some providers shifted from the project to home repair work. Subcontractors rescinded their bids due to concern for their ability to deliver under scarce labor conditions.

Consequently, the Subcontractor for the Development is paying a premium to ensure all of the subcontractors needed to complete the Development are secured.

The request includes a description by the Development Owner of delays in permitting and clearances as well as closing on financing. 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 \$1,437,311 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, with the 2021 Qualified Allocation Plan and Uniform Multifamily Rules applicable to the Development for the purposes of the force majeure event.

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 December 31, 2022. Because the Development Owner anticipates not meeting the placed in service deadline on December 31, 2022, the credits are expected to be returned. If the Development Owner returns the credits, the credits would first be made available in the subregion from which they were originally awarded, pursuant to 10 TAC §11.6(2), related to returned credits; in this case Region 6, Urban. There are pending Applications on the waiting list from that subregion. The next Application requests \$1,022,258, which is less than the amount of credits that would be returned.

Staff recommends the Board approve the request for treatment of Heritage Senior Residences under an application of the force majeure rule.



600 Congress Avenue, Suite 2200  
Austin, Texas 78701-2748  
Telephone: 512-305-4700  
Fax: 512-305-4800  
www.lockelord.com

Cynthia L. Bast  
Direct Telephone: 512-305-4707  
Direct Fax: 512-391-4707  
cbast@lockelord.com

June 8, 2021

**VIA EMAIL DELIVERY**

Marni Holloway  
Alena Morgan  
Rosalio Banuelos  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701-2410

Re: Heritage Senior Residences (the "**Development**")  
TDHCA File No. 20204

Greetings:

We represent Heritage Senior Residences, L.P., a Texas limited partnership ("**Owner**"), which submitted an Application<sup>1</sup> for Housing Tax Credits in the 2020 Application Cycle. The Application received points under the "readiness to proceed" category but was unable to close by November 30, 2020, due to a variety of circumstances out of Owner's control and documented in the letter attached as Exhibit A (the "**Waiver Request Letter**"). The relief sought in the Waiver Request Letter was granted.

Owner closed its debt and equity financing with Bank of America ("**BofA**") on April 16, 2021. As a condition to closing its financing, BofA inserted a provision in its loan documents requiring Owner to seek an extension of the placement in service date if, at any time, lender expected the construction completion date to extend beyond October 31, 2022.

**Relief Sought**

As required by its loan documents with BofA, Owner submits this request to return the Tax Credits and asks TDHCA to reallocate the Tax Credits in the current year pursuant to the "Force Majeure" provisions in Section 11.6(5) of the QAP.

---

<sup>1</sup> Capitalized terms used but not defined in this letter shall have the meanings assigned to them in the 2021 Qualified Allocation Plan (the "**QAP**").



### **Support for Force Majeure Conditions**

Pursuant to Section 11.6(5) of the QAP, a Force Majeure event includes Acts of God; changes in law, rules, or regulations; and supplier failures or materials or labor shortages that make construction activity impossible or materially impede its progress. The Waiver Request Letter outlined circumstances, outside of Owner's control, that made it impossible to close the debt and equity financing by November 30, 2020, including the following:

- **Scarcity of Equity.** Owner was able to receive only one viable offer for equity placement, and the selected provider, BofA, stated it would not be able to close until first quarter of 2021.
- **Environmental Clearance.** Owner's commitment of CDBG-DR funding from the City of Houston required HUD environmental clearance. Impacted by a shortage of resources and limited office hours stemming from the COVID-19 pandemic, various local and state agencies were unable to respond promptly, delaying the environmental clearance process. At the time of the Waiver Request Letter, environmental clearance was expected in late January 2021.
- **City of Houston CDBG-DR Loan Documents.** Also affected by COVID-19, the City of Houston was unable to timely prepare the documents and obtain City Council approval for the CDBG-DR funding. At the time of the Waiver Request Letter, City Council approval was anticipated by January 20, 2021.

Supplementing the items included in the Waiver Request Letter, the Development has experienced the following:

- **Environmental Clearance.** The HUD environmental clearance, which was expected in late January 2021, was received on February 2, 2021.
- **Materials Costs and Shortages.** Due to the impact of the COVID-19 pandemic on mills, labor, and distribution channels coupled with increased restrictions on cutting/logging in Canada and a significant increase in home improvement projects nationwide, costs for building materials including lumber, steel, and PVC, have increased substantially since Owner filed the Application. While the Development was able to absorb significant material cost escalations throughout 2020 due to favorable Tax Credit equity terms, the cost of building materials increased even more after the start of 2021; lumber alone resulted in a \$1,500,000 increase from January 22 to the pricing received on February 24.
- **Labor Shortages.** Turner Construction advised that labor became increasingly scarce after February's severe winter storm and as a result, they had lost some of the lowest qualified bidders. Increased demand for repair work is expected to continue for the next 6-9 months. Subcontractors rescinded their bids due to concern for their ability to deliver under scarce labor conditions. Consequently, Turner Construction is paying a

premium to ensure all of the subcontractors needed to complete the Development are secured.

- **Increase in Interest Rates.** When the Development was initially structured and the amount of CDBG-DR funds was determined, the 10-year treasury rate was below 100 basis points (BPS). This low interest rate remained through December 2020. When Owner signed the permanent loan term sheet, the rate was 76 BPS. Starting in 2021, the treasury rate took an upward trend to 165 BPS. As a result, the permanent lender advised that its loan would be decreased by \$600,000.
- **Request for Additional CDBG-DR Funding.** As a result of the increases in costs for materials and labor, along with the reduction in the permanent loan amount, Owner sought additional CDBG-DR funding from the City of Houston. Owner was awarded \$2,600,000 of additional funding, which required more administrative process with the Texas General Land Office.
- **City of Houston CDBG-DR Loan.** City Council approval for the CDBG-DR funds was delayed 6 times, such that the documents were not approved until April 7, 2021, eleven (11) weeks after originally anticipated. See [Exhibit B](#). Some of the delays related to capacity issues for the City of Houston, and some of the delays related to the additional CDBG-DR funding that was required to cover increased costs.

#### **BofA Requirements**

Like many lenders, BofA requires some cushion in the construction schedule. At the time of closing, BofA's required cushion had eroded. Therefore, it inserted a requirement into its loan documents that, if the lender ever anticipated construction would not be completed by [October 31, 2022](#), Owner would be required to promptly request a force majeure extension from TDHCA. See excerpts from the loan documents at [Exhibit C](#).

On May 25, Turner Construction submitted a pay application with a construction schedule, showing a projected completion date of December 9, 2022. See [Exhibit D](#). Thus, Owner is required to submit this request for relief.

#### **Factors for Consideration**

In accordance with Section 11.6(5) of the QAP, we believe Owner meets TDHCA's requirements for the relief sought, in that:

1. Owner has proven up delays resulting from "force majeure" events, including supplier failures and materials and labor shortages, the impact of the February ice storm, and the ongoing COVID-19 pandemic. The delays materially impeded Owner's ability to engage in construction activity.

2. When Owner submitted its Tax Credit Application in early 2020, it had no way of knowing what was to come with market conditions that are now commonly referred to as "unprecedented."

3. Owner has endeavored to mitigate the delays by working proactively with the local and state agencies providing funding and with Turner Construction.

4. Owner's lender believes there is a reasonable likelihood that it will not be able to meet the placement in service deadline because of the delays experienced. The current schedule calls for completion by December 9, 2022, which raises legitimate concern about meeting the deadline for placement in service.

We believe Owner has satisfied TDHCA's requirements for a reallocation of Tax Credits under Section 11.6(5) of the QAP and requests that this matter be considered at the next available Board meeting with a recommendation for approval. If additional information is required, please feel free to contact us.

Sincerely,



Cynthia L. Bast

cc: Heritage Senior Residences, L.P.

Exhibit A -- Waiver Request Letter dated December 30, 2020  
Exhibit B -- Houston City Council Delays  
Exhibit C -- Loan Documents Excerpts  
Exhibit D -- Updated Construction Schedule

**Exhibit A**

**Waiver Request Letter dated December 30, 2020**

# HERITAGE SENIOR RESIDENCES, L.P.

December 30, 2020

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

Re: Heritage Senior Residences / TDHCA #20204 – Readiness to Proceed

Dear Madam/Sir:

I respectfully request a Penalty Waiver of the Readiness to Proceed deadline pursuant to 10 TAC §11.9(c)(8) of the 2020 Qualified Allocation Plan for the above referenced development. The COVID-19 pandemic, as well as its associated precautionary measures, have had a significant impact on daily life and the development industry as a whole. Many government agencies and financial institutions had complete stoppages early on and most have transitioned to a full-time remote-work environment. As a result, the development has experienced extensive delays that are beyond our control.

While we worked, to the best of our ability, toward closing on the construction financing in November 2020, we are currently projecting to close in February 2021 due to the following factors that inhibited our ability to meet the Readiness to Proceed closing deadline:

- **Delays related to placing the Housing Tax Credit equity:** The only investor that has provided an equity bid on the HTC that makes the development feasible, Bank of America, is unable to close the transaction until the 1<sup>st</sup> quarter of 2021 due to their constrained capacity and bandwidth due to COVID-19 and the related remote work environment. See Exhibit A for support.
- **Delays related to HUD environmental clearance:** The development was awarded a CDBG-DR loan from the City of Houston (the “City”). The required environmental clearance needed for the City’s CDBG-DR program loan has taken longer than anticipated due to COVID-19. Specifically, the Texas Historical Commission took 37 days to respond to the City, 9 days longer than originally anticipated, and the Texas Parks and Wildlife Department took 41 days to respond to the City, 13 days longer than anticipated. The City submitted the environmental clearance approval to GLO on November 5 and GLO comments were received 20 days later. The City submitted their approval of the comments to GLO on December 9 and the 30-day notification period commenced on December 30. Due to the above delays, we do not expect to receive environmental clearance approval until late January at the earliest. See Exhibit B for support.
- **Delays related to the subordinate debt:** The CDBG-DR the development received from the City of Houston is taking longer to close than originally anticipated due to COVID-19. Although the LOI with the City was signed on July 30<sup>th</sup> and the required deposit paid to get the development in the queue for closing, the first draft of the City’s loan documents was not sent out until December 8<sup>th</sup>. In order to close, these documents must be negotiated by the borrower, lender, and investor, and once finalized the documents must be approved by City Council. Based on the current timeline it is not expected that these documents will be final and approved by City Council until January 20, 2021. Once approved it will then take approximately two weeks to close, setting the closing date at the beginning of February at the earliest. See Exhibit C for support.

# HERITAGE SENIOR RESIDENCES, L.P.

Due to the above unforeseen delays that are outside of our control, I respectfully request a Penalty Waiver of the Readiness to Proceed deadline pursuant to 10 TAC §11.9(c)(8) of the 2020 Qualified Allocation Plan.

Please do not hesitate to contact Greg Griffith at 305-357-4737 with any questions or comments. Your understanding and consideration is very much appreciated.

Sincerely,

Stanley D. Cohen  
Principal of Heritage Senior Residences, L.P.

EXHIBIT A

SUPPORT FOR DELAYS RELATED TO PLACING EQUITY

- 1) Draft Equity LOI received from on 9/23/20. Draft assumed a closing date of 1/15/21 due to Bank of America's inability to close in 2020.
- 2) Email from Bank of America confirming their inability to close in 2020.

Community Development Banking  
401 E Las Olas Blvd.  
Fort Lauderdale, FL 33301

Jason Kaye  
Senior Vice President  
P 954-765-2141  
Jason.Kaye@bofa.com

September 23, 2020

Greg Griffith  
c/o Atlantic Pacific Communities  
2950 S.W. 27<sup>th</sup> Avenue, Suite 200  
Miami, Florida 33133

Re: **Heritage Senior Residences Draft Equity LOI**

Dear Mr. Griffith:

This letter expresses the interest of Bank of America, N.A., and, or, its affiliates (“Investor”) in making an equity investment in a partnership for purposes of developing and owning a low-income senior housing project (the “Project”). This letter is intended to describe the terms and conditions of Investor’s proposed equity investment.

**1. Project.**

The Project will consist of the new construction of 135 units, including 94 affordable housing units for low income seniors (55+) and 41 market rate units contained in one five-story residential building located in Houston, Texas (the "Property"). The unit mix will be as follows:

Descripti	#BRs	LIHTC Unit?	Unit Class- ification	AMI (the <a href="#">drop-down</a> <a href="#">is from cells</a> <a href="#">F5-K5 - see</a> <a href="#">comment</a> )	No. Units
1 BR 30%	1	Y	LIHTC Restr	30%	23
1 BR 50%	1	Y	LIHTC Restr	50%	11
1 BR 60%	1	Y	LIHTC Restr	60%	24
1 BR 80%	1	Y	LIHTC Restr	80%	17
1 BR MKT	1	N	Market		33
2 BR 30%	2	Y	LIHTC Restr	30%	6
2 BR 50%	2	Y	LIHTC Restr	50%	3
2 BR 60%	2	Y	LIHTC Restr	60%	5
2 BR 80%	2	Y	LIHTC Restr	80%	5
2 BR MKT	2	N	Market		8

**2. Tax Credits.**

The Project has received a preliminary reservation in 2020 of 9% federal low-income housing tax credits (the “Projected Federal Credits”) in the amount of \$1,437,311 per



annum from the Texas Department of Housing and Community Affairs (the “Credit Agency”).

**3. Partnership.**

The Project will be owned and operated by Heritage Senior Residences, L.P., a Texas Limited Partnership (the “Partnership”), with Heritage Senior Residences GP, LLC, a Texas limited liability company as General Partner (“General Partner”), and Bank of America, N.A., a national banking association as Investor Limited Partner and Banc of America CDC Special Holding Company, Inc., a North Carolina corporation, an affiliate of Investor as Special Limited Partner. General Partner, Investor, and Special Limited Partner will enter into a Partnership Agreement (the “Partnership Agreement”). General Partner will own a 0.01% interest in the Partnership; Investor will own a 99.99% interest in the Partnership as Investor Limited Partner; and Special Limited Partner will own a 0.00% interest (the “Percentage Interests”).

**4. Project Financing.**

General Partner contemplates that the Partnership will obtain the loans set forth below (the “Loans”):

- A. Construction Loan. A construction loan in an estimated amount of \$17,501,366 and with a term of 30 month(s) (the “Construction Loan”) will be provided by Bank of America on terms to be approved by Investor.
- B. Permanent Loans. The following permanent loans (the “Permanent Loans”) are expected to be made to the Partnership:

Loan type	Loan Amount	Interest rate	Loan Term	Amortization Term
<u>First Mortgage Loan (BoFA)</u>	\$9,400,000	4.48%	18 years	35 years
Harris County CDBG-DR	\$911,700,000	100%	30 years	30 years

The terms and conditions of each of the Loans and any other loan to the Partnership will be subject to Investor’s approval. Such loans will (i) expressly permit the admission of Investor into the Partnership and the potential transfers of the partnership interests by Investor and Special Limited Partner without consent of the maker of the loan provided that such transfers are permitted under the Partnership Agreement, and (ii) will provide Investor with notices of default and cure rights acceptable to Investor. All Permanent Loans will be non-recourse.

**5. Other Parties.**

- A. Developer. Heritage Senior Residences, LLC (75%), a Texas limited liability company.

Heritage Senior Residences

- B. Guarantor. Stanley D. Cohen Revocable Living Trust and Stanley D. Cohen personally. Liquidity and Net Worth Covenants: \$5 million Liquidity and \$15 million Net Worth.
- C. Property Manager. TBD, a Texas limited liability company. The Property Manager is not affiliated with Developer, Guarantor, General Contractor, or Managing General Partner.
- D. Compliance Monitor. Atlantic Pacific Community Management, LLC.
- E. General Contractor. Atlantic Pacific Community Builders, LLC. The General Contractor is affiliated with Developer, Guarantor, and Managing General Partner. The General Contractor will provide a Guaranteed Maximum Price Contract with 100% Payment and Performance bonding or Letter of Credit equal to 15% of the construction contract in lieu of bonding.

The qualifications and financial condition of each of the foregoing parties must be acceptable to Investor.

**6. Capital Contributions.**

Investor will make a total Capital Contribution equal to \$0.96 for each \$1.00 of Federal Tax Credits to which it will be entitled as a limited partner. Based on the Projected Credits for the Partnership this would amount to a total Capital Contribution of \$13,796,806 (the “Total Capital Contribution”). The Total Capital Contribution will be paid as follows assuming a January 15, 2021 closing:

<b>Milestone</b>	<b>Conditions to be satisfied prior to payment</b>	<b>% Equity</b>	<b>\$ Equity</b>
<u>Initial Capital Contribution</u>	(i) closing of the Partnership (ii) closing and initial funding, to the extent contemplated by the closing draw, of all construction financing for the Project (iii) receipt of commitments for all permanent financing on the Project with the interest rate fixed for at least 15 years (iv) evidence of either acquisition of, or a long-term leasehold interest in, the land for the Project (v) evidence the Partnership has received an allocation from the Credit Agency of 9% credits in an amount equal to the Projected Federal Credits (vi) receipt by the Investor of a tax opinion prepared by special tax counsel for the Partnership in a form which is acceptable to the Investor (vi) satisfactory completion of Investor’s due diligence	15%	\$2,069,520.90

Heritage Senior Residences

<p><u>Completion Capital Contribution</u></p>	<p>(i) the Bank has received the Bank’s Construction Consultant’s report evidencing construction completion of the Project sufficient for all residential units to be “placed in service” within the meaning of section 42 of the Code.                      (ii) the owner’s title policy has been amended to remove all mechanics lien exceptions</p> <p>This contribution will occur no earlier than 8/01/2022.</p>	<p>15%</p>	<p>\$2,069,520.90</p>
<p><u>Conversion and Stabilization Capital Contribution</u></p>	<p>(i) the Project then has achieved at least an average over a period of three consecutive calendar months of a minimum of 1.15 to 1 debt service coverage on the Permanent Loan (which period must include the last day of the most recent calendar month)                      (ii) the Project is then at least 90% physically occupied                      (iii) all tax credit units have been leased to qualified tenants at least one time                      (iv) all Permanent Loans have closed and funded, or will close and fund concurrent with this Conversion and Stabilization Capital Contribution                      (v) permanent certificates of occupancy for each building in the Project.                      (vi) all reserves have funded or will fund concurrent with this payment                      (vii) receipt of an Accountant reviewed draft of the cost certification.</p> <p>This contribution will occur no earlier than 05/01/2023.</p>	<p>65%</p>	<p>\$8,967,923.90</p>
<p><u>Final Capital Contribution</u>                      (The balance of the unpaid Total Capital Contribution)</p>	<p>(i) the Credit Agency has issued a Form 8609 for each building.                      (ii) a final cost certification reviewed by a qualified accountant has been received in a form acceptable to Investor.                      (iii) a copy of the recorded Extended Use Agreement has been received.                      (iv) a copy of the compliance audit of the initial tenant files has been received.                      (v) calculations of final adjusters have been prepared and agreed to.</p> <p>This contribution will occur no earlier than 08/01/2023.</p>	<p>5%</p>	<p>\$689,840.30</p>

**7. General Partner and Guarantor Obligations.**

- A. Completion and Development Deficit Guaranty. General Partner and Guarantor will guarantee lien-free completion of the Project in a good and workmanlike manner substantially in accordance with plans and specifications as approved by Investor on or before August 1, 2022 (the “Completion Date”). General Partner and Guarantor will guaranty payment of all development costs, including all costs

of achieving such lien-free completion, including all soft costs and construction period interest. If necessary, the General Partners will defer developer fee to cover cost overruns provided that the amount of the deferred fee as increased is projected to be payable from the Project's Operating cash flow no later than the 13<sup>th</sup> year after completion. Further, under this guaranty, Managing General Partner and Guarantor will guaranty payment of all operating costs through the later of the date (i) the Project has achieved 90% occupancy for a period of three consecutive calendar months, (ii) the Project is 100% complete, (iii) all tax credit units have been leased to qualified tenants at least one time, and (iv) all Permanent Loans have closed and funded. Payments made under this guaranty up to \$1,000,000 will be treated as interest free loans ("Development Deficit Loans") to the Partnership.

- B. Operating Deficit Guaranty. Managing General Partner and Guarantor will agree to loan to the Partnership any amounts required to fund operating deficits arising after the expiration of the Completion and Development Deficit Guaranty up to six (6) months of operating expenses (inclusive of must pay annual debt service and replacement reserves) currently estimated to be \$653,115 (the "Operating Deficit Loan Maximum"). Any amounts so advanced will constitute interest-free loans ("Operating Loans") repayable only out of future available cash flow or out of available proceeds of a sale or refinancing. The Operating Deficit Guaranty will terminate 36 months after the later of (i) the expiration of the Completion and Development Deficit Guaranty, or (ii) the Project's achievement of 1.15 to 1 debt service coverage ratio on the Permanent Loans calculated over a period of 12 consecutive months. In addition, in order for the Operating Deficit Guaranty to terminate, the Project must average a 1.15 to 1.00 debt service coverage ratio for the last 12 months of the 36 month period or any subsequent 12 month period and the Operating Reserve must be replenished to its originally required balance of \$319,905.
- C. Repurchase. Managing General Partner and Guarantors will be required to repurchase the Investor's interest upon certain material events including but not limited to: failure to achieve completion by November 31, 2022, failure to achieve stabilization within 36 months of completion, failure to place the Project in service prior to the date required by the Internal Revenue Code, or loss of permanent financing commitments. The Managing General Partner and Guarantors will repurchase the Investor's interest in the Partnership at a price equal to the Investor's Capital Contributions paid to date, plus the actual out of pocket costs to the Investor (including legal, accounting, and consulting) plus 7% interest per annum, less any net tax credits received and retained by the Investor.
- D. Tax Credit Guaranty and Indemnification. Managing General Partner and Guarantors will indemnify Investor for the failure to achieve Projected Federal Credits except if caused by transfer of Investor's Interest or a change in law, in which case any resulting adjusters would be paid solely from the Project's Operating Cash Flow and proceeds from a sale or refinancing. Should the actual tax credits be lower than the Projected Federal Credits, Investor's capital

Heritage Senior Residences

contributions will be adjusted downward by the amount of the difference and any interest or penalties owed by Investor. Subsequent to the payment of Investor Capital Contributions, Managing General Partner and/or Guarantors will, within 75 days of the end of each calendar year, pay to Investor an amount on an after tax basis equal to the difference in actual tax credits plus any interest or penalties owed by Investor. This guaranty will run for the 15-year term of the compliance period.

- E. Taxable Income Prior to Stabilization. To the extent that the Partnership generates any taxable income prior to Stabilization, the Managing General Partner and Guarantor will be obligated to pay for any tax liability of the Investor Limited Partner due to such taxable income. This includes, but is not limited to, any interest income generated from Partnership assets (such as Guaranteed Investment Contracts) that exceeds the deductible investment expense allocated to the Investor Limited Partner.
- F. Adjuster Provisions. The Capital Contributions are based upon your projection of total federal Low-Income Housing Tax Credits of \$14,373,110 ("Original Projected Credit") to Investor, which in turn is based upon certain assumptions and projections. The following federal (and, if applicable, state) credits are to be delivered to the Investor assuming January 15, 2021 closing:

Credit	2021	2022	2023-2030	2031	2032
<u>Federal Low Income Housing Tax Credit</u>	\$14,445	\$996,731	\$1,213,412	\$1,198,967	\$216,681

The actual amount of Low-Income Housing Tax Credits may in fact change after the determination of eligible and qualified basis. Accordingly, the Capital Contribution may be adjusted when (i) final projections of the amount of Low-Income Housing Tax Credits are completed and/or (ii) upon or after actual completion of the project. Upon satisfaction of all conditions and prior to payment of the Final Capital Contribution, the Partnership Accountant will provide the Investor with Revised Economic Projections and the Final Credit Amount determined by the Accountants.

- G. Credit Adjuster. To the extent such final projected amount of Low-Income Housing Tax Credits varies from the Original Projected Credits, Investor's capital contribution will be adjusted by \$0.96 per federal credit on such variance in the delivery of actual credits to Original Project Credit (as reflected in cost certifications or Form 8609).
- H. Timing Adjuster. Investor's federal credit capital contribution will be adjusted to reflect the later or earlier than projected delivery of federal credits with respect to the first year and, if applicable, the second year, of the credit period, based on a reduction in price of \$0.65 for every federal credit dollar deferred, or an increase based on \$0.65 for every federal credit dollar accelerated.

**8. Allocation of Tax Credits, Depreciation, Profits and Losses.**

The Tax Credits, depreciation, operating profits and losses will be allocated in accordance with the Percentage Interests.

**9. Distribution of Cash Flow.**

A. Operating Cash Flow. Operating cash flow will be utilized as follows:

- (i) payment of must pay debt service on the Permanent Loans and other operating expenses;
- (ii) additions to a funded capital replacement reserve as provided in the Partnership Agreement;
- (iii) payment of the Asset Management Fee (\$5,000 per year beginning pro rata in 2021 (increasing 3% per year) to the Special Limited Partner, which fee will accrue if not paid;
- (iv) payment of any tax credit adjuster payments due to a change in law;
- (v) payment of the Deferred Developer Fee;
- (vi) payment of any “soft” loans if applicable;
- (vii) payment of the Partnership Management Fee (\$5,000 per year increasing 3% per year), 50% to the Managing General Partner and 50% to the Administrative General Partner, which fee will accrue if not paid;
- (viii) repayment of any Operating Deficit Loans or General Partner Loan Development Deficit Loans, made by the General Partner;
- (ix) replenishment of the Operating Reserve Account;
- (x) the balance 45% to the Managing General Partner, 45% to the Administrative General Partner, first as payment of an incentive management fee up to 6% of gross revenues and then as a distribution, and 10% to the Investor Limited Partner.

B. Sale or Refinancing Proceeds. Distributions of proceeds from a sale or refinancing of the Project will be distributed as follows:

- (i) payment of all outstanding debt in full and other operating expenses;
- (ii) to the extent reasonably determined necessary by the General Partner, additions to a funded capital replacement reserve;
- (iii) payment of the federal and state “exit” taxes incurred on any negative capital account, if any, of the Investor;

## Heritage Senior Residences

- (iv) payment of any unpaid, accrued Asset Management Fee;
- (v) payment of any outstanding tax credit adjusters due to a change in law;
- (vi) payment of the Deferred Developer Fee;
- (vii) payment of any unpaid, accrued Partnership Management Fee;
- (viii) repayment of any Operating Deficit Loans or General Partner Development Loans or Development Deficit Loans, made by the General Partner; and
- (ix) 45% to the Managing General Partner, 45% to the General Partner, and 10% to the Investor.

C. Developer Fee. Developer will earn a Developer Fee, projected to be approximately \$3,683,253 to be split 75% and 25% between TBD APC Entity, LLC and TBD Housing Authority Development LLC, or its affiliate, respectively. The timing of the payments toward the Developer Fee is subject to the terms of the Construction Loan, which will be subject to approval by Investor. In the event that the amount of the Final Capital Contribution is insufficient to pay the remaining balance of the Developer Fee, such unpaid balance will be deferred as provided in the Partnership Agreement and will be paid out of Operating Cash Flow and Net Proceeds as provided above, provided that the amount of the unpaid balance must be paid within 13 years after 100% completion of the Project.

### 10. Property Manager.

TBD with Atlantic Pacific Community Management, LLC providing compliance management. The Property Manager will earn a fee equal to a maximum of 5.0% of the Project's gross collected rents. If the Property Manager is an affiliate or related entity of the General Partner, then the Property Manager may be terminated as Property Manager in the event of the removal of the General Partner from the Partnership.

### 11. Depreciation.

For the purposes of the pricing contained in this Letter of Intent, we have assumed the Company will depreciate its residential rental property over a 30 year recovery period, Site Work over 15 year period, and Personal Property over 5 year period.

### 12. Replacement Reserves.

\$300 per unit annually, or greater if required by any Project lender, will be funded as an operating expense into a reserve account.

### 13. Operating Reserve.

\$319,905, (3 month reserve) or greater if required by any Project lender, will be funded upon Permanent Loan Conversion into a dual control Operating Reserve account to be used for potential operating deficits. These funds may be used to fund operating deficits

during the three year Operating Deficit Guaranty period identified in 7 B above and prior to Guarantors funding under such guaranty, but will be required to be replenished prior to release of the Operating Deficit Guaranty.

**14. Investor Review.**

As set forth in the Partnership Agreement, Investor will have the right to inspect the Project during and after construction and to review construction loan disbursement requests and other financial and operations matters of the Project and the Partnership.

**15. Reporting.**

The Partnership will be required to prepare quarterly and annual reports in form and substance satisfactory to Investor as set forth in the Partnership Agreement.

**16. Additional Partnership Agreement Terms.**

The Partnership Agreement will provide for customary covenants, rights to approve major Partnership matters, representations and warranties, defaults, (including the right to remove the General Partners for bankruptcy, fraud, violations of representations and warranties and other removal rights that are typically held by Investors in low-income housing tax credit transactions), remedies, and indemnities (including Environmental Indemnity) to be more fully described in the Partnership Agreement. The Partnership will carry insurance acceptable to Investor.

**17. Transfer of Investor Interest.**

Investor will have the right to transfer its interest in the Partnership with notice to the General Partners at no expense to General Partners, and to have the transferee admitted as a substitute limited partner: (i) to any affiliate of Investor, (ii) to any other person or entity provided that the net worth of the proposed transferee will be acceptable to General Partners in their reasonable discretion, or (iii) to a partnership or limited liability company in which the Investor is the general partner or managing member.

**18. Transfer of General Partner Interest.**

General Partners will not sell, transfer, assign, pledge or encumber any portion of its interest in the Partnership without the prior written consent of Investor.

**19. Bank Accounts.**

All bank accounts of the Partnership will be maintained with Investor.

**20. Conditions to Closing.**

Investor's investment in the Partnership in accordance with this letter is subject to the satisfaction of the following conditions precedent on or before the Closing Date, which will occur on or before January 15, 2021 (the "Closing Date").



## Heritage Senior Residences

- A. Due Diligence. Investor's satisfactory due diligence review, in its sole and absolute discretion, of all matters pertaining to the Partnership, the General Partner, the Guarantor, the Developer and the Project including, without limitation:
- (1) the construction budget, the scope of work, the construction schedule, all required permits, the construction contract, and all other construction and development matters;
  - (2) title, survey, zoning, engineering and environmental matters;
  - (3) any ground lease;
  - (4) market studies, appraisals, and all other matters regarding project feasibility;
  - (5) all aspects of the project's capital structure: the terms of all loans, grants, tax increment financing and equity contributions;
  - (6) debt service coverages, reserves, rental subsidies, income, expenses, and all other assumptions underlying the Projections;
  - (7) tax matters, including all aspects of all tax-exempt bonds;
  - (8) government benefits, government consents, government requirements and all other regulatory aspects of the Project;
  - (9) all formation documents and government filings of the Partnership, the General Partner, the Guarantor and the Developer; and
  - (10) the financial condition of the General Partner, Guarantor and the Developer.
- B. Negotiation of Satisfactory Documentation. The negotiation of a final Partnership Agreement and related documents (collectively the "Project Documents") that are satisfactory to Investor, Managing General Partner and General Partner. Investor's attorney will prepare and send to General Partner and its attorney the form of the Project Documents.
- C. Opinions. Investor's receipt of a corporate opinion rendered by counsel to General Partner satisfactory to Investor, in form and substance acceptable to Investor.
- D. Consents. Receipt of all necessary consents of governmental authorities and lenders.
- E. Title Insurance. Receipt of a title insurance policy in an amount and in a form acceptable to Investor, provided the amount of such title insurance must be at

least equal to the aggregate of the Total Capital Contribution plus all Permanent Loans. The policy must include a “Fairways” endorsement.

- F. Miscellaneous. Receipt of other items or information reasonably required by Investor.

**21. Transaction Expenses.**

The Investor is responsible for all of the Investor’s transaction expenses including its legal, market analysis, and accounting fees up to \$86,650. The Managing General Partner is responsible for all such costs to the extent they exceed \$86,650. Investor’s expenses will be paid in the form of capital contribution from the Investor, which is separate from and in addition to the Capital Contribution in paragraph 6. If the Partnership fails to close, the Managing General Partner will be responsible for reimbursing the Investor for all of the Investor’s transaction expenses.

**22. Termination.**

If the transaction contemplated by this letter fails to close by the Closing Date, as extended by the parties, this letter will be null and void and of no further force and effect, and, neither party will have any claim or demand whatsoever against the other party in connection with this letter, its execution or termination, except the Investor’s transaction expenses identified above.

**23. Option to Purchase/Right of First Refusal.**

Starting in the first calendar year after the end of the tax credit period, the Administrative General Partner or its affiliate shall have the option for a period of 2 years to purchase the Partnership’s leasehold interest in the Project for an amount equal to the greater of (a) fair market value as determined by an MAI Appraiser or (b) outstanding debt plus taxes payable as a result of the sale plus any amounts owed to the Limited Partners. Further, at any time after the end of the 15 year Compliance Period for a period of 1 year, the Administrative General Partner or its affiliate shall have an option to purchase the Partnership’s leasehold interest in the Project or the interests of the Limited Partners, at the discretion of the Administrative General Partner, for an amount equal to the greater of (a) fair market value as determined by an MAI Appraiser or (b) outstanding debt plus taxes payable as a result of the sale plus any amounts owed to the Limited Partners. At the end of the 15 year tax credit compliance period, the Housing Authority or its affiliate (assuming it is a qualified non-profit) will have a right of first refusal to purchase the Property for an amount equal to outstanding debt plus taxes payable as a result of the sale.

**24. Put Option.**

At any time after the expiration of the tax credit period, Investor may require that the General Partners purchase Investor’s Interest and Special Limited Partner’s Interest subject to all then existing liens and encumbrances to title for an amount equal to \$100 (the “Put Option”).

**25. Tax Disclosure.**

Notwithstanding anything to the contrary contained in the Partnership Agreement or any other agreement between the parties hereto, or in any offering materials pertaining to the Project, Investor and each officer, employee, representative or agent of Investor may disclose to any and all persons, without limitation of any kind, (i) the tax treatment and tax structure of the Partnership and any of the Partnership's transactions or activities, and (ii) all materials of any kind (including opinions and tax analysis) that are provided to Investor regarding its investment in the Partnership and/or such transactions or activities of the Partnership. This authorization as to tax disclosure is effective retroactively to the commencement of any discussions between the parties hereto or any of their agents or representatives.

**26. Material Adverse Change.**

Bank of America 's obligations hereunder shall terminate if, prior to closing, Bank of America determines, in its sole judgment, that there shall exist any conditions regarding the Property, or the operations, business, assets, liabilities or condition (financial or otherwise, including credit rating) of the Partnership or Guarantor or there shall have occurred a material adverse change in, or there shall exist any material adverse conditions in, the market for syndicated bank facilities or the financial, banking, credit or debt capital markets generally, that could be expected to cause the potential Investment to go into default or prevent any guarantor from performing its obligations under any guaranty or to materially and adversely affect the value or marketability of the Investment or the Property.

**27. Expiration.**

This Letter of Intent will expire at 5:00 p.m. on that date which is five (5) business days from the date hereof unless you execute this Letter Of Intent and return it to us prior to that time, which may be by facsimile transmission. This letter is not intended as a commitment or offer by Investor to invest in the Partnership or the Project, but is intended only to summarize for discussion purposes the equity investment it is considering at this time. Investor must obtain the approval of its Investment Committee with respect to any such investment. After receipt of your signature on this Letter Of Intent and after you provide any additional information that may be required, we will proceed with the necessary due diligence to process your request for Investment Committee Approval; provided, however that in any event, if this investment is not closed within 60 days, this Letter Of Intent will expire.

Heritage Senior Residences, L.P. acknowledges and agrees that: (i) the transaction contemplated by this Summary of Terms and Conditions is an arm's length, commercial transaction between Heritage Senior Residences, L.P. and the Bank in which the Bank is acting solely as a principal and for its own interest; (ii) the Bank is not acting as a municipal advisor or financial advisor to Heritage Senior Residences, L.P.; (iii) the Bank has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to Heritage Senior Residences, L.P. with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the

Heritage Senior Residences

Bank has provided other services or is currently providing other services to Heritage Senior Residences, L.P. on other matters); (iv) the only obligations the Bank has to Heritage Senior Residences, L.P. with respect to the transaction contemplated hereby expressly are set forth in this Summary of Terms and Conditions; and (v) the Bank is not recommending that Heritage Senior Residences, L.P. take an action with respect to the transaction contemplated by this Summary of Terms and Conditions, and before taking any action with respect to the contemplated transaction, Heritage Senior Residences, L.P. should discuss the information contained herein with its own legal, accounting, tax, financial and other advisors, as it deems appropriate. If Heritage Senior Residences, L.P. would like a municipal advisor in this transaction that has legal fiduciary duties to Heritage Senior Residences, L.P. is free to engage a municipal advisor to serve in that capacity. This Summary of Terms and Conditions is provided Heritage Senior Residences, L.P. pursuant to and in reliance upon the [bank exemption/RFP exemption/IRMA exemption] provided under the municipal advisor rules of the Securities and Exchange Commission, Rule 15Ba1-1 *et seq.*

Please indicate your agreement and acceptance of the foregoing by signing the enclosed copy of this letter and returning it to the undersigned. We look forward to working with you on this transaction.

Agreed and Accepted:

\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

cc: Jason Kaye, Bank of America  
Sylvia Monsivais, Bank of America

**From:** "Kaye, Jason" <[jason.kaye@bofa.com](mailto:jason.kaye@bofa.com)>  
**Date:** December 29, 2020 at 6:48:39 PM EST  
**To:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>  
**Subject:** RE: Heritage Senior Residences - Closing Timeline

That is correct.

**Jason Kaye**

Senior Vice President  
Senior Relationship Manager  
Community Development Banking  
Bank of America  
401 E. Las Olas Blvd., 9<sup>th</sup> Floor, Fort Lauderdale, FL 33301  
T 954.765.2141 M 561.592.0212  
[jason.kaye@bofa.com](mailto:jason.kaye@bofa.com)

Securities and investment services provided by BofA Securities, Inc.



**From:** Greg Griffith [<mailto:ggriffith@apmanagement.net>]  
**Sent:** Tuesday, December 29, 2020 5:00 PM  
**To:** Kaye, Jason <[jason.kaye@bofa.com](mailto:jason.kaye@bofa.com)>  
**Subject:** Heritage Senior Residences - Closing Timeline

Jason,

Per our discussion just now I just wanted to memorialize the fact that when we were originally negotiating the term sheet in September, the assumed closing date was January 15, 2021 due to the fact that the bank did not have the capacity to close another deal by the end of 2020.

Thank you,

**GREG GRIFFITH** | Vice President  
3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136  
t: (305) 357.4737 | f: (305) 476.1557 | [Website](#) | [E-Mail](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS MIAMI PINECREST SAN DIEGO



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## EXHIBIT B

### SUPPORT FOR DELAYS RELATED TO HUD ENVIRONMENTAL CLEARANCE

#### Sequence of Events:

- 1) On 7/14/20 the City advised expect the environmental review process to take anywhere from 90-120 days.
- 2) Request for Texas Historical Commission review was submitted on 8/2/20. Digital response received on 9/8/20.
- 3) Endangered Species Act Partner Worksheet, a form that is required to submit to Texas Parks and Wildlife Department (TPWD), was submitted to the City on 9/2/20.
- 4) Per the City, the request for consultation from the TPWD was submitted on 9/22/20.
- 5) TPWD Consultation Response was not received until 11/2/20.
- 6) 1<sup>st</sup> submission to GLO by the City occurred on 11/5/20. And initial comments from GLO were received 11/25/20.
- 7) GLO Comments were responded to by the City on 12/9/20.
- 8) On 12/30/20 the City informed the 30-day notification period has officially commenced.
- 9) Authority to Use Grant Funds (AUGF, 7015.16) issued on 2/2/21.

## Lee Cohen

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**From:** Thorp, Julia - HCD <Julia.Thorp@houstontx.gov>  
**Sent:** Tuesday, July 14, 2020 8:46 AM  
**To:** Lee Cohen; Jenkins, Matthew - HCD  
**Cc:** Greg Griffith; Dan Wilson; Farhoomand, Pirooz - HCD  
**Subject:** RE: Heritage Senior Residences - HUD Part 58-Environmental Assessment

Good Morning Mr. Cohen,

Thank you for your inquiry. Have you been assigned an HCDD project manager/underwriter yet? We receive key pieces of information from our underwriters such as site plans, project descriptions, funding information, Phase 1 Environmental Site Assessments, etc., which triggers our Part 58 Environmental Review process. Once the process is initiated, we typically expect the project to take anywhere from 90-120 days, dependent on environmental conditions, compliance with any number of environmental factors, and in this case, approval of our Environmental Review through the GLO. There is also a 15-day public comment period followed by a 15-day GLO review period of the Request for Release of Funds, which is included within the 90-120 day estimate. Please note that this timeframe is not guaranteed since we do not know what may arise during our review.

Thank you,

**Julia Thorp**

Environmental Investigator V  
Real Estate Compliance/Environmental

City of Houston  
Housing and Community Development Dept.  
2100 Travis Street | 9th Floor | Houston TX 77002  
832.394.6018 (office)

[www.houstontx.gov/housing](http://www.houstontx.gov/housing)

[www.recovery.houstontx.gov](http://www.recovery.houstontx.gov)

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**From:** Lee Cohen <LCohen@apcommunities.com>  
**Sent:** Monday, July 13, 2020 5:34 PM  
**To:** Thorp, Julia - HCD <Julia.Thorp@houstontx.gov>; Jenkins, Matthew - HCD <Matthew.Jenkins@houstontx.gov>  
**Cc:** Greg Griffith <ggriffith@apmanagement.net>; Dan Wilson <dwilson@apcompanies.com>  
**Subject:** Heritage Senior Residences - HUD Part 58-Environmental Assessment

[Message Came from Outside the City of Houston Mail System]

Hello Julia and Matthew,

My name is Lee Cohen and I am part of the team developing Heritage Senior Residences. I'm reaching out to introduce myself and to find out the timeline/requirements in place for HUD Part 58-Environmental Assessment. We will be hiring a consultant to perform the due diligence for the Assessment.

Any details you can provide on the process would be greatly appreciated. We look forward to working with you on this project.

Best,

**LEE COHEN** | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: (561) 573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS **MIAMI** PINECREST SAN DIEGO





## Lee Cohen

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**From:** Thorp, Julia - HCD <Julia.Thorp@houstontx.gov>  
**Sent:** Tuesday, August 4, 2020 1:08 PM  
**To:** Mitchell Young  
**Cc:** Jenkins, Matthew - HCD; Farhoomand, Pirooz - HCD; Lahey, Melissa - HCD; Yindeemark, Paul - HCD; Lee Cohen; Greg Griffith  
**Subject:** RE: Heritage Senior Residences Environmental Review Questions

Good Afternoon Mr. Young,

Thank you, I appreciate this information. Please also keep us in the loop regarding any additional consultation that may be needed with the THC once they respond. We also need to submit a notification to the Texas Parks and Wildlife Department (TPWD) regarding the Endangered Species determination. Once you have prepared the Endangered Species determination, can you please provide us with the documentation so we can notify TPWD? Let me know if you have any questions.

Thank you,

**Julia Thorp**

Environmental Investigator V  
Real Estate Compliance/Environmental

City of Houston  
Housing and Community Development Dept.  
2100 Travis Street | 9th Floor | Houston TX 77002  
832.394.6018 (office)  
[www.houstontx.gov/housing](http://www.houstontx.gov/housing)  
[www.recovery.houstontx.gov](http://www.recovery.houstontx.gov)  
Follow us: [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)

---

**From:** Mitchell Young <myoung@aspenenv.com>  
**Sent:** Sunday, August 2, 2020 11:26 PM  
**To:** Thorp, Julia - HCD <Julia.Thorp@houstontx.gov>  
**Subject:** Re: Heritage Senior Residences Environmental Review Questions

[Message Came from Outside the City of Houston Mail System]

Here is a link to an electronic version of our recent submittal to the Texas Historical Commission related to a historical review for the Heritage Senior Residences project. You indicated that you would like to use some of this information for your tribal resources inquiry.

<https://www.dropbox.com/s/4xex9g7w7j7goxj/Heritage%20Senior%20Residences%20SHPO%20Submittal.pdf?dl=0>

Let me know if you need portions of this submittal in another format to assist your inquiry.

Mitch

Mitchell T. Young, P.E.  
Aspen Environmental, Inc.  
12407 North Mopac Expressway  
Suite 250  
Austin, Texas 78758  
phone: (512) 535-6815  
[myoung@aspenenv.com](mailto:myoung@aspenenv.com)

## Lee Cohen

---

**From:** Mitchell Young <[myoung@aspenenv.com](mailto:myoung@aspenenv.com)>  
**Sent:** Wednesday, September 9, 2020 9:12 AM  
**To:** Lee Cohen  
**Cc:** Greg Griffith  
**Subject:** Fwd: Project Review: 202016548

Here is the electronic response from the THC about the Heritage site. I expect this in the mail in the next day or so. That will be the letter with their official stamp and signature. I will put this with the other info and get the final package together for submittal.

Mitch

Mitchell T. Young, P.E.  
Aspen Environmental, Inc.  
12407 North Mopac Expressway  
Suite 250  
Austin, Texas 78758  
phone: (512) 535-6815  
[myoung@aspenenv.com](mailto:myoung@aspenenv.com)

Begin forwarded message:

**From:** [noreply@thc.state.tx.us](mailto:noreply@thc.state.tx.us)  
**Subject:** Project Review: 202016548  
**Date:** September 8, 2020 at 5:20:17 PM CDT  
**To:** [myoung@aspenenv.com](mailto:myoung@aspenenv.com), [reviews@thc.state.tx.us](mailto:reviews@thc.state.tx.us)



Re: Project Review under Section 106 of the National Historic Preservation Act and/or the Antiquities Code of Texas

**THC Tracking #202016548**  
Heritage Senior Residences  
Center Street and Moy Street  
Houston, TX 77007

Dear Mitchell Young:

Thank you for your submittal regarding the above-referenced project. This response represents the comments of the State Historic Preservation Officer, the Executive Director of the Texas Historical Commission (THC), pursuant to review under Section 106 of the National Historic Preservation Act.

The review staff led by Bill Martin and Justin Kockritz has completed its review and has made the following determinations based on the information submitted for review:

### Above-Ground Resources

- No historic properties are present or affected by the project as proposed. However, if historic properties are discovered or unanticipated effects on historic properties are found, work should cease in the immediate area; work can continue where no historic properties are present. Please

contact the THC's History Programs Division at 512-463-5853 to consult on further actions that may be necessary to protect historic properties.

**Archeology Comments**

- No identified historic properties, archeological sites, or other cultural resources are present or affected. However, if cultural materials are encountered during project activities, work should cease in the immediate area; work can continue where no cultural materials are present. Please contact the THC's Archeology Division at 512-463-6096 to consult on further actions that may be necessary to protect the cultural remains.

We look forward to further consultation with your office and hope to maintain a partnership that will foster effective historic preservation. Thank you for your cooperation in this review process, and for your efforts to preserve the irreplaceable heritage of Texas. If you have any questions concerning our review or if we can be of further assistance, please email the following reviewers:

[bill.martin@thc.texas.gov](mailto:bill.martin@thc.texas.gov), [justin.kockritz@thc.texas.gov](mailto:justin.kockritz@thc.texas.gov)

This response has been sent through the electronic THC review and compliance system (eTRAC). Submitting your project via eTRAC eliminates mailing delays and allows you to check the status of the review, receive an electronic response, and generate reports on your submissions. For more information, visit <http://thc.texas.gov/etrac-system>.

Sincerely,



For Mark Wolfe, State Historic Preservation Officer  
Executive Director, Texas Historical Commission

**Please do not respond to this email.**

## Lee Cohen

---

**From:** Mitchell Young <[myoung@aspenenv.com](mailto:myoung@aspenenv.com)>  
**Sent:** Wednesday, September 2, 2020 1:48 AM  
**To:** Thorp, Julia - HCD  
**Cc:** Lee Cohen; Greg Griffith  
**Subject:** Re: Heritage Senior Residences Environmental Review Questions  
**Attachments:** [Endangered-Species-Act-Partner-Worksheet.pdf](#)

Julia:

As requested, here is information that will be part of the Part 58 environmental summary reports. You indicated that you would like to have the Endangered Species section to make direct inquiries with the Texas Parks and Wildlife Department.

We should have the full Part 58 Environmental Assessment documents soon. We have updated the Phase I ESA from January 2020 and are awaiting the Texas Historical Commission response.

Let us know if you need anything else in the interim.

Mitch

Mitchell T. Young, P.E.  
[Aspen Environmental, Inc.](#)  
12407 North Mopac Expressway  
Suite 250  
Austin, Texas 78758  
phone: (512) 535-6815  
[myoung@aspenenv.com](mailto:myoung@aspenenv.com)

## Lee Cohen

---

**From:** Jenkins, Matthew - HCD <Matthew.Jenkins@houstontx.gov>  
**Sent:** Thursday, December 10, 2020 9:09 AM  
**To:** Lee Cohen; Mitchell Young  
**Cc:** Greg Griffith; Alfaro, David - HCD; McDaniel, Ebony - HCD; Thorp, Julia - HCD; Lahey, Melissa - HCD; Farhoomand, Pirooz - HCD  
**Subject:** RE: Heritage Senior Residences Environmental Review Questions

The comments were returned to GLO yesterday. Thanks for following up and we will keep you posted as we move forward.

Thanks so much,  
Matt

*Matthew Jenkins*

**Environmental Investigator V**

**Real Estate Compliance/Environmental**

City of Houston, Housing & Community Development Department

2100 Travis, 9<sup>th</sup> Floor, Houston, Texas 77002

Office Phone (832) 394-6183

Mobile Phone (346) 266-7836

[matthew.jenkins@houstontx.gov](mailto:matthew.jenkins@houstontx.gov)



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**From:** Lee Cohen <LCohen@apcommunities.com>  
**Sent:** Thursday, December 10, 2020 8:04 AM  
**To:** Jenkins, Matthew - HCD <Matthew.Jenkins@houstontx.gov>; Mitchell Young <myoung@aspennv.com>  
**Cc:** Greg Griffith <ggriffith@apmanagement.net>; Alfaro, David - HCD <David.Alfaro@houstontx.gov>; McDaniel, Ebony - HCD <Ebony.McDaniel@houstontx.gov>; Thorp, Julia - HCD <Julia.Thorp@houstontx.gov>; Lahey, Melissa - HCD <Melissa.Lahey@houstontx.gov>; Farhoomand, Pirooz - HCD <Pirooz.Farhoomand@houstontx.gov>  
**Subject:** RE: Heritage Senior Residences Environmental Review Questions

[Message Came from Outside the City of Houston Mail System]

Good morning Matt,

Reaching out to see if the environmental review comments have been returned to the GLO. Any updates would be greatly appreciated.

Thank you,

**LEE COHEN** | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: 561.573.6628 | [Website](#) | [Email](#)



**From:** Jenkins, Matthew - HCD <[Matthew.Jenkins@houstontx.gov](mailto:Matthew.Jenkins@houstontx.gov)>  
**Sent:** Tuesday, December 1, 2020 5:19 PM  
**To:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>; Mitchell Young <[myoung@aspenenv.com](mailto:myoung@aspenenv.com)>  
**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>; Alfaro, David - HCD <[David.Alfaro@houstontx.gov](mailto:David.Alfaro@houstontx.gov)>; McDaniel, Ebony - HCD <[Ebony.McDaniel@houstontx.gov](mailto:Ebony.McDaniel@houstontx.gov)>; Thorp, Julia - HCD <[Julia.Thorp@houstontx.gov](mailto:Julia.Thorp@houstontx.gov)>; Lahey, Melissa - HCD <[Melissa.Lahey@houstontx.gov](mailto:Melissa.Lahey@houstontx.gov)>; Farhoomand, Pirooz - HCD <[Pirooz.Farhoomand@houstontx.gov](mailto:Pirooz.Farhoomand@houstontx.gov)>  
**Subject:** Re: Heritage Senior Residences Environmental Review Questions

Lee,

Thanks so much and the Environmental Team is reviewing these items. We will let you know if we have any questions or comments before we can move forward with these.

Thanks so much and have a great day.

Matt

Sent from my Verizon, Samsung Galaxy smartphone  
 Get [Outlook for Android](#)

---

**From:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>  
**Sent:** Tuesday, December 1, 2020 3:50:51 PM  
**To:** Jenkins, Matthew - HCD <[Matthew.Jenkins@houstontx.gov](mailto:Matthew.Jenkins@houstontx.gov)>; Mitchell Young <[myoung@aspenenv.com](mailto:myoung@aspenenv.com)>  
**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>; Alfaro, David - HCD <[David.Alfaro@houstontx.gov](mailto:David.Alfaro@houstontx.gov)>; McDaniel, Ebony - HCD <[Ebony.McDaniel@houstontx.gov](mailto:Ebony.McDaniel@houstontx.gov)>; Thorp, Julia - HCD <[Julia.Thorp@houstontx.gov](mailto:Julia.Thorp@houstontx.gov)>; Lahey, Melissa - HCD <[Melissa.Lahey@houstontx.gov](mailto:Melissa.Lahey@houstontx.gov)>; Farhoomand, Pirooz - HCD <[Pirooz.Farhoomand@houstontx.gov](mailto:Pirooz.Farhoomand@houstontx.gov)>  
**Subject:** RE: Heritage Senior Residences Environmental Review Questions

[Message Came from Outside the City of Houston Mail System]

Hi Matt,

Please see responses below. Let me know if you need additional support.

Local elevation requirements:	The City of Houston requires the finish floor to be 12" above the connecting SS MH rim elevation.
Site drainage and detention:	On-site drainage is collected via roof drains and is detained by a tank system located underneath the parking structure. The domestic and fire water connections are to existing public lines at the NW corner of the site. The sanitary connection is to an existing sanitary manhole at the south side of the site.
Safety during development:	Sitewide adherence to OSHA guidelines, enforced daily by Site Supervision team, documented weekly by all subcontractor's on site,

	and audited bi-weekly by an independent 3 <sup>rd</sup> party safety inspection service.
Security during development:	Installation and regular maintenance of perimeter temp fencing, combined with the use of security cameras and/or security patrol during non-operating hours to ensure a secure site.
Safety and security during operation:	Facility will have controlled access through fobs. There will be 67 security cameras, a gated garage, telephone entry system, secured stairways, fob activated elevators, and fobs to access amenities within community.

Thank you,

**LEE COHEN** | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS MIAMI PINECREST SAN DIEGO



**From:** Jenkins, Matthew - HCD <[Matthew.Jenkins@houstontx.gov](mailto:Matthew.Jenkins@houstontx.gov)>

**Sent:** Tuesday, December 1, 2020 10:56 AM

**To:** Mitchell Young <[myoung@aspenenv.com](mailto:myoung@aspenenv.com)>

**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>; Alfaro, David - HCD <[David.Alfaro@houstontx.gov](mailto:David.Alfaro@houstontx.gov)>; McDaniel, Ebony - HCD <[Ebony.McDaniel@houstontx.gov](mailto:Ebony.McDaniel@houstontx.gov)>; Thorp, Julia - HCD <[Julia.Thorp@houstontx.gov](mailto:Julia.Thorp@houstontx.gov)>; Lahey, Melissa - HCD <[Melissa.Lahey@houstontx.gov](mailto:Melissa.Lahey@houstontx.gov)>; Farhoomand, Pirooz - HCD <[Pirooz.Farhoomand@houstontx.gov](mailto:Pirooz.Farhoomand@houstontx.gov)>; Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>

**Subject:** RE: Heritage Senior Residences Environmental Review Questions

**Importance:** High

Please confirm if there are any updates, so we can update our review accordingly in response to the GLO comments, and keep moving forward.

Thanks so much, and have a great day and great week. Stay safe and take care.

Matt

*Matthew Jenkins*

**Environmental Investigator V**

**Real Estate Compliance/Environmental**

City of Houston, Housing & Community Development Department

2100 Travis, 9<sup>th</sup> Floor, Houston, Texas 77002

Office Phone (832) 394-6183

Mobile Phone (346) 266-7836

[matthew.jenkins@houstontx.gov](mailto:matthew.jenkins@houstontx.gov)





---

**From:** Jenkins, Matthew - HCD  
**Sent:** Wednesday, November 25, 2020 9:26 AM  
**To:** Mitchell Young <[myoung@aspenenv.com](mailto:myoung@aspenenv.com)>  
**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>; Alfaro, David - HCD <[David.Alfaro@houstontx.gov](mailto:David.Alfaro@houstontx.gov)>; McDaniel, Ebony - HCD <[Ebony.McDaniel@houstontx.gov](mailto:Ebony.McDaniel@houstontx.gov)>; Thorp, Julia - HCD <[Julia.Thorp@houstontx.gov](mailto:Julia.Thorp@houstontx.gov)>; Lahey, Melissa - HCD <[Melissa.Lahey@houstontx.gov](mailto:Melissa.Lahey@houstontx.gov)>; Farhoomand, Pirooz - HCD <[Pirooz.Farhoomand@houstontx.gov](mailto:Pirooz.Farhoomand@houstontx.gov)>; Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>  
**Subject:** RE: Heritage Senior Residences Environmental Review Questions

Mitch,

The GLO has submitted comments on the Heritage Senior Environmental Review, and we are in the process of updating a few items in our report and are reaching out to your office to gather potentially helpful information: The GLO comment for which we are reaching out is as follows:

*“Please include discussion any local elevation requirements.  
Please provide a description of site drainage and detention systems, and how utility services will be provided to site (i.e., connecting to existing utilities or need for site water and sewer facilities) in the project description.  
Please include discussion of safety and security during operation.”*

Any comments or feedback on these items, particularly related to water and sewer, safety/security during the development itself, and applicable steps to perform elevation (if any) are welcome and will be reviewed so they can be incorporated into our report and our response to GLO.

Please note that we will be out Thursday and Friday for Thanksgiving Holiday, but we look forward to working with you and to having a response to GLO ASAP next week so we can continue moving forward.

Thanks so much and have a great day.

Stay safe, and take care.

Matt

*Matthew Jenkins*

**Environmental Investigator V  
Real Estate Compliance/Environmental**  
City of Houston, Housing & Community Development Department  
2100 Travis, 9<sup>th</sup> Floor, Houston, Texas 77002  
Office Phone (832) 394-6183  
Mobile Phone (346) 266-7836  
[matthew.jenkins@houstontx.gov](mailto:matthew.jenkins@houstontx.gov)



**From:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>

**Sent:** Friday, November 6, 2020 8:35 AM

**To:** Jenkins, Matthew - HCD <[Matthew.Jenkins@houstontx.gov](mailto:Matthew.Jenkins@houstontx.gov)>; Mitchell Young <[myoung@aspenenv.com](mailto:myoung@aspenenv.com)>

**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>; Alfaro, David - HCD <[David.Alfaro@houstontx.gov](mailto:David.Alfaro@houstontx.gov)>; McDaniel, Ebony - HCD <[Ebony.McDaniel@houstontx.gov](mailto:Ebony.McDaniel@houstontx.gov)>; Thorp, Julia - HCD <[Julia.Thorp@houstontx.gov](mailto:Julia.Thorp@houstontx.gov)>; Lahey, Melissa - HCD <[Melissa.Lahey@houstontx.gov](mailto:Melissa.Lahey@houstontx.gov)>; Farhoomand, Pirooz - HCD <[Pirooz.Farhoomand@houstontx.gov](mailto:Pirooz.Farhoomand@houstontx.gov)>

**Subject:** RE: Heritage Senior Residences Environmental Review Questions

[Message Came from Outside the City of Houston Mail System]

Hi Matt,

Thank you for the update! Hope everyone has a great weekend!

**LEE COHEN** | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS MIAMI PINECREST SAN DIEGO



**From:** Jenkins, Matthew - HCD <[Matthew.Jenkins@houstontx.gov](mailto:Matthew.Jenkins@houstontx.gov)>

**Sent:** Friday, November 6, 2020 9:30 AM

**To:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>; Mitchell Young <[myoung@aspenenv.com](mailto:myoung@aspenenv.com)>

**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>; Alfaro, David - HCD <[David.Alfaro@houstontx.gov](mailto:David.Alfaro@houstontx.gov)>; McDaniel, Ebony - HCD <[Ebony.McDaniel@houstontx.gov](mailto:Ebony.McDaniel@houstontx.gov)>; Thorp, Julia - HCD <[Julia.Thorp@houstontx.gov](mailto:Julia.Thorp@houstontx.gov)>; Lahey, Melissa - HCD <[Melissa.Lahey@houstontx.gov](mailto:Melissa.Lahey@houstontx.gov)>; Farhoomand, Pirooz - HCD <[Pirooz.Farhoomand@houstontx.gov](mailto:Pirooz.Farhoomand@houstontx.gov)>

**Subject:** RE: Heritage Senior Residences Environmental Review Questions

Lee,

Thank you for checking in.

Heritage Senior was submitted to GLO late yesterday.

Thanks so much again, and have a great day. Stay safe and take care.

Matt

*Matthew Jenkins*

**Environmental Investigator V**

**Real Estate Compliance/Environmental**

City of Houston, Housing & Community Development Department

2100 Travis, 9<sup>th</sup> Floor, Houston, Texas 77002

Office Phone (832) 394-6183  
Mobile Phone (346) 266-7836  
[matthew.jenkins@houstontx.gov](mailto:matthew.jenkins@houstontx.gov)



---

**From:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>  
**Sent:** Friday, November 6, 2020 8:22 AM  
**To:** Mitchell Young <[myoung@aspennv.com](mailto:myoung@aspennv.com)>; Jenkins, Matthew - HCD <[Matthew.Jenkins@houstontx.gov](mailto:Matthew.Jenkins@houstontx.gov)>  
**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>; Alfaro, David - HCD <[David.Alfaro@houstontx.gov](mailto:David.Alfaro@houstontx.gov)>; McDaniel, Ebony - HCD <[Ebony.McDaniel@houstontx.gov](mailto:Ebony.McDaniel@houstontx.gov)>; Thorp, Julia - HCD <[Julia.Thorp@houstontx.gov](mailto:Julia.Thorp@houstontx.gov)>; Lahey, Melissa - HCD <[Melissa.Lahey@houstontx.gov](mailto:Melissa.Lahey@houstontx.gov)>; Farhoomand, Pirooz - HCD <[Pirooz.Farhoomand@houstontx.gov](mailto:Pirooz.Farhoomand@houstontx.gov)>  
**Subject:** RE: Heritage Senior Residences Environmental Review Questions

[Message Came from Outside the City of Houston Mail System]  
Good morning all,

Checking in to confirm everything has been provided in order to submit the environmental review to GLO. Please advise.

Thanks!

**LEE COHEN** | Development Associate  
Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136  
m: 561.573.6628 | [Website](#) | [Email](#)  
ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS MIAMI PINECREST SAN DIEGO



---

**From:** Mitchell Young <[myoung@aspennv.com](mailto:myoung@aspennv.com)>  
**Sent:** Wednesday, November 4, 2020 2:56 AM  
**To:** Jenkins, Matthew - HCD <[Matthew.Jenkins@houstontx.gov](mailto:Matthew.Jenkins@houstontx.gov)>  
**Cc:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>; Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>; Alfaro, David - HCD <[David.Alfaro@houstontx.gov](mailto:David.Alfaro@houstontx.gov)>; McDaniel, Ebony - HCD <[Ebony.McDaniel@houstontx.gov](mailto:Ebony.McDaniel@houstontx.gov)>; Julia Thorp <[Julia.Thorp@houstontx.gov](mailto:Julia.Thorp@houstontx.gov)>; Lahey, Melissa - HCD <[Melissa.Lahey@houstontx.gov](mailto:Melissa.Lahey@houstontx.gov)>; Farhoomand, Pirooz - HCD <[Pirooz.Farhoomand@houstontx.gov](mailto:Pirooz.Farhoomand@houstontx.gov)>  
**Subject:** Re: Heritage Senior Residences Environmental Review Questions

Thank you for your comments. I have tried to clarify the issues in your note so it makes sense for the reviewers at the GLO.

Here is a link to the updated Phase I ESA report. Let me know if I have clarified the issues at J&L Sheet Metal issues and the former nearby laundromat or if we have used language that is still confusing.

<https://www.dropbox.com/s/wz0ckq4cykby7np/200896%20Heritage%20Senior%20Residences%20Houston%20Env%20Report.pdf?dl=0>

Mitch

Mitchell T. Young, P.E.  
Aspen Environmental, Inc.  
12407 North Mopac Expressway  
Suite 250  
Austin, Texas 78758  
phone: (512) 535-6815  
[myoung@aspennv.com](mailto:myoung@aspennv.com)

On Nov 2, 2020, at 11:39 AM, Jenkins, Matthew - HCD <[Matthew.Jenkins@houstontx.gov](mailto:Matthew.Jenkins@houstontx.gov)> wrote:

Lee and Mitch,

Good morning. We have received the TPWD consultation response, and as expected we have a No Effect determination, which means there are no formal mitigation requirements.

Our Environmental Review Record (ERR) is complete, but before we can send it to the GLO, we must clarify the language in the Phase I ESA report, as outlined below. In the past, the GLO has reviewed Phase I ESA reports and asked for clarification. To prevent any further delays on the project, we are asking for more concrete language.

1. **In the executive summary, it states:**

*This assessment has revealed no evidence of recognized environmental conditions in connection with the property, except as noted below.*

*J&L Sheet Metal on the subject property appeared on the petroleum storage tank (PST) and leaking PST lists for a release of petroleum products that impacted soil only. The TCEQ reviewed testing results at the time of the tank removal and did not recommend additional remediation or testing related to the past presence of the PST.*

*Past use of the property as a sheet metal facility raised concerns about past handling of production and cleaning wastes. Information provided by the current property owner indicates that soil and groundwater were tested prior to acquisition from the sheet metal company and no significant contamination was identified at that time (2010).*

*No other assessment for environmental conditions is recommended at this time.*

**Although it is clear that no additional assessments are recommended, please clarify within the Phase I ESA report whether the two items listed above are considered RECs or not. At present, the statements in the summary and the body of the report are contradictory. If the aforementioned items are not RECs, please clarify if they are considered HRECs or if they are of no concern.**

2. **It is noted in the photo log that there was a former dry cleaners located at 1009 Moy Street. Please include language within the Phase I ESA declaring whether or not the former dry cleaners presents an environmental concern to the site (REC, HREC, CREC or no concern).**

Once these two items are clarified within the Phase I ESA, we will be able to submit the ERR to the GLO. Thank you for your attention to this matter, and we are looking forward to submitting the ERR as soon as possible.

Thanks so much, and have a great day. Stay safe and take care.

Matt

# Matthew Jenkins

**Environmental Investigator V**

**Real Estate Compliance/Environmental**

City of Houston, Housing & Community Development Department

2100 Travis, 9<sup>th</sup> Floor, Houston, Texas 77002

Office Phone (832) 394-6183

Mobile Phone (346) 266-7836

[matthew.jenkins@houstontx.gov](mailto:matthew.jenkins@houstontx.gov)

<image002.png>

---

**From:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>

**Sent:** Monday, November 2, 2020 9:33 AM

**To:** Lahey, Melissa - HCD <[Melissa.Lahey@houstontx.gov](mailto:Melissa.Lahey@houstontx.gov)>; Jenkins, Matthew - HCD

<[Matthew.Jenkins@houstontx.gov](mailto:Matthew.Jenkins@houstontx.gov)>; Mitchell Young <[myoung@aspennv.com](mailto:myoung@aspennv.com)>

**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>; Alfaro, David - HCD <[David.Alfaro@houstontx.gov](mailto:David.Alfaro@houstontx.gov)>;

McDaniel, Ebony - HCD <[Ebony.McDaniel@houstontx.gov](mailto:Ebony.McDaniel@houstontx.gov)>; Thorp, Julia - HCD

<[Julia.Thorp@houstontx.gov](mailto:Julia.Thorp@houstontx.gov)>

**Subject:** RE: Heritage Senior Residences Environmental Review Questions

[Message Came from Outside the City of Houston Mail System]

Good morning,

Checking in to see if any progress has been made with the TPWD response and the submission of the Environmental Review to GLO. Tomorrow will be six weeks since the request for consultation was submitted to TPWD. Just want to make sure this keeps moving forward and does not effect our closing of the CDBG-DR loan.

Thank you again for your help throughout this process.

**LEE COHEN** | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS MIAMI PINECREST SAN DIEGO

<image003.png>

---

**From:** Lahey, Melissa - HCD <[Melissa.Lahey@houstontx.gov](mailto:Melissa.Lahey@houstontx.gov)>

**Sent:** Monday, October 26, 2020 10:34 AM

**To:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>; Jenkins, Matthew - HCD

<[Matthew.Jenkins@houstontx.gov](mailto:Matthew.Jenkins@houstontx.gov)>; Mitchell Young <[myoung@aspennv.com](mailto:myoung@aspennv.com)>

**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>; Alfaro, David - HCD <[David.Alfaro@houstontx.gov](mailto:David.Alfaro@houstontx.gov)>;

McDaniel, Ebony - HCD <[Ebony.McDaniel@houstontx.gov](mailto:Ebony.McDaniel@houstontx.gov)>; Thorp, Julia - HCD

<[Julia.Thorp@houstontx.gov](mailto:Julia.Thorp@houstontx.gov)>

**Subject:** RE: Heritage Senior Residences Environmental Review Questions

Good morning Lee,

Matt is out until tomorrow. The TPWD response is still pending. We are not waiting for any other items, and once we receive the TPWD response we will be able to submit the environmental review to the GLO. We will keep you posted on the status and let you know as soon as we are able to submit.

Thanks,

**Melissa Lahey**

**Environmental Investigator III**

**Real Estate Compliance/Environmental**

City of Houston, Housing & Community Development Department  
2100 Travis, 9<sup>th</sup> Floor, Houston, Texas 77002

[melissa.lahey@houstontx.gov](mailto:melissa.lahey@houstontx.gov)

(832) 394-6397

---

**From:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>

**Sent:** Monday, October 26, 2020 9:25 AM

**To:** Lahey, Melissa - HCD <[Melissa.Lahey@houstontx.gov](mailto:Melissa.Lahey@houstontx.gov)>; Jenkins, Matthew - HCD <[Matthew.Jenkins@houstontx.gov](mailto:Matthew.Jenkins@houstontx.gov)>; Mitchell Young <[myoung@aspennv.com](mailto:myoung@aspennv.com)>

**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>; Alfaro, David - HCD <[David.Alfaro@houstontx.gov](mailto:David.Alfaro@houstontx.gov)>; McDaniel, Ebony - HCD <[Ebony.McDaniel@houstontx.gov](mailto:Ebony.McDaniel@houstontx.gov)>; Thorp, Julia - HCD <[Julia.Thorp@houstontx.gov](mailto:Julia.Thorp@houstontx.gov)>

**Subject:** RE: Heritage Senior Residences Environmental Review Questions

[Message Came from Outside the City of Houston Mail System]

Good morning,

Reaching out to see where we are in the review process for Heritage Senior Residences. Has the TPWD response been received? Are there any other pending items for this review? Please advise.

Thank you!

**LEE COHEN** | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS MIAMI PINECREST SAN DIEGO

<image003.png>

---

**From:** Lee Cohen

**Sent:** Tuesday, October 20, 2020 9:41 AM

**To:** Lahey, Melissa - HCD <[Melissa.Lahey@houstontx.gov](mailto:Melissa.Lahey@houstontx.gov)>; Jenkins, Matthew - HCD <[Matthew.Jenkins@houstontx.gov](mailto:Matthew.Jenkins@houstontx.gov)>; Mitchell Young <[myoung@aspennv.com](mailto:myoung@aspennv.com)>

**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>; Alfaro, David - HCD <[David.Alfaro@houstontx.gov](mailto:David.Alfaro@houstontx.gov)>; McDaniel, Ebony - HCD <[Ebony.McDaniel@houstontx.gov](mailto:Ebony.McDaniel@houstontx.gov)>; Thorp, Julia - HCD <[Julia.Thorp@houstontx.gov](mailto:Julia.Thorp@houstontx.gov)>

**Subject:** RE: Heritage Senior Residences Environmental Review Questions

Good morning,

Checking in to see how the review process is going and if the TPWD response has been received. Please let me know if there is anything I can do to assist.

Thank you,

**LEE COHEN** | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS **MIAMI** PINECREST SAN DIEGO

<image003.png>

---

**From:** Lahey, Melissa - HCD <[Melissa.Lahey@houstontx.gov](mailto:Melissa.Lahey@houstontx.gov)>

**Sent:** Tuesday, October 13, 2020 9:30 AM

**To:** Jenkins, Matthew - HCD <[Matthew.Jenkins@houstontx.gov](mailto:Matthew.Jenkins@houstontx.gov)>; Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>; Mitchell Young <[myoung@aspenenv.com](mailto:myoung@aspenenv.com)>

**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>; Alfaro, David - HCD <[David.Alfaro@houstontx.gov](mailto:David.Alfaro@houstontx.gov)>; McDaniel, Ebony - HCD <[Ebony.McDaniel@houstontx.gov](mailto:Ebony.McDaniel@houstontx.gov)>; Thorp, Julia - HCD <[Julia.Thorp@houstontx.gov](mailto:Julia.Thorp@houstontx.gov)>

**Subject:** RE: Heritage Senior Residences Environmental Review Questions

Good morning All,

The request for consultation from the TPWD was submitted on 9/22 and we are still waiting a response. It is expected soon because other projects have had a quick turnaround.

Thanks,

**Melissa Lahey**

**Environmental Investigator III**

**Real Estate Compliance/Environmental**

City of Houston, Housing & Community Development Department

2100 Travis, 9<sup>th</sup> Floor, Houston, Texas 77002

[melissa.lahey@houstontx.gov](mailto:melissa.lahey@houstontx.gov)

(832) 394-6397

---

**From:** Jenkins, Matthew - HCD

**Sent:** Tuesday, October 13, 2020 7:58 AM

**To:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>; Mitchell Young <[myoung@aspenenv.com](mailto:myoung@aspenenv.com)>

**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>; Lahey, Melissa - HCD <[Melissa.Lahey@houstontx.gov](mailto:Melissa.Lahey@houstontx.gov)>; Alfaro, David - HCD <[David.Alfaro@houstontx.gov](mailto:David.Alfaro@houstontx.gov)>; McDaniel, Ebony - HCD <[Ebony.McDaniel@houstontx.gov](mailto:Ebony.McDaniel@houstontx.gov)>; Thorp, Julia - HCD <[Julia.Thorp@houstontx.gov](mailto:Julia.Thorp@houstontx.gov)>

**Subject:** Re: Heritage Senior Residences Environmental Review Questions

We will take a look, review, and let you know.

Melissa, please confirm when we can expect the TPWD response so it can be added to package as needed.

Thanks so much,

Matt

---

**From:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>  
**Sent:** Monday, October 12, 2020 5:13:28 PM  
**To:** Mitchell Young <[myoung@aspennv.com](mailto:myoung@aspennv.com)>; Jenkins, Matthew - HCD <[Matthew.Jenkins@houstontx.gov](mailto:Matthew.Jenkins@houstontx.gov)>  
**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>; Lahey, Melissa - HCD <[Melissa.Lahey@houstontx.gov](mailto:Melissa.Lahey@houstontx.gov)>; Alfaro, David - HCD <[David.Alfaro@houstontx.gov](mailto:David.Alfaro@houstontx.gov)>; McDaniel, Ebony - HCD <[Ebony.McDaniel@houstontx.gov](mailto:Ebony.McDaniel@houstontx.gov)>; Thorp, Julia - HCD <[Julia.Thorp@houstontx.gov](mailto:Julia.Thorp@houstontx.gov)>  
**Subject:** RE: Heritage Senior Residences Environmental Review Questions

[Message Came from Outside the City of Houston Mail System]

Hi Matt,

I believe all documents have been submitted for review at this time. Will there be additional review comments to address? If so, we will provide responses to those comments and any additional documents you may need in one email response.

Thank you,

**LEE COHEN** | Development Associate  
Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136  
m: 561.573.6628 | [Website](#) | [Email](#)  
ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS MIAMI PINECREST SAN DIEGO  
<image003.png>

---

**From:** Mitchell Young <[myoung@aspennv.com](mailto:myoung@aspennv.com)>  
**Sent:** Friday, October 9, 2020 6:58 AM  
**To:** Jenkins, Matthew - HCD <[Matthew.Jenkins@houstontx.gov](mailto:Matthew.Jenkins@houstontx.gov)>  
**Cc:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>; Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>; Lahey, Melissa - HCD <[Melissa.Lahey@houstontx.gov](mailto:Melissa.Lahey@houstontx.gov)>; Alfaro, David - HCD <[David.Alfaro@houstontx.gov](mailto:David.Alfaro@houstontx.gov)>; McDaniel, Ebony - HCD <[Ebony.McDaniel@houstontx.gov](mailto:Ebony.McDaniel@houstontx.gov)>; Julia Thorp <[Julia.Thorp@houstontx.gov](mailto:Julia.Thorp@houstontx.gov)>  
**Subject:** Re: Heritage Senior Residences Environmental Review Questions  
**Importance:** High

As requested, here is the Statutory Checklist for the Heritage Senior Residences project.

Thank you for your review and comments on these documents.

Mitch

Mitchell T. Young, P.E.  
Aspen Environmental, Inc.  
12407 North Mopac Expressway  
Suite 250  
Austin, Texas 78758  
phone: (512) 535-6815  
fax: (512) 535-1149  
mobile: (512) 563-3223  
[myoung@aspennv.com](mailto:myoung@aspennv.com)



On Oct 2, 2020, at 2:38 PM, Jenkins, Matthew - HCD  
<[Matthew.Jenkins@houstontx.gov](mailto:Matthew.Jenkins@houstontx.gov)> wrote:

Mitch,

Thank you for sending these documents for our review. The Team is examining the information available.

Two recommendations:

1. On Page 2 of the Phase I, the Conclusions and Recommendations read as follows:

### **1.2 CONCLUSIONS AND RECOMMENDATIONS**

*Aspen has performed a Phase I Environmental Site Assessment in conformance with the scope and limitations of ASTM Practice E 1527-13 of the proposed Heritage Senior Residences Development Site property located near the intersection of Center Street and Moy Street in Houston, Texas, "the property". Any exceptions to, or deletions from, this practice are described in Section 2.3 of this report. This assessment has revealed no evidence of recognized environmental conditions in connection with the property, except as noted below. J&L Sheet Metal on the subject property appeared on the petroleum storage tank (PST) and leaking PST lists for a release of petroleum products that impacted soil only. The TCEQ reviewed testing results at the time of the tank removal and did not recommend additional remediation or testing related to the past presence of the PST. Past use of the property as a sheet metal facility raised concerns about past handling of production and cleaning wastes. Information provided by the current property owner indicates that soil and groundwater were tested prior to acquisition from the sheet metal company and no significant contamination was identified at that time (2010). No other assessment for environmental conditions is recommended at this time."*

While it appears that contamination has been ruled out, the language (particularly the discussion of the RECs highlighted above) is ambiguous and could be potentially confusing to readers and reviewers, since it is not 100% clear whether any RECs are still left on site. This language should be tightened to dispel any doubts, or if any RECs remain they should be addressed accordingly.

2. The supporting documents, which include an ERR, only contain the NEPA factors and do not include the Statutory Checklist. The Statutory Checklist per 24 CFR 58 (24 CFR 58.5) is a required component of the HUD Environmental Review and must be completed (along with all backup documentation) so we have a full Environmental Review package to review. If this item is still in draft stage due to outstanding information (i.e. TPWD letter) feel free to send over an attachment or link to draft if that is amenable. If that does not work for whatever reason, we will await it after the TPWD response is received, but note that it could be helpful for us to get a head start in reviewing the Statutory Checklist items ASAP.

Thanks so much, and have a great day. Saty safe, take care.

Matt

# Matthew Jenkins

**Environmental Investigator V**

**Real Estate Compliance/Environmental**

City of Houston, Housing & Community Development Department

2100 Travis, 9<sup>th</sup> Floor, Houston, Texas 77002

Office Phone (832) 394-6183

Mobile Phone (346) 266-7836

[matthew.jenkins@houstontx.gov](mailto:matthew.jenkins@houstontx.gov)

<image001.png>

---

**From:** Mitchell Young <[myoung@aspennv.com](mailto:myoung@aspennv.com)>

**Sent:** Friday, October 2, 2020 7:59 AM

**To:** Thorp, Julia - HCD <[Julia.Thorp@houstontx.gov](mailto:Julia.Thorp@houstontx.gov)>

**Cc:** Lee Cohen <[lcohen@apcommunities.com](mailto:lcohen@apcommunities.com)>; Greg Griffith

<[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>; Jenkins, Matthew - HCD

<[Matthew.Jenkins@houstontx.gov](mailto:Matthew.Jenkins@houstontx.gov)>; Lahey, Melissa - HCD

<[Melissa.Lahey@houstontx.gov](mailto:Melissa.Lahey@houstontx.gov)>; Alfaro, David - HCD <[David.Alfaro@houstontx.gov](mailto:David.Alfaro@houstontx.gov)>;

McDaniel, Ebony - HCD <[Ebony.McDaniel@houstontx.gov](mailto:Ebony.McDaniel@houstontx.gov)>

**Subject:** Re: Heritage Senior Residences Environmental Review Questions

[Message Came from Outside the City of Houston Mail System]

Attached are links to download environmental review documents related to the Heritage Senior Residences project. These include an updated Phase I Environmental Site Assessment and the supporting documents/worksheets for the Part 58 process. We received a site-specific noise assessment on Thursday that has been added to the supporting documents.

We understand that you have submitted consultation requests to the Texas Parks and Wildlife Department and additional tribal entities (also included in the packet), and we can add any responses to the final package as received.

Please review the referenced documents and let us know if you see anything that will clarify or update the information before the package is finalized for submittal.

Here are the links:

<https://www.dropbox.com/s/8vicrr72j64tmuc/200896%20Heritage%20Senior%20Residences%20Houston%20Env%20Report.pdf?dl=0>

<https://www.dropbox.com/s/dayct962qbiucjp/Supporting%20Documents%20for%20Heritage%20Senior%20Residences.pdf?dl=0>

Let me know if you have any trouble getting to the documents. Thank you for your review and comments.

Mitch

Mitchell T. Young, P.E.  
[Aspen Environmental, Inc.](#)  
*12407 North Mopac Expressway  
Suite 250  
Austin, Texas 78758  
phone: (512) 535-6815  
[myoung@aspenenv.com](mailto:myoung@aspenenv.com)*

## Lee Cohen

---

**From:** Jenkins, Matthew - HCD <Matthew.Jenkins@houstontx.gov>  
**Sent:** Wednesday, December 30, 2020 3:02 PM  
**To:** Lee Cohen; Mitchell Young  
**Cc:** Greg Griffith; Alfaro, David - HCD; McDaniel, Ebony - HCD; Thorp, Julia - HCD; Lahey, Melissa - HCD; Farhoomand, Pirooz - HCD  
**Subject:** RE: Heritage Senior Residences Environmental Review Questions

Public notice in today's paper – public comment period begins today.

Thanks,  
Matt

*Matthew Jenkins*

**Environmental Investigator V**

**Real Estate Compliance/Environmental**

City of Houston, Housing & Community Development Department

2100 Travis, 9<sup>th</sup> Floor, Houston, Texas 77002

Office Phone (832) 394-6183

Mobile Phone (346) 266-7836

[matthew.jenkins@houstontx.gov](mailto:matthew.jenkins@houstontx.gov)



---

**From:** Lee Cohen <LCohen@apcommunities.com>  
**Sent:** Wednesday, December 30, 2020 1:54 PM  
**To:** Jenkins, Matthew - HCD <Matthew.Jenkins@houstontx.gov>; Mitchell Young <myoung@aspennv.com>  
**Cc:** Greg Griffith <ggriffith@apmanagement.net>; Alfaro, David - HCD <David.Alfaro@houstontx.gov>; McDaniel, Ebony - HCD <Ebony.McDaniel@houstontx.gov>; Thorp, Julia - HCD <Julia.Thorp@houstontx.gov>; Lahey, Melissa - HCD <Melissa.Lahey@houstontx.gov>; Farhoomand, Pirooz - HCD <Pirooz.Farhoomand@houstontx.gov>  
**Subject:** RE: Heritage Senior Residences Environmental Review Questions

[Message Came from Outside the City of Houston Mail System]

Hi Matt,

Checking in to see if GLO had a chance to review the comments yet or if the 30-day notice period has commenced. Any updates would be greatly appreciated.

Thank you, and have a happy new year!

**LEE COHEN** | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS **MIAMI** PINECREST SAN DIEGO



**From:** Jenkins, Matthew - HCD <[Matthew.Jenkins@houstontx.gov](mailto:Matthew.Jenkins@houstontx.gov)>  
**Sent:** Thursday, December 10, 2020 9:09 AM  
**To:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>; Mitchell Young <[myoung@aspenenv.com](mailto:myoung@aspenenv.com)>  
**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>; Alfaro, David - HCD <[David.Alfaro@houstontx.gov](mailto:David.Alfaro@houstontx.gov)>; McDaniel, Ebony - HCD <[Ebony.McDaniel@houstontx.gov](mailto:Ebony.McDaniel@houstontx.gov)>; Thorp, Julia - HCD <[Julia.Thorp@houstontx.gov](mailto:Julia.Thorp@houstontx.gov)>; Lahey, Melissa - HCD <[Melissa.Lahey@houstontx.gov](mailto:Melissa.Lahey@houstontx.gov)>; Farhoomand, Pirooz - HCD <[Pirooz.Farhoomand@houstontx.gov](mailto:Pirooz.Farhoomand@houstontx.gov)>  
**Subject:** RE: Heritage Senior Residences Environmental Review Questions

The comments were returned to GLO yesterday. Thanks for following up and we will keep you posted as we move forward.

Thanks so much,  
 Matt

*Matthew Jenkins*

**Environmental Investigator V**  
**Real Estate Compliance/Environmental**  
 City of Houston, Housing & Community Development Department  
 2100 Travis, 9<sup>th</sup> Floor, Houston, Texas 77002  
 Office Phone (832) 394-6183  
 Mobile Phone (346) 266-7836  
[matthew.jenkins@houstontx.gov](mailto:matthew.jenkins@houstontx.gov)



**From:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>  
**Sent:** Thursday, December 10, 2020 8:04 AM  
**To:** Jenkins, Matthew - HCD <[Matthew.Jenkins@houstontx.gov](mailto:Matthew.Jenkins@houstontx.gov)>; Mitchell Young <[myoung@aspenenv.com](mailto:myoung@aspenenv.com)>  
**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>; Alfaro, David - HCD <[David.Alfaro@houstontx.gov](mailto:David.Alfaro@houstontx.gov)>; McDaniel, Ebony - HCD <[Ebony.McDaniel@houstontx.gov](mailto:Ebony.McDaniel@houstontx.gov)>; Thorp, Julia - HCD <[Julia.Thorp@houstontx.gov](mailto:Julia.Thorp@houstontx.gov)>; Lahey, Melissa - HCD <[Melissa.Lahey@houstontx.gov](mailto:Melissa.Lahey@houstontx.gov)>; Farhoomand, Pirooz - HCD <[Pirooz.Farhoomand@houstontx.gov](mailto:Pirooz.Farhoomand@houstontx.gov)>  
**Subject:** RE: Heritage Senior Residences Environmental Review Questions

[Message Came from Outside the City of Houston Mail System]

Good morning Matt,

Reaching out to see if the environmental review comments have been returned to the GLO. Any updates would be greatly appreciated.

Thank you,



**From:** Jenkins, Matthew - HCD <[Matthew.Jenkins@houstontx.gov](mailto:Matthew.Jenkins@houstontx.gov)>  
**Sent:** Thursday, December 10, 2020 9:09 AM  
**To:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>; Mitchell Young <[myoung@aspenenv.com](mailto:myoung@aspenenv.com)>  
**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>; Alfaro, David - HCD <[David.Alfaro@houstontx.gov](mailto:David.Alfaro@houstontx.gov)>; McDaniel, Ebony - HCD <[Ebony.McDaniel@houstontx.gov](mailto:Ebony.McDaniel@houstontx.gov)>; Thorp, Julia - HCD <[Julia.Thorp@houstontx.gov](mailto:Julia.Thorp@houstontx.gov)>; Lahey, Melissa - HCD <[Melissa.Lahey@houstontx.gov](mailto:Melissa.Lahey@houstontx.gov)>; Farhoomand, Pirooz - HCD <[Pirooz.Farhoomand@houstontx.gov](mailto:Pirooz.Farhoomand@houstontx.gov)>  
**Subject:** RE: Heritage Senior Residences Environmental Review Questions

The comments were returned to GLO yesterday. Thanks for following up and we will keep you posted as we move forward.

Thanks so much,  
 Matt

*Matthew Jenkins*

**Environmental Investigator V**  
**Real Estate Compliance/Environmental**  
 City of Houston, Housing & Community Development Department  
 2100 Travis, 9<sup>th</sup> Floor, Houston, Texas 77002  
 Office Phone (832) 394-6183  
 Mobile Phone (346) 266-7836  
[matthew.jenkins@houstontx.gov](mailto:matthew.jenkins@houstontx.gov)



**From:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>  
**Sent:** Thursday, December 10, 2020 8:04 AM  
**To:** Jenkins, Matthew - HCD <[Matthew.Jenkins@houstontx.gov](mailto:Matthew.Jenkins@houstontx.gov)>; Mitchell Young <[myoung@aspenenv.com](mailto:myoung@aspenenv.com)>  
**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>; Alfaro, David - HCD <[David.Alfaro@houstontx.gov](mailto:David.Alfaro@houstontx.gov)>; McDaniel, Ebony - HCD <[Ebony.McDaniel@houstontx.gov](mailto:Ebony.McDaniel@houstontx.gov)>; Thorp, Julia - HCD <[Julia.Thorp@houstontx.gov](mailto:Julia.Thorp@houstontx.gov)>; Lahey, Melissa - HCD <[Melissa.Lahey@houstontx.gov](mailto:Melissa.Lahey@houstontx.gov)>; Farhoomand, Pirooz - HCD <[Pirooz.Farhoomand@houstontx.gov](mailto:Pirooz.Farhoomand@houstontx.gov)>  
**Subject:** RE: Heritage Senior Residences Environmental Review Questions

[Message Came from Outside the City of Houston Mail System]

Good morning Matt,

Reaching out to see if the environmental review comments have been returned to the GLO. Any updates would be greatly appreciated.

Thank you,

**From:** [Jenkins, Matthew - HCD](#)  
**To:** [Yindeemark, Paul - HCD](#)  
**Cc:** [Moore, Juanita - HCD](#); [Bibbs, Ryan - HCD](#); [Miller, Ray - HCD](#); [Farhoomand, Pirooz - HCD](#); [Thorp, Julia - HCD](#); [McDaniel, Ebony - HCD](#); [Lahey, Melissa - HCD](#); [Lee Cohen](#); [Mitchell Young](#)  
**Subject:** Authority to Use Grant Funds (with mitigation): Heritage Senior  
**Date:** Tuesday, February 2, 2021 5:27:41 PM  
**Attachments:** [image002.png](#)  
[AUGF\\_Heritage\\_Senior\\_Residences\\_02012021\\_signed.pdf](#)  
[Heritage\\_Senior\\_Residences\\_Multifamily\\_Construction\\_Mitigation\\_Measures.pdf](#)  
**Importance:** High

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Paul,

Please find attached the Authority to Use Grant Funds (AUGF, 7015.16) for the Heritage Senior project.

The attached mitigation measures will need to be followed for this project as a condition of federal funds.

Thanks so much, and have a great day.

Matt

*Matthew Jenkins*

**Environmental Investigator V**

**Real Estate Compliance/Environmental**

City of Houston, Housing & Community Development Department

2100 Travis, 9<sup>th</sup> Floor, Houston, Texas 77002

Office Phone (832) 394-6183

Mobile Phone (346) 266-7836

[matthew.jenkins@houstontx.gov](mailto:matthew.jenkins@houstontx.gov)



## EXHIBIT C

### SUPPORT FOR DELAYS RELATED TO SUBORDINATE DEBT

#### Sequence of Events:

- 1) Executed LOI with the City on 7/30/20.
- 2) Third Party Legal Services Letter received on 10/14/20.
- 3) First draft of Due Diligence Checklist received on 11/11/20.
- 4) First draft of City Loan Documents received on 12/8/20.
- 5) Anticipate City Council approval on 1/20/21.



**From:** Yindeemark, Paul - HCD <Paul.Yindeemark@houstontx.gov>  
**Sent:** Monday, September 14, 2020 3:26 PM  
**To:** Lee Cohen <LCohen@apcommunities.com>  
**Cc:** Dan Wilson <dwilson@apcompanies.com>; Carine Yhap <cyhap@apcommunities.com>; Greg Griffith <ggriffith@apmanagement.net>  
**Subject:** RE: Reminder: Please DocuSign: HCDD DR-17 LOI Heritage Senior Residences.pdf

Hi Lee,

Heritage is on the Housing Committee's agenda for tomorrow. I will be monitoring for the Board's questions and concerns (if any).

b. HCDD recommends Council approval of an Ordinance authorizing \$11,700,000.00 of Community Development Block Grant - Disaster Recovery 2017 (CDBG-DR17) funds, for a Contract between the City of Houston (City) and Heritage Senior Residences, LP (Borrower) for the land acquisition and new development of Heritage Senior Residences. (District C)

I

Meanwhile, our internal councils are still in the process of selecting the legal team to work on the loan documents.

When both of our legal parties are engaged, you can start circulating a distribution list and initiate biweekly/weekly conference calls.

The City Council date is likely to be determined contingent upon the readiness from legal, permits, and underwriting procedures.

For the timeline, if all goes well then we should be able to achieve both the City Council Date and Closing date in November.

Thanks,

Paul Yindeemark  
Financial Analyst IV  
Multifamily Division

City of Houston  
Housing and Community Development Dept.  
2100 Travis Street | 9<sup>th</sup> Floor | Houston TX 77002  
T: (832)523-3437  
[www.houstontx.gov/housing](http://www.houstontx.gov/housing)  
[www.recovery.houstontx.gov](http://www.recovery.houstontx.gov)  
Follow us: [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)

**From:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>  
**Sent:** Tuesday, September 8, 2020 4:03 PM  
**To:** Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>

**Cc:** Dan Wilson <[dwilson@apcompanies.com](mailto:dwilson@apcompanies.com)>; Carine Yhap <[cyhap@apcommunities.com](mailto:cyhap@apcommunities.com)>; Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>

**Subject:** RE: Reminder: Please DocuSign: HCDD DR-17 LOI Heritage Senior Residences.pdf

[Message Came from Outside the City of Houston Mail System]

Hi Paul,

Hope you had a nice holiday weekend visiting the beach in Florida.

Writing to inform you all three entities are officially registered with SAM.gov.

When we spoke last week you mentioned we passed Project Review Committee and next would be the City Review. How long does the City Review process take, and what is the next step after that? Any details you can provide on the process/timeline would be greatly appreciated.

Thank you,

**LEE COHEN** | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS MIAMI PINECREST SAN DIEGO



**From:** Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>

**Sent:** Tuesday, September 1, 2020 5:46 PM

**To:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>

**Cc:** Dan Wilson <[dwilson@apcompanies.com](mailto:dwilson@apcompanies.com)>; Carine Yhap <[cyhap@apcommunities.com](mailto:cyhap@apcommunities.com)>; Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>

**Subject:** RE: Reminder: Please DocuSign: HCDD DR-17 LOI Heritage Senior Residences.pdf

Lee,

Great! thanks for the confirmation. I'll keep you posted.

Paul Yindeemark  
Financial Analyst IV  
Multifamily Division

City of Houston  
Housing and Community Development Dept.  
2100 Travis Street | 9<sup>th</sup> Floor | Houston TX 77002  
T: (832)523-3437

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[www.recovery.houstontx.gov](http://www.recovery.houstontx.gov)

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**From:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>  
**Sent:** Tuesday, September 1, 2020 4:41 PM  
**To:** Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>  
**Cc:** Dan Wilson <[dwilson@apcompanies.com](mailto:dwilson@apcompanies.com)>; Carine Yhap <[cyhap@apcommunities.com](mailto:cyhap@apcommunities.com)>; Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>  
**Subject:** RE: Reminder: Please DocuSign: HCDD DR-17 LOI Heritage Senior Residences.pdf

[Message Came from Outside the City of Houston Mail System]  
Hi Paul,

We checked the registration status of the remaining two entities and are both still showing as "Registration Status: Submitted." They should be finalized any day now.

As for paying for third party legal costs, we choose to deposit the fund to the City's custody account now. Please let us know how we can take care of the payment.

Thank you,

**LEE COHEN** | Development Associate  
Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136  
m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS MIAMI PINECREST SAN DIEGO



**From:** Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>  
**Sent:** Tuesday, September 1, 2020 2:36 PM  
**To:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>  
**Cc:** Dan Wilson <[dwilson@apcompanies.com](mailto:dwilson@apcompanies.com)>; Carine Yhap <[cyhap@apcommunities.com](mailto:cyhap@apcommunities.com)>; Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>  
**Subject:** RE: Reminder: Please DocuSign: HCDD DR-17 LOI Heritage Senior Residences.pdf

Hi Lee,

Quick updates and questions on the project before my presentation to our Project Review Committee this afternoon.

What's the status for the rest of the Sam.gov registrations.

Also, please let me know your preference on how you will be paying for the third party legal cost.

- disburse the fund later at closing (settlement statement)
- deposit the fund to City's custody account now

Thank you,

Paul Yindeem ark  
Financial Analyst IV  
Multifamily Division

City of Houston  
Housing and Community Development Dept.  
2100 Travis Street | 9<sup>th</sup> Floor | Houston TX 77002  
T: (832)523-3437

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[www.recovery.houstontx.gov](http://www.recovery.houstontx.gov)

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**From:** [Nancy Martin](#)  
**To:** [Lee Cohen](#)  
**Cc:** [Greg Griffith](#); [Dan Wilson](#); [Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov); [Miller, Ray - HCD](#); [Brunilda Santiago](mailto:Brunilda.Santiago@houstontx.gov)  
**Subject:** RE: Heritage Senior Residences City Loan  
**Date:** Wednesday, October 14, 2020 4:09:52 PM  
**Attachments:** [image001.png](#)  
[Heritage Legal Services Letter.pdf](#)

Third Party Legal Services  
Letter received on 10/14/20.

Hi Lee,

Attached is our Firm's legal services letter for execution along with the wiring instructions for our trust account. After execution, please return a signed copy of the letter to me via email and wire the \$49,000 fee to our trust account. Once the funds are received, I can start work on the project. Thanks so much.

---

**From:** Lee Cohen [mailto:LCohen@apcommunities.com]  
**Sent:** Monday, October 12, 2020 4:54 PM  
**To:** Nancy Martin  
**Cc:** rmorrow@lockelord.com; Greg Griffith; Dan Wilson  
**Subject:** Heritage Senior Residences

Hi Nancy,

Paul Yindeemark from the City of Houston's Housing and Community Development Department advised we will be working together on the CDBG-DR loan agreement for our development, Heritage Senior Residences. Please let me know if you need anything from our team or if there is a due diligence I can get started on. In this email I've included Greg Griffith and Dan Wilson from the AP Team, and Rick Morrow from Locke Lord.

We look forward to working with you.

Regards,

**LEE COHEN** | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136  
m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS **MIAMI** PINECREST SAN DIEGO



**From:** [Nancy Martin](#)  
**To:** [Lee Cohen](#)  
**Cc:** [Greg Griffith](#); [Dan Wilson](#); "[Paul.Yindeemark@houstontx.gov](#)"; "[Miller, Ray - HCD](#)"; "[Brunilda Santiago \(Brunilda.Santiago@houstontx.gov\)](#)"; [Francie Sargent \(Brunilda.Santiago@houstontx.gov\)](#)  
**Subject:** RE: Heritage Senior Residences City Loan - Checklist  
**Date:** Wednesday, November 11, 2020 7:22:37 PM  
**Attachments:** [image001.png](#)  
[Heritage Seniors Checklist - 11-11-20.doc](#)

First draft of Due Diligence Checklist received on 11/11/20

Attached is a first draft.

---

**From:** Nancy Martin  
**Sent:** Tuesday, November 10, 2020 4:41 PM  
**To:** 'Lee Cohen' <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>  
**Cc:** [Greg Griffith](#) <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>; [Dan Wilson](#) <[dwilson@apcompanies.com](mailto:dwilson@apcompanies.com)>; [Paul.Yindeemark@houstontx.gov](#); [Miller, Ray - HCD](#) <[Ray.Miller@houstontx.gov](mailto:Ray.Miller@houstontx.gov)>; [Brunilda Santiago \(Brunilda.Santiago@houstontx.gov\)](#) <[Brunilda.Santiago@houstontx.gov](mailto:Brunilda.Santiago@houstontx.gov)>; [Francie Sargent](#) <[fsargent@smfadlaw.com](mailto:fsargent@smfadlaw.com)>  
**Subject:** RE: Heritage Senior Residences City Loan

Tomorrow!

---

**From:** Lee Cohen [<mailto:LCohen@apcommunities.com>]  
**Sent:** Tuesday, November 10, 2020 4:12 PM  
**To:** Nancy Martin <[nmartin@smfadlaw.com](mailto:nmartin@smfadlaw.com)>  
**Cc:** [Greg Griffith](#) <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>; [Dan Wilson](#) <[dwilson@apcompanies.com](mailto:dwilson@apcompanies.com)>; [Paul.Yindeemark@houstontx.gov](#); [Miller, Ray - HCD](#) <[Ray.Miller@houstontx.gov](mailto:Ray.Miller@houstontx.gov)>; [Brunilda Santiago \(Brunilda.Santiago@houstontx.gov\)](#) <[Brunilda.Santiago@houstontx.gov](mailto:Brunilda.Santiago@houstontx.gov)>; [Francie Sargent](#) <[fsargent@smfadlaw.com](mailto:fsargent@smfadlaw.com)>  
**Subject:** RE: Heritage Senior Residences City Loan

Hi Nancy,

Following up to see if you have an ETA on the checklist.

Thanks!

**LEE COHEN** | Development Associate  
Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136  
m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS MIAMI PINECREST SAN DIEGO



---

**From:** Nancy Martin <[nmartin@smfadlaw.com](mailto:nmartin@smfadlaw.com)>

**Sent:** Friday, November 6, 2020 9:31 AM

**To:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>

**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>; Dan Wilson <[dwilson@apcompanies.com](mailto:dwilson@apcompanies.com)>; [Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov); Miller, Ray - HCD <[Ray.Miller@houstontx.gov](mailto:Ray.Miller@houstontx.gov)>; Brunilda Santiago ([Bruilda.Santiago@houstontx.gov](mailto:Bruilda.Santiago@houstontx.gov)) <[Bruilda.Santiago@houstontx.gov](mailto:Bruilda.Santiago@houstontx.gov)>; Francie Sargent <[fsargent@smfadlaw.com](mailto:fsargent@smfadlaw.com)>

**Subject:** RE: Heritage Senior Residences City Loan

I will send you a checklist either today or Monday.

---

**From:** Lee Cohen [<mailto:LCohen@apcommunities.com>]

**Sent:** Friday, November 6, 2020 8:29 AM

**To:** Nancy Martin

**Cc:** Greg Griffith; Dan Wilson; [Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov); Miller, Ray - HCD; Brunilda Santiago ([Bruilda.Santiago@houstontx.gov](mailto:Bruilda.Santiago@houstontx.gov)); Francie Sargent

**Subject:** RE: Heritage Senior Residences City Loan

Good morning Nancy,

Reaching out to see if there is a list of documents we can start putting together for you and the team.

Thank you,

**LEE COHEN** | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS **MIAMI** PINECREST SAN DIEGO



---

**From:** Nancy Martin <[nmartin@smfadlaw.com](mailto:nmartin@smfadlaw.com)>

**Sent:** Wednesday, October 28, 2020 10:16 AM

**To:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>

**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>; Dan Wilson <[dwilson@apcompanies.com](mailto:dwilson@apcompanies.com)>; [Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov); Miller, Ray - HCD <[Ray.Miller@houstontx.gov](mailto:Ray.Miller@houstontx.gov)>; Brunilda Santiago ([Bruilda.Santiago@houstontx.gov](mailto:Bruilda.Santiago@houstontx.gov)) <[Bruilda.Santiago@houstontx.gov](mailto:Bruilda.Santiago@houstontx.gov)>; Francie Sargent <[fsargent@smfadlaw.com](mailto:fsargent@smfadlaw.com)>

**Subject:** RE: Heritage Senior Residences City Loan

Receipt confirmd.

---

**From:** Lee Cohen [<mailto:LCohen@apcommunities.com>]

**Sent:** Wednesday, October 28, 2020 8:09 AM

**To:** Nancy Martin <[nmartin@smfadlaw.com](mailto:nmartin@smfadlaw.com)>

**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>; Dan Wilson <[dwilson@apcompanies.com](mailto:dwilson@apcompanies.com)>; [Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov); Miller, Ray - HCD <[Ray.Miller@houstontx.gov](mailto:Ray.Miller@houstontx.gov)>; Brunilda Santiago ([Brunilda.Santiago@houstontx.gov](mailto:Brunilda.Santiago@houstontx.gov)) <[Brunilda.Santiago@houstontx.gov](mailto:Brunilda.Santiago@houstontx.gov)>; Francie Sargent <[fsargent@smfadlaw.com](mailto:fsargent@smfadlaw.com)>

**Subject:** RE: Heritage Senior Residences City Loan

Good morning Nancy.

Please see attached executed legal services letter. Our accounting team sent the wire yesterday, please let me know if it has been received.

Thank you,

**LEE COHEN** | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS **MIAMI** PINECREST SAN DIEGO



---

**From:** Nancy Martin <[nmartin@smfadlaw.com](mailto:nmartin@smfadlaw.com)>

**Sent:** Wednesday, October 14, 2020 4:10 PM

**To:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>

**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>; Dan Wilson <[dwilson@apcompanies.com](mailto:dwilson@apcompanies.com)>; [Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov); Miller, Ray - HCD <[Ray.Miller@houstontx.gov](mailto:Ray.Miller@houstontx.gov)>; Brunilda Santiago ([Brunilda.Santiago@houstontx.gov](mailto:Brunilda.Santiago@houstontx.gov)) <[Brunilda.Santiago@houstontx.gov](mailto:Brunilda.Santiago@houstontx.gov)>; Francie Sargent <[fsargent@smfadlaw.com](mailto:fsargent@smfadlaw.com)>

**Subject:** RE: Heritage Senior Residences City Loan

Hi Lee,

Attached is our Firm's legal services letter for execution along with the wiring instructions for our trust account. After execution, please return a signed copy of the letter to me via email and wire the \$49,000 fee to our trust account. Once the funds are received, I can start work on the project. Thanks so much.

---

**From:** Lee Cohen [<mailto:LCohen@apcommunities.com>]

**Sent:** Monday, October 12, 2020 4:54 PM

**To:** Nancy Martin

**Cc:** [rmorrow@lockelord.com](mailto:rmorrow@lockelord.com); Greg Griffith; Dan Wilson

**Subject:** Heritage Senior Residences



Hi Nancy,

Paul Yindeemark from the City of Houston's Housing and Community Development Department advised we will be working together on the CDBG-DR loan agreement for our development, Heritage Senior Residences. Please let me know if you need anything from our team or if there is a due diligence I can get started on. In this email I've included Greg Griffith and Dan Wilson from the AP Team, and Rick Morrow from Locke Lord.

We look forward to working with you.

Regards,

**LEE COHEN** | Development Associate

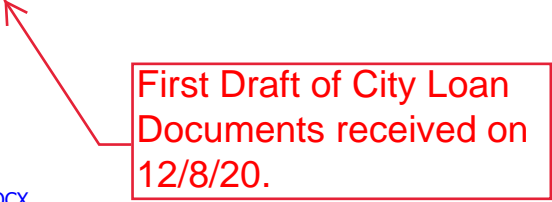
Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS **MIAMI** PINECREST SAN DIEGO



**From:** [Nancy Martin](#)  
**To:** [Greg Griffith](#); [Lee Cohen](#); [Dan Wilson](#); [Michael Fincher](#); "[crichardson@lockelord.com](#)"; "[cbast@lockelord.com](#)"; [Paul.Yindeemark@houston.tx.gov](#)"; "[Martinez, Ana - HCD](#)"; "[Morrow, Richard D.](#)"  
**Subject:** [Heritage Senior Residences - First Draft City Loan Documents](#)  
**Date:** [Tuesday, December 8, 2020 6:04:46 PM](#)  
**Attachments:** [Affidavit - No Commissions - Borrower 12-8.doc](#)  
[Affidavit - Use of City Funds.doc](#)  
[Attachment A - Restrictions.docx](#)  
[Attachment B - Borrower's Note 12-8.docx](#)  
[Attachment D - UCC 1.pdf](#)  
[ATTACHMENT E - reserved.docx](#)  
[ATTACHMENT F - reserved.docx](#)  
[Attachment G - Guaranty.docx](#)  
[Attachment H - Declaration of Subordination 12-8.DOCX](#)  
[Attachment I - Intercreditor Agreement.DOCX](#)  
[Attachment K - Collateral Assignment of Property Management Agreement.doc](#)  
[Attachment L - Assignment of Architect's Contract 12-8v2.doc](#)  
[Attachment M - Assignment of Construction Contract \(City of Houston CDBG-DR\) DMEAST 39158599\(3\).doc](#)  
[Attachment N - Environmental Indemnity.doc](#)  
[CERTIFICATION REGARDING DEBARMENT.docx](#)  
[CERTIFICATION REGARDING LOBBYING.doc](#)  
[Loan Agreement - Direct Loan 12-7-20.docx](#)  
[Attachment C - Deed of Trust.docx](#)  
[Attachment O - Bonds 12-8.doc](#)



**First Draft of City Loan Documents received on 12/8/20.**

---

Please see attached for your review. I will need the following documents to submit to City Council:

- |           |                                    |
|-----------|------------------------------------|
| EXHIBIT A | Legal Description of the "Land"    |
| EXHIBIT B | Commitments for "Other Financings" |
| EXHIBIT C | Preliminary Construction Budget    |
| EXHIBIT D | Scope of Work                      |
| EXHIBIT E | Construction Schedule.             |

There is no Council meeting for the last 2 weeks in December so the soonest that this can go is January.

**Exhibit B**

**Houston City Council Delays**

## SUPPORT FOR RESCHEDULED CITY COUNCIL DATES

### Sequence of Events:

- 1) On 1/6/21 the City suggested pushing back the City Council date from 1/20/21 to February due to the GLO's delay in issuing the Authority to Use Grant Funds (AUGF).
- 2) On 1/27/21 the City suggested pushing back the City Council date from 2/10/21 to 2/17/21 to have more time to review due diligence documents.
- 3) Later on 1/27/21, Nancy Martin, legal counsel for the City, advised the request to delay City Council is not due to the due diligence materials itself, but due to the City's bandwidth for work and departmental changes.
- 4) On 2/16/21 Nancy Martin informed the closing team that the City Council date had been moved from 2/17/21 to 2/24/21.
- 5) On 2/23/21 Heritage was removed from the 2/24/21 agenda at the request of Ownership. The deal had become economically unfeasible due to substantial movement in both micro and macro-economic environments. As a result, additional CDBG-DR funding had been requested for the development. On 3/9/21 the City advised they "will do [their] best to make the council agenda for March 24<sup>th</sup>".
- 6) On 3/12/21 the City pushed the City Council date from 3/24/21 to 3/31/21 to have more time to review due diligence documents.
- 7) On 3/30/21 the City advised the City Council date should be on the 4/7/21.
- 8) On 4/7/21 City Council approved the Loan Agreement between the City of Houston and Heritage Senior Residences, L.P.

## Lee Cohen

---

**From:** Yindeemark, Paul - HCD <Paul.Yindeemark@houstontx.gov>

**Sent:** Wednesday, January 6, 2021 4:35 PM

**To:** Lee Cohen <LCohen@apcommunities.com>

**Cc:** Nancy Martin <nmartin@smfadlaw.com>; Moore, Juanita - HCD <Juanita.Moore@houstontx.gov>

**Subject:** City Council Date - Status

Hi Lee,

From our call yesterday, I heard that Heritage's AUGF is expected to be released around the first week of Feb. That being said, I'm thinking we should push the City Council Date back to Feb 17<sup>th</sup>. Can you confirm the expiration of the land contract?

Thanks,

**Paul Yindeemark**

Financial Analyst IV

Multifamily Division

City of Houston

Housing and Community Development Dept.

2100 Travis Street | 9<sup>th</sup> Floor | Houston TX 77002

T: (832)523-3437

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[www.recovery.houstontx.gov](http://www.recovery.houstontx.gov)

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**From:** [Yindeemark, Paul - HCD](#)  
**To:** [Lee Cohen](#)  
**Cc:** [Nancy Martin](#)  
**Subject:** RE: Heritage Senior Residences  
**Date:** Wednesday, January 27, 2021 4:00:33 PM  
**Attachments:** [image001.png](#)

---

If we set a council date to 2/10 that leaves us with only this week to have all the due diligence items for Nancy to review by 3/1.

I think the 2/17 Council Date is better and we have enough time for closing by the end of the month.

**Paul Yindeemark**

Financial Analyst IV

Multifamily Division

City of Houston

Housing and Community Development Dept.

2100 Travis Street | 9<sup>th</sup> Floor | Houston TX 77002

T: (832)523-3437

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[www.recovery.houstontx.gov](http://www.recovery.houstontx.gov)

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---

**From:** Lee Cohen <LCohen@apcommunities.com>  
**Sent:** Wednesday, January 27, 2021 9:36 AM  
**To:** Yindeemark, Paul - HCD <Paul.Yindeemark@houstontx.gov>  
**Subject:** RE: Heritage Senior Residences

[Message Came from Outside the City of Houston Mail System]

Hi Paul,

By “taking the land down”, do you mean closing on the land acquisition after Council approval and before loan closing? This is not an option as we are relying on the CDBG-DR loan to cover.

**LEE COHEN** | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS **MIAMI** PINECREST SAN DIEGO



---

**From:** Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>  
**Sent:** Tuesday, January 26, 2021 7:46 PM  
**To:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>  
**Subject:** RE: Heritage Senior Residences

Understood, Have you had any discussions on taking the land down after Council approval?  
Some of the developers had to go through this route, you can ask Nancy about the contingencies.

---

**From:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>  
**Sent:** Tuesday, January 26, 2021 6:38 PM  
**To:** Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>  
**Subject:** RE: Heritage Senior Residences

[Message Came from Outside the City of Houston Mail System]  
Hi Paul,

Wanted to remind you we do not have site control after February 26. A closing date of March 3 is not possible as the purchase contract will be expired.

**LEE COHEN** | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136  
m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS MIAMI PINECREST SAN DIEGO



---

**From:** Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>  
**Sent:** Tuesday, January 26, 2021 7:25 PM  
**To:** Tates, Lakesha - HCD <[Lakesha.Tates@houstontx.gov](mailto:Lakesha.Tates@houstontx.gov)>  
**Cc:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>  
**Subject:** RE: Heritage Senior Residences

Hi Lakesha,

Here are my estimated dates for HSR as of now.

- City Council Date: 2/10 or 2/17

- Closing Date: 2/24 or 3/3
- Pre-Construction Meeting Date: 3/8-3/12
  - Construction Start Date: 3/15-3/19

Thanks,

**Paul Yindeemark**

Financial Analyst IV

Multifamily Division

City of Houston

Housing and Community Development Dept.

2100 Travis Street | 9<sup>th</sup> Floor | Houston TX 77002

T: (832)523-3437

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[www.recovery.houstontx.gov](http://www.recovery.houstontx.gov)

Follow us: [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)

---

**From:** Tates, Lakesha - HCD

**Sent:** Tuesday, January 26, 2021 2:10 PM

**To:** Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>

**Cc:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>

**Subject:** RE: Heritage Senior Residences

Hi Paul,

Just checking on the status on the Heritage Senior Residences. When is the project looking to go to council and do you have estimated construction start date? Contract Compliance is currently awaiting the Pre-Award compliance documents.

Regards,

**Lakesha Tates**

Administrative Coordinator

Contract Compliance Division

City of Houston

Housing and Community Development Dept.

2100 Travis Street | 9th Floor | Houston TX 77002



832.394.6345 (office)

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**From:** Yindeemark, Paul - HCD

**Sent:** Monday, January 11, 2021 4:26 PM

**To:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>

**Cc:** Tates, Lakesha - HCD <[Lakesha.Tates@houstontx.gov](mailto:Lakesha.Tates@houstontx.gov)>; Boyce, Chrystal - HCD <[Chrystal.Boyce@houstontx.gov](mailto:Chrystal.Boyce@houstontx.gov)>

**Subject:** RE: Heritage Senior Residences

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Financial Analyst IV

Multifamily Division

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**From:** [Nancy Martin](#)  
**To:** [Yindeemark, Paul - HCD](#); [Lee Cohen](#)  
**Subject:** RE: Heritage Senior Residences  
**Date:** Wednesday, January 27, 2021 5:49:00 PM  
**Attachments:** [image001.png](#)

---

The due diligence materials are not the issue.

Nancy F. Martin  
Shannon, Martin, Finkelstein, Alvarado & Dunne, P.C.  
1001 McKinney Street, Suite 1100  
Houston, TX 77002  
713-646-5560  
713-752-0337 (fax)  
[www.smfadlaw.com](http://www.smfadlaw.com)

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---

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**Sent:** Wednesday, January 27, 2021 4:34 PM  
**To:** Lee Cohen <LCohen@apcommunities.com>  
**Cc:** Nancy Martin <nmartin@smfadlaw.com>  
**Subject:** RE: Heritage Senior Residences

If Nancy thinks we are okay with 2/10, I will request for the agenda's update with the Mayor's office.

Thanks,

**Paul Yindeemark**

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**Cc:** Nancy Martin <[nmartin@smfadlaw.com](mailto:nmartin@smfadlaw.com)>  
**Subject:** RE: Heritage Senior Residences

[Message Came from Outside the City of Houston Mail System]  
Hi Paul,

It was communicated to our team that all the due diligence documents were needed for closing, which is scheduled for the last week of February. We were told the 2/1 deadline was for the five exhibits required for City Council, which were provided this afternoon.

In addition, I provided a link to the due diligence documents yesterday after the weekly call. The checklist isn't complete, but a majority of the "Borrowers" items have been provided – see attached. Is there something specific you are looking for at this time?

**LEE COHEN** | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136  
m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS MIAMI PINECREST SAN DIEGO



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**From:** Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>

**Sent:** Tuesday, January 26, 2021 7:46 PM

**To:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>

**Subject:** RE: Heritage Senior Residences

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**To:** Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>

**Subject:** RE: Heritage Senior Residences

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Hi Lakesha,

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- City Council Date: 2/10 or 2/17
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Thanks,

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---

**From:** Bates, Lakesha - HCD

**Sent:** Tuesday, January 26, 2021 2:10 PM

**To:** Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>

**Cc:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>

**Subject:** RE: Heritage Senior Residences

Hi Paul,

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Regards,

**Lakesha Bates**

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**Subject:** RE: Heritage Senior Residences  
**Date:** Wednesday, January 27, 2021 4:00:33 PM  
**Attachments:** [image001.png](#)

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## Lee Cohen

---

**From:** Nancy Martin <NMartin@smfadlaw.com>  
**Sent:** Tuesday, February 16, 2021 1:53 PM  
**To:** 'Hurwitz, Adam R [ICG-MSS]'; 'Chinweze, Kene - LGL'; '[bofa.com] Buzzelli, Sam'; Greg Griffith; 'Kaye, Jason'; 'De-La-Rosa, Jose L'; 'Monsivais, Sylvia'; 'Aiyer, Mahesh [ICG-MSS]'; 'Peterek, Kevin [ICG-MSS NE]'; 'Garrison, Suzanne'; Lee Cohen; Fernando Arimon; Dan Wilson; 'Pollio, Joseph [ICG-MSS NE]'; 'Yakren, Aviva'; 'Paul.Yindeemark@houstontx.gov'; 'Ryan.Bibbs@houstontx.gov'; 'Ana.Patino-Martinez@houstontx.gov'; 'Visser, Rory [ICG-MSS NE]'; 'Whyte, Michael [ICG-MSS NE]'; 'sara.heskett@hklaw.com'; 'Regina Davis (regina.davis@hklaw.com)'; 'Corrinne Mosser Esq. (corrinne.mosser@hklaw.com)'; 'Kathleen Furey Esq. (kathleen.furey@hklaw.com)'; 'John Fanciullo (john.fanciullo@hklaw.com)'; 'Joe.Steinberg@hklaw.com'; 'dphares@independencetitle.com'; Michael Fincher; 'cbast@lockelord.com'; 'rmorrow@lockelord.com'; 'crichardson@lockelord.com'; Randy Weisburd; Kenneth Naylor; Liz Wong  
**Subject:** RE: Heritage Senior Residences - City Documents

The City signatures can wait until next week. This doesn't go to Council until next week so there is time. Sorry for the confusion.

---

**From:** Nancy Martin <NMartin@smfadlaw.com>  
**Sent:** Monday, February 8, 2021 2:48 PM  
**To:** 'Hurwitz, Adam R [ICG-MSS]' <adam.r.hurwitz@citi.com>; 'Chinweze, Kene - LGL' <Kene.Chinweze@houstontx.gov>; '[bofa.com] Buzzelli, Sam' <sam.buzzelli@bofa.com>; 'Greg Griffith' <ggriffith@apmanagement.net>; 'Kaye, Jason' <jason.kaye@bofa.com>; 'De-La-Rosa, Jose L' <jose.l.de\_la\_rosa@bofa.com>; 'Monsivais, Sylvia' <sylvia.monsivais@bofa.com>; 'Aiyer, Mahesh [ICG-MSS]' <mahesh.aiyer@citi.com>; 'Peterek, Kevin [ICG-MSS NE]' <kevin.peterek@citi.com>; 'Garrison, Suzanne' <suzanne.garrison@bofa.com>; 'Lee Cohen' <LCohen@apcommunities.com>; 'Fernando Arimon' <FArimon@apcommunities.com>; 'Dan Wilson' <dwilson@apcompanies.com>; 'Pollio, Joseph [ICG-MSS NE]' <joseph.pollo@citi.com>; 'Yakren, Aviva' <ayakren@sidley.com>; 'Paul.Yindeemark@houstontx.gov' <Paul.Yindeemark@houstontx.gov>; 'Ryan.Bibbs@houstontx.gov' <Ryan.Bibbs@houstontx.gov>; 'Ana.Patino-Martinez@houstontx.gov' <Ana.Patino-Martinez@houstontx.gov>; 'Visser, Rory [ICG-MSS NE]' <rory.visser@citi.com>; 'Whyte, Michael [ICG-MSS NE]' <michael.whyte@citi.com>; 'sara.heskett@hklaw.com' <sara.heskett@hklaw.com>; 'Regina Davis (regina.davis@hklaw.com)' <regina.davis@hklaw.com>; 'Corrinne Mosser Esq. (corrinne.mosser@hklaw.com)' <corrinne.mosser@hklaw.com>; 'Kathleen Furey Esq. (kathleen.furey@hklaw.com)' <kathleen.furey@hklaw.com>; 'John Fanciullo (john.fanciullo@hklaw.com)' <john.fanciullo@hklaw.com>; 'Joe.Steinberg@hklaw.com' <Joe.Steinberg@hklaw.com>; 'dphares@independencetitle.com' <dphares@independencetitle.com>; 'mfincher@apcommunities.com' <mfincher@apcommunities.com>; 'cbast@lockelord.com' <cbast@lockelord.com>; 'rmorrow@lockelord.com' <rmorrow@lockelord.com>; 'crichardson@lockelord.com' <crichardson@lockelord.com>; 'rweisburd@apmanagement.net' <rweisburd@apmanagement.net>; 'knaylor@apcommunities.com' <knaylor@apcommunities.com>; 'LWong@apcompanies.com' <LWong@apcompanies.com>  
**Subject:** RE: Heritage Senior Residences - City Documents

One more change is attached to the Intercreditor.

Nancy F. Martin  
Shannon, Martin, Finkelstein, Alvarado & Dunne, P.C.  
1001 McKinney Street, Suite 1100  
Houston, TX 77002  
713-646-5560  
713-752-0337 (fax)  
[www.smfadlaw.com](http://www.smfadlaw.com)

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---

**From:** Nancy Martin

**Sent:** Monday, February 08, 2021 2:43 PM

**To:** 'Hurwitz, Adam R [ICG-MSS]' <[adam.r.hurwitz@citi.com](mailto:adam.r.hurwitz@citi.com)>; 'Chinweze, Kene - LGL' <[Kene.Chinweze@houstontx.gov](mailto:Kene.Chinweze@houstontx.gov)>; '[bofa.com] Buzzelli, Sam' <[sam.buzzelli@bofa.com](mailto:sam.buzzelli@bofa.com)>; 'Greg Griffith' <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>; 'Kaye, Jason' <[jason.kaye@bofa.com](mailto:jason.kaye@bofa.com)>; 'De-La-Rosa, Jose L' <[jose.l.de\\_la\\_rosa@bofa.com](mailto:jose.l.de_la_rosa@bofa.com)>; 'Monsivais, Sylvia' <[sylvia.monsivais@bofa.com](mailto:sylvia.monsivais@bofa.com)>; 'Aiyer, Mahesh [ICG-MSS]' <[mahesh.aiyer@citi.com](mailto:mahesh.aiyer@citi.com)>; 'Peterek, Kevin [ICG-MSS NE]' <[kevin.peterek@citi.com](mailto:kevin.peterek@citi.com)>; 'Garrison, Suzanne' <[suzanne.garrison@bofa.com](mailto:suzanne.garrison@bofa.com)>; 'Lee Cohen' <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>; 'Fernando Arimon' <[FArimon@apcommunities.com](mailto:FArimon@apcommunities.com)>; 'Dan Wilson' <[dwilson@apcompanies.com](mailto:dwilson@apcompanies.com)>; 'Pollio, Joseph [ICG-MSS NE]' <[joseph.pollio@citi.com](mailto:joseph.pollio@citi.com)>; 'Yakren, Aviva' <[ayakren@sidley.com](mailto:ayakren@sidley.com)>; 'Paul.Yindeemark@houstontx.gov' <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>; 'Ryan.Bibbs@houstontx.gov' <[Ryan.Bibbs@houstontx.gov](mailto:Ryan.Bibbs@houstontx.gov)>; 'Ana.Patino-Martinez@houstontx.gov' <[Ana.Patino-Martinez@houstontx.gov](mailto:Ana.Patino-Martinez@houstontx.gov)>; 'Visser, Rory [ICG-MSS NE]' <[rory.visser@citi.com](mailto:rory.visser@citi.com)>; 'Whyte, Michael [ICG-MSS NE]' <[michael.whyte@citi.com](mailto:michael.whyte@citi.com)>; 'sara.heskett@hklaw.com' <[sara.heskett@hklaw.com](mailto:sara.heskett@hklaw.com)>; 'Regina Davis' ([regina.davis@hklaw.com](mailto:regina.davis@hklaw.com))' <[regina.davis@hklaw.com](mailto:regina.davis@hklaw.com)>; 'Corrinne Mosser Esq.' ([corrinne.mosser@hklaw.com](mailto:corrinne.mosser@hklaw.com))' <[corrinne.mosser@hklaw.com](mailto:corrinne.mosser@hklaw.com)>; 'Kathleen Furey Esq.' ([kathleen.furey@hklaw.com](mailto:kathleen.furey@hklaw.com))' <[kathleen.furey@hklaw.com](mailto:kathleen.furey@hklaw.com)>; 'John Fanciullo' ([john.fanciullo@hklaw.com](mailto:john.fanciullo@hklaw.com))' <[john.fanciullo@hklaw.com](mailto:john.fanciullo@hklaw.com)>; 'Joe.Steinberg@hklaw.com' <[Joe.Steinberg@hklaw.com](mailto:Joe.Steinberg@hklaw.com)>; 'dphares@independencetitle.com' <[dphares@independencetitle.com](mailto:dphares@independencetitle.com)>; 'mfincher@apcommunities.com' <[mfincher@apcommunities.com](mailto:mfincher@apcommunities.com)>; 'cbast@lockelord.com' <[cbast@lockelord.com](mailto:cbast@lockelord.com)>; 'rmorrow@lockelord.com' <[rmorrow@lockelord.com](mailto:rmorrow@lockelord.com)>; 'crichardson@lockelord.com' <[crichardson@lockelord.com](mailto:crichardson@lockelord.com)>; 'rweisburd@apmanagement.net' <[rweisburd@apmanagement.net](mailto:rweisburd@apmanagement.net)>; 'knaylor@apcommunities.com' <[knaylor@apcommunities.com](mailto:knaylor@apcommunities.com)>; 'LWong@apcompanies.com' <[LWong@apcompanies.com](mailto:LWong@apcompanies.com)>

**Subject:** RE: Heritage Senior Residences - City Documents

<< File: Attachment I - Intercreditor Agreement.DOCX >> << File: Attachment H declaration of Subordination.DOCX >>  
>> << File: Attachment C - Deed of Trust.DOCX >> << File: Loan Agreement 2-8-21 (final).DOCX >>

Please see attached last revisions. I have no choice but to take these to final now and hope that we can make the submission deadline.

Nancy F. Martin

Shannon, Martin, Finkelstein, Alvarado & Dunne, P.C.

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Houston, TX 77002

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---

**From:** Nancy Martin



**Sent:** Monday, February 08, 2021 9:25 AM

**To:** 'Hurwitz, Adam R [ICG-MSS]' <[adam.r.hurwitz@citi.com](mailto:adam.r.hurwitz@citi.com)>; 'Chinweze, Kene - LGL' <[Kene.Chinweze@houstontx.gov](mailto:Kene.Chinweze@houstontx.gov)>; '[bofa.com] Buzzelli, Sam' <[sam.buzzelli@bofa.com](mailto:sam.buzzelli@bofa.com)>; 'Greg Griffith' <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>; 'Kaye, Jason' <[jason.kaye@bofa.com](mailto:jason.kaye@bofa.com)>; 'De-La-Rosa, Jose L' <[jose.l.de\\_la\\_rosa@bofa.com](mailto:jose.l.de_la_rosa@bofa.com)>; 'Monsivais, Sylvia' <[sylvia.monsivais@bofa.com](mailto:sylvia.monsivais@bofa.com)>; 'Aiyer, Mahesh [ICG-MSS]' <[mahesh.aiyer@citi.com](mailto:mahesh.aiyer@citi.com)>; 'Peterek, Kevin [ICG-MSS NE]' <[kevin.peterek@citi.com](mailto:kevin.peterek@citi.com)>; 'Garrison, Suzanne' <[suzanne.garrison@bofa.com](mailto:suzanne.garrison@bofa.com)>; 'Lee Cohen' <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>; 'Fernando Arimon' <[FArimon@apcommunities.com](mailto:FArimon@apcommunities.com)>; 'Dan Wilson' <[dwilson@apcompanies.com](mailto:dwilson@apcompanies.com)>; 'Pollio, Joseph [ICG-MSS NE]' <[joseph.pollio@citi.com](mailto:joseph.pollio@citi.com)>; 'Yakren, Aviva' <[ayakren@sidley.com](mailto:ayakren@sidley.com)>; 'Paul.Yindeemark@houstontx.gov' <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>; 'Ryan.Bibbs@houstontx.gov' <[Ryan.Bibbs@houstontx.gov](mailto:Ryan.Bibbs@houstontx.gov)>; 'Ana.Patino-Martinez@houstontx.gov' <[Ana.Patino-Martinez@houstontx.gov](mailto:Ana.Patino-Martinez@houstontx.gov)>; 'Visser, Rory [ICG-MSS NE]' <[rory.visser@citi.com](mailto:rory.visser@citi.com)>; 'Whyte, Michael [ICG-MSS NE]' <[michael.whyte@citi.com](mailto:michael.whyte@citi.com)>; 'sara.heskett@hklaw.com' <[sara.heskett@hklaw.com](mailto:sara.heskett@hklaw.com)>; 'Regina Davis' ([regina.davis@hklaw.com](mailto:regina.davis@hklaw.com))' <[regina.davis@hklaw.com](mailto:regina.davis@hklaw.com)>; 'Corrinne Mosser Esq.' ([corrinne.mosser@hklaw.com](mailto:corrinne.mosser@hklaw.com))' <[corrinne.mosser@hklaw.com](mailto:corrinne.mosser@hklaw.com)>; 'Kathleen Furey Esq.' ([kathleen.furey@hklaw.com](mailto:kathleen.furey@hklaw.com))' <[kathleen.furey@hklaw.com](mailto:kathleen.furey@hklaw.com)>; 'John Fanciullo' ([john.fanciullo@hklaw.com](mailto:john.fanciullo@hklaw.com))' <[john.fanciullo@hklaw.com](mailto:john.fanciullo@hklaw.com)>; 'Joe.Steinberg@hklaw.com' <[Joe.Steinberg@hklaw.com](mailto:Joe.Steinberg@hklaw.com)>; 'dphares@independencetitle.com' <[dphares@independencetitle.com](mailto:dphares@independencetitle.com)>; 'mfincher@apcommunities.com' <[mfincher@apcommunities.com](mailto:mfincher@apcommunities.com)>; 'cbast@lockelord.com' <[cbast@lockelord.com](mailto:cbast@lockelord.com)>; 'rmorrow@lockelord.com' <[rmorrow@lockelord.com](mailto:rmorrow@lockelord.com)>; 'crichardson@lockelord.com' <[crichardson@lockelord.com](mailto:crichardson@lockelord.com)>; 'rweisburd@apmanagement.net' <[rweisburd@apmanagement.net](mailto:rweisburd@apmanagement.net)>; 'knaylor@apcommunities.com' <[knaylor@apcommunities.com](mailto:knaylor@apcommunities.com)>; 'LWong@apcompanies.com' <[LWong@apcompanies.com](mailto:LWong@apcompanies.com)>

**Subject:** RE: Heritage Senior Residences - City Documents

The City documents for Heritage Senior Residences are being submitted this morning to start the process of City Council Approval. I need the senior lender, borrower/guarantor, equity, and permanent lender to sign off on the last drafts sent.

Nancy F. Martin  
Shannon, Martin, Finkelstein, Alvarado & Dunne, P.C.  
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-----Original Appointment-----

**From:** Nancy Martin **On Behalf Of** Hurwitz, Adam R [ICG-MSS]

**Sent:** Tuesday, February 2, 2021 7:19 AM

**To:** Chinweze, Kene - LGL

**Subject:** FW: Heritage Senior Residences - Weekly Call

**When:** Occurs every Tuesday effective 12/15/2020 until 3/2/2021 from 1:00 PM to 1:30 PM Eastern Standard Time.

**Where:** Dial In Info Below - Phone Only

**From:** [Miller, Ray - HCD](#)  
**To:** [Dan Wilson](#); [Lee Cohen](#)  
**Cc:** [Bibbs, Ryan - HCD](#); [Yindeemark, Paul - HCD](#)  
**Subject:** RE: Heritage Senior Residences  
**Date:** Tuesday, March 9, 2021 4:57:31 PM  
**Attachments:** [image001.png](#)

---

Dan and Lee,

We have a good news and a little bit of bad news regarding the request for additional DR financing. The good news is Director and Administration agreed to an increase in DR-17 funds of \$2,650,000 totaling **\$14,350,000**. We are covering the amount impacted by the hard costs and the senior loan reduction, but will not contribute additional funds that will increase the level of cash developer fee compared to the budget received a couple weeks ago.

Also, it will take some time to have this amount approved by our Finance group and GLO. We'll do our best to make the council agenda for March 24<sup>th</sup>, but it may take another week to have all internal documentation needed to complete the request.

Ray

---

**From:** Miller, Ray - HCD  
**Sent:** Friday, February 26, 2021 3:35 PM  
**To:** Dan Wilson <[dwilson@apcompanies.com](mailto:dwilson@apcompanies.com)>  
**Cc:** Bibbs, Ryan - HCD ([Ryan.Bibbs@houstontx.gov](mailto:Ryan.Bibbs@houstontx.gov)) <[Ryan.Bibbs@houstontx.gov](mailto:Ryan.Bibbs@houstontx.gov)>; Paul - HCD Yindeemark ([Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)) <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>  
**Subject:** RE: Heritage Senior Residences

Dan,

We've reviewed the proposal and will make a recommendation to the GLO and Administration/City Council for the increased funding. It will take a couple of weeks to get the approvals needed and to update the files on the new amount.

Ray

---

**From:** Dan Wilson <[dwilson@apcompanies.com](mailto:dwilson@apcompanies.com)>  
**Sent:** Thursday, February 25, 2021 4:42 PM  
**To:** Miller, Ray - HCD <[Ray.Miller@houstontx.gov](mailto:Ray.Miller@houstontx.gov)>  
**Subject:** Heritage Senior Residences

[Message Came from Outside the City of Houston Mail System]

Ray,

Thanks again for today's call. We have deeply appreciated the City's continued support in our effort to bring a new 135-unit high-quality, mixed-income, affordable housing community to the

Washington Corridor. Heritage Senior Residences will be the first development financed with housing tax credits in the census tract in 30 years and the need for high-quality affordable housing in this area has never been more significant.

Unfortunately, there has been substantial movement in both the micro and macro-economic environments since we submitted our request in March 2020 for \$11.7MM of CDBG-DR funds from the City of Houston, including several that have recently come to light. As a result, Heritage Senior Residences, a shovel ready project, is now unable to close and start construction as currently structured. The largest contributing factors to the development's current financial circumstances are outlined below:

- **Significant increase in interest rates:** When Heritage Senior Residences was initially structured and the CDBG-DR request amount was determined, the 10-year treasury rate was below 100 Basis Points (BPS). This low interest rate environment held all the way through the 4th quarter of 2020 (the rate at the time of signing the permanent loan term sheet was approximately 76 BPS).

Unfortunately, since the beginning of 2021, the 10-year treasury rate has increased over 50 BPS from sub 100 BPS to approximately 150 BPS. As a result, we were just informed by Freddie Mac (through Citibank) that they need to cut the permanent loan sizing by over \$550,000, from \$10.4MM to \$9.847MM.

- **Increased Cost of Materials and Labor:** Due to the impact of the COVID-19 pandemic on mills, labor, and distribution channels coupled with increased restrictions on cutting/logging in Canada and a significant increase in home improvement projects nationwide, building materials including lumber, steel, and PVC costs have increased substantially. While Heritage Senior Residences was able to absorb significant material cost escalations throughout 2020 due to favorable LIHTC equity terms, the cost of building materials have increased dramatically since the start of 2021 to the dismay of many industry professionals, with lumber and other materials reaching highs this month; lumber alone resulted in a \$1.5MM increase from January 22nd to the latest pricing received on February 24th.

In addition to the material cost escalations, Turner Construction has advised us that labor has become increasingly scarce due to last week's severe winter storm and as a result, they have lost some of the lowest qualified bidders because they decided to rescind their bid due to concerns surrounding their ability to deliver under scarce labor conditions (increased demand for repair work is expected to continue for the next 6-9 months). Consequently, Turner Construction now has to pay a premium to ensure all of the subcontractors that are needed to complete the development are secured.

Due to the significant impacts of these factors and the unique circumstances that led to their existence, we are requesting an additional \$2.9MM of CDBG-DR funds so the development can close and commence construction.

Per your request, attached is the revised NOFA workbook. If there is any additional information we can provide to help process this request, please let me know.

Sincerely,

**DAN WILSON | Senior Vice President**

3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

t: (305) 357.4733 | f: (305) 476.1557 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS MIAMI PINECREST SAN DIEGO

**From:** [Yindeemark, Paul - HCD](#)  
**To:** [Lee Cohen](#)  
**Cc:** [Greg Griffith](#)  
**Subject:** Re: Heritage Senior Budget  
**Date:** Friday, March 12, 2021 10:20:12 AM  
**Attachments:** [image001.png](#)

---

Lee,  
I'm going to resubmit everything again today with the final amount.

As expected per Ray's email earlier this week. Our internal approval process can't all be done in a single day. I have to move the council date to the 31st. Please be advised.

Thanks,

Paul Yindeemark  
City of Houston - HCDD  
(832)523-3437  
[www.houstontx.gov/housing](http://www.houstontx.gov/housing)

---

**From:** Lee Cohen <LCohen@apcommunities.com>  
**Sent:** Friday, March 12, 2021 9:06:52 AM  
**To:** Yindeemark, Paul - HCD <Paul.Yindeemark@houstontx.gov>  
**Cc:** Greg Griffith <ggriffith@apmanagement.net>  
**Subject:** RE: Heritage Senior Budget

[Message Came from Outside the City of Houston Mail System]  
Here you go.

**LEE COHEN** | Development Associate  
Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136  
m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS **MIAMI** PINECREST SAN DIEGO



---

**From:** Yindeemark, Paul - HCD <Paul.Yindeemark@houstontx.gov>  
**Sent:** Friday, March 12, 2021 10:05 AM  
**To:** Lee Cohen <LCohen@apcommunities.com>  
**Cc:** Greg Griffith <ggriffith@apmanagement.net>  
**Subject:** Re: Heritage Senior Budget

Lee,

Can you send an excel file of the workbook?

Thanks

Paul Yindeemark  
City of Houston - HCDD  
(832)523-3437  
[www.houstontx.gov/housing](http://www.houstontx.gov/housing)

---

**From:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>  
**Sent:** Friday, March 12, 2021 8:22:14 AM  
**To:** Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>  
**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>  
**Subject:** RE: Heritage Senior Budget

[Message Came from Outside the City of Houston Mail System]

Hi Paul,

Please see attached. Let me know if you have any questions.

Thanks!

**LEE COHEN** | Development Associate  
Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136  
m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS **MIAMI** PINECREST SAN DIEGO



---

**From:** Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>  
**Sent:** Thursday, March 11, 2021 11:10 AM  
**To:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>  
**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>  
**Subject:** RE: Heritage Senior Budget

Lee,

Just following up on this. I'll be gone all next week, hoping to get these items from you today or tomorrow.

Thanks,

**Paul Yindeemark**

Financial Analyst IV

Multifamily Division

City of Houston

Housing and Community Development Dept.

2100 Travis Street | 9<sup>th</sup> Floor | Houston TX 77002

T: (832)523-3437

[www.houstontx.gov/housing](http://www.houstontx.gov/housing)

[www.recovery.houstontx.gov](http://www.recovery.houstontx.gov)

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---

**From:** Yindeemark, Paul - HCD

**Sent:** Tuesday, March 9, 2021 4:04 PM

**To:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>

**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>

**Subject:** RE: Heritage Senior Budget

Great, thanks

Paul

---

**From:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>

**Sent:** Tuesday, March 9, 2021 4:02 PM

**To:** Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>

**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>

**Subject:** RE: Heritage Senior Budget

[Message Came from Outside the City of Houston Mail System]

Yes sir I'm on it.

**LEE COHEN** | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS **MIAMI** PINECREST SAN DIEGO



---

**From:** Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>

**Sent:** Tuesday, March 9, 2021 5:01 PM

**To:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>

**Subject:** RE: Heritage Senior Budget

Lee,

Per Ray's email. Can you send an updated excel workbook and a signed pdf version? Hopefully, this is the last round of changes we have to make.

Thanks,

**Paul Yindeemark**

Financial Analyst IV

Multifamily Division

City of Houston

Housing and Community Development Dept.

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---

**From:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>

**Sent:** Tuesday, March 9, 2021 11:00 AM

**To:** Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>

**Subject:** RE: Heritage Senior Budget

[Message Came from Outside the City of Houston Mail System]

Hi Paul,

Please see attached. Page 3 was signed by Kenneth Naylor. Let me know if you need anything else.

Thank you,

**LEE COHEN** | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS **MIAMI** PINECREST SAN DIEGO



---

**From:** Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>

**Sent:** Monday, March 8, 2021 11:43 AM

**To:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>

**Subject:** RE: Heritage Senior Budget

Sounds good.

Thanks

**Paul Yindeemark**

Financial Analyst IV

Multifamily Division

City of Houston

Housing and Community Development Dept.

2100 Travis Street | 9<sup>th</sup> Floor | Houston TX 77002

T: (832)523-3437

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[www.recovery.houstontx.gov](http://www.recovery.houstontx.gov)

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---

**From:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>

**Sent:** Monday, March 8, 2021 10:42 AM



**To:** Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>

**Subject:** RE: Heritage Senior Budget

[Message Came from Outside the City of Houston Mail System]

Hi Paul,

The document was sent out for signature early Friday. Hoping to have it back today.

Thank you,

**LEE COHEN** | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS **MIAMI** PINECREST SAN DIEGO



---

**From:** Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>

**Sent:** Monday, March 8, 2021 11:36 AM

**To:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>

**Subject:** RE: Heritage Senior Budget

Lee,

Just to follow up on below, will you send the signed workbook back to me sometime this week?

Once received, I will update our LOI to reflect the final numbers.

Thanks,

**Paul Yindeemark**

Financial Analyst IV

Multifamily Division

City of Houston

Housing and Community Development Dept.

2100 Travis Street | 9<sup>th</sup> Floor | Houston TX 77002

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[www.recovery.houstontx.gov](http://www.recovery.houstontx.gov)

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---

**From:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>  
**Sent:** Thursday, March 4, 2021 4:42 PM  
**To:** Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>  
**Subject:** RE: Heritage Senior Budget

[Message Came from Outside the City of Houston Mail System]  
That certainly answers it – thank you Paul. Will likely have the signed workbook back to you tomorrow.

**LEE COHEN** | Development Associate  
Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136  
m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS **MIAMI** PINECREST SAN DIEGO



---

**From:** Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>  
**Sent:** Thursday, March 4, 2021 5:39 PM  
**To:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>  
**Subject:** RE: Heritage Senior Budget

Lee,

As long as each category meets its minimum requirements, I have no problem with it.  
So, it's okay to with **Distributed Heating and Cooling** as opposed to **Envelop Efficiency**.

Sorry, I'm on another call. Let me know if this answered your question.

**Paul Yindeemark**  
Financial Analyst IV  
Multifamily Division

City of Houston  
Housing and Community Development Dept.  
2100 Travis Street | 9<sup>th</sup> Floor | Houston TX 77002

T: (832)523-3437

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[www.recovery.houstontx.gov](http://www.recovery.houstontx.gov)

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---

**From:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>

**Sent:** Thursday, March 4, 2021 4:16 PM

**To:** Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>

**Subject:** RE: Heritage Senior Budget

[Message Came from Outside the City of Houston Mail System]

Hi Paul,

I wanted to double check the Multi-Family Building Resilience selections with the Architect before sending back the signed NOFA Workbook. Would it be an issue to swap selections under a particular Resilient Area? For example, if #6 was swapped with #13, the minimum requirement would still be met for the "Adaptation" Resilient Area.

Thank you,

**LEE COHEN** | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS **MIAMI** PINECREST SAN DIEGO



---

**From:** Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>

**Sent:** Tuesday, March 2, 2021 6:28 PM

**To:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>

**Subject:** RE: Heritage Senior Budget

Good deal, thanks!

---

**From:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>

**Sent:** Tuesday, March 2, 2021 5:28 PM

**To:** Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>

**Subject:** RE: Heritage Senior Budget

[Message Came from Outside the City of Houston Mail System]  
Sure thing. Will get this back as quickly as possible.

**LEE COHEN** | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136  
m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS **MIAMI** PINECREST SAN DIEGO



---

**From:** Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>  
**Sent:** Tuesday, March 2, 2021 6:25 PM  
**To:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>  
**Subject:** RE: Heritage Senior Budget

Lee,

Can you get the revised workbook signed and dated?

Thanks,

**Paul Yindeemark**

Financial Analyst IV

Multifamily Division

City of Houston

Housing and Community Development Dept.

2100 Travis Street | 9<sup>th</sup> Floor | Houston TX 77002

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---

**From:** Miller, Ray - HCD

**Sent:** Thursday, February 25, 2021 1:50 PM

**To:** Dan Wilson <[dwilson@apcompanies.com](mailto:dwilson@apcompanies.com)>; Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>

**Cc:** Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>; Bibbs, Ryan - HCD <[Ryan.Bibbs@houstontx.gov](mailto:Ryan.Bibbs@houstontx.gov)>

**Subject:** RE: Heritage Senior Budget

Dan and Lee,

As a follow up, if I don't get an update by 4:00 the item won't make it on the agenda for the 10<sup>th</sup>. In addition, there is no council meeting on the 17<sup>th</sup> so if we miss next week we can't take it to council until the 24<sup>th</sup>

Ray

---

**From:** Miller, Ray - HCD

**Sent:** Thursday, February 25, 2021 12:56 PM

**To:** Dan Wilson <[dwilson@apcompanies.com](mailto:dwilson@apcompanies.com)>; Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>

**Cc:** Paul - HCD Yindeemark ([Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)) <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>; Bibbs, Ryan - HCD ([Ryan.Bibbs@houstontx.gov](mailto:Ryan.Bibbs@houstontx.gov)) <[Ryan.Bibbs@houstontx.gov](mailto:Ryan.Bibbs@houstontx.gov)>

**Subject:** Heritage Senior Budget

Dan and Lee,

Our agenda office is asking about this item next week. Is the budget finalized to go next week?

I need to know something today.

Ray

**From:** [Yindeemark, Paul - HCD](#)  
**To:** [Lee Cohen](#); [Nancy Martin](#)  
**Cc:** [Greg Griffith](#)  
**Subject:** Re: Heritage - City Council Date  
**Date:** Tuesday, March 30, 2021 12:58:28 PM  
**Attachments:** [image001.png](#)

---

No, I don't see why it wouldn't be on 4/7. But until it's officially on the agenda, then we can confirm.

Paul Yindeemark  
City of Houston - HCDD  
(832)523-3437  
[www.houstontx.gov/housing](http://www.houstontx.gov/housing)

---

**From:** Lee Cohen <LCohen@apcommunities.com>  
**Sent:** Tuesday, March 30, 2021 11:55:40 AM  
**To:** Yindeemark, Paul - HCD <Paul.Yindeemark@houstontx.gov>; Nancy Martin <nmartin@smfadlaw.com>  
**Cc:** Greg Griffith <ggriffith@apmanagement.net>  
**Subject:** RE: Heritage - City Council Date

[Message Came from Outside the City of Houston Mail System]

If the necessary documents were submitted on time, is there any reason why Heritage would not make it on the 4/7 agenda?

**LEE COHEN** | Development Associate  
Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136  
m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS **MIAMI** PINECREST SAN DIEGO



---

**From:** Yindeemark, Paul - HCD <Paul.Yindeemark@houstontx.gov>  
**Sent:** Tuesday, March 30, 2021 12:54 PM  
**To:** Lee Cohen <LCohen@apcommunities.com>; Nancy Martin <nmartin@smfadlaw.com>  
**Cc:** Greg Griffith <ggriffith@apmanagement.net>  
**Subject:** RE: Heritage - City Council Date

Lee,

All documents are with our City's attorney and the Controller's office. We're still waiting on the Mayor's office to confirm 4/7 agenda.

We should hear something on or before Friday.

**Paul Yindeemark**

Financial Analyst IV

Multifamily Division

City of Houston

Housing and Community Development Dept.

2100 Travis Street | 9<sup>th</sup> Floor | Houston TX 77002

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[www.recovery.houstontx.gov](http://www.recovery.houstontx.gov)

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---

**From:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>

**Sent:** Tuesday, March 30, 2021 11:51 AM

**To:** Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>; Nancy Martin <[nmartin@smfadlaw.com](mailto:nmartin@smfadlaw.com)>

**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>

**Subject:** RE: Heritage - City Council Date

[Message Came from Outside the City of Houston Mail System]

Hi Paul,

Any updates about the April 7 City Council date?

**LEE COHEN** | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS **MIAMI** PINECREST SAN DIEGO



---

**From:** Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>

**Sent:** Monday, March 29, 2021 6:05 PM

**To:** Nancy Martin <[nmartin@smfadlaw.com](mailto:nmartin@smfadlaw.com)>; Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>

**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>

**Subject:** RE: Heritage - City Council Date

Lee/ Greg

We're waiting on the confirmation from the Controller's office. I'll let you know soon.

Thanks,

**Paul Yindeemark**

Financial Analyst IV

Multifamily Division

City of Houston

Housing and Community Development Dept.

2100 Travis Street | 9<sup>th</sup> Floor | Houston TX 77002

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[www.recovery.houstontx.gov](http://www.recovery.houstontx.gov)

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---

**From:** Nancy Martin <[NMartin@smfadlaw.com](mailto:NMartin@smfadlaw.com)>

**Sent:** Monday, March 29, 2021 4:50 PM

**To:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>; Yindeemark, Paul - HCD  
<[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>

**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>

**Subject:** RE: Heritage - City Council Date

[Message Came from Outside the City of Houston Mail System]

It made it to the legal department this morning for processing but I haven't heard anything else. I will check.

---

**From:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>

**Sent:** Monday, March 29, 2021 4:35 PM

**To:** Nancy Martin <[NMartin@smfadlaw.com](mailto:NMartin@smfadlaw.com)>; Yindeemark, Paul - HCD



<[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>

**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>

**Subject:** RE: Heritage - City Council Date

Hi Nancy – any updates on the city council agenda?

**LEE COHEN** | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS **MIAMI** PINECREST SAN DIEGO



---

**From:** Nancy Martin <[NMartin@smfadlaw.com](mailto:NMartin@smfadlaw.com)>

**Sent:** Monday, March 29, 2021 12:20 PM

**To:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>; Yindeemark, Paul - HCD  
<[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>

**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>

**Subject:** RE: Heritage - City Council Date

As soon as find out, I will let you know.

---

**From:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>

**Sent:** Monday, March 29, 2021 9:54 AM

**To:** Nancy Martin <[NMartin@smfadlaw.com](mailto:NMartin@smfadlaw.com)>; Yindeemark, Paul - HCD  
<[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>

**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>

**Subject:** RE: Heritage - City Council Date

Thanks Nancy. It would be much appreciated if you could send out an email confirming when the submission has occurred/when Heritage has officially been added to the agenda.

**LEE COHEN** | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS **MIAMI** PINECREST SAN DIEGO



---

**From:** Nancy Martin <[NMartin@smfadlaw.com](mailto:NMartin@smfadlaw.com)>

**Sent:** Monday, March 29, 2021 10:49 AM  
**To:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>; Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>  
**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>  
**Subject:** RE: Heritage - City Council Date

We will be submitting it this morning with the updated legal.

---

**From:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>  
**Sent:** Monday, March 29, 2021 9:44 AM  
**To:** Nancy Martin <[NMartin@smfadlaw.com](mailto:NMartin@smfadlaw.com)>; Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>  
**Cc:** Greg Griffith <[ggriffith@apmanagement.net](mailto:ggriffith@apmanagement.net)>  
**Subject:** Heritage - City Council Date

Good morning,

Can you confirm Heritage Senior Residences is included on the April 7<sup>th</sup> City Council Agenda?

Thank you,

**LEE COHEN** | Development Associate  
Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136  
m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS **MIAMI** PINECREST SAN DIEGO



**From:** [Yindeemark, Paul - HCD](#)  
**To:** [Lee Cohen](#); [Nancy Martin](#)  
**Subject:** RE: Heritage - City Council Date  
**Date:** Wednesday, April 7, 2021 11:47:20 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.jpg](#)

---

Lee,

FYI- on City Council's result today.

- 
17. ORDINANCE approving and authorizing Loan Agreement between City of Houston and HERITAGE SENIOR RESIDENCES, L.P. to provide loan of Hurricane Harvey Community Development Block Grant Disaster Recovery Funds for City of Houston's Harvey Multifamily Program, to partially finance the new construction of Heritage Senior Residences, a 135-unit affordable Rental Housing Community serving Seniors 55 years of age and older, located at the northeast corner lot of Center Street and Moy Street, Houston, Texas (HCD20-128) - DISTRICT C – KAMIN - PASS

Paul Yindeemark

Financial Analyst IV

Multifamily Division

City of Houston

Housing and Community Development Dept.

2100 Travis Street | 9<sup>th</sup> Floor | Houston TX 77002

T: (832)523-3437

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[www.recovery.houstontx.gov](http://www.recovery.houstontx.gov)

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---

**From:** Lee Cohen <LCohen@apcommunities.com>  
**Sent:** Thursday, April 1, 2021 3:53 PM  
**To:** Nancy Martin <nmartin@smfadlaw.com>; Yindeemark, Paul - HCD <Paul.Yindeemark@houstontx.gov>  
**Subject:** RE: Heritage - City Council Date

[Message Came from Outside the City of Houston Mail System]

That's great, thanks Paul!

**LEE COHEN** | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS **MIAMI** PINECREST SAN DIEGO



---

**From:** Nancy Martin <[NMartin@smfadlaw.com](mailto:NMartin@smfadlaw.com)>

**Sent:** Thursday, April 1, 2021 4:45 PM

**To:** Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>; Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>

**Subject:** RE: Heritage - City Council Date

Yippee!!!

---

**From:** Yindeemark, Paul - HCD <[Paul.Yindeemark@houstontx.gov](mailto:Paul.Yindeemark@houstontx.gov)>

**Sent:** Thursday, April 1, 2021 3:44 PM

**To:** Lee Cohen <[LCohen@apcommunities.com](mailto:LCohen@apcommunities.com)>

**Cc:** Nancy Martin <[NMartin@smfadlaw.com](mailto:NMartin@smfadlaw.com)>

**Subject:** RE: Heritage - City Council Date

Lee and Nancy,

HSR is officially on the City Council Agenda for 4/7 

Thanks,

**Paul Yindeemark**

Financial Analyst IV

Multifamily Division

City of Houston

Housing and Community Development Dept.

2100 Travis Street | 9<sup>th</sup> Floor | Houston TX 77002

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## Exhibit C

### Loan Document Excerpts

#### **CONSTRUCTION LOAN AGREEMENT**

Section 4.33 **Covenants Regarding Tax Credits.** (Page 25/88)

Borrower hereby agrees to comply with all of the following covenants:

(k) In the event that Lender and its Construction Inspector, in their sole reasonable discretion, determine that the Completion of Construction will not occur by the Completion Date [10/31/22] to enable the Property to be “placed in service” (within the meaning given in Section 42 of the Code) by December 31, 2022, then (i) within ten (10) business days following notice of Lender’s and Construction Inspector’s determination, Borrower shall deliver to Lender written evidence in form and substance satisfactory to Lender that the Borrower has applied to the Credit Agency for either (x) an exchange of the 2020 allocation of Tax Credits to Borrower for a 2021 (or later year) allocation of Tax Credits (a “**Tax Credit Swap**”) or (y) an administrative extension of the “placed in service” date (a “**PIS Extension**”) and (ii) on or before October 1, 2022 or such later date acceptable to Lender in its sole reasonable discretion, but in no event later than October 31, 2022, Borrower shall deliver to Lender written evidence of the allocation of 2021 (or later year) Tax Credits from by the Credit Agency or an administrative extension of the “placed in service” date by the Credit Agency. Borrower acknowledges and agrees that once Lender and its Construction Inspector make the determination that the Completion of Construction will not occur by the Completion Date to enable the Property to the “placed in service” by December 31, 2021, the rate of interest under the Note shall be increased to the Default Rate (as that term is defined in Section 6 of the Note) and shall continue at such increased rate (the “**Pricing Adjustment Event**”) until such time that Borrower provides either a Tax Credit Swap or a PIS Extension that extends the “placed in service’ date that is beyond the Completion Date. Upon Borrower obtaining either a Tax Credit Swap or a PIS Extension, Borrower and Lender shall negotiate in good faith to agree upon a commensurate revision to the Project Schedule which shall include, without limitation, an extension of the Completion Date to the extent appropriate in accordance with the provisions of this Agreement related to revisions of the Project Schedule.

Borrower acknowledges and agrees that if the Completion Date is extended in accordance with the foregoing, then Borrower will be required to obtain a further PIS Extension beyond any Completion Date extension and failure to do so will result in a Pricing Adjustment Event. Lender acknowledges and agrees that the Pricing Adjustment Event itself shall not be construed as an Event of Default under this Agreement or the other Loan Documents, but Lender is not waving any other Event of Default that could occur under the Loan Documents by agreeing to the events that could result in the Pricing Adjustment Event.

**SCHEDULE 4 (page 63/88)**  
**PROJECT SCHEDULE**

1. Commencement. Subject to Force Majeure, Borrower shall cause Construction of the Improvements to commence no later than no later than April 30, 2021.
  
2. Progress of Construction. Borrower shall cause Construction of the Improvements to be completed in accordance with the following schedule:
  - 50% Complete January 30, 2022
  - 100% Complete October 31, 2022 (the “**Completion Date**”)
  
3. Completion of Construction of All Improvements. Subject to Force Majeure, Borrower shall cause Completion of Construction of all of the Improvements to occur no later than the Completion Date.

**Exhibit D**

**Updated Construction Schedule**





Turner Construction Company  
4263 Dacoma Street  
Houston, Tx 77092  
phone: 713.840.8441

May 25, 2021

**Heritage Senior Residence**  
**Project #** 210509

**APPLICATION #** 1

**Heritage Senior Residences, LP**  
161 NW 6th St., suite 1020  
Miami FL 33136

Dear Heritage Senior Residences, LP:

Please find attached our Pay Application 01 in the amount of \$533,727.00 for work performed on the above referenced project during the period ending of May 31st 2021.

**If possible, please submit payment by electronic funds transfer and notify me once this transfer has taken place.**

**Bank Name:** BMO Harris  
**Account:** Turner Construction Company  
**Account No.:** 4233854  
**ABA No.:** 071-000-288  
**REF:** 300402-210509

**If an electronic transfer is not possible, please send a check to the following address:**

**Turner Construction**  
**13430 Northwest Frwy., Suite 500**  
**Houston, Tx 770040**

Should you have any questions regarding this billing, please do not hesitate to contact me.

I have reviewed and approve the following payment application  
Turner Construction

**"FRAUD PREVENTION NOTICE:** Turner will never inform you of changes to payment instructions through email. Payment details will only be changed when initiated by an executed change order, approval letter or a bi-lateral agreement/document sent by regular mail executed by the individuals who signed the contract. Additionally please follow up with a phone call to the General Manager of Turner prior to making any change."

**Application and Certificate for Payment**

**TO (OWNER):**

Heritage Senior Residences, LP  
161 NW 6th Street, Suite 1020  
Miami FL 33136

**Project:**

Heritage Senior Residence  
1120 Moy Street  
Houston TX 77007

**APPLICATION NO:**

1 (Pynt ref: 90933851)

**APPLICATION DATE:**

05/25/2021

**PERIOD TO:**

**FROM (CONTRACTOR):**

Turner Construction Company  
13430 Northwest Frwy, Suite 500  
Houston TX 77040

**VIA (CM/Owner's Rep.):**

**PROJECT NO:**

210509

**VIA (ARCHITECT):** Mucasey & Associates

**CONTRACT DATE:**

**CONTRACT FOR:** Heritage Senior Residences, LP

**OWNERS REFERENCE NO:**

**INV DESCRIPTION:**

**CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for Payment, as shown below, in connection with the Contract.

Continuation Sheet is attached.

1. ORIGINAL CONTRACT SUM TO DATE	\$	23,739,778.00
2. Net change by Change Orders	\$	0.00
3. CONTRACT SUM TO DATE (Line 1 +/- 2)	\$	23,739,778.00
4. TOTAL COMPLETED & STORED TO DATE (Column J on Continuation Sheet)	\$	564,806.00
5. RETAINAGE:		
a. 5.503 % of Completed Work \$		31,079.00
(Column G+H on Continuation Sheet)		
b. 0.000 % of Stored Material \$		0.00
(Column I on Continuation Sheet)		
Total Retainage	\$	31,079.00
6. TOTAL EARNED LESS RETAINAGE	\$	533,727.00
(Line 4 less Line 5 Total)		
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	0.00
8. APPLICABLE TAXES OUTSIDE OF CONTRACT CURRENT APPLICATION	\$	0.00
9. CURRENT PAYMENT DUE	\$	533,727.00
10. BALANCE TO FINISH, PLUS RETAINAGE (Line 3 less Line 6)	\$	23,206,051.00

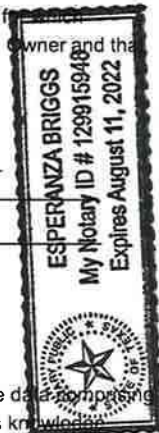
The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief the Work covered by this Application for Payment has been performed or completed in accordance with the Contract Documents, that the Contractor has paid or will pay subcontractors amounts due in accordance with the subcontract terms and conditions for Work performed. If previous Applications for Payment were issued and payments received from the Owner and that the current payment shown herein is now due.

**CONTRACTOR:** Turner Construction Co.

By: [Signature] Date: 5/25/21  
Name: Ken Nguyen Title: Senior PM

State of: Texas County of: Harris  
Subscribed and sworn before me this 25 day of May 2021

Notary Public: [Signature] Expires: 8/11/22



**ARCHITECT'S CERTIFICATE FOR PAYMENT**

In accordance with the Contract Documents, based on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

**AMOUNT CERTIFIED** \$ 533,727.00

(Attached explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that changed to conform to the amount certified.)

Architect: Mucasey & Associates  
By: [Signature] Date: 05-25-21

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor Named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

**Crossroads Housing Development Corporation**  
By: STACY SWISHER Date: 5/25/2021 | 2:40 PM PDT

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total charges approved in		
Previous months by Owner	0.00	0.00
Total approved this Month	0.00	0.00
Totals	0.00	0.00
NET CHANGES by Change Order		0.00

**CONTINUATION SHEET**

APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractor's signed Certification is attached.

Use Column K on Contracts where variable retainage for line items may apply.

**APPLICATION NO:** 1 (Pymt ref: 90933851)

**APPLICATION DATE:** 05/25/2021

**PERIOD TO:**

**ARCHITECT'S PROJECT NO:**

A ITEM NO	B DESCRIPTION	C SCHEDULED VALUE	D ADDS/ DEDUCTS	E BUDGET TRANSFERS	F REVISED SCHEDULED VALUE	G H WORK COMPLETED		I MATERIALS PRESENTLY STORED(NOT IN 'G' OR 'H')	J TOTAL %		K BALANCE TO FINISH (F-J)	L RETAINAGE
						PREVIOUS APPLICATION	THIS PERIOD		COMPLETED AND STORED TO DATE (G+H+I)	(J/F)		
16	Site Work	1,095,362.00	0.00	0.00	1,095,362.00	0.00	0.00	0.00	0.00	0.00	1,095,362.00	0.00
17	Concrete	2,129,481.00	0.00	0.00	2,129,481.00	0.00	0.00	0.00	0.00	0.00	2,129,481.00	0.00
18	Masonry	192,282.00	0.00	0.00	192,282.00	0.00	0.00	0.00	0.00	0.00	192,282.00	0.00
19	Metals	421,599.00	0.00	0.00	421,599.00	0.00	0.00	0.00	0.00	0.00	421,599.00	0.00
20	Wood and Plastics	6,657,457.00	0.00	0.00	6,657,457.00	0.00	0.00	0.00	0.00	0.00	6,657,457.00	0.00
21	Thermal and Moisture Protection	1,019,216.00	0.00	0.00	1,019,216.00	0.00	0.00	0.00	0.00	0.00	1,019,216.00	0.00
22	Doors and Windows	820,953.00	0.00	0.00	820,953.00	0.00	0.00	0.00	0.00	0.00	820,953.00	0.00
23	Finishes	2,454,929.00	0.00	0.00	2,454,929.00	0.00	0.00	0.00	0.00	0.00	2,454,929.00	0.00
24	Specialties	33,106.00	0.00	0.00	33,106.00	0.00	0.00	0.00	0.00	0.00	33,106.00	0.00
25	Equipment	421,014.00	0.00	0.00	421,014.00	0.00	0.00	0.00	0.00	0.00	421,014.00	0.00
26	Furnishings	106,619.00	0.00	0.00	106,619.00	0.00	0.00	0.00	0.00	0.00	106,619.00	0.00
27	Conveying Systems	237,492.00	0.00	0.00	237,492.00	0.00	0.00	0.00	0.00	0.00	237,492.00	0.00
28	Mechanical/Plumbing	2,841,986.00	0.00	0.00	2,841,986.00	0.00	0.00	0.00	0.00	0.00	2,841,986.00	0.00
29	Electrical	2,141,198.00	0.00	0.00	2,141,198.00	0.00	0.00	0.00	0.00	0.00	2,141,198.00	0.00
30	Insurance	254,016.00	0.00	0.00	254,016.00	0.00	254,016.00	0.00	254,016.00	100.00	0.00	0.00
	<b>Direct Work</b>	<b>20,826,710.00</b>	<b>0.00</b>	<b>0.00</b>	<b>20,826,710.00</b>	<b>0.00</b>	<b>254,016.00</b>	<b>0.00</b>	<b>254,016.00</b>	<b>1.22</b>	<b>20,572,694.00</b>	<b>0.00</b>
31	General Conditions	2,090,160.00	0.00	0.00	2,090,160.00	0.00	310,790.00	0.00	310,790.00	14.87	1,779,370.00	31,079.00
	<b>General Conditions</b>	<b>2,090,160.00</b>	<b>0.00</b>	<b>0.00</b>	<b>2,090,160.00</b>	<b>0.00</b>	<b>310,790.00</b>	<b>0.00</b>	<b>310,790.00</b>	<b>14.87</b>	<b>1,779,370.00</b>	<b>31,079.00</b>
32	Fee	822,908.00	0.00	0.00	822,908.00	0.00	0.00	0.00	0.00	0.00	822,908.00	0.00
	<b>Fee</b>	<b>822,908.00</b>	<b>0.00</b>	<b>0.00</b>	<b>822,908.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>822,908.00</b>	<b>0.00</b>
	<b>Construction Total</b>	<b>23,739,778.00</b>	<b>0.00</b>	<b>0.00</b>	<b>23,739,778.00</b>	<b>0.00</b>	<b>564,806.00</b>	<b>0.00</b>	<b>564,806.00</b>	<b>2.38</b>	<b>23,174,972.00</b>	<b>31,079.00</b>
	TOTAL CONTRACT	23,739,778.00	0.00	0.00	23,739,778.00	0.00	564,806.00	0.00	564,806.00	2.38	23,174,972.00	31,079.00
	APPLICABLE TAXES OUTSIDE OF CONTRACT					0.00	0.00		0.00			

**CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

Project Heritage Senior Residence, LP

Job No. 300402 - 210509

On receipt by the signer of this document of a check from Heritage Senior Residence, LP (maker of check) in the sum of \$533,727.00 payable to Turner Construction (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of Heritage Senior Residence, Lp (owner) located at 1120 Moy St Houston TX 77007 (location) to the following extent: General Construction (job description).

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to Turner Construction (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date 5/25/2021

Turner Construction (Company name)

By [Signature] (Signature)

Sr. Project Manager (Title)

STATE OF TEXAS §

§

COUNTY OF Harris §

This instrument was subscribed and sworn to before me on this 25 day of May, 2021, by

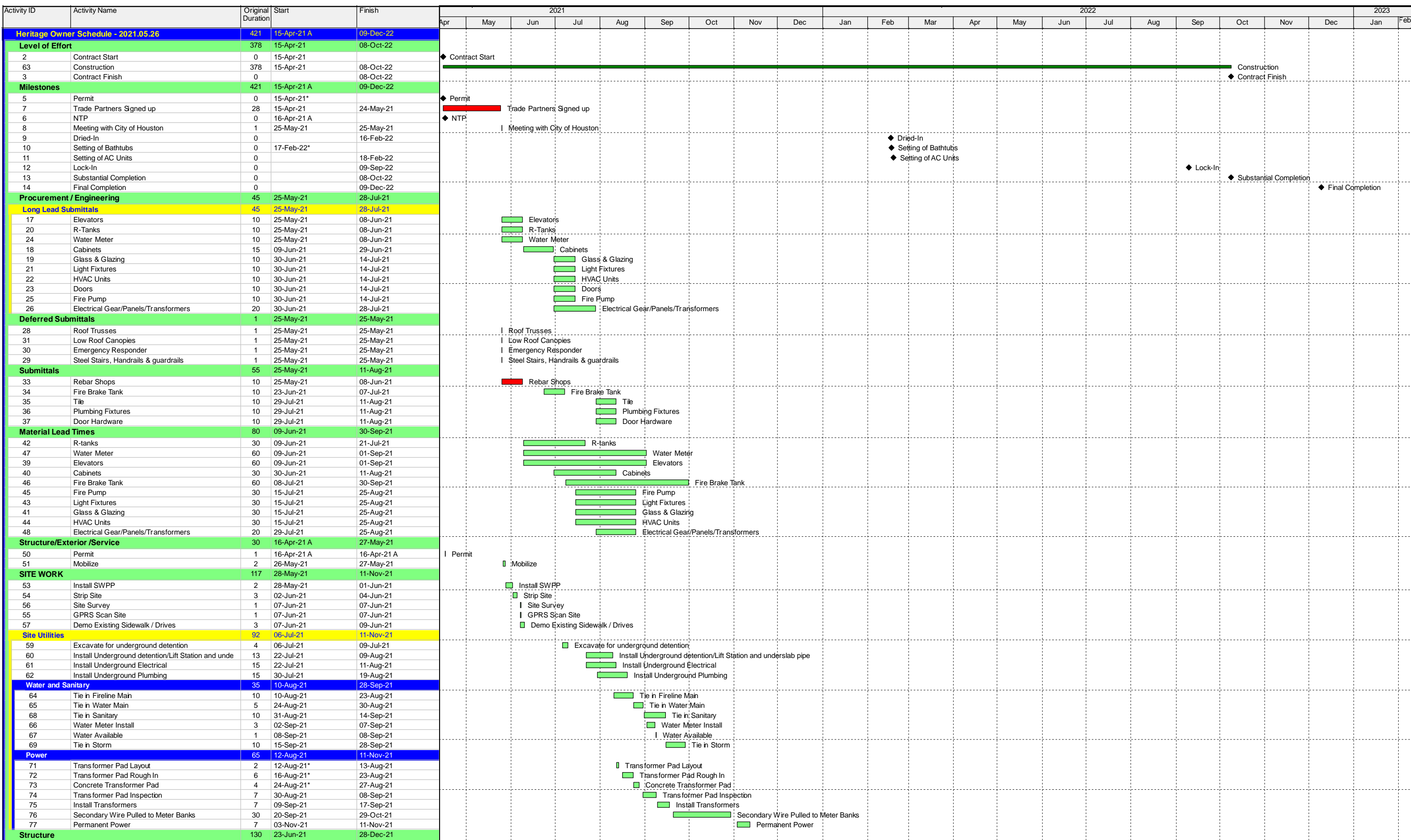
Ken Nguyen (name), Sr. Project Manager (job title) of

Turner Construction Company (company name).

NOTARY PUBLIC, STATE OF TEXAS







█ Remaining Level of Effort   
 █ Actual Work   
 █ Critical Remaining Work  
█ Actual Level of Effort   
 █ Remaining Work   
 ◆ Milestone

Start Date: 15-Apr-21  
 Finish Date: 09-Dec-22

Heritage Owner Schedule - 2021.05.26  
 Page 1 of 8



















20205

Ella Grand

Force Majeure Request

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**SEPTEMBER 2, 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 20205 Ella Grand in Houston

**RECOMMENDED ACTION**

**WHEREAS**, an award of Competitive (9%) Housing Tax Credits in the amount of \$1,500,000 to 20205 Ella Grand (the Development) was approved by the Board in July 2020;

**WHEREAS**, staff executed a Carryover Allocation Agreement with the Development Owner on December 31, 2020, 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, 2022, and the 10% Test would be submitted by July 1, 2021 (which was subsequently extend to September 30, 2021);

**WHEREAS**, on July 14, 2021, the Department received a request to extend the placement in service deadline, and staff determined that an extension of the 10% Test deadline was appropriate;

**WHEREAS**, other than in situations covered by force majeure, 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 Ella Grand under an application of the force majeure rule is approved, with the 2021 Qualified Allocation Plan and Uniform Multifamily Rules, and the 2021 Program Calendar applicable to the Development for the purposes of the force majeure event;

**FURTHER RESOLVED**, that the Department may issue a 2021 Carryover Agreement, with the extended 10% Test deadline of July 1, 2022 and 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 \$1,500,000 in Competitive (9%) Housing Tax Credits to the Development was approved by the Board in July 2020. The Development proposed the New Construction of 145 Units for an Elderly, mixed income population in Houston. Staff executed a Carryover Allocation Agreement with the Development Owner on December 31, 2020, 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, 2022, and the 10% Test would be submitted by July 1, 2021 (which was subsequently extended to September 30, 2021). On July 14, 2021, the Department received a request from the Development Owner to extend the placement in service deadline from December 31, 2022, to December 31, 2023, under the provisions of 10 TAC §11.6(5) related to Credits Returns Resulting from Force Majeure Events. Staff determined that an extension of the 10% Test deadline was appropriate.

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).

### **Presidentially Declared Major Disaster**

Of the circumstances listed in the rule, the request indicates that force majeure might be triggered by a presidentially declared major disaster, particularly the national emergency of the COVID-19 Pandemic and related disruptions. Per the request, the pandemic has resulted in:

Materials shortages and cost increases: per the request, the Development Owner has had great difficulty getting reliable construction cost bids due to the historically high cost of lumber and other scarce materials. The Covid-19 pandemic has caused extreme shortages in the lumber market as well as in other construction commodity and labor markets which has drastically increased construction costs. These conditions have created significant challenges to the financial feasibility and development timeline for this project.



Per the request, the Development Owner intends to apply to TDHCA for a direct loan under its current notice of funding availability for the National Housing Trust Fund. Since those funds cannot be used on developments that have begun construction, the Owner cannot begin construction until TDHCA makes these funds available later in 2021.

The request includes a letter from the Development Owner describing the delays and increased costs. 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 \$1,500,000 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, and documentation for the 10% Test would be submitted by July 1, 2022. For the purposes of the force majeure event, the 2021 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 December 31, 2022. Because the Development Owner anticipates not meeting the placed in service deadline on December 31, 2022, the credits are expected to be returned. If the Development Owner returns the credits, the credits would first be made available in the subregion from which they were originally awarded, pursuant to 10 TAC §11.6(2), related to returned credits; in this case Region 6, Urban. There are pending Applications on the waiting list from that subregion. The next Application requests \$1,022,258, which is less than the amount of credits that would be returned.

Staff recommends the Board approve the 10% Test extension and approve the request for treatment of Ella Grand under an application of the force majeure rule.



July 14, 2021

VIA EMAIL ([leeann.chance@tdhca.state.tx.us](mailto:leeann.chance@tdhca.state.tx.us))

Lee Ann Chance, Senior Asset Manager  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, TX 78701

Re: Request for 2021 allocation of credits pursuant to Section 11.6(5) Force Majeure  
Ella Grand (#20205)

Dear Lee Ann:

This letter serves as a formal request for an allocation of 2021 credits in exchange for the return of our 2020 credits for the above-mentioned development, pursuant to Section 11.6(5) of the 2020 Qualified Allocation Plan.

We are requesting this exchange of credits at this time because our investor and lender—RBC and Capital One—are concerned about closing this transaction in the fourth quarter of 2021, when we only have until December 2022 to complete construction on this 145-unit development. By way of history, Ella Grand had a very late start for the 2020 competitive cycle. Most Commitment Notices were issued by TDHCA for successful 2020 competitive 9% applications around August 25, 2020. Ella Grand was first on the waitlist for Region 6 (Urban) and in January 2021, TDHCA received returned credits from a terminated 2020 awardee (Campanile on Briar Hollow, #20223) and issued a formal award of 2020 credits to Ella Grand on February 5, 2021. As we were uncertain that this project would receive funding through the 2020 9% competitive program, our team was unable to move forward with design work until earlier this year.


Furthermore, our construction period will be at least approximately 15 months, so in order to make the original placed in service extension, we would need to close no later than September 30<sup>th</sup> of this year. Closing by September 30<sup>th</sup> is impossible because we have had great difficulty getting reliable construction cost bids due to the historically high cost of lumber and other scarce materials. Due to these unexpectedly high-cost increases, we intend to apply to TDHCA for a direct loan under its current notice of funding availability for national housing trust funds. I understand that those funds cannot be used on developments that have begun construction, which means that we cannot begin construction until TDHCA makes these funds available, which I understand to be in the October to December 2021 timeframe. If we close on that direct loan in November 2021, for example, we will have insufficient time to complete construction in time for the December 31, 2022 place-in-service deadline.

Section 11.6(5), which defines “force majeure” as “. . . national emergency or insurrection; . . . ; supplier failures; or materials or labor shortages.” In this case, the Covid-19 pandemic, which has been deemed a national emergency, has caused extreme shortages in the lumber market as well as in other construction commodity and labor markets which has drastically increased construction costs. These conditions have created significant challenges to the financial feasibility and development timeline for this project.

Based on the foregoing, we respectfully request that TDHCA award this development 2021 credits, in exchange for the return of its 2020 credits, which would re-set all deadlines back one year. Should you have any questions or need any more information, please contact me at (512) 328-3232 ext. 4505 or JanineS@dmacompanies.com. Thank you for your consideration.

Sincerely,

DMA DEVELOPMENT COMPANY, LLC

A handwritten signature in blue ink, appearing to read "Janine Sisak". The signature is stylized with a large, looping initial "J" and a long horizontal stroke at the end.

Janine Sisak  
Senior Vice President/General Counsel

cc: Marni Holloway

20212

Vernon Pioneer Crossing  
Force Majeure Request

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**SEPTEMBER 2, 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 20212 Vernon Pioneer Crossing in Vernon

**RECOMMENDED ACTION**

**WHEREAS**, an award of Competitive (9%) Housing Tax Credits in the amount of \$824,345 to 20212 Vernon Pioneer Crossing (the Development) was approved by the Board in July 2020;

**WHEREAS**, staff executed a Carryover Allocation Agreement with the Development Owner on October 12, 2020, 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, 2022, and documentation for the 10% Test would be submitted by July 1, 2021 (which was subsequently extend to September 30, 2021);

**WHEREAS**, on July 27, 2021, the Department received a request to extend the placement in service deadline and the September 30, 2021 10% Test deadline;

**WHEREAS**, other than in situations covered by force majeure, 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 Vernon Pioneer Crossing under an application of the force majeure rule is approved, with the 2021 Qualified Allocation Plan and Uniform Multifamily Rules, and the 2021 Program Calendar applicable to the Development for the purposes of the force majeure event;

**FURTHER RESOLVED**, that the Department may issue a 2021 Carryover Agreement, with the extended 10% Test deadline of July 1, 2022 and 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 \$824,345 in Competitive (9%) Housing Tax Credits to the Development was approved by the Board in July 2020. The Development proposed the New Construction of 64 Units for an Elderly, mixed income population in Vernon. Staff executed a Carryover Allocation Agreement with the Development Owner on October 12, 2020, 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, 2022, and documentation for the 10% Test would be submitted by July 1, 2021 (which was subsequently extended to September 30, 2021). On July 27, 2021, the Department received a request from the Development Owner to extend the 10% Test deadline, and to extend the placement in service deadline from December 31, 2022, to December 31, 2023, 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).

### **Presidentially Declared Major Disaster**

Of the circumstances listed in the rule, the request indicates that force majeure might be triggered by a presidentially declared major disaster, particularly the national emergency of the COVID-19 Pandemic and related disruptions. Per the request, the pandemic has resulted in:

Materials shortages and cost increases: per the request, the Development Owner has had great difficulty getting reliable construction cost bids due to the historically high cost of lumber and other scarce materials. The Covid-19 pandemic has caused extreme shortages in the lumber market as well as in other construction commodity and labor markets which has drastically increased construction costs. These conditions have created significant challenges to the financial feasibility and development timeline for this project.

Per the request, the Development Owner intends to apply to TDHCA for a direct loan under its current notice of funding availability for the National Housing Trust Funds. Since those funds cannot be used on

developments that have begun construction, the Owner cannot begin construction until TDHCA makes these funds available later in 2021.

The request includes a letter from the Development Owner describing the delays and increased costs. 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 \$824,345 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, and documentation for the 10% Test would be submitted by July 1, 2022. For the purposes of the force majeure event, the 2021 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 December 31, 2022. Because the Development Owner anticipates not meeting the placed in service deadline on December 31, 2022, the credits are expected to be returned. If the Development Owner returns the credits, the credits would first be made available in the subregion from which they were originally awarded, pursuant to 10 TAC §11.6(2), related to returned credits; in this case Region 2, Rural. There are pending Applications on the waiting list from that subregion. The next Application requests \$600,000, which is less than the amount of credits that would be returned.

Staff recommends the Board approve the 10% Test extension and approve the request for treatment of Vernon Pioneer Crossing under an application of the force majeure rule.



July 27, 2021

Ms. Karen Treadwell  
Asset Manager  
Texas Department of Housing and Community Affairs  
211 E 11<sup>th</sup> Street  
Austin, Texas 78701

Via Email: [karen.treadwell@tdhca.state.tx.us](mailto:karen.treadwell@tdhca.state.tx.us)

Re: TDHCA HTC Application #20212 (MFDL #21505) – Vernon Pioneer Crossing,  
Vernon, TX

Dear Ms. Treadwell,

Vernon Pioneer Crossing, LLC (the “Owner”) received an allocation of Housing Tax Credits from the Texas Department of Housing and Community Affairs (“TDHCA”) for the construction of Vernon Pioneer Crossing (the “Development”). The Owner is required to meet the 10% test by September 30, 2021 and place the Development in service by December 31, 2022. Unfortunately, the Owner faces the possibility of not being able to meet these deadlines as required by §42(h)(1)(E)(i) & §42(h)(1)(E)(ii) of the Internal Revenue Code. The need for requesting an extension to meet the required 10% test and placed in service deadlines is the result of events that we believe should fall under the provisions of §11.6(5) of the 2021 Qualified Allocation Plan (“QAP”) relating to Force Majeure.

#### Background Information

The Development is located in Vernon, Texas, in Wilbarger County. The City of Vernon, and quite frankly the entire State of Texas, has experienced significant cost increases, supply chain issues, and labor shortages that as a whole have impacted and delayed the start of construction of the Development, which has had an adverse effect on the initial construction schedule and anticipated placed-in-service timelines. These issues are the direct result of not one, but two events that together have put extreme upward pricing pressure and timing constraints on the construction industry across the entire State of Texas. The two events affecting our development are Winter Storm Uri and the COVID-19 Pandemic.

#### Winter Storm Uri

Winter Storm Uri occurred between February 13-17, 2021, and the lasting effects of the damage have sent a shockwave throughout the State of Texas that is still being felt by many residences and businesses. The damages from the blackouts and harsh freezes are estimated to be at least \$195 billion, making it the costliest natural disaster in Texas and the United States as a whole.<sup>1</sup> This devastation has continued to put supply chain pressure on plumbing parts

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<sup>1</sup> Ivanova, Irina (February 25, 2021). "Texas winter storm costs could top \$200 billion — more than hurricanes Harvey and Ike". CBS News. Retrieved March 5, 2021





and services, drywall, appliances and flooring materials as repairs are still being made to many homes and businesses months after the event took place. These increased needs have negatively impacted the original construction budgets that were presented in the 2020 tax credit application.

### COVID-19 Pandemic

Globally, the COVID-19 Pandemic is an event that will forever change our lives as a world population. On March 11, 2020, the World Health Organization (WHO) declared COVID-19 a pandemic.<sup>2</sup> Two days later, March 13, 2020, Texas shuts down because of Gov. Abbott's State disaster declaration spanning all counties in the State of Texas<sup>3</sup>. For Texans, that was when the COVID-19 Pandemic became real, and our lives were forever changed. More than a year later, the shutdown has affected and continues to affect various global economies in a multitude of ways, but one thing can be said for all economies, supply chain and logistical challenges are here to stay for the unforeseeable future. The shutdown has affected Lumber, which rose as much as 288%<sup>4</sup> from the Development's originally budgeted estimates. However, Lumber is not the only culprit, windows, appliances, electrical supplies, labor shortages, resin shortages, and plumbing supplies have all contributed too, and been affected by the COVID-19 Pandemic aftershocks.

### Request

The Development has currently applied for funds from the 2021-3 NOFA which, if awarded, we believe will alleviate the cost increase constraints that have resulted from the devastating events listed above and should make the Development feasible once again. However, due to the inability to close on construction financing and the current requirement for construction to not have started, if utilizing the 2021-3 NOFA, we have now run into a time constraint that puts meeting the 10% Test and Placement in Service timelines in jeopardy. We request that the Owner be permitted to return the Tax Credits and that TDHCA reallocate the Tax Credits to the Owner in the current year in accordance with §11.6(5) of the 2021 QAP relating to Force Majeure. We believe the Owner and Development meet all the requirements in Section 11.6(5), in that:

1. The events that caused the delay occurred before issuance of 8609s and were sudden, unforeseen circumstances outside the control of the Development Owner.
2. The delays were not caused by willful negligence or acts of Owner, any Affiliate, or any other Related Party.
3. The Owner has provided evidence and a timeline of the events that was the direct result of the delays, see referenced footnotes 1, 2, 3, & 4.

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<sup>2</sup> <https://www.yalemedicine.org/news/covid-timeline>

<sup>3</sup> <https://www.kxan.com/news/coronavirus/365-days-of-covid-how-the-coronavirus-in-texas-unfolded-one-year-after-the-first-case/>

<sup>4</sup> <https://fortune.com/2021/06/10/lumber-prices-2021-chart-price-of-lumber-production-wood-supply-costs-update-june/>



4. Though there was little that could be done to mitigate the effects of Winter Storm Uri and the COVID-19 Pandemic, once a viable option was made available by TDHCA to assist with the cost increases resulting from these two disasters (2021-3 NOFA), the Owner immediately contacted the proposed financial partners of the Development and worked out a viable financing option that we believe will assist in making the Development feasible once again. The result of those discussions is that an application was submitted for funds under the 2021-3 NOFA (Application #21505). This was the fourth application submitted as evidenced in the July 22, 2021 MFDL Application Log, which demonstrates the Owner's best effort to mitigate additional delays as much as possible. Additionally, the Development was and remains properly insured, and TDHCA was notified of the Force Majeure events.
5. The Force Majeure threatens to prevent the Owner from meeting the 10% Test and Place in Service requirements of the original allocation.
6. The requested current year Carryover Agreement would allocate the same amount of Tax Credits as those that would be returned.
7. If granted and award under the 2021-3 NOFA, the Development continues to be financially feasible, as these MFDL funds would assist in offsetting the cost increases experienced by the Development resulting from Winter Storm Uri and the COVID-19 Pandemic. Additionally, there have not been any insurance proceeds received related to the Force Majeure event.

If you have any questions or would like to discuss these items further, please do not hesitate to contact me directly at (512) 785-3710 or via email at [lora@betcohousinglab.com](mailto:lora@betcohousinglab.com) .

Sincerely,



Lora Myrick, Principal  
BETCO Consulting, LLC

20272

Westwind of Dumas  
Force Majeure Request

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**SEPTEMBER 2, 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 20272 Westwind of Dumas in Dumas

**RECOMMENDED ACTION**

**WHEREAS**, an award of Competitive (9%) Housing Tax Credits in the amount of \$703,287 to 20272 Westwood of Dumas (the Development) was approved by the Board in July 2020;

**WHEREAS**, staff executed a Carryover Allocation Agreement with the Development Owner on October 12, 2020, 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, 2022, and the 10% Test would be submitted by July 1, 2021 (which was subsequently extend to September 30, 2021);

**WHEREAS**, on July 28, 2021, the Department received a request to extend the placement in service deadline and the September 30, 2021 10% Test deadline;

**WHEREAS**, other than in situations covered by force majeure, 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 2021 Qualified Allocation Plan and Uniform Multifamily Rules, and the 2021 Program Calendar applicable to the Development for the purposes of the force majeure event;

**FURTHER RESOLVED**, that the Department may issue a 2021 Carryover Agreement, with the extended 10% Test deadline of July 1, 2022 and 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 \$703,287 in Competitive (9%) Housing Tax Credits to the Development was approved by the Board in July 2020. The Development proposed the New Construction of 64 Units for a general, mixed income population in Dumas. Staff executed a Carryover Allocation Agreement with the Development Owner on October 12, 2020, 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, 2022, and documentation for the 10% Test would be submitted by July 1, 2021 (which was subsequently extended to September 30, 2021). On July 28, 2021, the Department received a request from the Development Owner to extend the 10% Test deadline, and to extend the placement in service deadline from December 31, 2022, to December 31, 2023, 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).

### **Presidentially Declared Major Disaster**

Of the circumstances listed in the rule, the request indicates that force majeure might be triggered by two presidentially declared major disasters: particularly Winter Storm Uri in Texas and the national emergency of the COVID-19 Pandemic and related disruptions. Per the request, the disasters have resulted in:

Materials shortages and cost increases: per the request, the freeze put supply chain pressure on plumbing parts and services, drywall, appliances and flooring materials. The shutdown affected prices of lumber, windows, appliances, electrical and plumbing supplies, and caused labor shortages.

Per the request, the Development Owner intends to apply to TDHCA for a direct loan under its current notice of funding availability for the National Housing Trust Fund. Since those funds cannot be used on

developments that have begun construction, the Owner cannot begin construction until TDHCA makes these funds available later in 2021.

The request includes a letter from the Development Owner describing the increased costs and steps they have taken since the award of credits. 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 \$703,287 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, and documentation for the 10% Test would be submitted by July 1, 2022. For the purposes of the force majeure event, the 2021 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 the 10% Test is due will remain September 30, 2021 and the date by which the Development must be placed in service will remain as December 31, 2022. Because the Development Owner anticipates not meeting the placed in service deadline on December 31, 2022, the credits are expected to be returned. If the Development Owner returns the credits, the credits would first be made available in the subregion from which they were originally awarded, pursuant to 10 TAC §11.6(2), related to returned credits; in this case Region 1, Rural. There are no pending Applications on the waiting list from that subregion, so the returned credits would go into the statewide collapse and would contribute to the next award.

Staff recommends the Board approve the 10% Test extension and approve the request for treatment of Westwind of Dumas under an application of the force majeure rule.



July 28, 2021

Ms. Marni Holloway  
Director of Multifamily Finance  
Texas Department of Housing and Community Affairs  
211 E 11<sup>th</sup> Street  
Austin, Texas 78701

Via Email: [marni.holloway@tdhca.state.tx.us](mailto:marni.holloway@tdhca.state.tx.us)

Re: TDHCA HTC Application #20272 (MFDL #21507) – Westwind of Dumas, Dumas, TX

Dear Ms. Holloway,

SCF Dumas 20, LP (the “Owner”) received an allocation of Housing Tax Credits from the Texas Department of Housing and Community Affairs (“TDHCA”) for the construction of Westwind of Dumas (the “Development”). The Owner is required to meet the 10% test by September 30, 2021 and place the Development in service by December 31, 2022. Unfortunately, the Owner faces the possibility of not being able to meet these deadlines as required by §42(h)(1)(E)(i) & §42(h)(1)(E)(ii) of the Internal Revenue Code. The need for requesting an extension to meet the required 10% test and placed in service deadlines is the result of events that we believe should fall under the provisions of §11.6(5) of the 2021 Qualified Allocation Plan (“QAP”) relating to Force Majeure.

#### Background Information

The Development is located in Dumas, Texas, in Moore County. The City of Dumas, and quite frankly the entire State of Texas, has experienced significant cost increases, supply chain issues, and labor shortages that as a whole have impacted and delayed the start of construction of the Development, which has had an adverse effect on the initial construction schedule and anticipated placed-in-service timelines. These issues are the direct result of not one, but two events that together have put extreme upward pricing pressure and timing constraints on the construction industry across the entire State of Texas. The two events affecting our development are Winter Storm Uri and the COVID-19 Pandemic.

#### Winter Storm Uri

Winter Storm Uri occurred between February 13-17, 2021, and the lasting effects of the damage have sent a shockwave throughout the State of Texas that is still being felt by many residences and businesses. The damages from the blackouts and harsh freezes are estimated to be at least \$195 billion, making it the costliest natural disaster in Texas and the United States as a whole.<sup>1</sup> This devastation has continued to put supply chain pressure on plumbing parts and services, drywall, appliances and flooring materials as repairs are still being made to many

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<sup>1</sup> Ivanova, Irina (February 25, 2021). "Texas winter storm costs could top \$200 billion — more than hurricanes Harvey and Ike". CBS News. Retrieved March 5, 2021



homes and businesses months after the event took place. These increased needs have negatively impacted the original construction budgets that were presented in the 2020 tax credit application.

### COVID-19 Pandemic

Globally, the COVID-19 Pandemic is an event that will forever change our lives as a world population. On March 11, 2020, the World Health Organization (WHO) declared COVID-19 a pandemic.<sup>2</sup> Two days later, March 13, 2020, Texas shuts down because of Gov. Abbott's State disaster declaration spanning all counties in the State of Texas<sup>3</sup>. For Texans, that was when the COVID-19 Pandemic became real, and our lives were forever changed. More than a year later, the shutdown has affected and continues to affect various global economies in a multitude of ways, but one thing can be said for all economies, supply chain and logistical challenges are here to stay for the unforeseeable future. The shutdown has affected Lumber, which rose as much as 288%<sup>4</sup> from the Development's originally budgeted estimates. However, Lumber is not the only culprit, windows, appliances, electrical supplies, labor shortages, resin shortages, and plumbing supplies have all contributed too, and been affected by the COVID-19 Pandemic aftershocks.

### Request

The Development has currently applied for funds from the 2021-3 NOFA which, if awarded, we believe will alleviate the cost increase constraints that have resulted from the devastating events listed above and should make the Development feasible once again. However, due to the inability to close on construction financing and the current requirement for construction to not have started, if utilizing the 2021-3 NOFA, we have now run into a time constraint that puts meeting the 10% Test and Placement in Service timelines in jeopardy. We request that the Owner be permitted to return the Tax Credits and that TDHCA reallocate the Tax Credits to the Owner in the current year in accordance with §11.6(5) of the 2021 QAP relating to Force Majeure. We believe the Owner and Development meet all the requirements in Section 11.6(5), in that:

1. The events that caused the delay occurred before issuance of 8609s and were sudden, unforeseen circumstances outside the control of the Development Owner.
2. The delays were not caused by willful negligence or acts of Owner, any Affiliate, or any other Related Party.
3. The Owner has provided evidence and a timeline of the events that was the direct result of the delays, see referenced footnotes 1, 2, 3, & 4.

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<sup>2</sup> <https://www.yalemedicine.org/news/covid-timeline>

<sup>3</sup> <https://www.kxan.com/news/coronavirus/365-days-of-covid-how-the-coronavirus-in-texas-unfolded-one-year-after-the-first-case/>

<sup>4</sup> <https://fortune.com/2021/06/10/lumber-prices-2021-chart-price-of-lumber-production-wood-supply-costs-update-june/>





4. Though there was little that could be done to mitigate the effects of Winter Storm Uri and the COVID-19 Pandemic, once a viable option was made available by TDHCA to assist with the cost increases resulting from these two disasters (2021-3 NOFA), the Owner immediately contacted the proposed financial partners of the Development and worked out a viable financing option that we believe will assist in making the Development feasible once again. The result of those discussions is that an application was submitted for funds under the 2021-3 NOFA (Application #21507). This application was accepted on July 20, 2021 as evidenced in the July 22, 2021 MFDL Application Log, which demonstrates the Owner's best effort to mitigate additional delays as much as possible. Additionally, the Development was and remains properly insured, and TDHCA was notified of the Force Majeure events.
5. The Force Majeure threatens to prevent the Owner from meeting the 10% Test and Place in Service requirements of the original allocation.
6. The requested current year Carryover Agreement would allocate the same amount of Tax Credits as those that would be returned.
7. If granted and award under the 2021-3 NOFA, the Development continues to be financially feasible, as these MFDL funds would assist in offsetting the cost increases experienced by the Development resulting from Winter Storm Uri and the COVID-19 Pandemic. Additionally, there have not been any insurance proceeds received related to the Force Majeure event.

If you have any questions or would like to discuss these items further, please do not hesitate to contact me directly at (512) 785-3710 or via email at [lora@betcohousinglab.com](mailto:lora@betcohousinglab.com) .

Sincerely,

Lora Myrick, Principal  
BETCO Consulting, LLC

20344

Merritt Sunset

Force Majeure Request

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**SEPTEMBER 2, 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 20344, Merritt Sunset in Midland

**RECOMMENDED ACTION**

**WHEREAS**, an award of Competitive (9%) Housing Tax Credits in the amount of \$1,301,492 to 20344 Merritt Sunset (the Development) was approved by the Board in July 2020;

**WHEREAS**, staff executed a Carryover Allocation Agreement with the Development Owner on December 30, 2020, 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, 2022, and the 10% Test would be submitted by July 1, 2021 (which was subsequently extend to September 30, 2021);

**WHEREAS**, on June 10, 2021, the Department received a request to extend the placement in service deadline, and staff determined that an extension of the 10% Test deadline was appropriate;

**WHEREAS**, other than in situations covered by force majeure, 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 Merritt Sunset under an application of the force majeure rule is approved, with the 2021 Qualified Allocation Plan and Uniform Multifamily Rules, and the 2021 Program Calendar applicable to the Development for the purposes of the force majeure event;

**FURTHER RESOLVED**, that the Department may issue a 2021 Carryover Agreement, with the extended 10% Test deadline of July 1, 2022 and 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 \$1,301,492 in Competitive (9%) Housing Tax Credits to the Development was approved by the Board in July 2020. The Development proposed the New Construction of 149 Units for a general, mixed income population in Midland. Staff executed a Carryover Allocation Agreement with the Development Owner on December 30, 2020, 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, 2022, and documentation for the 10% Test would be submitted by July 1, 2021 (which was subsequently extend to September 30, 2021). On June 10, 2021, the Department received a request from the Development Owner to extend the placement in service deadline from December 31, 2022, to December 31, 2023, under the provisions of 10 TAC §11.6(5) related to Credits Returns Resulting from Force Majeure Events. Staff determined that an extension of the 10% Test deadline was appropriate

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).

### **Presidentially Declared Major Disaster**

Of the circumstances listed in the rule, the request indicates that force majeure might be triggered by a presidentially declared major disaster, particularly the national emergency of the COVID-19 Pandemic and related disruptions. Per the request, the pandemic has resulted in:

Materials and labor shortages and cost increases: per the request, the Development Owner has had great difficulty getting bids from suppliers because of the volatility of pricing for lumber, HVAC systems, cabinetry, and electrical components. A shortage of steel cost them their plumbing and steel work contractors.

Per the request, location in the Permian Basin is an exacerbating factor. The COVID-19 pandemic triggered a decrease in oil prices, due to decline in travel and commercial activity. The Owner found that certain subcontractors were not willing to work in Midland.

The request includes letters of support for the extension from the Lender and the Investor. 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 \$1,301,492 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, and documentation for the 10% Test would be submitted by July 1, 2022. For the purposes of the force majeure event, the 2021 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 December 31, 2022. Because the Development Owner anticipates not meeting the placed in service deadline on December 31, 2022, the credits are expected to be returned. If the Development Owner returns the credits, the credits would first be made available in the subregion from which they were originally awarded, pursuant to 10 TAC §11.6(2), related to returned credits; in this case Region 12, Urban. There are no pending Applications on the waiting list from that subregion, so the credits would go to the statewide collapse and contribute to the next award.

Staff recommends the Board approve the 10% Test extension and the request for treatment of Merritt Sunset under an application of the force majeure rule.



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Direct Fax: 512-391-4707  
cbast@lockelord.com

June 10, 2021

**VIA EMAIL DELIVERY**

Marni Holloway  
Alena Morgan  
Rosalio Banuelos  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701-2410

Re: Merritt Sunset (the "**Development**")  
TDHCA File No. 20344

Greetings:

We represent DDC Merritt Sunset, Ltd., a Texas limited partnership ("**Owner**"), which submitted an Application<sup>1</sup> for Housing Tax Credits on or before February 28, 2020. An award of Tax Credits was conditionally approved on July 23, 2020, and the Commitment was received on November 7, 2020. At the time the Application was submitted, Owner contemplated a conservative 20-month construction schedule, which would allow for closing in the Spring of 2021 and completion before December 31, 2022. Upon receipt of the award, even before the Commitment was issued, Owner began working on updating its construction budget for submission of its HUD financing application. Over the past six months, Owner has encountered subcontractors who refused to bid or refused to hold a bid because of the volatility of pricing, not just for lumber, which has been widely reported, but for a variety of materials. These market conditions have now jeopardized Owner's ability to complete the Development by December 31, 2022. The investor limited partner is requiring assurance that the Tax Credits will remain available to Owner for its planned construction schedule, plus a three-month cushion, in order to close the financing. See Exhibit A. We are seeing numerous investors requiring such a cushion on the construction schedule, making the 2-year placement in service deadline difficult to achieve.

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<sup>1</sup> Capitalized terms used but not defined in this letter shall have the meanings assigned to them in the 2021 Qualified Allocation Plan (the "**QAP**").

### **Relief Sought**

Owner submits this request to return the Tax Credits and asks TDHCA to reallocate the Tax Credits in the current year pursuant to the "Force Majeure" provisions in Section 11.6(5) of the QAP.

### **Support for Force Majeure Conditions**

Pursuant to Section 11.6(5) of the QAP, a Force Majeure event includes supplier failures or materials or labor shortages that make construction activity impossible or materially impede its progress. We know TDHCA is well aware of the general construction market conditions that have changed dramatically since Applications were submitted in the first quarter of 2020. An article from the *Wall Street Journal*, attached as Exhibit B, provides a good general description.

Specific to this Development:

- When Owner sought an updated bid for HVAC systems in April 2021, it was advised that the subcontractor was experiencing the "biggest overall price increases" ever, exceeding 10%. See Exhibit C.
- The cabinetry subcontractor also indicated it would change its proposal, based upon increases in prices of lumber, hardware, and freight. See Exhibit D.
- After receiving a bid from an electrical subcontractor in October 2020, Owner was advised in April that pricing on wire and PVC pipe had gone up drastically, and the bid would need to be revised. See Exhibit E.
- After receiving a bid for steel work in February, the subcontractor advised that materials for the Development were no longer available, and the company would not be signing up work until supplies were in stock. See Exhibit F.
- A plumbing contractor stated that its supplier had no more pipes; a different supplier would need to be identified, and prices would increase. See Exhibit G.
- Recent data compiled by Matheus Lumber shows volatility in the lumber market and reports long lead times for supplies. See Exhibit H.
- A response from a subcontractor for trusses shows year-over-year increases in lumber prices, which shows dramatic change since the Tax Credit Application was filed. See Exhibit I.

Location in the Permian Basin is an exacerbating factor. The COVID-19 pandemic triggered a decrease in oil prices, due to decline in travel and commercial activity. Owner found that certain subcontractors were not willing to work in Midland, as discussed below.

**Factors for Consideration**

In accordance with Section 11.6(5) of the QAP, we believe Owner meets TDHCA's requirements for the relief sought, in that:

1. The delays imposed by the supplier failures and materials and labor shortages constitute "force majeure" events that have materially impeded Owner's ability to engage in construction activity.
2. When Owner submitted its Tax Credit Application in early 2020, it had no way of knowing what was to come with market conditions that are now commonly referred to as "unprecedented."
3. Owner has endeavored to mitigate the delays by reaching out to a variety of different subcontractors, expanding the pool of potential providers. It sought 182 bids. Of those requested to bid, 37 (20.3%) declined and 51 (28%) did not respond at all. A copy of Owner's spreadsheet for those who declined to bid is attached as Exhibit J.
4. Owner believes there is a reasonable likelihood that it will not be able to meet the placement in service deadline because of the delays experienced.
5. Owner has now finalized its construction budget and financing plans for the Development, and it remains viable. See supporting documentation from the lender and investor at Exhibit K.

We believe Owner has satisfied TDHCA's requirements for a reallocation of Tax Credits under Section 11.6(5) of the QAP and requests that this matter be considered at the next available Board meeting with a recommendation for approval. If additional information is required, please feel free to contact us.

Sincerely,



Cynthia L. Bast

cc: Denison Development



Exhibit A –	Request from Investor
Exhibit B --	Wall Street Journal Article
Exhibit C --	Correspondence with HVAC Subcontractor
Exhibit D --	Correspondence with Cabinetry Subcontractor
Exhibit E –	Correspondence with Electrical Subcontractor
Exhibit F --	Correspondence with Steel Subcontractor
Exhibit G --	Correspondence with Plumbing Subcontractor
Exhibit H –	Recent Lumber Volatility and Lead Time
Exhibit I –	Correspondence Regarding Trusses
Exhibit J --	Spreadsheet of Refusal to Bid
Exhibit K --	Letters from Lender and Investor

## Exhibit A

### Request from Investor

**From:** Adam Lavelle <[alavelle@creallc.com](mailto:alavelle@creallc.com)>  
**Sent:** Wednesday, May 5, 2021 3:22 PM  
**To:** Colby Denison <[colby@denisondevelopment.com](mailto:colby@denisondevelopment.com)>  
**Subject:** RE: Merritt Sunset - 2020 9% Allocation

Yes, we will want to verify the projected Construction Completion date is at least 3 months prior to TDHCA's required PIS date. This can be in the form of an letter from TDHCA acknowledging the extension or even a credit refresh if they are willing to do so.

We will need this prior to Closing

#### **Adam Lavelle**

*Vice President, Originator*  
Acquisitions



30 South Meridian St., Suite 400 / Indianapolis, IN 46204  
O: 317.808.7382 / C: 402.432.4164  
[alavelle@creallc.com](mailto:alavelle@creallc.com) / [CREALLC.com](http://CREALLC.com)

**Exhibit B**

***Wall Street Journal Article***

## POLITICS

# U.S. Manufacturers Blame Tariffs for Swelling Inflation

Some economists differ, saying removing tariffs on metal, lumber won't mean big drop in prices



Steel pipes being loaded for export in Handan, China, in April.

PHOTO: HU GAOLEI/SIPA ASIA/ZUMA PRESS

By [Yuka Hayashi](#) and [Josh Zumbrun](#)

May 30, 2021 5:30 am ET

 [Listen to Article](#) (7 minutes)

WASHINGTON—Economists and policy makers are debating whether stimulus spending and easy monetary policy are fueling inflation. Many businesses say there is another culprit that should share the blame: import tariffs.

The Trump administration implemented tariffs on products including lumber, steel and semiconductors to shield American companies from a glut of cheap imported products from China and other countries.

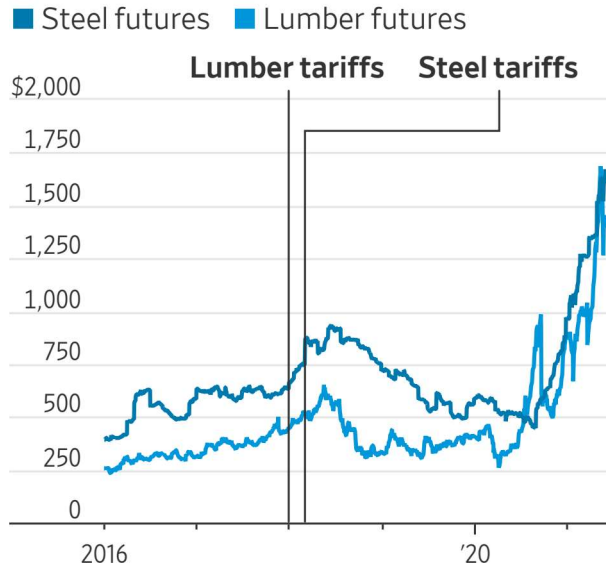
The tariffs have long been opposed by U.S. companies that import the goods and pay the levies. They are making a new push for the Biden administration to lift them, on grounds

that tariffs contribute to rising prices and product shortages that are accompanying the post-pandemic recovery.

## Lumber and Steel

Market prices of two critical commodities in construction climbed in the months after tariffs took effect, but recent price increases have been far more dramatic

### Benchmark futures contracts



Note: Most-actively traded hot-rolled coil steel and front-month random length lumber.

Source: FactSet

“I have had 15 price increases from my primary steel supplier since September,” said Scott Buehrer, president of B. Walter & Co., a Wabash, Ind., maker of fabricated metal products. “What’s the justification for these tariffs when you have sky-high steel prices?”

### WSJ NEWSLETTER

## Notes on the News

The news of the week in context, with Tyler Blint-Welsh.



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Some economists say the tariffs have had only muted effects on prices and that their removal won't do much to ease the price pressure.

Mr. Buehrer's company was among more than 300 manufacturers that wrote to Mr. Biden on May 6 asking him to immediately terminate 25% tariffs on steel and 10% levies on aluminum. The Biden administration has said it is reviewing the tariff policy but has no immediate plans to lift the tariffs.

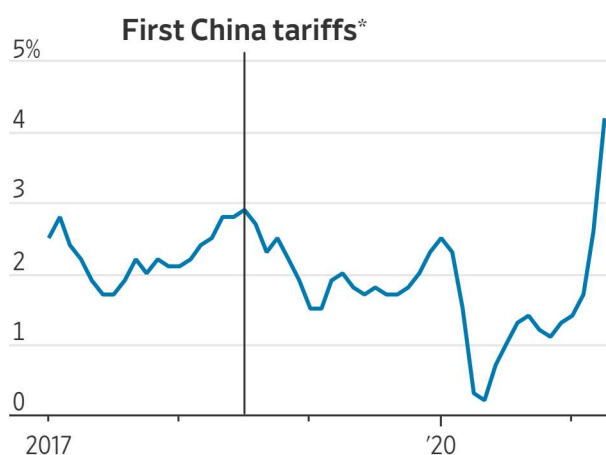
The manufacturers say the tariffs make their companies less competitive at a time when U.S. buyers, facing red-hot domestic demand, are paying 40% more for some steel products than their European peers.

Mr. Buehrer said he has cut his payroll by 10% to reduce costs as the prices of rolled steel nearly tripled since last fall. But labor unions and the steel industry are urging Mr. Biden to keep the metal tariffs in place, saying in a May 19 letter that the policy has enabled the industry to “restart idle mills, rehire laid-off workers and invest in the future.”

## Inflation Rate

The inflation rate fell after the tariffs first took effect. Now that inflation is higher again, companies are renewing calls for relief.

### Consumer Price Index, 12-month percent change



Source: Labor Department

“The tariffs have been in place since 2018 and there has been no inflationary pressure since then,” said Roy Houseman, legislative director at United Steelworkers. “The U.S. has

put trillions of dollars of stimulus in the economy. That is going to impart some inflationary pressure.”

Another industry wrestling with soaring prices is home-building.

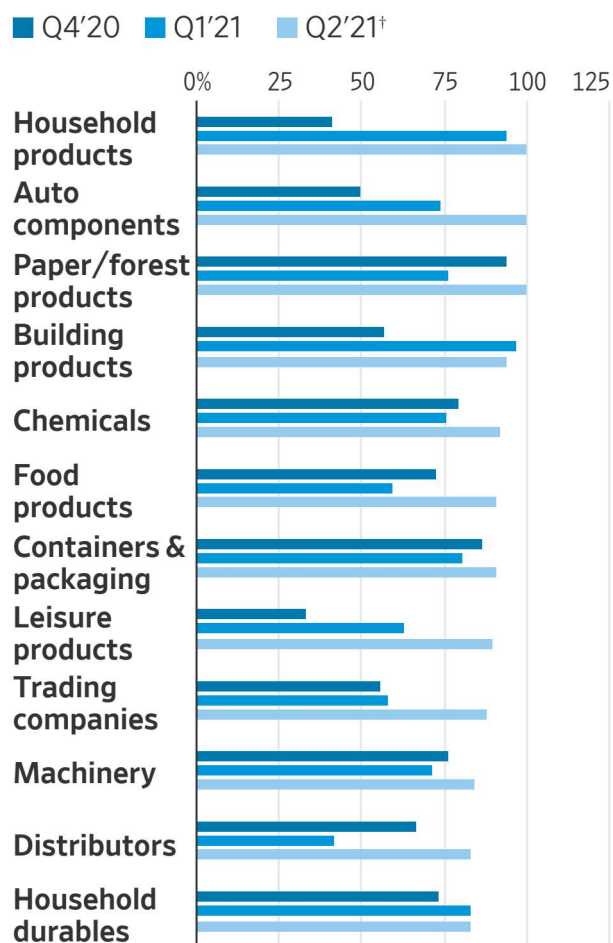
Futures contracts of lumber in May reached more than \$1,600 per thousand board feet—a record that is more than four times the typical price this time of year. The National Association of Home Builders estimates the higher lumber prices have added \$36,000 to the price of a typical single-family home.

“It doesn’t make any economic sense to be taxing things when you don’t have sufficient domestic supply,” said Robert Dietz, NAHB’s chief economist. “Appliances, washing machines, literally the nuts and bolts that go into making a home—screws and nails—are subject to some of the metal tariffs.”

## Inflation Chatter

Many industries with growing inflation concerns may benefit from tariff relief

### Proportion of company conference calls discussing topics linked to inflation



† As of May 18

Source: Panjiva

Home builders and lawmakers have pressed Mr. Biden to eliminate tariffs imposed in 2017 on Canadian softwood lumber, part of a decadeslong disagreement between U.S. and Canadian lumber producers.

Instead of removing the duty, the Commerce Department issued a preliminary decision May 21 to double the levy to 18%, concluding that Canadian imports are heavily subsidized. The tariffs will remain at the current 9% until a final decision on the proposed increase is made before November, a Commerce Department official said.



To provide a bipartisan process to grant importers exclusions for more than 2,000 items ranging from pillows to auto parts. The exclusion process, introduced by the Trump administration, expired in December but hasn't been renewed.

When the Trump administration's tariffs first went into effect, some economists warned they could spur inflation. But there appears to be a consensus that the impact has been muted.

"Given that the tariffs didn't have a big impact on consumer prices in the first place, I probably wouldn't expect their removal to result in significant downward pressure either," said Andrew Hunter, economist for Capital Economics, a research firm.

The muted impact is partly because tariffs only affect imports, which typically make up a relatively small share of the domestic market. For steel, imports represent roughly one-third of the total U.S. demand. And the share of the taxed imports is even smaller as the largest exporters to the U.S.—Canada, Brazil and Mexico—are exempted.

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#### SHARE YOUR THOUGHTS

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*Do you think rising commodity prices signal inflation? Join the conversation below.*

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Import prices of the goods subject to tariffs did rise initially. But many importers absorbed much of the increases, rather than pass the full increase on to consumers. Meanwhile, the prices of many goods not subject to the tariffs were declining, keeping the overall inflation rate low.

David Weinstein, a Columbia University economist, says tariffs may actually lower prices over the long term.

Mr. Weinstein and his colleagues examined changes in financial markets' inflation expectations based on bond-market yields around the time of 11 new tariff announcements by the U.S. and China between 2018 and 2019.

To their surprise, he said, they found that the events lowered inflationary expectations so that prices were expected to be roughly 1 percentage point lower five years later and 1.3 points lower 10 years later. Stock prices also fell.

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The latest economic news, analysis and data curated weekdays by WSJ's Jeffrey Sparshott.

PREVIEW

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“What the markets are predicting, and our data is suggesting, is that the trade war will have negative impacts on productivity,” he said, referring to tariffs’ hit to companies’ operations. “When you hold down productivity, you’ll have really big impacts down the road on the success of your economy, and prices as well.”

The U.S. Trade Representative’s Office, which is conducting a review of U.S. tariff policy, is studying whether easing tariffs, among other factors, could relieve the supply shortage for lumber and other products, Cecilia Rouse, chair of the White House Council of Economic Advisers, said during a May 18 briefing.

She added, however, trade policy is a “much bigger issue” than short-term market gyrations and that it needs to be worked out in the context of Washington’s global policy.

Write to Yuka Hayashi at [yuka.hayashi@wsj.com](mailto:yuka.hayashi@wsj.com) and Josh Zumbrun at [Josh.Zumbrun@wsj.com](mailto:Josh.Zumbrun@wsj.com)

### UPCOMING EVENTS

June

9

2021

9:00 AM - 4:00 PM EDT

WSJ Tech Health

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June

**17**

2021

12:00 PM - 1:45 PM EDT

WSJ Women In: Intelligent Investing

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June

**24**

2021

11:00 AM - 5:00 PM EDT

Global Food Forum

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**ADD TO CALENDAR**

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Exhibit C

Correspondence with HVAC Subcontractor

**From:** [robferguson@airclinic.net](mailto:robferguson@airclinic.net) [<mailto:robferguson@airclinic.net>]  
**Sent:** Friday, April 16, 2021 8:23 AM  
**To:** Martha Govea <[mgovea@denisondevelopment.com](mailto:mgovea@denisondevelopment.com)>  
**Cc:** Colby Denison <[colby@denisondevelopment.com](mailto:colby@denisondevelopment.com)>  
**Subject:** RE: Merritt Sunset - Air Clinic Current bid

Hi Martha...

I will do my best to keep pricing as close to last proposal possible... however, we are experiencing the biggest overall price increases I've ever had to deal with in our industry... The average increase across all of our products/manufacturers is 10.26%...

What date range would we expect the project to be active vertical construction ..? this year? Month..?



**ROB FERGUSON**  
210.369.9468 OFFICE  
210.722.6925 MOBILE  
9012 FM 1976, SUITE 501  
CONVERSE, TX 78109  
[robferguson@airclinic.net](mailto:robferguson@airclinic.net)  
[www.airclinic.net](http://www.airclinic.net)

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**From:** Martha Govea <[mgovea@denisondevelopment.com](mailto:mgovea@denisondevelopment.com)>  
**Sent:** Friday, April 16, 2021 8:18 AM  
**To:** [robferguson@airclinic.net](mailto:robferguson@airclinic.net)  
**Cc:** Colby Denison <[colby@denisondevelopment.com](mailto:colby@denisondevelopment.com)>  
**Subject:** Merritt Sunset - Air Clinic Current bid

Good morning,

I hope you are doing well.

I am reaching out to request the most current pricing for the Sunset project.

See attached the latest bids we have from you.

If pricing is the same, could you please update the dates?

Let us know if you have any questions.

Thank you,

**Martha Govea**  
**Denison Construction, Inc.**  
**PO Box 302707**  
**Austin, TX 78703**  
512-732-1226  
512-563-4415

**PHYSICAL ADDRESS:**  
**1608 West 34<sup>th</sup> St, Suite A**  
**Austin, TX 78703**

**Exhibit D**

**Correspondence with Cabinetry Subcontractor**

**From:** Dennis Jones [<mailto:dennisj@kicabs.com>]  
**Sent:** Friday, April 16, 2021 8:46 AM  
**To:** Martha Govea <[mgovea@denisondevelopment.com](mailto:mgovea@denisondevelopment.com)>; 'Dennis Jones' <[dennisj@kitchencabinetsinc.com](mailto:dennisj@kitchencabinetsinc.com)>  
**Cc:** Colby Denison <[colby@denisondevelopment.com](mailto:colby@denisondevelopment.com)>  
**Subject:** RE: Merritt Sunset - KCI Current bid

Good morning,  
As you probably already know there has been recent increases in lumber , hardware, and freight cost.  
So, I will have to revise my proposal.  
I will have the new proposal to you by Monday afternoon, (4/19)

Thank you.

Dennis Jones  
[MP- 972-880-0609](tel:MP-972-880-0609)  
KITCHEN CABINETS INC.  
2330 NW Dallas, St.  
Grand Prairie, TX. 75050

**From:** Martha Govea <[mgovea@denisondevelopment.com](mailto:mgovea@denisondevelopment.com)>  
**Sent:** Friday, April 16, 2021 8:06 AM  
**To:** Dennis Jones ([dennisj@kitchencabinetsinc.com](mailto:dennisj@kitchencabinetsinc.com)) <[dennisj@kitchencabinetsinc.com](mailto:dennisj@kitchencabinetsinc.com)>  
**Cc:** Colby Denison <[colby@denisondevelopment.com](mailto:colby@denisondevelopment.com)>  
**Subject:** Merritt Sunset - KCI Current bid  
**Importance:** High

Dennis,

I hope you are doing well.  
I am reaching out to request the most current pricing for cabinetry for the Sunset project.

See attached the latest bid we have from you.

If pricing is the same, could you please update the dates?

Let us know if you have any questions.

Thank you,

**Martha Govea**  
**Denison Construction, Inc.**  
**PO Box 302707**  
**Austin, TX 78703**

## Exhibit E

### Correspondence with Electrical Subcontractor

**From:** Juan Cantu <[juancantu@allbrightelectric.net](mailto:juancantu@allbrightelectric.net)>  
**Date:** April 19, 2021 at 11:14:21 AM CDT  
**To:** Martha Govea <[mgovea@denisondevelopment.com](mailto:mgovea@denisondevelopment.com)>  
**Cc:** Colby Denison <[colby@denisondevelopment.com](mailto:colby@denisondevelopment.com)>  
**Subject:** Re: Merritt Sunset (East & West) Revised Bid Proposal

Martha,

Good morning, hope all is well☺

Pricing on Wire & PVC have Drastically gone up, I definitely need to Revise our Proposal

Thanks,



**From:** Martha Govea <[mgovea@denisondevelopment.com](mailto:mgovea@denisondevelopment.com)>  
**Date:** Friday, April 16, 2021 at 8:13 AM  
**To:** Juan Cantu <[juancantu@allbrightelectric.net](mailto:juancantu@allbrightelectric.net)>  
**Cc:** Colby Denison <[colby@denisondevelopment.com](mailto:colby@denisondevelopment.com)>  
**Subject:** RE: Merritt Sunset (East & West) Revised Bid Proposal

Juan,

I hope you are doing well.

I am reaching out to request the most current pricing for the Sunset project.

See attached the latest bids we have from you.

If pricing is the same, could you please update the dates?

Let us know if you have any questions.

**From:** Juan Cantu [<mailto:juancantu@allbrightelectric.net>]  
**Sent:** Monday, March 29, 2021 9:24 AM  
**To:** Martha Govea <[mgovea@denisondevelopment.com](mailto:mgovea@denisondevelopment.com)>  
**Subject:** Re: Merritt Sunset (East & West) Revised Bid Proposal

Thank you 😊



**From:** Martha Govea <[mgovea@denisondevelopment.com](mailto:mgovea@denisondevelopment.com)>  
**Date:** Monday, March 29, 2021 at 9:19 AM  
**To:** Juan Cantu <[juancantu@allbrightelectric.net](mailto:juancantu@allbrightelectric.net)>  
**Subject:** RE: Merritt Sunset (East & West) Revised Bid Proposal

Juan,

We are still trying to close this deal.  
I don't have any information yet.

Thank you for following up. I will keep you in the loop.

**From:** Juan Cantu [<mailto:juancantu@allbrightelectric.net>]  
**Sent:** Monday, March 29, 2021 8:19 AM  
**To:** Martha Govea <[mgovea@denisondevelopment.com](mailto:mgovea@denisondevelopment.com)>  
**Subject:** Re: Merritt Sunset (East & West) Revised Bid Proposal

Martha,

Good morning, hope all is well 😊

Did you guys ever close or award the Electrical on this project ?

Thanks,



**From:** Martha Govea <[mgovea@denisondevelopment.com](mailto:mgovea@denisondevelopment.com)>  
**Date:** Thursday, January 21, 2021 at 2:30 PM



**To:** Juan Cantu <[juancantu@allbrightelectric.net](mailto:juancantu@allbrightelectric.net)>  
**Subject:** RE: Merritt Sunset (East & West) Revised Bid Proposal

Perfect. thank you.

Have a good day!

**From:** Juan Cantu <[juancantu@allbrightelectric.net](mailto:juancantu@allbrightelectric.net)>  
**Sent:** Thursday, January 21, 2021 2:16 PM  
**To:** Martha Govea <[mgovea@denisondevelopment.com](mailto:mgovea@denisondevelopment.com)>  
**Subject:** Re: Merritt Sunset (East & West) Revised Bid Proposal

Here you go

Thanks 😊



**From:** Martha Govea <[mgovea@denisondevelopment.com](mailto:mgovea@denisondevelopment.com)>  
**Date:** Thursday, January 21, 2021 at 2:07 PM  
**To:** Juan Cantu <[juancantu@allbrightelectric.net](mailto:juancantu@allbrightelectric.net)>  
**Subject:** RE: Merritt Sunset (East & West) Revised Bid Proposal

Perfect. is there a way you can send it to me with today's date?

**From:** Juan Cantu <[juancantu@allbrightelectric.net](mailto:juancantu@allbrightelectric.net)>  
**Sent:** Thursday, January 21, 2021 2:02 PM  
**To:** Martha Govea <[mgovea@denisondevelopment.com](mailto:mgovea@denisondevelopment.com)>  
**Subject:** Re: Merritt Sunset (East & West) Revised Bid Proposal

Martha,

The only thing I see that actually went up in price is PVC but we are not doing your Utility Conduits so we should be ok with Previous Proposal.

Let us know what we can do for you and thank you again for considering us on this project 😊

Best Regards,



**From:** Martha Govea <[mgovea@denisondevelopment.com](mailto:mgovea@denisondevelopment.com)>  
**Date:** Thursday, January 21, 2021 at 10:56 AM  
**To:** Juan Cantu <[juancantu@allbrightelectric.net](mailto:juancantu@allbrightelectric.net)>  
**Subject:** RE: Merritt Sunset (East & West) Revised Bid Proposal

Juan,

I am following up.

Thank you,

**From:** Martha Govea  
**Sent:** Tuesday, January 19, 2021 12:11 PM  
**To:** Juan Cantu <[juancantu@allbrightelectric.net](mailto:juancantu@allbrightelectric.net)>  
**Subject:** Merritt Sunset (East & West) Revised Bid Proposal  
**Importance:** High

Good morning,

I am reaching out to request the most current bids for the Merritt Sunset project in Midland, TX.

Updated bid due date is 1.22.

We are getting close to break ground and we need the most current price.

If you have any questions, please don't hesitate to reach out.

Thank you,

**From:** Martha Govea  
**Sent:** Monday, January 4, 2021 7:58 AM  
**To:** 'Juan Cantu' <[juancantu@allbrightelectric.net](mailto:juancantu@allbrightelectric.net)>  
**Subject:** RE: Merritt Sunset - revise proposal

Juan,

Happy New Year!!

No, we are still working on closing the deal. We should have more information by the end of this month. I will then reach out to you.

Thank you for following up!!

**From:** Juan Cantu <[juancantu@allbrightelectric.net](mailto:juancantu@allbrightelectric.net)>  
**Sent:** Saturday, January 2, 2021 2:05 PM  
**To:** Martha Govea <[mgovea@denisondevelopment.com](mailto:mgovea@denisondevelopment.com)>  
**Subject:** Re: Merritt Sunset - revise proposal

Martha,

Happy New Year, hope all is well☺

Haven't heard anything from you guys, has this project been Awarded ?

Thanks,



**From:** Martha Govea <[mgovea@denisondevelopment.com](mailto:mgovea@denisondevelopment.com)>  
**Date:** Tuesday, October 20, 2020 at 1:21 PM  
**To:** Juan Cantu <[juancantu@allbrightelectric.net](mailto:juancantu@allbrightelectric.net)>  
**Subject:** RE: Merritt Sunset - revise proposal

Received.

Thank you,

**From:** Juan Cantu <[juancantu@allbrightelectric.net](mailto:juancantu@allbrightelectric.net)>  
**Sent:** Tuesday, October 20, 2020 1:17 PM  
**To:** Martha Govea <[mgovea@denisondevelopment.com](mailto:mgovea@denisondevelopment.com)>  
**Subject:** Re: Merritt Sunset - revise proposal

Here you go Martha

Thanks and let us know if you need anything else



**From:** Martha Govea <[mgovea@denisondevelopment.com](mailto:mgovea@denisondevelopment.com)>

**Date:** Tuesday, October 20, 2020 at 12:46 PM

**To:** Juan Cantu <[juancantu@allbrightelectric.net](mailto:juancantu@allbrightelectric.net)>

**Subject:** RE: Merritt Sunset - revise proposal

Yes, please.

Add bonding as options.

Update the date on your proposal.

Thank you,

**From:** Juan Cantu <[juancantu@allbrightelectric.net](mailto:juancantu@allbrightelectric.net)>

**Sent:** Tuesday, October 20, 2020 12:33 PM

**To:** Martha Govea <[mgovea@denisondevelopment.com](mailto:mgovea@denisondevelopment.com)>

**Subject:** Re: Merritt Sunset - revise proposal

Add 6% to Total Amount

Would you like for me to Revise Proposal ?



**From:** Martha Govea <[mgovea@denisondevelopment.com](mailto:mgovea@denisondevelopment.com)>

**Date:** Friday, October 16, 2020 at 3:13 PM

**To:** Juan Cantu <[juancantu@allbrightelectric.net](mailto:juancantu@allbrightelectric.net)>

**Subject:** RE: Merritt Sunset - revise proposal

We will need a bond to cover the total amount of your contract.

Thank you,

**From:** Juan Cantu <[juancantu@allbrightelectric.net](mailto:juancantu@allbrightelectric.net)>  
**Sent:** Friday, October 16, 2020 3:12 PM  
**To:** Martha Govea <[mgovea@denisondevelopment.com](mailto:mgovea@denisondevelopment.com)>  
**Subject:** Re: Merritt Sunset - revise proposal

Martha,

They are asking me what type of Bond do we need ?

Thanks,



**From:** Martha Govea <[mgovea@denisondevelopment.com](mailto:mgovea@denisondevelopment.com)>  
**Date:** Wednesday, October 14, 2020 at 8:01 AM  
**To:** "[juancantu@allbrightelectric.net](mailto:juancantu@allbrightelectric.net)" <[juancantu@allbrightelectric.net](mailto:juancantu@allbrightelectric.net)>  
**Subject:** RE: Merritt Sunset - revise proposal

Juan,

I hope you are doing well.

Do you have an update? please see below.

Thank you,

**From:** Martha Govea  
**Sent:** Thursday, October 8, 2020 2:43 PM  
**To:** [juancantu@allbrightelectric.net](mailto:juancantu@allbrightelectric.net)  
**Subject:** RE: Merritt Sunset - revise proposal  
**Importance:** High

Juan,

Can you please add bonding amount for the total amount of your proposal?

Thank you,

**From:** Martha Govea  
**Sent:** Thursday, October 8, 2020 12:37 PM

**To:** [juancantu@allbrightelectric.net](mailto:juancantu@allbrightelectric.net)

**Subject:** Merritt Sunset - revise proposal

**Importance:** High

Juan,

I hope you are doing well.. can you please confirm this is the most current bid? if you need to update pricing, please do so and send revised proposal.

Of you don't have to make any changes, please update the date on your proposal.

Here is the most current set (no changes):

<https://www.dropbox.com/sh/i06kj3574tkx4iu/AABYsqTkQpBPfwg9xEw0LRn5a?dl=0>

I appreciate your help!

Have a good day

**Martha Govea**  
**Denison Construction, Inc.**  
**PO Box 302707**  
**Austin, TX 78703**  
512-732-1226  
512-563-4415

**PHYSICAL ADDRESS:**  
**1608 West 34<sup>th</sup> St, Suite A**  
**Austin, TX 78703**

**Exhibit F**

**Correspondence with Steel Subcontractor**

## Martha Govea

---

**From:** Brad Hahn <bradh@suddenlinkmail.com>  
**Sent:** Tuesday, May 25, 2021 3:10 PM  
**To:** Martha Govea  
**Cc:** Colby Denison  
**Subject:** RE: Merritt Sunset - Lone Star Steel

Martha,

Material costs have continued to escalate, but the pricing I sent back in February should still be a good budget number; however, the major issue continues to be supply.

I'm not sure what your projected schedule is, but I am currently not signing up new work. Hopefully, the supply chain will catch up soon, and we can all go back to work.

Thanks again,

**Brad Hahn**  
**Lone Star Steel**  
**Office 936 856 1433**  
**Fax 936 856 1430**  
**Mobile 936 264 7061**

---

**From:** Martha Govea [mailto:mgovea@denisondevelopment.com]  
**Sent:** Tuesday, May 25, 2021 11:27 AM  
**To:** Brad Hahn  
**Cc:** Colby Denison  
**Subject:** RE: Merritt Sunset - Lone Star Steel  
**Importance:** High

Brad,

I am following up.  
Could you please send us the most current bid for the Merritt Sunset Project?

We need to update our budget for our investors.

Thank you,

---

**From:** Brad Hahn [mailto:bradh@suddenlinkmail.com]  
**Sent:** Tuesday, April 20, 2021 6:58 PM  
**To:** Martha Govea <mgovea@denisondevelopment.com>  
**Cc:** Colby Denison <colby@denisondevelopment.com>  
**Subject:** RE: Merritt Sunset - Lone Star Steel

Martha,

Thanks for following up. Material pricing has increased from the proposal I sent in February. The major issue now is shortages, the most common material sizes for your project are no longer a stock item at suppliers.



I'll run back through this pricing again, if you'd like, but until material is available I'd be concerned about signing up new work and not being able to perform.

Let me know if you'd like to see a budget based proposal.

Thanks,

**Brad Hahn**  
**Lone Star Steel**  
**Office 936 856 1433**  
**Fax 936 856 1430**  
**Mobile 936 264 7061**

---

**From:** Martha Govea [<mailto:mgovea@denisondevelopment.com>]  
**Sent:** Tuesday, April 20, 2021 8:41 AM  
**To:** Brad Hahn  
**Cc:** Colby Denison  
**Subject:** RE: Merritt Sunset - Lone Star Steel

Brad,

I am following up.

Let us know if you have any questions.

Thank you,

---

**From:** Martha Govea  
**Sent:** Friday, April 16, 2021 10:03 AM  
**To:** Brad Hahn <[bradh@suddenlinkmail.com](mailto:bradh@suddenlinkmail.com)>  
**Cc:** 'colby@denisondevelopment.com' <[colby@denisondevelopment.com](mailto:colby@denisondevelopment.com)>  
**Subject:** Merritt Sunset - Lone Star Steel  
**Importance:** High

Brad,

I hope you are doing well.

I am reaching out to request the most current pricing for the Sunset project.

Let us know if you have any questions.

Thank you,

**Martha Govea**  
**Denison Construction, Inc.**  
**PO Box 302707**  
**Austin, TX 78703**  
512-732-1226

512-563-4415

**PHYSICAL ADDRESS:  
1608 West 34<sup>th</sup> St, Suite A  
Austin, TX 78703**

## Exhibit G

### Correspondence with Plumbing Subcontractor

**From:** Martha Govea  
**Sent:** Thursday, April 22, 2021 8:58 AM  
**To:** Colby Denison <[colby@denisondevelopment.com](mailto:colby@denisondevelopment.com)>  
**Cc:** Mona Amin <[mona@denisondevelopment.com](mailto:mona@denisondevelopment.com)>  
**Subject:** Merritt Sunset bids update

Colby,

Brad with Lone Star Steel called me yesterday. He wants to know what you think about his email (see below) he is concerned to comply with any new contracts due to material shortage.

He is not the only one with this problem. The plumbing subcontractor called me and explained that some of the pipes' manufacturers are not making certain type of pipes and they have to find other manufacturers, this is causing high demand and higher prices. He is reviewing our project one more time before submitting revised proposal.

Same with Trusses...

I am still waiting for some quotes. Today, I am sending a follow up email to the subs.

Thank you,

## **Exhibit H**

### **Recent Lumber Volatility and Lead Time**

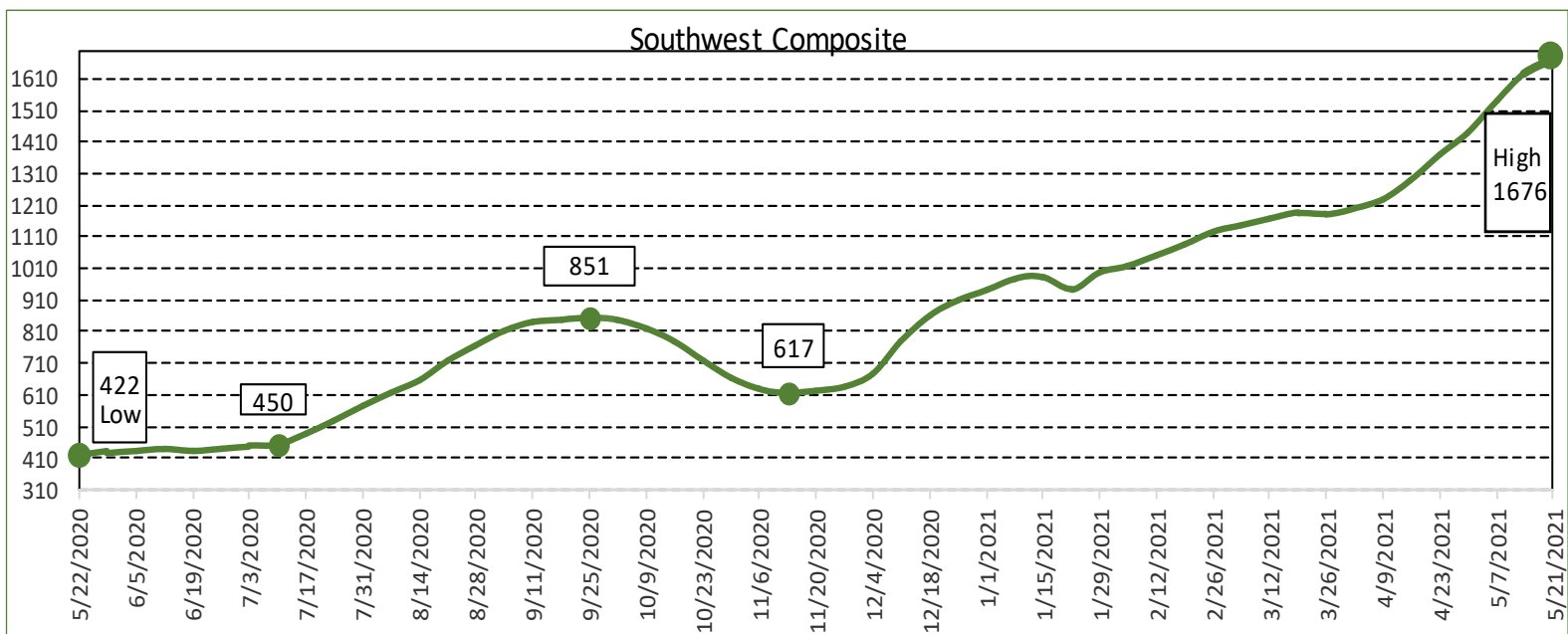
## Wood Brief

	5/21	5/14	+/-	1 yr Ago
2x4 9' #2 Doug Fir	1949	1936	13	458
2x6 9' #2 Doug Fir	2001	1967	34	461
2x4 9' SPF #2	1823	1807	16	419
2x4 #3 SYP	1158	1139	19	335
2x4 #2 SYP	1409	1394	15	489
2x6 #3 SYP	1021	1002	19	310
2x12 #2 SYP	1999	1982	17	517
4x8 7/16" OSB	1494	1382	112	303
4x8 23/32" OSB T&G	1812	1676	136	488
Southwest Index	\$1,676	\$1,626	50	\$422

### Specialty Products Division

*Don't Forget - Matheus Lumber has a specialty products division that focuses on Commercial doors, accessories, window and railing packages. We have a team of window/door experts that can provide window or door takeoffs for your next project. They will value engineer your windows or doors to provide you with the most cost-effective package to fit your project. Contact your salesman for more info.*

**Overall:** There is a lot of confusion out there right now with the drop we saw in the July futures contracts over the last week. It tumbled from its high point of around 1730 down to 1265 and has now rebounded to 1543 and still heading up. This is some wicked volatility and has created the idea what cash prices have come down. The cash market has not reacted this way at all. Most all items pertaining to multifamily projects were up for the week and still have long lead times at the mills. My take is the "Warren Buffet" types took a lot of profits on their future's positions by selling off; now it's ramping right back up to where it was. Cash prices for real products went up all week albeit at a slower pace than the previous couple of weeks. All products from studs to panels are still long lead times and at all-time prices. The futures correction I think threw some pause into the buying activity this week, but the demand for real wood is still at all-time highs and the material is scarce. It's something to watch but as I've told many customers this week, NO your lumber packages aren't cheaper now.



#### A weekly report on wood products pricing for the Multi-Family builder

Prices on the above items reflect F.O.B. mill, excluding freight. This index is a weighted composite, which represents a mix of framing items found on a southwest apartment project. The index composite number may or may not reflect the pricing trend for the product mix on your project. This information is to be used as a guide only.

## Exhibit I

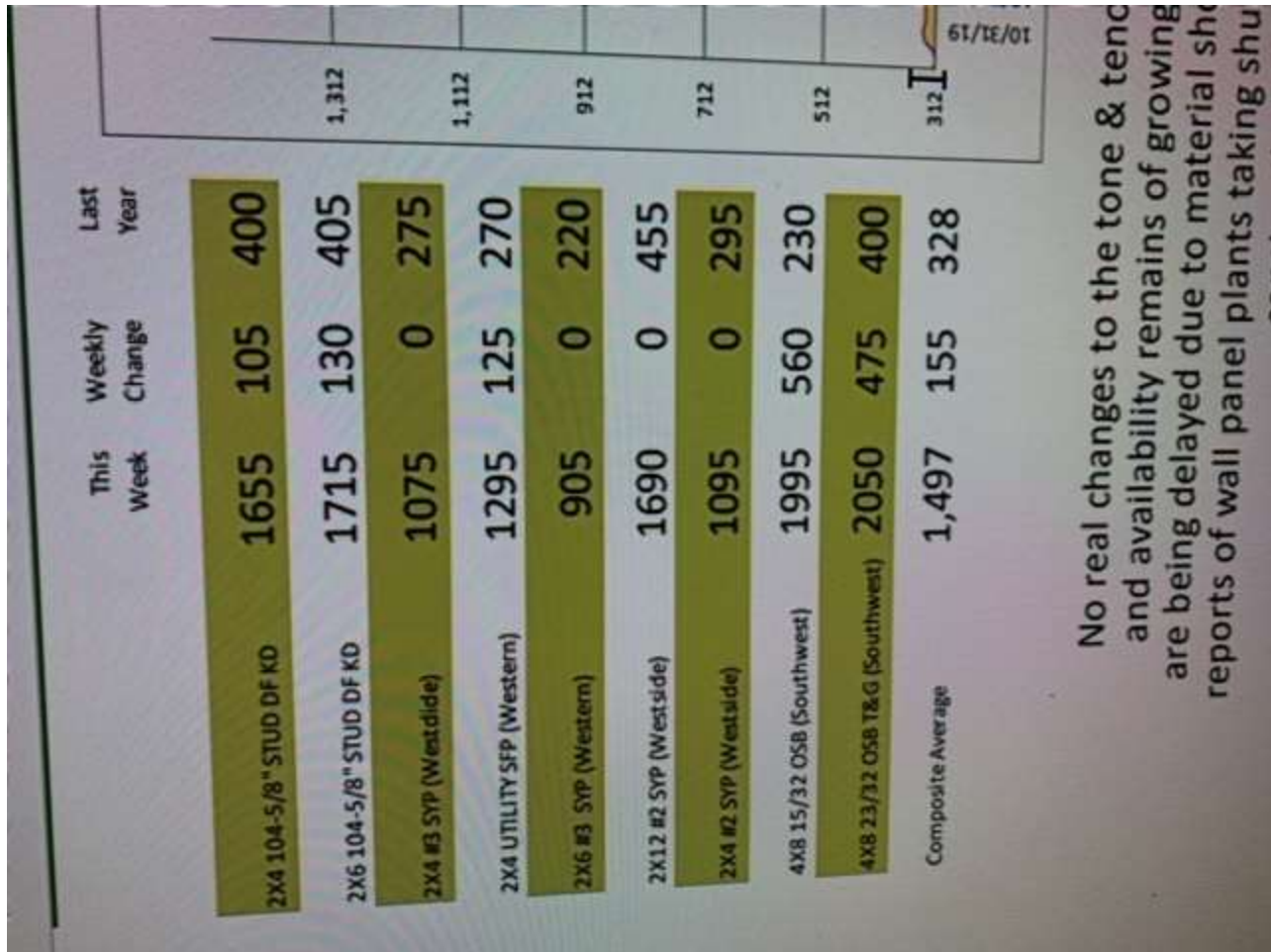
### Correspondence Regarding Trusses

**From:** Wil Reid [<mailto:wreid@noltextruss.com>]  
**Sent:** Friday, April 16, 2021 8:20 AM  
**To:** Martha Govea <[mgovea@denisondevelopment.com](mailto:mgovea@denisondevelopment.com)>  
**Cc:** Colby Denison <[colby@denisondevelopment.com](mailto:colby@denisondevelopment.com)>  
**Subject:** Re: Merritt Sunset - Noltextruss current bid

Thank you, I will update the pricing. The lumber market has continued to increase as well as engineered wood products as well as the availability on engineered wood is becoming harder to find.

I have included a few items that explain the lumber market. You can see on the blue chart lumber closed yesterday at \$1260 per thousand board feet and a year ago today it was in the \$400s. On the bottom chart this is the actual delivered cost to the Texas market it shows last year date as well. Please call me if you would like any more information





Thanks,

**Wil Reid**  
**Noltex Truss**  
**Multifamily & Commercial Sales**  
 Cell [214-724-5799](tel:214-724-5799)  
[wreid@noltextruss.com](mailto:wreid@noltextruss.com)

Serving All Of Texas and Surrounding States  
[www.noltextruss.com](http://www.noltextruss.com) or follow us on [Facebook](#) and [LinkedIn](#)



*The information contained in this message and its attachments is intended only for the recipient(s) named above. This information may be privileged and confidential in nature and protected by law. If the reader of this message is not the intended recipient, any further review, dissemination, distribution or copying of this information is strictly prohibited. If you received this communication in error, please delete the message with its attachments and notify the sender immediately.*

On Apr 16, 2021, at 8:07 AM, Martha Govea <[mgovea@denisondevelopment.com](mailto:mgovea@denisondevelopment.com)> wrote:

Wil,

I hope you are doing well.

I am reaching out to request the most current pricing for Trusses for the Sunset project.

If pricing is the same, could you please update the dates?

Let us know if you have any questions.

Thank you,

**Martha Govea**  
**Denison Construction, Inc.**  
**PO Box 302707**  
**Austin, TX 78703**  
512-732-1226  
512-563-4415

**PHYSICAL ADDRESS:**  
**1608 West 34<sup>th</sup> St, Suite A**  
**Austin, TX 78703**

## Exhibit J

### Spreadsheet of Refusal to Bid

Subcontractors	Contact	Budget Categories	Status
ABC Supply	Rachel Dyess	WINDOWS	Declined to Bid
Austin Contractor Services	Billy Williamson	INSULATION	Declined to Bid
Austin Garage Door		GARAGES	Declined to Bid
Bart's Electric	Stephanie Cook	ELEC DISTRIBUTION	Declined to Bid
Billy Black HVAC	Billy Black	HVAC	Declined to Bid
Buffalo Framing	Matt Parmley	FRAMING MATERIALS	Declined to Bid
Builder's Interior Finishing	Ereck Jones	DRYWALL	Declined to Bid
C&Z Enterprises	Luke Robinson	PAINTING	Declined to Bid
CARR Utility	Clarissa	UNDERGROUND UTILITIES	Declined to Bid
Central Texas Lath & Plaster	Houston Carpenter	MASONRY, STUCCO & FLASHING	Declined to Bid
Champion Site Prep	Jessica Kelly		Declined to Bid
Cody Pools	Rob Stefanic	SWIMMING POOL & DECK	Declined to Bid
Commonhouse Company	Robert Smith	FRAMING	Declined to Bid
Dry Utilities of Texas	Mike Parsons	DRY UTILITIES	Declined to Bid
Eagle Eye Surveying	Brian Wyatt		Declined to Bid
ECS	Tyler Offers	MATERIAL TESTING	Declined to Bid
Environmental Allies	Cherie Cross	EROSION CONTROL	Declined to Bid
First Service HVAC	Alex Dominguez	HVAC	Declined to Bid
Garza & Sons Electric	Tommy Garza	ELEC DISTRIBUTION	Declined to Bid
Hart Lumber	Craig Ottorness	FRAMING MATERIALS	Declined to Bid
Hill Country Insulation	Larry Scott	INSULATION	Declined to Bid
Hull Associates	Max Hering	FRAMING	Declined to Bid
Keystone Concrete	Cindy Holder	CONCRETE SLABS	Declined to Bid
KONE Elevators	Don Heo	ELEVATORS	Declined to Bid
Mechanical Systems Co.	Greg Holloway	PLUMBING	Declined to Bid
MSF Electrical	Steve Parnell	ELEC DISTRIBUTION	Declined to Bid
N2 Electric	Kim Cargill	ELEC DISTRIBUTION	Declined to Bid
Paramount Steel	Nghia Nguyen	STRUCTURAL STEEL	Declined to Bid
Phoenix Electric	Jose Bernal	ELEC DISTRIBUTION	Declined to Bid
Precision Floor	Craig Garrett	FLOORING	Declined to Bid
Schaffer Mechanical	Jayson McMillan	HVAC	Declined to Bid
Textruss	Joe Flores		Declined to Bid
Tom Arnold Drilling	Tommy Arnold	WATER WELL & STORAGE TANKS	Declined to Bid
Tri Star	Jason Howell	WET UTILITIES	Declined to Bid
TX Cleanup Crew	Leticia Jones	CLEANING	Declined to Bid
Watts Pool Co.	Kirt Watts	SWIMMING POOL & DECK	Declined to Bid
West Tex Paving			Declined to Bid

Status	Bids	Percentage (%)
Declined to bid	37	20.3
No Response	51	28.0
Received bids	76	41.8
N/A Scope	18	9.9

**Martha:**  
"Unfortunately, no we don't. Thank you for the inquiry though" - Chris Henningsen

**Martha:**  
"We are going to pass, but thank you for reaching out" - Houston Carpenter

**Martha:**  
"No we don't go that far. Sorry about that" - Larry Scott

**Martha:**  
"we don't provide bids in Midland Area" - Nghia Nguyen

**Exhibit K**

**Letters from Lender and Investor**



# COLLIERS MORTGAGE LLC

June 3, 2021

DDC Merritt Sunset, LLC  
1608 West 34<sup>th</sup> Street, Suite A  
Austin, TX 78703

Re: Merritt Sunset (TDHCA # 20344)  
149 Units under 221(d)(4) New Construction  
5407 Thomason Drive  
Midland, TX 79703

Dear DDC Merritt Sunset, LLC:

Colliers Mortgage is very supportive of your request to extend the placed in service date (PIS) for Merritt Sunset. Upon approval of a PIS extension, Colliers will resume processing of Merritt Sunset. We have an appraisal, market study and environmental reports on file for Merritt Sunset. Additionally the third party plan and cost reviewer has approved the plans and specifications. We are excited to quickly move towards a Firm application submission to HUD and to a 221(d)(4) closing. HUD under the 221(d)(4) program remains extremely interest in processing and insuring affordable housing deals. HUD recently changed the HUD processing priorities to move new tax credit deals similar to Merritt Sunset to the front of the processing line.

Colliers is very much in support of extending the PIS. Colliers is confident this project will make an impact in the community and provide much needed quality and sustainable long term affordable housing for the City of Midland.

COLLIERS MORTGAGE LLC

A handwritten signature in blue ink that reads "Jeffrey L. Rogers". The signature is written in a cursive style and is positioned above a horizontal line.

Jeffrey L. Rogers  
Senior Vice President



April 29, 2021

Colby Denison  
Denison Development & Construction, Inc.  
1608 W 34th Street, Unit A  
Austin, TX 78703

**Re: Merritt Sunset – Midland, Texas**

Dear Mr. Denison:

I am writing regarding our investment in Merritt Sunset, which represents the proposed new construction of 109 affordable housing units and 40 market rate units in Midland, Texas which was awarded in the 2020 Competitive (9%) Texas Housing Tax Credit awards. At this point, we have received the necessary investment approvals to issue an equity letter of intent and intend to move forward with our closing due diligence process.

As currently forecasted we are expecting an investment in the Partnership to occur in December – 2021 and given the current construction market conditions, our construction team and third party consultants are recommending a minimum construction schedule of 19 months, which final recommendation will be received upon receipt and review of final construction diligence.

Under these circumstances, we would not be able to make an investment in Merritt Sunset unless we could be assured that some sort of extension to the Placed in Service or refresh of awarded 2020 tax credits to 2021 provided that Merritt Sunset will not be able to meet the placed in service deadline of December 31<sup>st</sup>, 2022.

In talking with consultants and market professionals in both in the LIHTC arena and Midland market area, the delay in closing time frame and extended construction schedule are attributable to market conditions outside of the general partner's and developer's control which include, but are not limited to, rising construction costs, availability of quality subcontractors, increased supply of tax credits and subsequent decreased demand both nationally and in the Midland primary market area, the COVID pandemic which directly impacted Midland market through oil demand decreases, and increased governmental agency inefficiencies.

Although every development provides unique challenges, we have found most states to be amenable to agreeing to extensions or credit refreshes if the conditions giving rise to them are out of the general partner's and developer's control in an effort to continue the production of the affordable housing supply. We believe that this would certainly be one of those cases.

Very truly yours,

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

Name: Adam Lavelle  
Title: Vice President

2a



## TDHCA Outreach and Media Analysis, June 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 June 1 through June 30, 2021 (news articles specifically mentioned the Department and/or Texas Rent Relief Program).

Total number of articles referencing TDHCA: 431

Breakdown by Medium:<sup>1</sup>

- Print: 17 (Editorials/Columnists = 2)
- Broadcast: 83
- Trade, Government or Internet-Based Publications: 331

Figure 1 News Tone

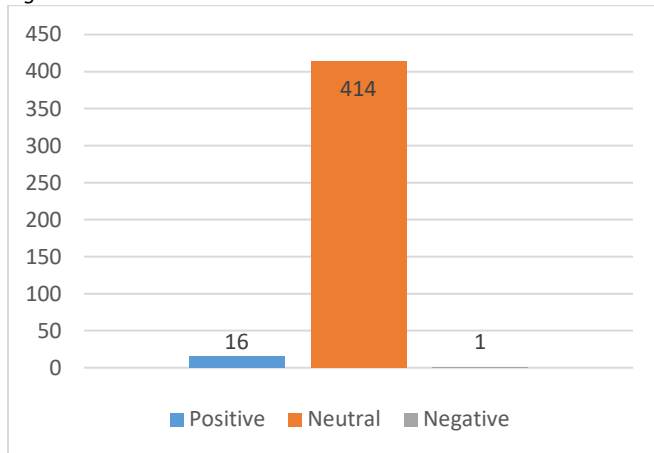
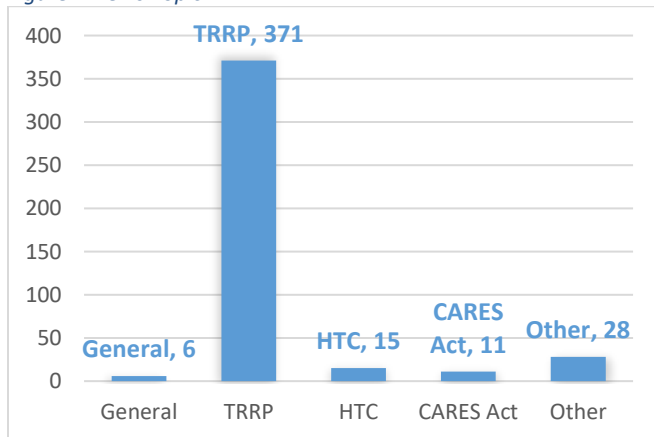
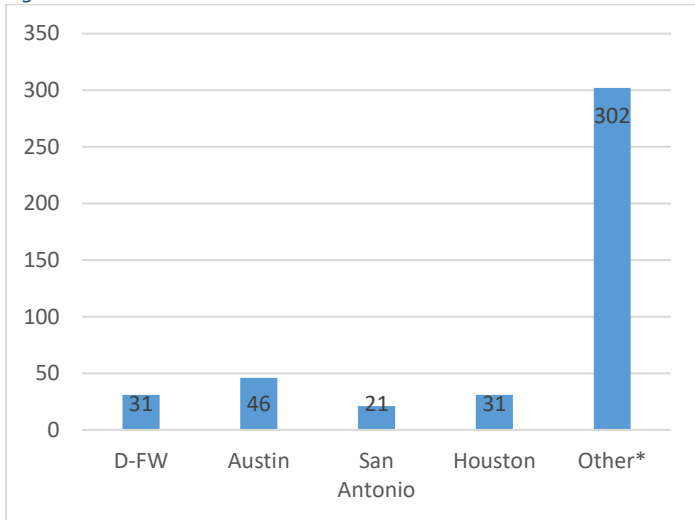


Figure 2 News Topic



<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

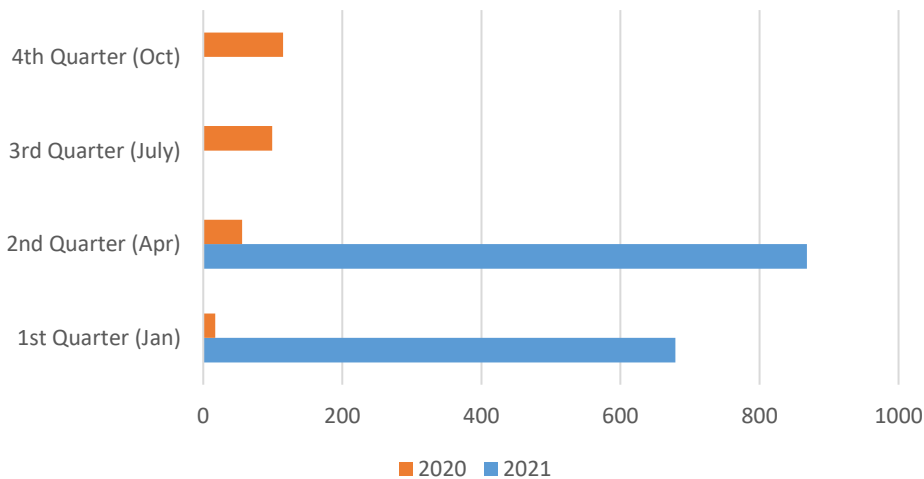


**Summary:**

Reporting on Department activities by the news media totaled 431 references in June 2021. News mentions reflected TDHCA’s Texas Rent Relief Program efforts, including increased disbursements, challenges with the online system, call center issues, as well as a legislative report. Additionally, TDHCA’s press announcement regarding utility bill assistance through CEAP and TRR garnered numerous mentions.

The following table illustrates the number of news mentions during each quarter of 2021 compared to 2020. There were a total of 868 news articles mentioning TDHCA and/or the Texas Rent Relief Program in the second quarter of 2021.

TDHCA News Trends





## Social media:

Currently, TDHCA's Twitter account has more than 2,800 followers and its Facebook account has more than 4,300 followers. TDHCA's YouTube views totaled more than 32,700 views. 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

\* 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

\* 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 (hrs)	Avg. view duration	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%

# June 2021

Video	Views ↓	Watch time (hours)	Subscribers ▲	Impressions	Impressions click-through rate
<input type="checkbox"/> <b>Total</b>	<b>32,719</b>	<b>833.2</b>	<b>302</b>	<b>47,805</b>	<b>5.5%</b>
<input type="checkbox"/> Texas Rent Relief Program Completing Application Tutorial	17,213 52.6%	164.6 19.8%	107 35.4%	3,430	8.0%
<input type="checkbox"/> Texas Rent Relief Program Registration Tutorial	8,525 26.1%	67.7 8.1%	100 33.1%	1,783	4.3%
<input type="checkbox"/> Texas Rent Relief Program Tenant Application Tutorial	3,264 10.0%	190.7 22.9%	38 12.6%	10,276	10.6%
<input type="checkbox"/> Texas Rent Relief Program Landlord Tips	780 2.4%	18.4 2.2%	5 1.7%	2,688	8.1%
<input type="checkbox"/> Texas Rent Relief Program Landlord Application Tutorial	620 1.9%	26.0 3.1%	6 2.0%	3,357	4.7%
<input type="checkbox"/> Texas Rent Relief Program Landlord Assistance with a Tenant Appli...	557 1.7%	20.3 2.4%	9 3.0%	2,471	7.0%
<input type="checkbox"/> Digital Outreach Webinar	274 0.8%	94.4 11.3%	0 0.0%	134	5.2%
<input type="checkbox"/> Texas Emergency Mortgage Assistance Program TEMAP Webinar - ...	235 0.7%	27.1 3.3%	5 1.7%	2,826	3.4%
<input type="checkbox"/> TEMAP Implementation Workshop - June 8, 2021	151 0.5%	23.3 2.8%	5 1.7%	1,352	3.4%
<input type="checkbox"/> Utility Allowance Training - May 5, 2021	80 0.2%	44.7 5.4%	0 0.0%	906	4.3%
<input type="checkbox"/> Fair Housing 101: The Basics of Fair Housing in Texas	74 0.2%	11.1 1.3%	1 0.3%	1,328	2.7%
<input type="checkbox"/> Consejos para la solicitud del propietario	72 0.2%	0.8 0.1%	0 0.0%	703	3.3%
<input type="checkbox"/> Como Completar Su Aplicación para el Programa de Asistencia de ...	70 0.2%	0.9 0.1%	0 0.0%	255	2.8%
<input type="checkbox"/> TERAP Application Workshop	69 0.2%	6.4 0.8%	0 0.0%	1,771	2.8%
<input type="checkbox"/> Fair Housing Special Topics: The Violence Against Women Act in F...	61 0.2%	14.0 1.7%	1 0.3%	1,161	2.7%
<input type="checkbox"/> 20 Income Determination Training	60 0.2%	7.2 0.9%	0 0.0%	1,258	2.2%
<input type="checkbox"/> TERAP Implementation Workshop	53 0.2%	21.0 2.5%	0 0.0%	664	3.8%
<input type="checkbox"/> TERAP Webinar on Monthly Reporting and Duplication of Benefits	49 0.2%	15.7 1.9%	0 0.0%	1,003	1.3%
<input type="checkbox"/> Consejos para la solicitud de inquilinos	47 0.1%	1.3 0.2%	0 0.0%	559	1.8%
<input type="checkbox"/> TDHCA Governing Board meeting - June 17, 2021	45 0.1%	14.1 1.7%	0 0.0%	520	2.1%
<input type="checkbox"/> Como Registrarse Para el Programa de Asistencia de Pago de Rent...	45 0.1%	0.8 0.1%	0 0.0%	318	2.2%
<input type="checkbox"/> Fair Housing Special Topics: Reasonable Accommodations, Modifi...	44 0.1%	8.9 1.1%	1 0.3%	931	3.1%
<input type="checkbox"/> Overview of Updates to Compliance, Affirmative Marketing and Writ...	43 0.1%	9.4 1.1%	1 0.3%	614	2.4%
<input type="checkbox"/> Fair Housing Special Topics: How to Create an Affirmative Marketin...	36 0.1%	6.1 0.7%	0 0.0%	796	2.0%
<input type="checkbox"/> Fair Housing Special Topics: Assistance Animals, Service Animals, ...	36 0.1%	10.7 1.3%	1 0.3%	916	2.0%
<input type="checkbox"/> Virtual Roundtable - TDHCA's Enforcement Rule	36 0.1%	3.3 0.4%	0 0.0%	1,612	1.9%
<input type="checkbox"/> TERAP Demographics Reporting Update Workshop	35 0.1%	5.9 0.7%	0 0.0%	389	3.6%
<input type="checkbox"/> Average Income Webinar - Sept. 2, 2020	23 0.1%	6.9 0.8%	0 0.0%	511	2.5%
<input type="checkbox"/> TDHCA Utility Allowance Roundtable - Oct. 13, 2020	18 0.1%	2.2 0.3%	1 0.3%	486	3.3%
<input type="checkbox"/> Accessing Texas Department of Aging and Disability Services	17 0.1%	0.8 0.1%	0 0.0%	370	4.1%
<input type="checkbox"/> Cost Certification Roundtable - November 18, 2020	16 0.1%	1.8 0.2%	0 0.0%	161	2.5%
<input type="checkbox"/> Section 811 PRA Updates for Referral Agents	15 0.1%	2.6 0.3%	0 0.0%	444	1.8%
<input type="checkbox"/> TERAP Monthly Reporting Workshop - March 1, 2021	14 0.0%	1.0 0.1%	0 0.0%	407	2.7%
<input type="checkbox"/> Fair Housing Special Topics: Limited English Proficiency and Langu...	6 0.0%	1.1 0.1%	0 0.0%	339	1.2%
<input type="checkbox"/> Compliance Round Table - April 21, 2021	5 0.0%	0.5 0.1%	1 0.3%	290	1.4%
<input type="checkbox"/> TDHCA Board Audit & Finance Committee - June 17, 2021	4 0.0%	0.0 0.0%	0 0.0%	75	5.3%
<input type="checkbox"/> 2020 04 14 10 00 Fair Housing Month 2020 Assistance Animals	4 0.0%	0.8 0.1%	0 0.0%	53	3.8%
<input type="checkbox"/> For Sec. 811 Referral Agents - PRA Barrier Busting Funds	4 0.0%	0.0 0.0%	0 0.0%	71	1.4%
<input type="checkbox"/> Rental Assistance	3 0.0%	0.3 0.0%	0 0.0%	116	0.9%
<input type="checkbox"/> Accessing Texas Department of State Health Services	3 0.0%	0.1 0.0%	0 0.0%	95	2.1%
<input type="checkbox"/> TDHCA's Multifamily Direct Loan Training - Sept. 24, 2020	3 0.0%	0.1 0.0%	0 0.0%	213	0.9%
<input type="checkbox"/> Texas Rent Relief Program Webinar - Feb. 26, 2021	2 0.0%	0.0 0.0%	0 0.0%	3	0%
<input type="checkbox"/> Energy Assistance	1 0.0%	0.0 0.0%	0 0.0%	34	2.9%
<input type="checkbox"/> Previous Participation Review 2016	- -	- -	- -	46	0%

### TDHCA Outreach June 2021

A compilation of outreach activities such as meetings, trainings and webinars.

<b>Department</b>	<b>Meeting Date</b>	<b>Meeting Title</b>	<b>Attendees (includes organizer)</b>
Home Ownership	Jun 01, 2021	Continuing Education Course "United Texas" for Houston Association of Realtors	16
Housing Resource Center	Jun 2, 2021	Draft 2022 Regional Allocation Formula (RAF) Methodology Public Hearing	7
Home Ownership	Jun 4, 2021	Affordable Homes of South Texas Inc. Virtual Homebuyer Fair	200
Multifamily	Jun 14, 2021	QAP Focus Group regarding Sponsor Characteristics	10
Community Affairs	Jun 11, 2021	CSNT CEAP Training	10
Internal Audit	Jun 11, 2021	Opening Conference - Internal Audit of Multifamily Loans	18
Home Ownership	Jun 12-13, 2021	NeighborWorks Laredo 2021 Virtual Home Fair Expo	200
Multifamily	Jun 14, 2021	TDHCA - Sponsor Characteristics - HUBs	11
Texas Rent Relief	Jun 16, 2021	TRR for TAA	228
TDHCA	Jun 17, 2021	Board meeting	267
Home Ownership	Jun 22, 2021	Monthly Lender Lunch and Learn Series	196
Multifamily	Jun 22, 2021	Meet with Rural Rental Housing Association representatives regarding the 2020-1 NOFA and use of HOME funds	7
Compliance	Jun 23, 2021	Income Determination Training sponsored by TAA	74
Bond Finance	Jun 28, 2021	HAF Plan Public Comment	13
SFHP	Jun 29, 2021	Homeless Prevention and Hazard Pay	62
Compliance	Jun 29, 2021	Housing Tax Credit Training sponsored by TAA	126
Texas Rent Relief	Jun 29, 2021	TDHCA Rent and Utility Programs for North Central COG	93

SFHP	Jun 29, 2021	Training Discussion: Homeless Prevention and Hazard Pay/ESG And ESG CARES Subrecipients	65
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## TDHCA Outreach and Media Analysis, July 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 July 1 through July 31, 2021 (news articles specifically mentioned the Department and/or Texas Rent Relief Program).

Total number of articles referencing TDHCA: 546

Breakdown by Medium:<sup>1</sup>

- Print: 16 (Editorials/Columnists = 1)
- Broadcast: 127
- Trade, Government or Internet-Based Publications: 403

Figure 1 News Tone

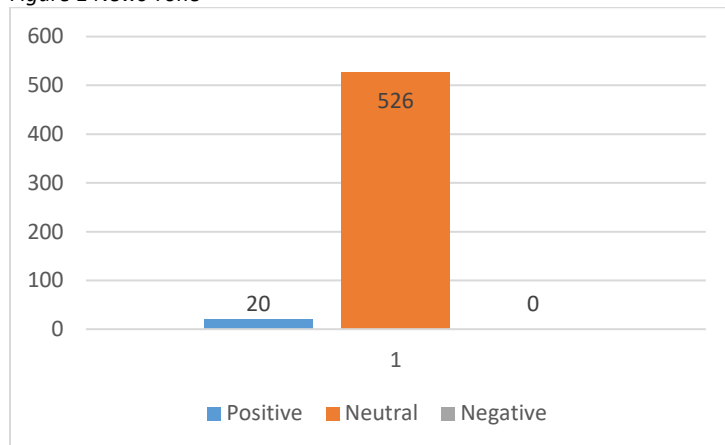
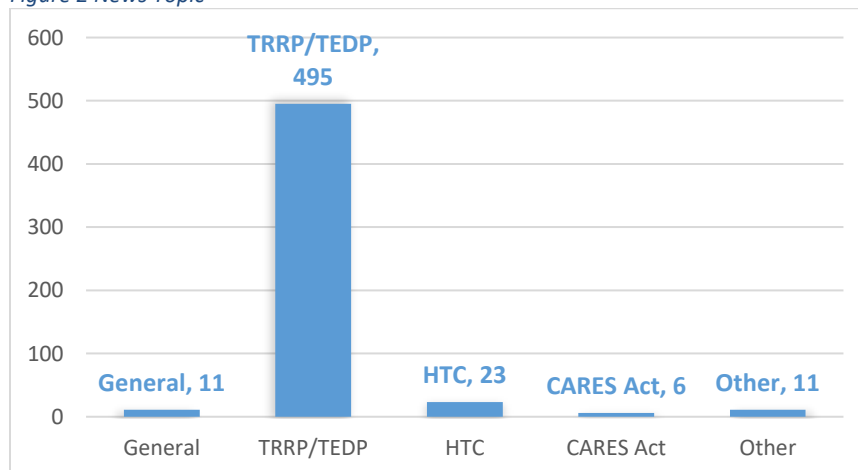
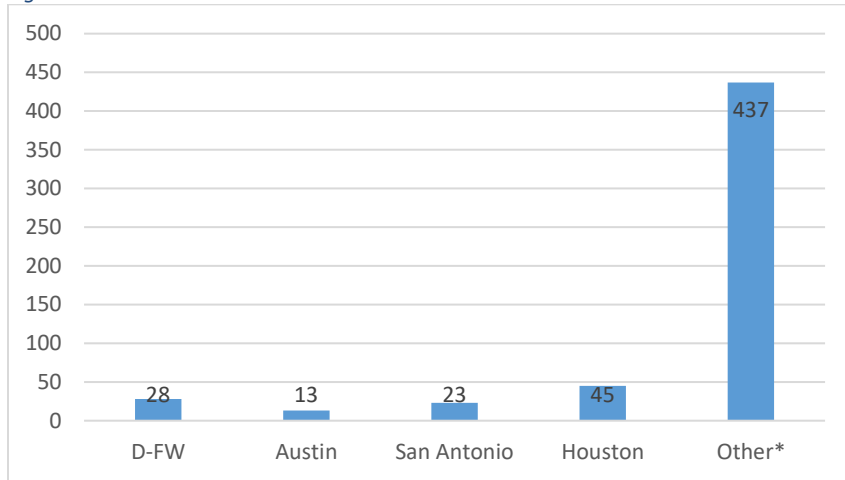


Figure 2 News Topic



<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

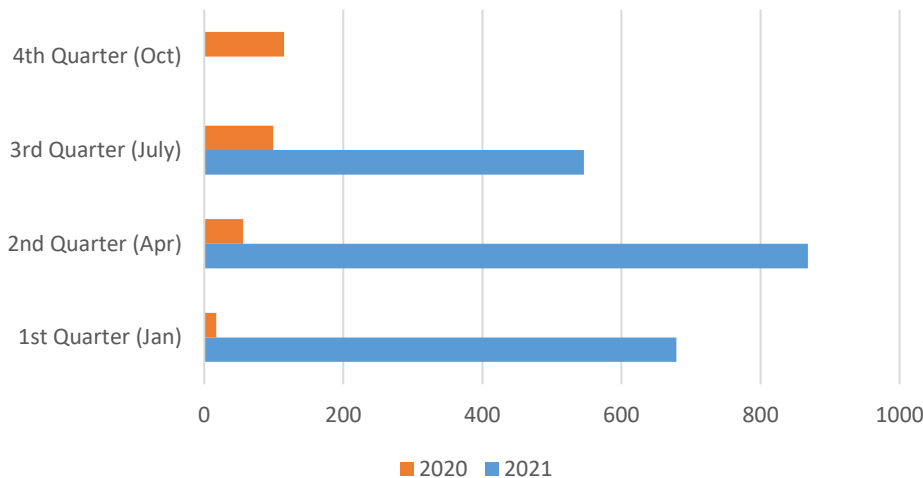


**Summary:**

Reporting on Department activities by the news media totaled 546 references in July 2021. News mentions reflected TDHCA’s Texas Rent Relief Program efforts, including US Treasury data report on increased TRR disbursements. Additionally, TDHCA’s joint press announcement with the Office of the Governor regarding Housing Stability Services Grants and the 2021 9% HTC awards press announcement garnered numerous mentions.

The following table illustrates the number of news mentions during each quarter of 2021 compared to 2020. There were 546 news articles mentioning TDHCA and/or the Texas Rent Relief Program in the first month (July) of the third quarter of 2021.

TDHCA News Trends



**Social media:**

Currently, TDHCA’s Twitter account has more than 2,900 followers and its Facebook account has nearly 4,900 followers. TDHCA’s YouTube views totaled nearly 38,000 views. 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

\* 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

\* 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 (hrs)	Avg. view duration	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%

# July 2021

Video	Views ↓	Watch time (hours)	Subscribers	Impressions	Impressions click-through rate
<input type="checkbox"/> Total	<b>37,996</b>	<b>864.4</b>	<b>324</b>	<b>54,038</b>	<b>5.9%</b>
<input type="checkbox"/> Texas Rent Relief Program Completing Application Tutorial	19,292 50.8%	173.9 20.1%	130 40.1%	4,481	6.2%
<input type="checkbox"/> Texas Rent Relief Program Registration Tutorial	9,993 26.3%	78.4 9.1%	100 30.9%	1,892	4.1%
<input type="checkbox"/> Texas Rent Relief Program Tenant Application Tutorial	4,003 10.5%	234.3 27.1%	51 15.7%	11,549	11.3%
<input type="checkbox"/> Texas Rent Relief Program Landlord Application Tutorial	855 2.3%	35.5 4.1%	6 1.9%	4,682	5.4%
<input type="checkbox"/> Texas Rent Relief Program Landlord Tips	794 2.1%	18.7 2.2%	3 0.9%	2,986	7.4%
<input type="checkbox"/> Tutorial - Additional Funding Requests	722 1.9%	34.2 4.0%	10 3.1%	1,198	7.9%
<input type="checkbox"/> Texas Rent Relief Program Landlord Assistance with a Tenant Appli...	576 1.5%	23.0 2.7%	3 0.9%	2,808	6.3%
<input type="checkbox"/> Texas Emergency Mortgage Assistance Program TEMAP Webinar - ...	217 0.6%	19.3 2.2%	3 0.9%	2,772	3.6%
<input type="checkbox"/> Virtual Roundtable - TDHCA's Enforcement Rule	124 0.3%	15.3 1.8%	1 0.3%	1,407	6.2%
<input type="checkbox"/> Fair Housing Special Topics: Reasonable Accommodations, Modifi...	95 0.3%	23.5 2.7%	1 0.3%	1,129	4.8%
<input type="checkbox"/> Fair Housing Special Topics: How to Create an Affirmative Marketin...	77 0.2%	14.5 1.7%	0 0.0%	906	4.8%
<input type="checkbox"/> TDHCA Governing Board meeting - July 8, 2021	76 0.2%	19.2 2.2%	1 0.3%	1,035	2.0%
<input type="checkbox"/> TDHCA Governing Board meeting - July 22, 2021	75 0.2%	21.3 2.5%	0 0.0%	750	3.7%
<input type="checkbox"/> Como Completar Su Aplicación para el Programa de Asistencia de ...	74 0.2%	0.9 0.1%	0 0.0%	260	3.5%
<input type="checkbox"/> TEMAP Reporting Webinar	73 0.2%	9.4 1.1%	0 0.0%	566	1.6%
<input type="checkbox"/> TEMAP Implementation Workshop - June 8, 2021	69 0.2%	13.3 1.5%	0 0.0%	875	1.6%
<input type="checkbox"/> Como Registrarse Para el Programa de Asistencia de Pago de Rent...	67 0.2%	1.1 0.1%	1 0.3%	340	6.8%
<input type="checkbox"/> Utility Allowance Training - May 5, 2021	65 0.2%	16.2 1.9%	0 0.0%	848	5.3%
<input type="checkbox"/> Fair Housing 101: The Basics of Fair Housing in Texas	64 0.2%	14.9 1.7%	3 0.9%	720	4.9%
<input type="checkbox"/> TERAP Webinar on Monthly Reporting and Duplication of Benefits	61 0.2%	8.9 1.0%	0 0.0%	1,022	3.1%
<input type="checkbox"/> TERAP Application Workshop	56 0.2%	3.7 0.4%	3 0.9%	1,277	2.7%
<input type="checkbox"/> TDHCA Governing Board meeting - June 17, 2021	47 0.1%	10.3 1.2%	0 0.0%	1,360	0.9%
<input type="checkbox"/> Fair Housing Special Topics: Assistance Animals, Service Animals, ...	44 0.1%	4.7 0.6%	1 0.3%	620	4.5%
<input type="checkbox"/> TERAP Demographics Reporting Update Workshop	44 0.1%	5.3 0.6%	0 0.0%	1,147	1.4%
<input type="checkbox"/> Consejos para la solicitud de inquilinos	42 0.1%	1.4 0.2%	0 0.0%	542	2.0%
<input type="checkbox"/> TERAP Implementation Workshop	38 0.1%	13.9 1.6%	0 0.0%	709	3.2%
<input type="checkbox"/> Overview of Updates to Compliance, Affirmative Marketing and Writ...	37 0.1%	8.7 1.0%	0 0.0%	170	5.3%
<input type="checkbox"/> Accessing Texas Department of Aging and Disability Services	36 0.1%	2.0 0.2%	0 0.0%	456	4.4%
<input type="checkbox"/> Consejos para la solicitud del propietario	35 0.1%	0.5 0.1%	0 0.0%	557	1.3%
<input type="checkbox"/> Fair Housing Special Topics: The Violence Against Women Act in F...	35 0.1%	6.4 0.7%	0 0.0%	921	2.4%
<input type="checkbox"/> Digital Outreach Webinar	34 0.1%	6.6 0.8%	1 0.3%	148	6.1%
<input type="checkbox"/> TEMAP Reporting Webinar Program Part C	32 0.1%	2.1 0.3%	0 0.0%	401	3.2%
<input type="checkbox"/> Average Income Webinar - Sept. 2, 2020	23 0.1%	5.9 0.7%	0 0.0%	293	2.4%
<input type="checkbox"/> TDHCA Board Audit & Finance Committee - June 17, 2021	17 0.0%	0.8 0.1%	-1 -0.3%	882	1.3%
<input type="checkbox"/> 20 IncomeDeterminationTraining	17 0.0%	5.0 0.6%	0 0.0%	522	0.6%
<input type="checkbox"/> Cost Certification Roundtable - November 18, 2020	17 0.0%	2.4 0.3%	0 0.0%	129	4.7%
<input type="checkbox"/> TDHCA's Multifamily Direct Loan Training - Sept. 24, 2020	13 0.0%	5.0 0.6%	0 0.0%	157	5.7%
<input type="checkbox"/> Section 811 PRA Updates for Referral Agents	11 0.0%	1.1 0.1%	0 0.0%	158	3.2%
<input type="checkbox"/> Fair Housing Special Topics: Limited English Proficiency and Langu...	11 0.0%	0.7 0.1%	0 0.0%	208	2.4%
<input type="checkbox"/> TDHCA Utility Allowance Roundtable - Oct. 13, 2020	11 0.0%	0.7 0.1%	0 0.0%	260	2.7%
<input type="checkbox"/> TERAP Monthly Reporting Workshop - March 1, 2021	10 0.0%	0.8 0.1%	0 0.0%	238	2.9%
<input type="checkbox"/> Rental Assistance	5 0.0%	0.1 0.0%	0 0.0%	234	1.3%
<input type="checkbox"/> For Sec. 811 Referral Agents - PRA Barrier Busting Funds	4 0.0%	0.3 0.0%	0 0.0%	55	3.6%
<input type="checkbox"/> Energy Assistance	3 0.0%	0.1 0.0%	1 0.3%	21	14.3%
<input type="checkbox"/> Accessing Texas Department of State Health Services	1 0.0%	0.0 0.0%	0 0.0%	95	1.1%
<input type="checkbox"/> Texas Rent Relief Program Webinar - Feb. 26, 2021	1 0.0%	0.0 0.0%	0 0.0%	3	0%



### TDHCA Outreach July 2021

A compilation of outreach activities such as meetings, trainings and webinars.

<b>Department Name</b>	<b>Meeting Date</b>	<b>Meeting Title</b>	<b>Attendees (includes organizer)</b>
Section 811	Jul 07, 2021	Introducing Section 811 PRA	33
TDHCA	Jul 8, 2021	Board Meeting	164
Section 811	Jul 15, 2021	Introducing Section 811 PRA	42
Home Ownership	Jul 22, 2021	TDHCA Lender Roundtable	14
Compliance	Jul 22, 2021	Women in Affordable Housing Network	100
TDHCA	Jul 22, 2021	Board meeting	244
Single Family - Homeless	Jul 27, 2021	TDHCA ESG/ESG CARES and CoCs	14
Housing Resource Center	Jul 27, 2021	Texas Interagency Council for Homeless, Quarterly Meeting	23
Home Ownership	Jul 29, 2021	Lender Discussion with Lisa Alonzo and Team (Wallick and Volk Inc.)	14
Housing Resource Center	Jul 29, 2021	Housing and Health Services Coordination Council, Quarterly Meeting	20

2b



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

**Update on TDHCA Programs Addressing COVID-19 Pandemic Response  
Report for September 2, 2021**

This report provides an update on the programs TDHCA has targeted to assist with Texas' response to COVID-19 through reprogramming of existing funds, and through the administration of CARES Act, Coronavirus Relief Bill funds, and the American Rescue Plan Act.

*Shaded rows reflect completed programs for which assistance is no longer available.*

Program	Timelines / Contract Periods	Planned Activities	Waivers and Initial Approvals Needed	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Drawn (%)	Other Notes
<b>EARLY REPROGRAMMING OF EXISTING TDHCA PROGRAM FUNDS</b>								
<b>HOME Program Tenant Based Rental Assistance (TBRA) for COVID-19 DR</b>	NA: Reservation Agreements	3-6 months of rental assistance made available through existing or new HOME subrecipients.  <i>Geography:</i> Available where subrecipients apply. 23 administrators covering 120 counties. <i>Income Eligibility:</i> Households at or below 80% AMFI based on current circumstances.	All necessary waivers for this activity were authorized by the OOG and HUD via HUD's mega-waiver of April 10, 2020. The HUD waivers were extended by HUD in December 2020 to expire September 30, 2021.	Amount obligated exceeds original program funding because other previously deobligated available HOME funds are being used to allow eligible households to access a full 6 months of assistance.	No added TDHCA staffing.  No added admin funds.	2,610  Includes active, pending PCR, and closed activities	Up to \$11,290,076  \$11,467,377* 101.57%  \$10,442,855 91.06%	All originally programmed funds are obligated.  2,749 (households) activities submitted, including total served.  * Amount Reserved
<b>Reprogram 2019 and 2020 CSBG Discretionary and Admin. Funds</b>	<ul style="list-style-type: none"> <li>Board approval March 2020.</li> <li>Recipients contracts effective: 3/26/20</li> <li>Expenditure Deadline: 8/31/20</li> </ul>	Uses the existing network of Community Action Agencies to provide direct client assistance to low income households economically impacted by COVID-19.  <i>Geography:</i> Available statewide (excluding CWCCP and CSI <sup>1</sup> ) <i>Income Eligibility:</i> 200% poverty (normally is 125%)	None	<b>COMPLETED</b>  100% expended.	No added TDHCA staffing.  No added admin funds.	9,468 persons	\$1,434,352  1,434,352 <b>100%</b>  \$1,434,352 <b>100%</b>	38 CAA subs

<sup>1</sup> CWCCP and CSI were omitted from this specific type of award because they have outstanding balances owed to the Department. The counties these two entities cover include: Anderson, Cameron, Collin, Denton, Ellis, Henderson, Hunt, Kaufman, Navarro, Rockwall, Van Zandt, and Willacy. It should be noted those counties will receive CSBG services under the CSBG CARES funds.

Program	Timelines / Contract Periods	Planned Activities	Waivers and Initial Approvals Needed	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Expended (%)	Other Notes
<b>Recaptured 2018/2019 HHSP</b>	<ul style="list-style-type: none"> <li>Board approval March 2020.</li> <li>Spend by 8/31/20 for 2018 HHSP funds, and extensions on some 2019 HHSP funds through 12/31/20.</li> </ul>	<p>To allow subrecipients to perform HHSP eligible activities in addressing homelessness and those at risk of homelessness.</p> <p><i>Geography:</i> Available 9 largest metro areas. <i>Income Eligibility:</i> Generally 30% AMFI if applicable</p>	Approval from Comptroller granted.	<b>COMPLETED</b> 100% expended.	No added TDHCA staffing.  No added admin funds.	462 persons	\$191,939.53 \$191,939.53 <b>100%</b> \$191,939.53 <b>100%</b>	9 subs
<b>CARES ACT FUNDS</b>								
<b>CSBG CARES</b>	<ul style="list-style-type: none"> <li>Board approved April 2020.</li> <li>On 9/3/20 Board programmed 7% in reserve for eviction diversion pilot.</li> <li>Expend 90% by 8/31/22</li> <li>45 day closeout</li> </ul>	<p>90% to CAAs using regular CSBG formula for households affected by COVID-19; 2% (\$949,120) to Texas Homeless Network<sup>2</sup>; 7% for an eviction diversion pilot program; and 1% for state admin.</p> <p><i>Geography:</i> Available statewide <i>Income Eligibility:</i> 200% of poverty (normally is 125%)</p>	The <a href="#">flexibilities allowed by USHHS</a> have been accepted.	All contracts executed. THN awarded \$489,970 of their barrier funds to 11 entities covering all six regions of the Balance of State. Eviction Diversion program has been completed.	1 Art. IX FTE for CSBG reporting  1% admin (\$474,560)	110,597 persons	\$48,102,282 \$48,102,282 <b>100%</b> \$37,778,968 79%	40 CAA subs  CSBG-CV Discretionary has various deadlines.
<b>LIHEAP CARES</b>	<ul style="list-style-type: none"> <li>Board approved April 2020</li> <li>By 4/30/21 need to decide on the 9% reserve</li> <li>Expend by 9/30/21</li> <li>45 day closeout</li> </ul>	<p>90% to CEAP subs using regular CEAP formula for households affected by COVID-19; 9% was held in reserve for future emergency use or for subs (subsequently allocated among subrecipients); and 1% for state admin. No weatherization.</p> <p><i>Geography:</i> Available statewide <i>Income Eligibility:</i> 150% of poverty</p>	The <a href="#">flexibilities allowed by USHHS</a> have been accepted.	Funds not expended by the September 30, 2021 deadline will be lost to the state. While staff is attempting to move funds from subrecipients less likely to fully expend to subrecipients more likely to do so, there are very few who are in a position to receive funds; it is possible that some portion of funds will revert to HHS.	1 Art. IX FTE for CEAP TA/capacity (1 Filled)  1% admin (\$892,670)	136,457 persons	\$94,023,896 \$93,483,658 99% \$49,226,674 52%	37 subs with all contracts executed. No subs declined funds.  Added program flexibilities to improve assistance to households impacted by Winter Storm Uri.

<sup>2</sup> The award to THN is to address homelessness and those at risk of homelessness as a result of COVID-19.

Program	Timelines / Contract Periods	Planned Activities	Waivers and Initial Approvals Needed	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Expended (%)	Other Notes
<b>CDBG CARES – Phases I, II and III</b>	<p>Board approved general use of the funds for CDBG Phase I in April 2020 and Plan Amendments in October 2020 and January 2021. A third amendment was approved by the Board at the July 8 Board meeting.</p> <p>80% of funds must be expended by 11/3/23; remaining 20% by 11/3/26.</p> <p>90-day closeout</p>	<p>Planned Usage: rental assistance in 40 cities/counties; mortgage payment assistance in 40 counties; legal services; assistance for providers of persons with disabilities; food expenses; community resiliency activities; and possible HMIS data warehouse funds.</p> <p><i>Geography:</i> Varies by activity type.</p>	<p>Plan Amendment reflecting use of these funds was approved by HUD on October 27, 2020. HUD agreement executed November 3, 2020. A second Plan Amendment was accepted by HUD on January 15, 2021. A third plan was accepted by HUD in August 2021.</p>	<p>Rental assistance contracts with 40 of 40 cities/counties now executed. Mortgage assistance contracts with 40 of 40 applicants now executed. Contracts for legal services and assistance for disability providers executed. A second round of 8 Mortgage Assistance awards totaling \$3M will be presented to the board during this meeting. Food expenses contract is being finalized; NOFA for community resiliency program is being drafted.</p>	<p>CDBG Director position filled. 7 other positions filled. May still hire other positions.</p> <p>All FTES are Art. IX</p> <p>Up to 7% admin and TA budget (\$9,929,238)</p>	<p>3,594 households</p>	<p>1<sup>st</sup> allocation: \$40,000,886 2<sup>nd</sup> Allocation: \$63,546,200 3<sup>rd</sup> Allocation: \$38,299,172</p> <p>Total: \$141,846,258 45% \$13,691,953 9.65%</p>	<p><i>Income Eligibility:</i> For households at or below 80% of AMI. * Figure includes staff administrative funds.</p>
<b>ESG CARES – Phase I</b>	<ul style="list-style-type: none"> <li>Board approved programming plan on April 2020, and conditional awards on July 23, 2020.</li> <li>Expend by 9/30/22</li> <li>90 day closeout</li> </ul>	<p>Four streams:</p> <ul style="list-style-type: none"> <li>Existing subs were offered 100% to 200% of current contract amount (~\$12.5M)</li> <li>ESG Coordinators decided via local process for their CoC, and awards made in three areas without ESG Coordinators by offering funds to CoC awardees (~\$17.2M)</li> <li>Legal/HMIS (\$1.9M)</li> </ul> <p><i>Geography:</i> Locations of all funded grantees <i>Income Eligibility:</i> 50% AMI for homeless prevention.</p>	<p>HUD mega-waivers accepted.</p> <p>One-Year Plan/Con Plan amendment to HUD on May 8. HUD provided guidance that the CDC moratorium is no longer a blanket cause for ineligibility.</p>	<p>Signed grant agreement sent to HUD 5/15/20.</p> <p>Funds live in HUD system 5/22/20. 101 contracts executed.</p> <p>3 legal service providers.</p> <p>Some unexpended funds reallocated to higher expended subrecipients, and may result in small fluctuations in the admin funds percentage.</p>	<p>4 Art. IX FTE (for all phases of ESG)</p> <p>5 % admin (\$1,682,448)</p>	<p>39,453 persons</p>	<p>\$33,254,679 \$31,591,282 94.99% 20,483,454 61.59%</p>	<p>This is the first \$1B of national ESG.</p> <p>HMIS/Coordination funds totaling \$417,949 was awarded to the 8 ESG Coordinators.</p>

Program	Timelines / Contract Periods	Planned Activities	Waivers and Initial Approvals Needed	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Expended (%)	Other Notes
<b>ESG CARES – Phase II</b>	<ul style="list-style-type: none"> <li>Board approved awards January 14, 2021.</li> <li>Expend by 9/30/22</li> <li>90 Day closeout</li> </ul>	<p>Two streams:</p> <ul style="list-style-type: none"> <li>\$61,031,041 for Homelessness Prevention and Rapid Rehousing.</li> <li>\$274,649 for ESG CARES and HMIS Coordination through each Continuum of Care.</li> </ul> <p>Amendment processed allowing greater flexibility upon request on eligible uses.</p>	<p>ESG Guidance issued by HUD on 9/1/20.</p> <p>Plan Amendment submitted to HUD 10/21/20. HUD signed grant agreement on 10/27/2020.</p>	All contracts are in effect.	<p>FTEs noted under ESG CARES Phase I will be utilized for both phases.</p> <p>5% admin (\$3,232,247 )</p>	4,525 persons	<p>\$64,537,937</p> <p>\$64,537,937 <b>100%</b></p> <p>\$5,893,327.73 9.13%</p>	This is the state's share of the second (final) allocation of \$2.96 billion.
<b>Housing Choice Voucher Program Admin</b>	<p>HUD has clarified that expenditure must occur by June 30, 2022 (awaiting in writing, is an update from previous noted deadline of 12/31/21).</p> <p>1<sup>st</sup> Award: \$117,268 2<sup>nd</sup> Award: \$140,871 (8/10/2020)</p>	<ul style="list-style-type: none"> <li>Software upgrades with Housing Pro to allow more efficient remote interface.</li> <li>Landlord incentive payments.</li> <li>Possible damage assistance, PPE expenses, tablets</li> <li>October 2020 Board approved use of funds for retention payments to existing owners to ensure their ongoing participation in the program.</li> </ul>	<p>Received HUD interpretation that using funds for software upgrades are acceptable. \$11,620 was paid for the system purchase.</p>	<p>Most recently, through the Project Access program, 37 incentives were offered to new landlord. As of today, 8 payments were paid to the landlord.</p>	No added TDHCA staffing.	31 Landlords; 20 new landlords added	<p>\$258,139</p> <p>\$56,932 22.05%</p> <p>\$30,468 (Landlord Payment) 11.8%</p>	\$380M nationally. Purchases of Housing Pro upgrades complete. Training underway. Materials for landlord incentives completed.
<b>Housing Choice Voucher Program MVP</b>	<p>12 months of assistance, start date begins whenever we designate with HUD.</p> <p>Orig. Alloc: \$105,034*</p>	<p>15 additional MVP vouchers consistent with our award of MVP, which for TDHCA is for Project Access households.</p> <p>* A supplemental allocation from HUD is provided each quarter to support the 15 vouchers (amounts vary by quarter).</p>	None needed.	<p>Received award from HUD. Issued the 15 vouchers on 5/22/20.</p>	<p>No added TDHCA staffing.</p> <p>No added admin funds.</p>	7 families in current leases.	<p>\$110,302</p> <p>\$17,538 15.9%</p> <p>\$17,538 15.9%</p>	8 vouchers outstanding; all are searching for units.

Program	Timelines / Contract Periods	Planned Activities	Waivers and Initial Approvals Needed	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Expended (%)	Other Notes
<b>CORONAVIRUS RELIEF BILL – PART OF THE CONSOLIDATED APPROPRIATIONS ACT OF 2021</b>								
<b>Emergency Rental Assistance 1.0 (Texas Rent Relief Program)</b>	<p>Signed by the President on December 27, 2020, the bill, tied to the appropriation bill, dedicated funds through Treasury specifically for rental assistance. Called ERA 1.0.</p> <p>Must obligate funds by 9/30/21</p> <p>Expend funds by 9/30/22 (extended by American Rescue Bill)</p>	<p>Program provides up to 15 months of rental and utility assistance including arrears. Households must reapply every 3 months. Program run by the state directly with no subrecipients. 10% of funds may be used for Housing Stability services. 10% admin expenses allowed. A 10% set-aside of funds for eviction diversion has been established; those applications and households facing utility disconnections are processed first.</p> <p><i>Geography:</i> Available statewide. <i>Income Eligibility:</i> For households at or below 80% AMI.</p>	<p>Treasury has provided periodic updated FAQs as informal guidance – most recently June 24, 2021. As they are released, TRR policies are adjusted.</p>	<p>QA/QC vendor, Deloitte, has been contracted.</p> <p>Housing Stability Services: Contract with Texas Access to Justice Foundation pending execution; awards made by Board July 2021 to approximately 30 providers of services in process of being set up and contracted.</p>	<p>Positions filled include Director and 18 positions filled. Four position posted. Staffing now includes a team for the Stability Services activity.</p> <p>All FTES are Art. IX</p> <p>Up to 10% budget for admin (\$130,811,062)</p>	122,348	<p>\$1,308,110,629</p> <p>Expended* \$739,695,465 56.55%</p>	<p>Figure in preceding 2 columns is per Internal Report August 25, 2021. Numbers reflect all payments already made, plus payments in process (review and approval is complete, pending payment processing) and excluding administrative payments.</p>
<b>Low-Income Household Water Assistance Program (LIHWAP1)</b>	<p>Part of the appropriation bill; provides dedicated funds through HHS for the Low-Income Household Drinking Water and Wastewater Emergency Assistance Program</p> <p>Must obligate funds by: 9/30/23</p> <p>Must expend funds by: 9/30/23</p>	<p>Program provides funds to assist low-income households that pay a high proportion of household income for drinking water and wastewater services, by providing funds to owners/operators of public water and treatment systems to reduce arrearages charged. HHS has encouraged that grantees model the LIHEAP program and utilize their LIHEAP networks of subrecipients.</p> <p><i>Geography:</i> Statewide <i>Income Eligibility:</i> TBD</p>	<p>The governor designated TDHCA as the recipient state agency on March 5, 2021. TDHCA submitted signed Terms &amp; Conditions, 424 and required survey responses on April 22.</p>	<p>TDHCA submitted its state LIHWAP plan on August 9, 2021. Plan is under review by HHS. Upon approval, staff will initiate contracts (anticipated to start October 1<sup>st</sup>) with the providers approved by the Board in June 2021. Outreach is occurring with water utility providers.</p>	<p>3 Art. IX FTEs</p> <p>Admin 15% Any FTES will be Art. IX</p>	0	<p>\$51,801,876</p> <p>\$0 0%</p> <p>\$0 0%</p>	<p>\$638M Nationally</p>

**AMERICAN RESCUE PLAN (ARPA) – Public Law 117-2**

Program	Timelines / Contract Periods	Planned Activities	Waivers and Initial Approvals Needed	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Expended (%)	Other Notes
<p align="center"><b>Emergency Rental Assistance 2.0</b></p>	<p>Passed as Section 3201 of the American Rescue Plan, dedicates funds through Treasury specifically for rental assistance. While a separate federal allocation, Treasury has indicated it is considered the same program as ERA 1.0.</p> <p>As early as March 31, 2022 may reallocate funds to other grantees if not used.</p> <p>Must expend funds by 9/30/25</p>	<p>Program limits assistance up to 18 month (including any assistance under ERA 1.0) for rental and utility assistance including arrears. Will use the same system of delivery as ERA 1.0. Up to 10% may be used for Housing Stability services.</p> <p><i>Geography:</i> Available statewide. <i>Income Eligibility:</i> For households at or below 80% of AMI.</p>	<p>No waivers needed.</p>	<p>Funds will be utilized upon completion of ERA 1.0.</p>	<p>The TRR Director will include these additional funds in her oversight. FTEs noted under ERA 1.0 are being utilized for both phases of ERA.</p> <p>Up to 15% budget for admin (TBD)</p>	<p>0</p>	<p>\$1,079,786,857</p> <p>\$0 0%</p> <p>\$0 0%</p>	<p>\$21.5B nationally. Texas amount not yet available. Unlike ERA 1.0, 2.0 establishes High Need Grantees to receive a portion of funds. Provides the states an initial 40% of funds within the first 60 days.</p>
<p align="center"><b>Homeless Assistance and Supportive Services Program</b></p>	<p>Passed as Section 3205 of the American Rescue Plan, the program dedicates funds through HUD allowing flexible uses that can include typical HOME activities as well as homeless services and non-congregate shelter.</p> <p>Must expend funds by 9/30/30</p>	<p>Funds can be used for tenant based rental assistance, development of affordable housing, supportive services, non-congregate emergency shelter, permanent supportive housing, and operating costs for eligible nonprofit organizations.</p> <p><i>Geography:</i> TBD <i>Households Eligibility:</i> For homeless, at risk of homelessness, those fleeing Domestic Violence, or others with housing instability.</p>	<p>HUD has released no guidance to date, but has verbally indicated that it will release guidance. Grantees cannot submit the required Consolidated Plan amendment until that guidance is released. Therefore, until guidance is released, TDHCA is not able to take more proactive steps for moving this program forward.</p>	<p>Program design to be determined – will depend on HUD guidance.</p>	<p>Being administered through Single Family and Homelessness Division. Positions to be filled not yet determined.</p> <p>All FTES are Art. IX</p> <p>Up to 15% budget for admin and planning (\$19,945,372)</p>	<p>0</p>	<p>\$132,969,147</p> <p>\$0 0%</p> <p>\$0 0%</p>	<p>\$5B nationally.</p>



Program	Timelines / Contract Periods	Planned Activities	Waivers and Initial Approvals Needed	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Expended (%)	Other Notes
<b>Homeowner Assistance Fund (HAF)</b>	<p>Passed as section 3206 of the American Rescue Plan, dedicates funds through Treasury specifically for preventing mortgage delinquencies, defaults, foreclosures, loss of utilities and displacement.</p> <p>Must expend funds by 9/30/26</p>	<p>The HAF Plan to be submitted to Treasury includes 1) a Reinstatement Program to reinstate delinquent mortgage loans, including principal and interest, as well as amounts advanced by the servicer for property charges (taxes, insurance, condo and homeowner association fees, and other related expenses advanced to protect lien position, and 2) a Property Charge Default Resolution Program, to bring current delinquent property charges, including past due property taxes, insurance premiums, condo and homeowner association fees, and cooperative maintenance or common charges, including up to 90 days of upcoming property charges. 100% of the funds will be made available to households with incomes equal to or less than the greater of (i) 100% of AMI or (ii) 100% of national median income. <i>(Cont. under Waivers)</i></p>	<p>TDHCA submitted a grant agreement to Treasury by the April 23 deadline.</p> <p>TDHCA will submit its HAF plan to Treasury by September 30, 2021.</p> <p><i>(Cont. from Planned Activ.)</i></p> <p>Additional programs may be submitted to Treasury in the future.</p> <p><i>Geography:</i> Statewide <i>Income Eligibility:</i> Household income at or below greater of 100% AMI or 100% of national median income.</p>	<p>To receive funds beyond the initial 10%, the state must submit the HAF Plan. Staff obtained public comment on a draft plan. The Plan includes needs assessment, evidence of public engagement, program design, method for targeting, goals, readiness, and a budget.</p>	<p>TBD relating to positions that will need to be filled.</p> <p>All FTES are Art. IX</p> <p>Up to 15% (\$126,332,101) for admin, planning, community engagement and needs assessment</p>	0	<p>\$842,214,006</p> <p>\$0 0%</p> <p>\$0 0%</p>	<p>\$9.9B nationally. Treasury encourages states to use initial disbursement of 10% of funds for creating or funding pilot programs to serve targeted populations, and focus on rapid assistance options such as mortgage reinstatement programs.</p>
<b>LIHEAP</b>	<p>Passed as Section 2911 of the American Rescue Plan, dedicates funds through HHS for home energy costs.</p> <p>Must expend funds by: 9/30/22</p>	<p>99% of funds were programmed in April 2021 to CEAP subs using a modified formula; 1% for state admin.</p> <p><i>Geography:</i> Available statewide <i>Income Eligibility:</i> 150% of poverty</p>	Not yet known.	<p>Contracts have not yet been executed. Program flexibilities to improve assistance to households impacted by Winter Storm Uri will be included in these funds.</p>	<p>FTEs noted under CARES LIHEAP will be utilized for both allocations.</p> <p>1% admin (TBD)</p>	0	<p>\$134,407,308</p> <p>\$0 0%</p> <p>\$0 0%</p>	<p>\$4.5B nationally.</p>

Program	Timelines / Contract Periods	Planned Activities	Waivers and Initial Approvals Needed	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Expended (%)	Other Notes
<b>LIHWAP2</b>	<p>Passed as Section 2912 of the American Rescue Plan, dedicates funds through HHS for home water costs.</p> <p>Must obligate funds by: 9/30/23</p> <p>Must expend funds by: 9/30/23</p>	<p>See LIHWAP1 above. HHS has suggested that it will administer LIHWAP1 and 2 under one LIHWAP Plan. Because of the different funding sources, separate contracts will be required.</p> <p><i>Geography:</i> Statewide</p> <p><i>Income Eligibility:</i> TBD</p>	<p>The governor designated TDHCA as the recipient state agency for these funds on March 5, 2021.</p>	<p>See LIHWAP1 above.</p>	<p>FTEs noted under Appropriation Act LIHWAP will be utilized for both allocations.</p> <p>Admin % not yet known</p>	<p>0</p>	<p>\$40,597,082</p> <p>\$0 0%</p> <p>\$0 0%</p>	<p>\$500M Nationally</p>
<b>Emergency Housing Vouchers (EHV)</b>	<p>Passed as Section 3202 of the American Rescue Plan, dedicates vouchers through HUD for emergency rental assistance.</p> <p>HUD Authority to Recapture May Occur as Early As: 1 Year from Funding (if vouchers are unissued)</p> <p>Initial Funding Term Expires: Dec. 31, 2022</p> <p>Can Reissue EHV until: Sept. 30, 2023</p> <p>Renewal Funds Available for 'Occupied Units' through: Sept. 30, 2030</p>	<p>TDHCA is receiving 798 vouchers. The award includes funds for the vouchers (\$7,933,560) plus funds to provide services (\$2,793,000) and funds for admin (\$763,788). Vouchers are for households who are: (1) homeless, (2) at risk of homelessness, (3) fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking, or (4) recently homeless.</p> <p><i>Geography:</i> TENTATIVE/ SUBJECT TO CHANGE: 34 county PHA Jurisdiction plus some counties in the Balance of State Continuum of Care (excluding the areas covered by PHAs that accepted EHV for their jurisdiction).</p> <p><i>Income Eligibility:</i> Not to exceed 50% of AMI</p>	<p>Significant waivers have been authorized by HUD. TDHCA will seek to maximize its use of these waivers, however the waivers are time-limited so TDHCA will be cautious not to authorize households based on waivers that, when expired, would make the household ineligible at renewal.</p> <p>TDHCA is required to update its PHA Admin Plan to reflect our plan for the service fee (see last column) and other program elements.</p>	<p>HUD requires that PHAs enter into MOUs with Homeless Continua of Cares (CoC) to receive referrals for these vouchers. Because service funds are also being provided to these organizations, contracts may be executed. Awards of those contracts were approved at the July 8 Board meeting; the contract with the Waco CoC has been executed. Collaboration with other CoCs is underway.</p>	<p>Program is being administered jointly by the Section 8 and Section 811 areas due to the unique nature of the program.</p> <p>2 Positions to be filled. To be paid for by EHV Admin and CSBG Admin.</p> <p>FTEs are Art. IX</p> <p>Admin fee structure is complex, variable and tied to timing of household having found a unit, hence the use of CSBG Admin to support the positions.</p>		<p>Total \$11,490,348</p> <p><u>Rent Payments</u> Avail: \$7,933,560</p> <p>Obligated: \$0 0%</p> <p>Expended: \$0 0%</p> <p><u>Service Contracts</u> Avail: \$2,793,000</p> <p>Obligated: \$175,000 6.3%</p> <p>Expended: \$0 0%</p>	<p>\$5 billion Nationally</p> <p>A service fee of \$3,500 per unit is authorized separate from the rental assistance payment. The fee total is not tied to each voucher, but is a combined total of funds for services. Services may include: housing search assistance; deposits, holding fees, and application fees; owner-related uses; and other eligible uses.</p>

2c

**BOARD REPORT ITEM**  
**BOND FINANCE DIVISION**  
**SEPTEMBER 2, 2021**

Report on the Department's Swap Portfolio and recent activities with respect thereto

**BACKGROUND**

Between 2004 and 2007, the Department entered into five interest rate swaps to hedge interest rate risk associated with its tax-exempt, single family variable rate mortgage revenue bonds. One swap was terminated in conjunction with a refunding of the underlying bonds, and four swaps remain outstanding, two of which were restructured in 2014.

In accordance with the Department's Interest Rate Swap Policy, the Bond Finance Division has the day-to-day responsibility of managing the swaps. The outstanding bonds associated with each of the swaps are reduced by scheduled redemptions and maturing amounts, and by amounts representing principal and prepayments received on the mortgage-backed securities that secure each bond issue. Under state law, the notional amount of swap outstanding cannot exceed the par amount of related bonds outstanding. To avoid being overswapped, staff closely monitors the amount of swap outstanding, the related outstanding bond amount, and any upcoming bond redemptions to ensure enough swap is called to comply with state law.

In addition to monitoring state law compliance, staff works closely with the Department's Financial Advisor, Stifel, Nicolaus & Company, Incorporated, to identify opportunities to terminate or reduce swaps by exercising optional terminations, or call rights, on the swaps. Staff analyzes the economic benefit of the proposed termination, and evaluates potential interest rate or other associated risks. When both economically beneficial and prudent to do so, optional termination rights are exercised on portions of the underlying swaps.

The attached report reflects the status of the Department's swaps as of September 1, 2021. Series 2005A and Series 2007A swaps are matched amortization swaps; as such, a reduction in the outstanding swap amount for these series is the direct result of principal payments and prepayments received on the underlying mortgage loans. State law requires that the bonds outstanding equal or exceed the amount of swap outstanding at all times.

Through the issuance of Single Family Mortgage Revenue Refunding Bonds, 2021 Series B, the Series 2004B and Series 2004D Bonds were refunded in full on September 1, 2021, and the related swaps were cancelled at par.

Since 2004, when the Department first utilized swaps to hedge variable rate bonds, the total notional amount of swaps has been reduced from an initial \$354,005,000, to the current outstanding amount of \$20,705,000.

**Texas Department of Housing and Community Affairs**  
**Swap Portfolio Update**  
**September 2, 2021**

<b>Matched Amortization Swaps</b>							
Related Bonds	Swap Counterparty	Effective Date	Maturity Date	Original Notional Amount	Swap Outstanding Notional as of 12/1/2020	Swap Outstanding Notional as of 9/1/2021	CHANGE in Swap Outstanding
2005A	JP Morgan	8/1/2005	9/1/2036	\$ 100,000,000	\$ 15,065,000	\$ 10,920,000	\$ (4,145,000)
2007A	JP Morgan	6/5/2007	9/1/2038	\$ 143,005,000	\$ 13,780,000	\$ 9,785,000	\$ (3,995,000)

<b>Amortizing Swaps with Optionality</b>							
Related Bonds	Swap Counterparty	Effective/Restructured Date	Maturity Date	Original Notional Amount	Swap Outstanding Notional as of 12/1/2020	Swap Outstanding Notional as of 9/1/2021	CHANGE in Swap Outstanding
2004B	BNY Mellon	3/1/2014	9/1/2034	\$ 40,000,000	\$ 14,335,000	\$ -	\$ (14,335,000)
2004D	Goldman Sachs	1/1/2005	3/1/2035	\$ 35,000,000	\$ 10,440,000	\$ -	\$ (10,440,000)
2006H	BNY Mellon	3/1/2014	9/1/2025	\$ 36,000,000	\$ -	\$ -	\$ -

<b>TOTAL SWAPS</b>				<b>\$ 354,005,000</b>	<b>\$ 53,620,000</b>	<b>\$ 20,705,000</b>	<b>\$ (32,915,000)</b>
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2004B - UBS AG was the original counterparty and the original notional at issuance was \$53,000,000.

<b>Variable Rate Bonds Associated with Matched Amortization Swaps</b>							
Related Bonds	Swap Counterparty	Effective Date	Maturity Date	Original Notional Amount	Bonds Outstanding 12/1/2020	Bonds Outstanding 9/1/2021	CHANGE in Bonds Outstanding
2005A	JP Morgan	8/1/2005	9/1/2036	\$ 100,000,000	\$ 15,065,000	\$ 10,920,000	\$ (4,145,000)
2007A	JP Morgan	6/5/2007	9/1/2038	\$ 143,005,000	\$ 13,780,000	\$ 9,785,000	\$ (3,995,000)

<b>Variable Rate Bonds Associated with Amortizing Swaps with Optionality</b>							
Related Bonds	Swap Counterparty	Effective Date	Maturity Date	Original Notional Amount	Bonds Outstanding 12/1/2020	Bonds Outstanding 9/1/2021	CHANGE in Bonds Outstanding
2004B	BNY Mellon	3/1/2014	9/1/2034	\$ 40,000,000	\$ 15,595,000	\$ -	\$ (15,595,000)
2004D	Goldman Sachs	1/1/2005	3/1/2035	\$ 35,000,000	\$ 11,065,000	\$ -	\$ (11,065,000)
2006H	BNY Mellon	3/1/2014	9/1/2025	\$ 36,000,000	\$ -	\$ -	\$ -

<b>TOTAL BONDS</b>				<b>\$ 354,005,000</b>	<b>\$ 55,505,000</b>	<b>\$ 20,705,000</b>	<b>\$ (34,800,000)</b>
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# ACTION ITEMS

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# ORAL PRESENTATION



4a

**TO BE POSTED  
NOT LATER THAN  
THE THIRD DAY  
BEFORE THE  
DATE OF THE  
MEETING**

4b

**BOARD REPORT**  
**MULTIFAMILY FINANCE DIVISION**  
**SEPTEMBER 2, 2021**

**Quarterly report relating to staff-issued Determination Notices for 2021 Non-competitive 4% Housing Tax Credit applications**

In April 2021 the Board adopted a policy that allowed a more streamlined approach to the review process associated with certain 4% HTC applications. These applications include those where the Department's only role was in evaluating the 4% HTC and where the Department was not serving as the bond issuer and where there was not a request for Multifamily Direct Loan funds.

Specifically, the Board approved a series of waivers relating to staff's evaluation of program requirements as well as underwriting requirements. As it relates to the underwriting requirements, the waivers were specific to the reasonableness of certain costs represented by an applicant in an application in that staff was not independently verifying the reasonableness of those costs. Moreover, the new approach recognizes the point in time in which evaluating the costs associated with a particular development matters and provides value, which is at cost certification when costs are actually known, instead of speculating what they might be at application and again as a development gets closer to closing.

As it relates to the program requirements, the waivers allowed for the administrative approval and issuance of the Determination Notice which would allow staff more flexibility in responding to an applicant's needs in a timely manner that is not bound by the Board calendar. Part of the adoption of this streamlined policy included a report item to be provided to the Board on a quarterly basis detailing the number of Determination Notices issued, along with a brief description of the projects.

The 4% HTC applications are reviewed by program, underwriting, and compliance staff within an approximate 90-day period and Notices are issued once all reviews are complete and the underwriting report is ready to be posted to the Department's website. Applications are still submitted at the beginning of the month and slated for a Determination Notice to be issued approximately 90 days later that still generally coincides with the Board meeting calendar, in order to provide internal and external expectations regarding when the Determination Notice should be issued. The 4% HTC applications listed in Exhibit A include those where the Determination Notice was issued administratively by staff. Since implementation of the policy, staff has administratively issued 17 Determination Notices that would have otherwise been presented to the Board for approval. This represents 3,564 total units and \$30,670,610 in annual 4% Housing Tax Credits.



**EXHIBIT A**

**4% Housing Tax Credit Recommended Applications**

Application #	Development Information	Determination Notice Issue Date	Units	Recommended HTC Amount	Bond Issuer & Priority Designation	PPR Category and Conditions
21413	Summit at Renaissance Park SWC of Greenspoint Dr. and Benmar Dr. City: Houston County: Harris New Construction Target Population: General	July 15, 2021	325	\$3,320,362	Houston Housing Finance Corporation  Priority 3	Category 1
21415	Temenos 1703 Gray Street City: Houston County: Harris Reconstruction Target Population: Supportive Housing	July 13, 2021	95	\$1,133,609	Houston Housing Finance Corporation  Priority 1B	Category 1
21416	Virginia Flats 2250 W. Virginia Street City: Beaumont County: Jefferson Acquisition/Rehabilitation Target Population: General	May 14, 2021	110	\$833,030	Jefferson County Housing Finance Corporation  Priority 3	Category 3  Conditioned upon the following:  1. ITEX agrees to replace the existing management company, consultant, or management personnel with another of its choosing, for any of their properties identified with new Events of Noncompliance on any Audits notified from March 1, 2021 through December 31, 2022.  2. ITEX will hire a third party compliance auditor to review their existing portfolio on a quarterly basis and have them provide reports and guidance to ITEX and independent reports to TDHCA upon request, through December 31, 2022.  3. ITEX will hire a Director of Compliance and Asset Management at the corporate and development level by July 1, 2021 to oversee the existing Affordable Housing Compliance Department to ensure they continue to move forward on resolving compliance issues.  4. ITEX will actively engage with TDHCA compliance staff to use better processes and best practices to reduce compliance issues through December 31, 2022.

Application #	Development Information	Determination Notice Issue Date	Units	Recommended HTC Amount	Bond Issuer & Priority Designation	PPR Category and Conditions
						<p>5. Owner has designated the Senior Vice President of Property Management (until a new Director of Compliance and Asset Management is hired) to receive Compliance correspondence and provide timely responses to the Department on behalf of the proposed Development and all other Developments subject to a TDHCA LURAs over which the Owner has the power to exercise Control.</p> <p>6. ITEX will require that at least on the of the following employees: VP of Operations, Compliance Director, Compliance Auditor(s), Regional Manager(s), or Site Staff annually attend the trainings listed and provide certifications to TDHCA upon request through December 31, 2022.</p> <p>a. Housing Tax Credit Trainings sponsored by the Texas Apartment Association;</p> <p>b. 1st Thursday Income Eligibility Training conducted by TDHCA;</p> <p>c. Review one or more of the TDHCA Compliance Training Webinars:</p> <p>i. 2012 Income and Rent Limits Webinar Video;</p> <p>ii. 2012 Supportive Services Webinar Video;</p> <p>iii. Income Eligibility Presentation Video;</p> <p>iv. 2013 Annual Owner's Compliance Report (AOCR) Webinar Video;</p> <p>v. Most current Tenant Selection Criteria Presentation;</p> <p>vi. Most current Affirmative Marketing Requirements Presentation;</p> <p>vii. Fair Housing Webinars (including but not limited to the 2017 FH Webinars)</p>
21423	El Rosario Homes Scattered Sites City: Mission County: Hidalgo Acquisition/Rehabilitation Target Population: General	July 2, 2021	100	\$767,789	Hidalgo/Willacy Housing Finance Corporation  Priority 3	Category 1
21424	La Merced Homes Scattered Sites City: Mercedes County: Hidalgo Acquisition/Rehabilitation Target Population: General	July 2, 2021	100	\$529,454	Hidalgo/Willacy Housing Finance Corporation  Priority 3	Category 1
21425	Granada Apartments 311 South St. Mary's St. City: San Antonio County: Bexar Acquisition/Rehabilitation	July 2, 2021	265	\$2,142,452	Las Varas Public Facility Corporation  Priority 3	Category 1

Application #	Development Information	Determination Notice Issue Date	Units	Recommended HTC Amount	Bond Issuer & Priority Designation	PPR Category and Conditions
	Target Population: Elderly					
21426	The Lantana NC of Rattler Rd. and Hwy. 123 City: San Marcos County: Hays New Construction Target Population: General	June 22, 2021	216	\$2,112,864	SMHA Finance PFC  Priority 3	Category 1
21428	Grand Avenue Flats ≈ 15701 FM 1325 City: Austin ETJ County: Williamson New Construction Target Population: General	June 25, 2021	275	\$2,419,820	Capital Area Housing Finance Corporation  Priority 2	Category 2
21429	The Henderson on Reinli 1101 Reinli St. City: Austin County: Travis New Construction Target Population: General	June 1, 2021	306	\$3,601,141	Austin Affordable PFC, Inc.  Priority 3	Category 2
21436	Capitol View Flats 3600 East Slaughter Ln. City: Austin ETJ County: Travis New Construction Target Population: General	May 24, 2021	324	\$2,656,332	Travis County Housing Finance Corporation  Priority 2	Category 1
21437	Enclave on Ross SW Corner of Hwy. 71 and Ross Rd. City: Dell Valle ETJ County: Travis New Construction Target Population: General	June 25, 2021	288	\$1,917,732	Travis County Housing Finance Corporation  Priority 1B	Category 1
21438	Las Palmas 2211 Del Rio Blvd. City: Eagle Pass County: Maverick Acquisition/Rehabilitation Target Population: General	June 9, 2021	64	\$385,862	Texas State Affordable Housing Corporation  Priority 3	Category 1
21439	Riverstation Apartments 220 Stoneport Dr. City: Dallas County: Dallas Acquisition/Rehabilitation Target Population: General	June 28, 2021	236	\$1,940,716	Texas State Affordable Housing Corporation  Priority 3	Category 2
21440	City Parc at West Oaks Apartments 3443 Addicks Clodine Rd. City: Houston County: Harris Acquisition/Rehabilitation	August 5, 2021	168	\$1,199,972	Harris County Housing Finance Corporation  Priority 3	Category 1

Application #	Development Information	Determination Notice Issue Date	Units	Recommended HTC Amount	Bond Issuer & Priority Designation	PPR Category and Conditions
	Target Population: General					
21442	Bristol at Somerset Apartments Somerset Road City: San Antonio County: Bexar New Construction	July 29, 2021	348	\$2,741,353	Las Varas Public Facility Corporation  Priority 3	Category 2
	Target Population: General					
21445	Parmore Arcadia Trails NEQ Beltline Rd. and Mercury Rd. City: Balch Springs County: Dallas New Construction	July 14, 2021	200	\$1,705,989	Texas State Affordable Housing Corporation  Priority 3	Category 1
	Target Population: Elderly					
21446	Machuca 1039 J C Machuca Rd. City: El Paso County: El Paso Acquisition/Rehabilitation	August 6, 2021	144	\$1,262,133	El Paso Housing Finance Corporation  Priority 3	Category 2
	Target Population: General					
Totals for Recommended Applications			3,564	\$ 30,670,610		



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**BOARD ACTION REQUEST**

**BOND FINANCE DIVISION**

**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action on Resolution No. 22-002 authorizing modifications to single family homeownership programs and approving amending program documents and program guidelines, authorizing the execution of documents and instruments relating to the foregoing, making certain findings and determinations in connection therewith, and containing other provisions relating to the subject and possible waiver of 10 TAC §27.4(a) and 10 TAC §28.4(a)

**RECOMMENDED ACTION**

Adopt attached resolution.

**BACKGROUND**

In an effort to keep pace with ever-changing market conditions and borrower preferences and requirements, staff is recommending two changes to the Department's single family homeownership programs: a change to the income limits for the Department's Taxable Mortgage Program (TMP), and the addition of forgivable mortgage loans to expand borrower financing options for the all single family homeownership programs.

**Income Limits**

The Department finances mortgage loans originated through its single family homeownership program under two programs, the My First Texas Home (MFTH) Program, and the Taxable Mortgage Program (TMP). MFTH provides tax-exempt and tax-exempt eligible financing through the issuance of single family mortgage revenue bonds (SFMRBs) and the issuance of Mortgage Credit Certificates (MCCs). Loans originated through MFTH must comply with IRS Requirements for tax-exempt bonds, including income and purchase price limits and first-time homebuyer requirements. Income limits established by the IRS are as follows:

Households of 1-2 Persons	100% AMFI if the home is not located in a Targeted Area 120% AMFI if the home is located in a Targeted Area
Households of 3 or more	115% AMFI if the home is not located in a Targeted Area 140% AMFI if the home is located in a Targeted Area

TMP provides taxable financing through the forward sale of mortgage-backed securities backed by Ginnie Mae and Fannie Mae. Since implementation, the Department has used the same IRS income limits referenced above as the maximum income for TMP. However, TMP is a taxable program, and the Board has the statutory authority to establish income limits for TMP. Texas Gov't Code §2306.004(8)(A)(iv) permits the Board to effectively define moderate income to

take into account “the ability of the individuals and families to compete successfully in the private housing market and to pay the amounts required by private enterprise for sanitary, decent, and safe housing.”

Given the current housing market and lack of affordability across the State, staff is requesting that the Board authorize the following income limits for TMP: 125% AMFI for homes not located in a Targeted Area, and 140% AMFI if the home is located in a Targeted Area.

Using Houston–The Woodlands–Sugar Land HMFA as an example, the income limit determined by the U.S. Department of Housing and Urban Development (HUD) for fiscal year 2021 for a household of 1-2 persons purchasing a home not located in a Targeted Area is 100% AMFI, or \$79,200, and the income limit for a household of 3 or more persons purchasing a home not located in a Targeted Area is 115% AMFI, or \$91,080. With the recommended increase to 125% AMFI, homebuyers purchasing a home not located in a Targeted Area would have an income limit of \$99,000, and with an increase to 140% AMFI, homebuyers purchasing a home in a Targeted Area would have an income limit of \$110,880. This will significantly increase the purchasing power for homebuyers, and will hopefully allow more moderate income homebuyers to achieve affordable homeownership.

Alternative statewide affordable housing programs offered by other public entities in the State have already moved away from IRS income limits for taxable financing programs.

### Forgivable Mortgage Loans

The Department currently offers Down Payment and Closing Cost Assistance (DPA) in the form of a 0% interest, non-amortizing, second mortgage loan that is due on sale, refinance, or repayment of the first mortgage. Borrowers can choose two, three, four, or five points of DPA if financing with a government loan (FHA, USDA, VA), and three or five points of DPA if financing with a conventional loan. This financing structure typically provides the lowest possible mortgage rate.

In the last year, a significant number of program lenders have requested that the Department offer DPA through a forgivable mortgage loan. Staff has been working with its Financial Advisor and TBA Provider to analyze the economics and merits of the addition of a forgivable loan. Based on lender feedback regarding borrower needs, and an economic analysis of the addition of forgivable mortgage loans, staff is requesting authorization to add either a 3-year or a 5-year forgivable mortgage loan financing option to the financing alternatives offered by the Department. Forgivable mortgage loans would be structured to be identical to the currently offered DPA loans, except that they would only be 100% repayable if the first mortgage is repaid within the first 3 years (3-year forgivable) or 5 years (5-year forgivable) and otherwise, 100% forgiven at the 3-year or 5-year anniversary, respectively. Forgivable mortgage loans typically carry a higher mortgage interest rate on the first mortgage than a repayable second lien financing structure, due to the forgiveness of the second mortgage. The amount of increase to the mortgage interest rate depends on several factors, primarily market conditions

and pricing related to the forward sale of MBS, and is expected to vary between .125% and .375% as compared to the mortgage interest rate for a repayable second mortgage.

To add forgivable mortgage loans as a financing alternative for borrowers under the single family homeownership Programs, two rule waivers will be necessary. Pursuant to 10 TAC §27.9 (Texas First Time Homebuyer Program Rule), staff is requesting a waiver of 10 TAC §27.4(a), which requires that “Borrowers receiving down payment assistance must repay all or a portion of the assistance no later than upon repayment of the associated first Mortgage Loan, whether due to sale of the property, refinance, or otherwise.” Pursuant to 10 TAC §28.9 (Taxable Mortgage Program), staff is requesting a waiver of 10 TAC §28.4(a), which requires that “Borrowers receiving down payment assistance must repay all or a portion of the assistance no later than upon repayment of the associated first Mortgage Loan, whether due to sale of the property, refinance, or otherwise.”

The waivers support the Department’s legislatively directed purposes, including to “provide for the housing needs of individuals and families of low, very low, and extremely low income and families of moderate income” and to “develop policies and programs designed to increase the number of individuals and families of extremely low, very low, and low income and families of moderate income that participate in the housing finance division's programs.” In addition, they support the Department’s policy goal that “every resident of this state should have a decent, safe, and affordable living environment.”

Both requested program changes, the increase in income limits and the addition of forgivable mortgage loans as a financing alternative, are specifically designed to better serve low and moderate income homebuyers in the State. Homebuyers will have a menu of financing options from which they can choose the financing structure that best meets their individual circumstances.

Staff recommends approval of Resolution 22-002.

## RESOLUTION NO. 22-002

RESOLUTION AUTHORIZING MODIFICATIONS TO SINGLE FAMILY HOMEOWNERSHIP PROGRAM AND APPROVING AMENDING PROGRAM DOCUMENTS AND PROGRAM GUIDELINES; AUTHORIZING THE EXECUTION OF DOCUMENTS AND INSTRUMENTS RELATING TO THE FOREGOING; MAKING CERTAIN FINDINGS AND DETERMINATIONS IN CONNECTION THEREWITH; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT AND POSSIBLE WAIVER OF 10 TAC §27.4(a) AND 10 TAC §28.4(a)

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 the laws of the State of Texas (the "State"), including particularly Chapter 2306, Texas Government Code, as amended from time to time (the "Act"), for the purpose of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe and sanitary housing for individuals and families of low and very low income and families of moderate income (as described in the Act as determined by the Governing Board of the Department (the "Governing Board") from time to time) at prices they can afford; and

WHEREAS, the Act authorizes the Department (a) to purchase notes and other obligations evidencing loans or interests in loans for individuals and families of low and very low income and families of moderate income and (b) to sell, at public or private sale, with or without public bidding, a mortgage or other obligation held by the Department; and

WHEREAS, the Act further authorizes the Department: (a) to issue revenue bonds, to provide money to (i) make and acquire mortgage loans or participations therein, (ii) fund or increase the Department's reserves or funds (iii) pay the costs and expenses of issuing the bonds and (iv) pay interest on the bonds; and (b) to pledge all or part of the revenues, income or resources of the Department, including the revenues to be received by the Department from the mortgage loans or participations therein, to secure the payment of the principal, interest or redemption premium on the bonds; and

WHEREAS, pursuant to the authorization in the Act, the Department finances mortgage loans originated by the Department through two programs: the My First Texas Home Program (the "MFTH Program"), and the Taxable Mortgage Program ("TMP Program", and collectively with the MFTH Program, the "Single Family Homeownership Program"); and

WHEREAS, through the MFTH Program the Department provides tax-exempt and tax-exempt eligible financing through the issuance of single family mortgage revenue bonds and the issuance of mortgage credit certificates; and

WHEREAS, to qualify for tax-exempt status, loans originated through the MFTH Program are subject to certain limitations under federal tax law, including but not limited to, the following income limits for borrowers: (a) for families of three or more persons, up to 115% (140% in certain targeted areas or in certain cases permitted under applicable provisions of the Internal

Revenue Code of 1986, as amended (the “Code”)) of the area median income; and (b) for individuals and families of two persons, up to 100% (120% in certain targeted areas or in certain cases permitted under applicable provisions of the Code) of the area median income (the “IRS Income Requirements”); and

WHEREAS, the Act permits the Governing Board to define moderate income taking into account, among other factors, the ability of the individuals and families to compete successfully in the private housing market and to pay the amounts required by private enterprise for sanitary, decent, and safe housing; and

WHEREAS, notwithstanding the TMP Program is a taxable program, since its implementation, the Department has used the same IRS Income Requirements for the TMP Program as the MFTH Program; and

WHEREAS, to address current market conditions, the Governing Board desires to approve an increase in the income limits for the TMP Program for all borrowers up to 125% (140% in certain targeted areas or in certain cases permitted under applicable provisions of the Code) of the area median income; and

WHEREAS, the Department provides eligible borrowers with an option for down payment and closing costs assistance (the “DPA Loans”) in connection with its Single Family Homeownership Program; and

WHEREAS, certain of the Department’s administrative rules (the “Department’s Rules”), including particularly 10 Texas Administrative Code § 27.4(a) and 10 Texas Administrative Code § 28.4(a), provide that borrowers receiving down payment assistance must repay all or a portion of the assistance no later than upon repayment of the associated first mortgage loan, whether due to sale of the property, refinance, or otherwise; and

WHEREAS, in accordance with the Act and the Department’s Rules, the Department currently offers DPA Loans in the form of a 0% interest, non-amortizing, second mortgage loan that is due on sale, refinance, or repayment of the related first mortgage loan; and

WHEREAS, to address current market conditions, the Governing Board desires to authorize, as financing alternatives, the addition of 3-year or 5-year forgivable options for DPA Loans (collectively referred to herein as the “Forgivable Loan Options”), which options would otherwise be structured to be identical to the currently-offered DPA Loans, but would provide for forgiveness of DPA Loans following the third anniversary or fifth anniversary, respectively, of the qualifying related first mortgage loan originated under the Single Family Homeownership Program; and

WHEREAS, in order to offer the Forgivable Loan Options, the Governing Board desires to waive the Department’s Rules requiring repayment of down payment assistance; and

WHEREAS, the Governing Board has determined that offering Forgivable Loan Options and the proposed waiver of the Department's Rules would support the Department's public purposes and policy goals identified in the Act, including (a) to provide for the housing needs of individuals and families of low, very low, and extremely low income and families of moderate income; (b) to develop policies and programs designed to increase the number of individuals and families of extremely low, very low, and low income and families of moderate income that participate in the Department's programs; and (c) that every resident of the State should have a decent, safe, and affordable living environment; and

WHEREAS, the Governing Board further desires to approve revising and amending any program guidelines or other documents in connection with the modifications to the Single Family Homeownership Program;

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

## ARTICLE 1

### APPROVAL OF DOCUMENTS AND CERTAIN ACTIONS

Section 1.1 Approval of Increased Income Limits for the TMP Program. The Governing Board hereby approves increasing the income limits for eligible borrowers under the TMP Program for all borrowers up to 125% (140% in certain targeted areas or in certain cases permitted under applicable provisions of the Code) of the area median income.

Section 1.2 Authorization to Modify the Single Family Homeownership Program to Offer the Forgivable Loan Options. The Governing Board hereby authorizes modification of the Single Family Homeownership Program by authorizing the making of the Forgivable Loan Options.

Section 1.3 Waiver of the Department's Rules. To the extent of any conflict between this Resolution and the Department's Rules, the Governing Board hereby approves waiver of such conflicting Rules, including particularly 10 Texas Administrative Code § 27.4(a) and 10 Texas Administrative Code § 28.4(a).

Section 1.4 Execution and Delivery of Documents. The Authorized Representatives each are hereby authorized to execute and deliver all agreements, certificates, contracts, documents, instruments, releases, financing statements, 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 1.5 Power to Revise Form of Documents. Notwithstanding any other provision of this Resolution, the Authorized Representatives are each hereby authorized to make or approve such revisions in any program guidelines or any other documents related to the Single Family Homeownership Program as, in the judgment of such Authorized Representative, 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 delivery of such documents by the Authorized Representatives.

Section 1.6 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 Financial Administration of the Department, the Director of Bond Finance and Chief Investment Officer of the Department, the Director of Texas Homeownership of the Department and the Secretary or 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.

Section 1.7 Ratifying Other Actions. All other actions taken or to be taken by the Executive Director and the Department's staff in connection with the Single Family Homeownership Program are hereby ratified, adopted, and confirmed as the authorized acts and deeds of the Department.

## ARTICLE 2

### GENERAL PROVISIONS

Section 2.1 Purposes of Resolution. That the Board has expressly determined and hereby confirms that offering the Forgivable Loan Options and the furtherance of the purposes contemplated by this Resolution accomplish a valid public purpose of the Department by (a) providing for the housing needs of individuals and families of low, very low and extremely low income and families of moderate income in the State; (b) developing policies and programs designed to increase the number of individuals and families of extremely low, very low, and low income and families of moderate income that participate in the Department's programs; and (c) providing that every resident of the State should have a decent, safe, and affordable living environment.

Section 2.2 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.

Section 2.3 Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

PASSED AND APPROVED this 2<sup>nd</sup> day of September, 2021.



6

**BOARD ACTION REQUEST**

**HOME AND HOMELESS PROGRAMS DIVISION**

**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action on Program Year 2021 Emergency Solutions Grants Program Awards

**RECOMMENDED ACTION**

**WHEREAS**, the Department received an allocation of \$9,389,759 for the Emergency Solutions Grants Program (ESG) for Fiscal Year 2021 from the U.S. Department of Housing and Urban Development (HUD) on July 30, 2021, of which \$8,990,692 was made available to ESG annual Subrecipients in accordance with 10 TAC Chapter 7, Subchapter C, Section 7.33, Apportionment of ESG Funds;

**WHEREAS**, HUD regulations require the Department to award ESG funds within 60 days of receipt of the award letter from HUD, which was signed on July 30, 2021;

**WHEREAS**, 10 TAC Chapter 7, Subchapter C, Section 7.33, Apportionment of ESG Funds allows for the 2021 allocation of ESG funds received by the Department to be offered to eligible Subrecipients of ESG funds that were awarded funds under the 2020 ESG NOFA;

**WHEREAS**, the Department sent Applications to 52 Subrecipients who were eligible to apply for 2020 ESG and received 50 Applications by the deadline;

**WHEREAS**, because the total amount of the 2021 ESG funding allocated to TDHCA was less than 100% of the award amounts of the Contracts issued under the 2020 ESG NOFA, the awards in this recommendation were proportionally reduced to approximately 99% of the 2020 ESG Award amounts based on the total reduction in the amount of the 2021 allocation, eligible applications and savings in administrative funds;

**WHEREAS**, the Applications received have been reviewed and determined to be eligible in accordance with the requirements of 10 TAC §7.33(h)(1)-(5); and

**WHEREAS**, all 50 Applicants have been recommended for approval by the Executive Award Review Advisory Committee (EARAC);

**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

effectuate awards totaling \$8,990,692 for ESG funding recommended pursuant to 10 TAC Chapter 7, Subchapter C, Section 7.33, Apportionment of ESG Funds as detailed in Attachment B, as recommended by EARAC.

## BACKGROUND

The ESG Program is a HUD-funded program designed to assist people experiencing homelessness or at-risk of homelessness to regain stability in permanent housing quickly after experiencing a housing crisis and/or homelessness. The program components under ESG include street outreach, emergency shelter, rapid re-housing, homelessness prevention, Homeless Management Information System (HMIS), and administration. Rapid re-housing and homelessness prevention may be used for housing relocation and stabilization services and short-term and medium-term rental assistance.

Funds allocated to the State of Texas for ESG are allocated based on the factors outlined in 10 TAC §7.33 by TDHCA to CoC regions, which are local planning bodies that coordinate housing and services funding for homeless families and individuals. Within Texas there are 11 geographically limited CoC regions. The largest of these regions is the Balance of State, which includes 215 counties. Both the 2020 ESG regional allocation and the 2021 ESG regional allocation are listed in Attachment A.

On May 13, 2021, the Department adopted amendments to 10 TAC Chapter 7, Subchapter C, Section 7.33, Apportionment of ESG Funds, establishing that the 2021 allocation of ESG funds to the Department would not be subject to a competitive application cycle. Contracts committing funds would instead be offered to eligible Subrecipients who competed for and received an award of funds under the 2020 ESG allocation. The rule outlined minimum requirements for recipients of 2020 ESG funds to receive an award of 2021 funds.

Per 10 TAC §7.33(h) an ESG Subrecipient would be ineligible for funding if it:

- (1) does not submit an Application for funding within 21 days of the request from TDHCA;
- (2) does not resolve administrative deficiencies per §7.37 of this Subchapter within the timeframe and in the manner outlined in that section;
- (3) has four or more months of delinquent monthly reports for its existing contract from 2020 ESG funds;
- (4) does not satisfy the requirements of the Previous Participation Review;
- (5) has unresolved monitoring findings after the corrective action period; or
- (6) is not approved by the Department's Governing Board.

Therefore, in order to understand the awards for 2021 ESG, the 2020 award process must be considered.

### Explanation of 2020 ESG Award Process (Basis for 2021 Awards)

There are three factors to consider that were used in the 2020 ESG award process, which is the basis for this year's award cycle: (1) the number of applications received in each region; (2) the federal cap of 60% of ESG fund on emergency shelter and street outreach; and (3) the three levels of funding recommendations.

For the 2020 ESG competition, there were two regions where fewer funds were requested than were allocated to the region: Austin and Bryan/College Station. The funds not requested were awarded under a later round.

The second factor that affected the 2020 ESG annual award process was the requirement in 24 Code of Federal Regulations (CFR) §576.100(b)(1) that no more than 60% of the state's ESG allocation may be used for street outreach and emergency shelter. In the 2020 ESG annual competition, some higher scoring Applicants with emergency shelter or street outreach Applications were not funded to ensure that the state would not exceed this cap.

Finally, after completion of the scoring and ranking process in the 2020 ESG application process, award recommendations were determined in accordance with the process outlined in 10 TAC §7.38 which provides for up to three levels of funding. Level one of funding was for the highest ranked Applicants within each CoC region, until the funding was exhausted or until there was an offer of a partial award. Level two pooled the unused funds from the first level of funding and offered these pooled funds to the highest ranked Applicants in regions that were not fully funded. In the 2020 ESG annual competition, only these first two levels of funding were used.

In 2020 ESG, the number of applications received, the 60% cap on street outreach/emergency shelter and the two funding levels used resulted in 2020 ESG awards that were different than the amount allocated to each region. The 2020 ESG awards affected the 2021 ESG awards compared to the regional allocation for each region.

#### 2021 Award Process

For the 2021 ESG annual application process, invitations to apply were sent to all 52 Subrecipients of 2020 ESG funds. The 2021 ESG Annual Application period ran from June 14, 2021, through July 6, 2021. Fifty Applications were received and all administrative deficiencies were resolved within the timeframe and in the manner outlined in §7.37. Two 2020 ESG Annual Subrecipients did not submit an application for 2021 funds: Salvation Army of San Antonio (San Antonio CoC) and Shelter Agencies for Families in East Texas (Balance of State CoC).

Per 10 TAC §7.33(j), the funding for each award renewal will be reduced from their 2020 level based on the total reduction in the amount of 2021 allocation received from HUD by the Department. The amount of 2021 ESG annual funds was less the 2020 ESG annual funds by approximately 3%. Due to the two applications that were not received, and the administrative savings achieved during the 2021 renewal process which was shorter than a competitive application cycle, each ESG renewal needed to be reduced by approximately 1%.

All Applications recommended for award have been reviewed for previous participation and were approved for recommendation by EARAC on August 23, 2021. The recommended awards pursuant to 10 TAC Chapter 7, Subchapter C, Section 7.33, Apportionment of ESG Funds, are included for approval as Attachment B.

## Attachment A – Allocation Amounts and Requests by CoC Regions

CoC Number	CoC Region	2020 ESG Allocation	2020 Awards	2020 Difference Allocated and Awarded	2021 ESG Allocation	2021 Awards with Reduction	2021 Difference Allocated and Awarded
TX500	San Antonio/ Bexar County <sup>+</sup>	\$712,703	\$712,703	\$0	\$714,288	\$632,628.00	(\$81,660.00)
TX503	Austin/Travis County*	\$579,039	\$498,367	(\$80,672)	\$577,560	\$494,402	(\$83,158.00)
TX600	Dallas City & County/ Irving	\$1,296,412	\$1,296,412	\$0	\$1,268,728	\$1,286,099	\$17,371.00
TX601	Fort Worth/Arlington/Tarrant County**	\$604,750	\$643,764	\$39,014	\$583,091	\$638,641	\$55,550.00
TX603	El Paso City & County**	\$265,058	\$277,711	\$12,653	\$259,799	\$275,501	\$15,702.00
TX604	Waco/McLennan County	\$143,048	\$143,048	\$0	\$149,884	\$141,910	(\$7,974.00)
TX607	Texas Balance of State***	\$3,643,643	\$3,861,657	\$218,014	\$3,599,361	\$3,759,425	\$160,064.00
TX611	Amarillo	\$178,947	\$178,947	\$0	\$131,534	\$177,523	\$45,989.00
TX624	Wichita Falls/Wise, Palo Pinto, Wichita, Archer Counties	\$139,755	\$139,755	\$0	\$104,111	\$138,644	\$34,533.00
TX700	City of Houston/Fort Bend, Harris, and Montgomery Counties	\$1,457,520	\$1,457,520	\$0	\$1,418,100	\$1,445,919	\$27,819.00
TX701	Bryan/College Station/Brazos Valley*	\$189,009	\$0	(\$189,009)	\$184,236	\$0	(\$184,236.00)
<b>TOTAL</b>		<b>\$9,209,884</b>	<b>\$9,209,884</b>	<b>\$0</b>	<b>\$8,990,692</b>	<b>\$8,990,692</b>	<b>\$0.00</b>

<sup>+</sup>San Antonio CoC and Texas Balance of State CoC each had one applicant that did not apply for 2021 ESG annual funds. The amounts not applied for in these regions was used to proportionally increase all 2021 awards closer to 100% of their 2020 award amounts.

\*Austin CoC region received fewer applications than the amount available in 2020 and Bryan/College Station/Brazos Valley CoC received no applications in 2021.

\*\*Fort Worth/Arlington/Tarrant County CoC, El Paso City/County CoC, and Texas Balance of State CoC had high scoring applications in 2020 that were awarded through the second level of funding.

**Attachment B – ESG Award Recommendations from TDHCA**

**TX-500 (San Antonio/Bexar County)**

Application Number	Applicant Name	Street Outreach Total	Emergency Shelter Total	Homeless Prevention Total	Rapid Re-Housing Total	Total Recommended
42215000001	Family Violence Prevention Services, Inc.	\$0.00	\$115,241.00	\$0.00	\$86,070.00	\$201,311.00
42215000002	Haven for Hope of Bexar County	\$56,637.00	\$51,997.00	\$0.00	\$0.00	\$108,634.00
42215000003	San Antonio Metropolitan Ministry, Inc.	\$51,090.00	\$0.00	\$99,204.00	\$88,968.00	\$239,262.00
42215000004	Society of St. Vincent de Paul, Archdiocesan Council of San Antonio	\$0.00	\$0.00	\$83,421.00	\$0.00	\$83,421.00
					<b>Total</b>	<b>\$632,628.00</b>

**TX-503 (Austin/Travis County)**

Application Number	Applicant Name	Street Outreach Total	Emergency Shelter Total	Homeless Prevention Total	Rapid Re-Housing Total	Total Recommended
42215030006	Youth and Family Alliance (dba LifeWorks)	\$0.00	\$207,921.00	\$0.00	\$134,332.00	\$342,253.00
42215030005	The SAFE Alliance	\$0.00	\$92,504.00	\$0.00	\$59,645.00	\$152,149.00
					<b>Total</b>	<b>\$494,402.00</b>

**TX-600 (Dallas City & County/Irving CoC)**

Application Number	Applicant Name	Street Outreach Total	Emergency Shelter Total	Homeless Prevention Total	Rapid Re-Housing Total	Total Recommended
42216000007	Bridge Steps, dba The Bridge	\$0.00	\$342,255.00	\$0.00	\$0.00	\$342,255.00
42216000008	City House	\$0.00	\$43,445.00	\$0.00	\$0.00	\$43,445.00
42216000009	CitySquare	\$11,765.00	\$0.00	\$0.00	\$0.00	\$11,765.00
42216000010	Family Gateway, Inc.	\$0.00	\$127,635.00	\$0.00	\$169,470.00	\$297,105.00
42216000011	Shelter Ministries of Dallas dba Austin Street Center	\$0.00	\$163,489.00	\$0.00	\$71,363.00	\$234,852.00
42216000013	The Family Place	\$0.00	\$83,071.00	\$80,884.00	\$116,087.00	\$280,042.00
42216000014	The Salvation Army (Dallas)	\$0.00	\$0.00	\$76,635.00	\$0.00	\$76,635.00
					<b>Total</b>	<b>\$1,286,099.00</b>

**TX-601 (Fort Worth/Arlington/Tarrant County CoC)**

Application Number	Applicant Name	Street Outreach Total	Emergency Shelter Total	Homeless Prevention Total	Rapid Re-Housing Total	Total Recommended
42216000012	Tarrant County Hands of Hope	\$50,479.00	\$0.00	\$0.00	\$0.00	\$50,479.00
42216010015	Center for Transforming Lives	\$0.00	\$92,635.00	\$0.00	\$0.00	\$92,635.00
42216010016	SafeHaven of Tarrant County	\$0.00	\$99,204.00	\$19,841.00	\$79,363.00	\$198,408.00
42216010017	The Salvation Army (Fort Worth) Mabee Center	\$0.00	\$172,685.00	\$48,025.00	\$76,409.00	\$297,119.00
					<b>Total</b>	<b>\$638,641.00</b>

**TX-603 El Paso City & County CoC**

Application Number	Applicant Name	Street Outreach Total	Emergency Shelter Total	Homeless Prevention Total	Rapid Re-Housing Total	Total Recommended
42216030018	El Paso Center for Children, Inc.	\$0.00	\$28,806.00	\$0.00	\$88,927.00	\$117,733.00
42216030019	El Paso Human Services, Inc.	\$0.00	\$157,768.00	\$0.00	\$0.00	\$157,768.00
					<b>Total</b>	<b>\$275,501.00</b>

**TX-604 (Waco/McLennan County CoC)**

Application Number	Applicant Name	Street Outreach Total	Emergency Shelter Total	Homeless Prevention Total	Rapid Re-Housing Total	Total Recommended
42216040020	The Salvation Army (Waco)	\$0.00	\$61,937.00	\$34,399.00	\$45,574.00	\$141,910.00
					<b>Total</b>	<b>\$141,910.00</b>

**TX-607 (Texas Balance of State CoC)**

Application Number	Applicant Name	Street Outreach Total	Emergency Shelter Total	Homeless Prevention Total	Rapid Re-Housing Total	Total Recommended
42216070021	Advocacy Outreach	\$0.00	\$23,593.00	\$66,804.00	\$66,804.00	\$157,201.00
42216070022	Ark-Tex Council of Governments	\$0.00	\$0.00	\$137,111.00	\$0.00	\$137,111.00
42216070039	Bay Area Turning Point, Inc.	\$0.00	\$0.00	\$25,446.00	\$25,446.00	\$50,892.00
42216070023	Brown County Home Solutions Inc	\$14,089.00	\$34,225.00	\$34,225.00	\$0.00	\$82,539.00
42216070024	Christian Community Action	\$0.00	\$0.00	\$150,494.00	\$116,367.00	\$266,861.00
42216070025	Community Action Committee of Victoria, Texas	\$0.00	\$0.00	\$297,613.00	\$0.00	\$297,613.00
42216070026	Corpus Christi Hope House, Inc.	\$0.00	\$49,602.00	\$0.00	\$0.00	\$49,602.00
42216070027	Denton County Friend of the Family, Inc.	\$0.00	\$160,424.00	\$0.00	\$83,277.00	\$243,701.00
42216070028	Families In Crisis, Inc.	\$0.00	\$132,835.00	\$51,090.00	\$51,090.00	\$235,015.00
42216070029	Family Crisis Center, Inc.	\$0.00	\$91,268.00	\$0.00	\$91,838.00	\$183,106.00
42216070030	Friendship of Women, Inc.	\$0.00	\$117,825.00	\$0.00	\$0.00	\$117,825.00



Application Number	Applicant Name	Street Outreach Total	Emergency Shelter Total	Homeless Prevention Total	Rapid Re-Housing Total	Total Recommended
42216070031	La Posada Providencia	\$0.00	\$157,300.00	\$0.00	\$0.00	\$157,300.00
42216070032	Loaves & Fishes of the Rio Grande Valley, Inc.	\$57,042.00	\$82,141.00	\$106,148.00	\$57,042.00	\$302,373.00
42216070033	Mid-Coast Family Services, Inc.	\$13,691.00	\$100,306.00	\$85,563.00	\$142,606.00	\$342,166.00
42216070034	Randy Sams' Outreach Shelter	\$0.00	\$148,311.00	\$0.00	\$0.00	\$148,311.00
42216070035	Resource and Crisis Center of Galveston County	\$0.00	\$167,159.00	\$0.00	\$0.00	\$167,159.00
42216070036	The Salvation Army (Coastal Bend)	\$16,815.00	\$114,085.00	\$49,652.00	\$45,088.00	\$225,640.00
42216070037	The Salvation Army (Denton)	\$0.00	\$148,253.00	\$57,630.00	\$91,514.00	\$297,397.00
42216070038	The Salvation Army (Temple)	\$0.00	\$148,102.00	\$59,855.00	\$89,656.00	\$297,613.00
					<b>Total</b>	<b>\$3,759,425.00</b>

**TX-611 (City of Amarillo)**

Application Number	Applicant Name	Street Outreach Total	Emergency Shelter Total	Homeless Prevention Total	Rapid Re-Housing Total	Total Recommended
42216110040	City of Amarillo	\$106,514.00	\$0.00	\$0.00	\$71,009.00	\$177,523.00
					<b>Total</b>	<b>\$177,523.00</b>

**TX-624 Wichita Falls/Wise, Palo Pinto, Wichita, Archer Counties CoC**

Application Number	Applicant Name	Street Outreach Total	Emergency Shelter Total	Homeless Prevention Total	Rapid Re-Housing Total	Total Recommended
42216240041	Nortex Regional Planning Commission	\$0.00	\$0.00	\$48,527.00	\$90,117.00	\$138,644.00
					<b>Total</b>	<b>\$138,644.00</b>

**TX-700 (Houston, Pasadena, Conroe/Harris, Ft. Bend, Montgomery, Counties CoC)**

<b>Application Number</b>	<b>Applicant Name</b>	<b>Street Outreach Total</b>	<b>Emergency Shelter Total</b>	<b>Homeless Prevention Total</b>	<b>Rapid Re-Housing Total</b>	<b>Total Recommended</b>
42217000042	Alliance of Community Assistance Ministries, Inc.	\$0.00	\$0.00	\$154,262.00	\$0.00	\$154,262.00
42217000045	Covenant House Texas	\$0.00	\$125,096.00	\$0.00	\$0.00	\$125,096.00
42217000046	Houston Area Women's Center, Inc.	\$0.00	\$76,890.00	\$0.00	\$227,211.00	\$304,101.00
42217000047	HTX H.O.P.E. Haven	\$67,071.00	\$0.00	\$0.00	\$0.00	\$67,071.00
42217000048	Magnificat Houses, Inc.	\$0.00	\$75,508.00	\$0.00	\$0.00	\$75,508.00
42217000049	SEARCH Homeless Services	\$122,861.00	\$0.00	\$0.00	\$0.00	\$122,861.00
42217000044	The Bridge Over Troubled Water, Inc.	\$0.00	\$68,463.00	\$0.00	\$0.00	\$68,463.00
42217000050	The Salvation Army (Houston)	\$0.00	\$263,022.00	\$0.00	\$0.00	\$263,022.00
42217000043	Bay Area Turning Point, Inc.	\$0.00	\$94,046.00	\$51,090.00	\$120,399.00	\$265,535.00
					<b>Total</b>	<b>\$1,445,919.00</b>

7

**BOARD ACTION REQUEST**

**COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM DIVISION**

**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action on the Community Development Block Grant Coronavirus Aid, Relief, and Economic Security Act Texas Emergency Mortgage Assistance Program awards and any timely filed appeals

**RECOMMENDED ACTION**

**WHEREAS**, on March 27, 2020, the President of the United States signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act into law which provided, in Title XII, supplemental Community Development Block Grant program (CDBG CARES) funds, of which Texas received \$141,846,258 funded through the U.S. Department of Housing and Urban Development (HUD), to prevent, prepare for, and respond to COVID-19;

**WHEREAS**, the Board approved a plan on October 8, 2020, which outlined the planned uses of CDBG CARES funding which included Rental Assistance and which has been updated and amended by the Board in January 2021, May 2021, and July 2021, to continue to make the program as efficient and responsive as possible;

**WHEREAS**, one of the activities in the amended plan is mortgage assistance, and on May 13, 2021, the Board approved \$22,524,125 in CDBG CARES funding for 40 awards in 223 counties throughout Texas, and due to a desire to provide statewide coverage, the Board authorized staff to make available \$3,000,000 to the remaining 31 counties not initially covered by the May awards;

**WHEREAS**, a second Notice of Funding Availability was released from June 21, 2021, to August 6, 2021, to receive applications for the Texas Emergency Mortgage Assistance Program (TEMAP) for coverage of the 31 counties, which did not originally receive coverage;

**WHEREAS**, the TEMAP applications scores were released to the applicants and the applicants were made aware of their right to appeal such scores and the Department has received no appeals to the TEMAP scores; and

**WHEREAS**, staff is recommending the attached list of eight awards conditioned on final recommendations of approval or approval with conditions from the Compliance Division for purposes of a recommendation or recommendation with conditions from the Executive Review and Advisory Committee, totaling \$3,000,000 in CDBG CARES awards;

**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 effectuate 8 awards totaling \$3,000,000 for CDBG CARES mortgage assistance funding, pending the Executive Award Approval and Advisory Committee (EARAC) review and approval or approval with conditions; and

**FURTHER RESOLVED**, should funds under any CDBG CARES allocation contracts be returned or made available, those funds may be reallocated at the discretion and authority of the Executive Director or designee to other contracts awarded under CDBG CARES that have shown sufficient obligations and/or expenditures.

**BACKGROUND**

On March 27, 2020, the CARES Act was signed into law. The CARES Act provides for \$5 billion to be distributed through the CDBG Program nationally and includes waivers of certain provisions of the CDBG regulations. The CDBG Program is a HUD-funded program designed to provide decent housing and a suitable living environment, and by expanding economic opportunities, principally for low- and moderate-income persons. The response by HUD to address the Coronavirus Pandemic under CDBG CARES allows the funding to be used for a range of eligible activities which prevent, prepare for, or respond to the spread of infectious diseases such as the coronavirus disease 2019 (COVID-19).

The Department's Second Substantial Amendment to the 2019 State of Texas Consolidated Plan One Year Action Plan, approved by the Board in January 2021, identified \$69,538,864 in CDBG CARES funding for Urgent Need Mortgage Payment Assistance. The Department has created the Texas Emergency Mortgage Assistance Program (TEMAP) which will provide relief to homeowners in the form of mortgage assistance payments to income eligible homeowners throughout Texas. On, May 13, 2021, the Department obligated \$22,524,125 of mortgage assistance funds and issued 40 statewide contracts to cities, counties, and regional providers for the administration of the Texas Emergency Mortgage Assistance Program.

As required by CDBG-CV rules, the emergency mortgage assistance payments will be made directly to mortgage lenders / loan servicers, on behalf of the individual or families in need of assistance, and not directly to an individual or family in the form of a direct income payment. Funds dedicated to this activity will assist households for no more than six months of mortgage assistance, including arrears. The assistance will allow payments for up to five months of arrears and at least one month of forward payment.

With the approval of the Department's Third Substantial Amendment to the 2019 State of Texas Consolidated Plan One Year Action Plan on July 8, 2021, a Texas Emergency Mortgage Assistance Program second Notice of Funding Availability (NOFA) was released statewide on June 21, 2021. The application period closed on August 6, 2021. Funds were targeted specifically to the 31 Texas

counties which did not receive program coverage during the first NOFA. To ensure maximum geographic distribution in the state, eligible applicants included non-entitlement communities under the Rural and Small Metro set-aside, and entitlement cities or counties or regional organizations or nonprofit under the Balance of State in those 31 unserved counties:

Rural and Small Metro Areas: As required by HUD, TDHCA is required to allocate at least \$40,000,886 of the CDBG CARES funding to non-entitlement units of general local government. Non-entitlement units are cities with populations of less than 50,000 (except cities that are designated principal cities of Metropolitan Statistical Areas), and counties with populations of less than 200,000. The Department provided specific program design guidelines facilitating the program administration for non-entitlement awardees. No applications were received in this category during the second NOFA.

Balance of State Coverage. Eligible applicants under this set-aside included the following:

- 1) Entitlement cities and counties and nonprofits covering one county; and
- 2) Regional organizations which include private nonprofits serving more than one county, community action agencies and regional councils of governments.

The table below reflects the types of eligible applicants which applied for funding, the number of applications received, and the total amount of funds and applications awarded.

<b>Eligible Applicants</b>	<b>Applications Received</b>	<b>Funds Awarded</b>	<b>Number of Applications Awarded</b>
Entitlements and Single County Nonprofits	5	\$1,800,000	5
Regional providers	4	\$1,200,000	3
<b>TOTAL</b>	<b>9</b>	<b>\$3,000,000</b>	<b>8</b>

TDHCA received nine applications covering the 31 counties targeted in the NOFA. All applications were reviewed for required threshold requirements. The applications were also reviewed for completeness and eligibility. When needed, staff requested that an applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in their application to assist staff in evaluating the Application. Applications were also scored and the scores were posted for review. As required by the NOFA, in order to ensure that no two organizations covered the same geographic area to minimize duplication of benefits, staff revised applicants' service regions where applicable to eliminate duplication of service areas. In some cases where two or more entities were proposing to serve the same county(ies), service areas were split to fully utilize funds and allow as many applicants an opportunity to participate in the program.

With this action item, TDHCA will award the \$3,000,000 among eight applicants and will be able to provide statewide mortgage assistance coverage in all 254 counties. The CDBG CARES requires a non-entitlement set-aside and to that end, in the initial award of NOFA funds, for the regional

providers the Department identified the non-entitlement and entitlement portion of their service area and divided their service area and budget in their contract into these two parts. The Department will do the same with the applicants covering non-entitlement areas who are recommended to receive an award with this funding allocation.

If the CDBG CARES contracts with these TEMAP subrecipients are returned or otherwise deobligated, the funds may be reallocated at the discretion and authority of the Executive Director to existing contracts awarded under CDBG CARES that have shown a high percentage of expenditure or may be brought back before the Board for programming into other eligible activities.

Staff recommends the awards conditioned on EARAC recommendation or recommendation with conditions, as reflected herein and in Attachment A.

**Attachment A – TEMAP NOFA 2 Award Recommendations**

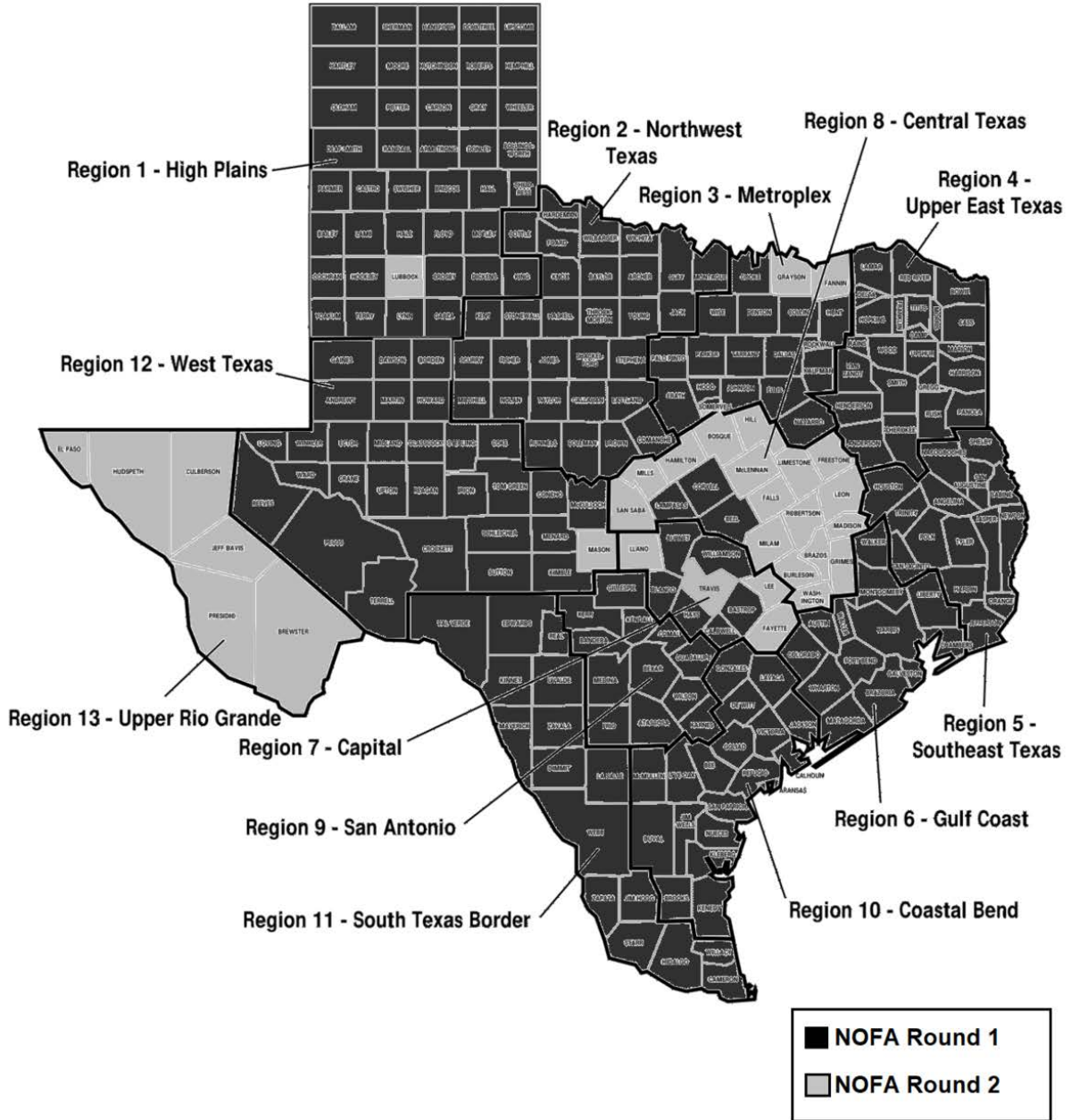
<b>Entitlement Communities and Single County Nonprofits</b>	<b>Regional Providers</b>	<b>Total Requested Funds</b>
\$ 1,800,000	\$ 1,200,000	\$ 3,000,000

<b>TEMAP Funding Recommendations: Entitlement Communities and Single County Nonprofits</b>	
<b>Entity Name</b>	<b>Recommended Funds</b>
Travis County	\$415,000
Adults Youth United Development Association	\$500,000
Alliance of Border Collaboratives	\$500,000
Economic Opportunities Advancement Corporation	\$300,000
Lazarus House Initiative	\$85,000
<b>PROGRAM TOTAL</b>	<b>\$ 1,800,000</b>

<b>TEMAP Funding Recommendations: Regional Providers</b>	
<b>Entity Name</b>	<b>Recommended Funds</b>
Tracy Andrus Foundation	\$500,000
Tricounty Community Corporation	\$500,000
Heart of Texas Council of Governments	\$200,000
<b>PROGRAM TOTAL</b>	<b>\$ 1,200,000</b>



# TEMAP Coverage - NOFA Round 1 and 2



8a

**BOARD ACTION REQUEST**  
**BOND FINANCE DIVISION**  
**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 12, concerning the Multifamily Housing Revenue Bond Rules, and an order proposing new 10 TAC Chapter 12 concerning the Multifamily Housing Revenue Bond Rules, and directing their publication for public comment 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**, the Department is authorized to issue multifamily housing revenue bonds for the State of Texas by Tex. Gov't Code §2306.351 and Tex. Gov't Code §2306.359 requires the Department to provide for specific scoring criteria and underwriting considerations for multifamily private activity bond activities;

**WHEREAS**, the Department developed the Multifamily Housing Revenue Bond Rules to establish the procedures and requirements relating to the issuance of bonds; and

**WHEREAS**, such proposed rulemaking will be published in the *Texas Register* for public comment and subsequently returned to the Board for final adoption;

**NOW, therefore, it is hereby**

**RESOLVED** that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed for and on behalf of the Department, to cause the proposed repeal of the current 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules, and the proposed new 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules, together with the preambles in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection therewith, make non-substantive technical corrections as they may deem necessary to effectuate the foregoing including any requested revisions to the preambles.

**BACKGROUND**

Attached to the Board Action Request is a draft that reflects the proposed changes to the 2022 Draft Multifamily Housing Revenue Bond Rules which incorporate staff's recommendations for the Board's consideration. The proposed changes primarily include modifications to existing scoring items and also introduce several new scoring items. Given the extent to which the Private Activity Bond program has

been oversubscribed in 2021, which is anticipated to continue, staff believes the revised scoring items incorporate more competitive scoring options.

The newer scoring items include:

- Points for those applications that are on the Department's waiting list with the BRB at the time of the PAB Lottery for the upcoming year; and
- Points relating to the bond amount financed, which is necessary to meet the 50% test that provides access to the 4% Housing Tax Credit. This is a tiered scoring item that provides the most points for a bond amount that is less than 60% and fewer points if the bond amount is more than 60% but less than 64%.

Modifications to existing scoring items include the following:

- For the tie breakers that would be applied to applications that are within the same priority and have the same score, the rule gives priority to those applications that are on the Department's waiting list with BRB at the time of the PAB Lottery;
- Adding a 40 year extended affordability period option;
- Introducing a tiered supportive services scoring item that allows for more points if exceeding the threshold requirement; and
- Allowing an applicant to exceed the threshold points required under common amenities which would primarily depend on development size.

**Attachment 1: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules**

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules (Bond Rules). The purpose of the proposed 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 proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous re-adoption making changes to an existing activity, the issuance of Private Activity Bonds (PAB).

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

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

4. The proposed repeal does not result in an increase in fees paid to the Department or in a decrease in fees paid to the Department.

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

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous re-adoption making changes to an existing activity, the issuance of PABs.

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

8. The proposed 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 proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

**c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.**

The proposed repeal does not contemplate nor authorize a 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 proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no

economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

**e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).**

Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the 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 proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held September 17, 2021, to October 18, 2021, to receive stakeholder comment on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Jon Galvan, Bond Rule Public Comment, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-3963, attn: Jon Galvan, Bond Rule Public Comments, or by email to jonathan.galvan@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time OCTOBER 18, 2021.

**STATUTORY AUTHORITY.** The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed 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 proposed new 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules**

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules (Bond Rule). The purpose of the proposed new section is to provide compliance with Tex. Gov't Code §2306.67022 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 to ensure that it 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 rule proposed for action pursuant to item (9), which excepts rule changes necessary to implement legislation. The proposed 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 proposed rulemaking and the analysis is described below for each category of analysis performed.

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

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

1. The proposed 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 proposed new 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 proposed rule changes do not require additional future legislative appropriations.
4. The proposed 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 proposed rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The proposed rule will not limit, expand or repeal an existing regulation but merely revises a rule.
7. The proposed rule will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed 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 proposed 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 effect 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 proposed rule for which the economic impact of the rule would be a fee of approximately \$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 fee for submitting an Application for PAB layered with LIHTC is may range from \$480 to \$2,400 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 proposed 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 proposed rule does not contemplate or 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 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 proposed 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 and region in which it is being developed.

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 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 new 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 issuances 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 rules changes. The proposed 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.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 17, 2021, to October 18, 2021, to receive stakeholder comment on the new proposed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Jon Galvan, Bond

Rule Public Comment, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-3963, attn: Jon Galvan, Bond Rule Public Comments, or by email to [jonathan.galvan@tdhca.state.tx.us](mailto:jonathan.galvan@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time OCTOBER 18, 2021.

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

## §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 ~~titlepart~~ (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 ~~titlepart~~ (relating to Waiver of Rules). [The process for appeals and grounds for appeals may be found under §1.7 of this ~~titlepart~~ \(relating to Appeals Process\).](#)

## §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 ~~titlepart~~ (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 ~~titlepart~~ (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 ~~titlepart~~ (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 ~~titlepart~~ (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) ~~go to~~To the pre-application that was on the waiting list with the TBRB but did not have an active ~~receive~~ Certificate of Reservation at the time of the TBRB lottery ~~for the~~ the highest

~~number of points and~~ achieved points under §12.6(~~128~~) of this chapter (relating to Underserved AreaWaiting 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), to determine which pre-application will receive preference in consideration of a Certificate of Reservation.~~

**(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 ~~titlepart~~ (relating to Underwriting and Loan Policy) will be utilized even if not reflected by the Applicant in the pre-application.

(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 ~~titlepart~~ (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. ~~and For Lottery applications, Site Control must have the option to extend through March 1 of the current program year. must meet the requirements of §11.204(10) of this title at the time of Application;~~

(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, ~~as provided in the pre-application~~, 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 ~~titlepart~~ (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 ~~titlepart~~ 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 either the Building Cost ~~or the Hard Costs voluntarily included in Eligible Basis~~, 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. (65) 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. ~~(32 points)~~ A pre-application may qualify for up to three (3) points under this item.

(A) for Development Owners that agree are willing to extend the State Restrictive Period for a Development to a total of 4035 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 -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. The amenities and corresponding point structure is provided in §11.101(b)(6)(B) of this ~~titlepart~~ (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. The points selected at pre-application and/or Application will be required to be identified in the LURA and the points selected must be maintained throughout the State Restrictive Period. 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 (53 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-title 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. (108 points) 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 titlepart, appropriate for the residents and that there will be adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA and must be maintained throughout the State Restrictive Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Applicationpre-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 ~~title 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.

(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 titlepart (relating to Procedural Requirements for Application Submission). While a Certificate of Reservation is required under §11.201 of this titlepart (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 titlepart (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 titlepart 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, ~~upon presentation by Department staff,~~ 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. The process for appeals and grounds for appeals may be found under §1.7 of this title \(relating to Appeals Process\). 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.](#)

**(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 ~~titlepart~~ (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 ~~titlepart~~ (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. ~~The Such~~ Regulatory and Land Use Restriction Agreement shall include provisions relating to the Qualified Project Period, the State Restrictive Period, ~~including any points claimed under §12.6(4) of this chapter for extending such term,~~ 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) ~~The longer of~~ 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 the following fees: \$1,000, along with the fees noted on the Schedule of Fees posted on the Department's website specific ~~-(payable to TDHCA), \$2,500 (payable to the Department's bond counsel)~~ and ~~\$5,000 (payable to 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.

8b



**TO BE POSTED  
NOT LATER THAN  
THE THIRD DAY  
BEFORE THE  
DATE OF THE  
MEETING**

8c

**TO BE POSTED  
NOT LATER THAN  
THE THIRD DAY  
BEFORE THE  
DATE OF THE  
MEETING**

9a

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**SEPTEMBER 2, 2021**

Presentation, Discussion, and Possible Action regarding a workout for La Esperanza Del Rio (HOME #1002040)

**RECOMMENDED ACTION**

**WHEREAS**, La Esperanza Del Rio (the Development) received a 9% Housing Tax Credit (HTC) allocation in 2013 (HTC #13046), along with a \$1,000,000 HOME loan to construct 60 new multifamily units in Rio Grande City, Starr County;

**WHEREAS**, CLDC RGC, LP (the Development Owner or Owner) has indicated to the Department that due to Hurricane Hanna, the COVID-19 pandemic, and other reasons, including stagnant incomes in Starr County and the Department funding of a nearby competitive project shortly after the Development was funded, the Development is not generating sufficient income to meet its obligations;

**WHEREAS**, the Development Owner is attempting to restructure their first lien debt with Bonneville Multifamily (Bonneville), but the associated loan fees and other costs totaling to \$161,700 cannot be afforded by the Owner;

**WHEREAS**, the Owner is now requesting a workout arrangement: 1) to have the existing HOME loan payments suspended for a period of five years, 2) to have a requirement of loan payments after the five-year mark be made out of surplus cash flow, and 3) to receive a new Multifamily Direct Loan (MFDL) in the amount of \$161,700, at 0% interest and also be payable from surplus cash starting five years after closing date, to cover the costs associated with the interest rate reduction for the first lien and replenish reserves;

**WHEREAS**, in order to qualify for the described additional funding, the Owner will designate two additional units as rent and income restricted HOME Match units; and

**WHEREAS**, the Department has evaluated the request and proposed an alternative work out solution;

**NOW, therefore, it is hereby**

**RESOLVED**, that with the exception of the five-year deferral on loan payments the request is approved, and the Executive Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing recommendation.

## **BACKGROUND**

La Esperanza Del Rio received a \$1,000,000 HOME loan award, as well as \$500,000 in annual 9% Housing Tax Credits, in 2013, to construct 60 units (50 of which are HTC) in Rio Grande City, Starr County. The Development's financing includes a \$1,442,882 first lien USDA 538 permanent loan from Bonneville Multifamily, at an interest rate of 4.90% (plus a 0.50% USDA Guarantee Fee) with a 40-year term and amortization, resulting in annual payments of principal and interest of \$82,347. The \$1.0M HOME loan is at 0% interest, has a 40-year term and amortization, and monthly payments of \$2,083.33 (\$25,000 annually).

In May 2021, the Owner approached the Department with a request for workout assistance. The original request was for a new loan from the Department to pay off the Bonneville first lien loan. However, this option was determined infeasible, given funding limitations. Subsequently, the request from the Owner was revised to be for the deferral of payments on the Department's existing HOME loan for a period of five years and for a new loan in the amount of \$161,700, which would also have a five-year forbearance on payments. In addition, the request is for both Department loans to be structured to be payable out of surplus cash flow. According to the Owner contact, the \$161,700 is needed to meet certain conditions for, and pay fees to, the first lien lender, Bonneville Multifamily. If these conditions are met, the Owner will be able to reduce the interest rate on the first lien loan. The Owner representative, Sara Reidy, indicated that the new loan in the amount of \$161,700 would be used to pay a \$68,700 yield maintenance to Bonneville, reimburse \$30k to the Replacement Reserve, reimburse \$48k to the Operating Reserve, pay counsel fees of \$14k, and title fees of \$1k. The Owner cannot afford all of these costs.

Regarding the origins of the Development's financial difficulties, Ms. Reidy cites several challenges, including the Department funding Gran Cielo Residences (HTC #15275) shortly after the Development was funded. Gran Cielo Residences is an 80-unit multifamily tax credit development located less than one mile east of the Development, with more competitive amenities and with a more visible location. Also, Ms. Reidy reports Starr County has a 32.5% poverty rate, the highest percentage in Texas, and it has the second lowest median household income statewide, at \$32,516. For these reasons, the Development is not achieving rents at program limits.

Ms. Reidy reports the financial challenges are leading to increased deferred maintenance. Additionally, in 2020, the Development suffered \$111,241 of structural damage from Hurricane Hanna. The amount of damage was less than the property's insurance deductible, which forced the Owner to negotiate with its lender and investor to release \$30K from the Replacement Reserve and \$48K from the Operating Reserve to pay for the needed repairs. The investor required the \$48K in Operating Reserve funds to be paid in full by December 31, 2021, and would not allow Replacement Reserve draws in 2021, unless it is for a safety issue. As of March 2021, the Replacement Reserve balance is \$46,052, and the account will have to be replenished to a minimum balance of \$60,000 as required by the lender. However, there is no positive cash flow to accomplish this.

In addition, the property taxes will affect the net income. As of 2020, the property tax expense totaled \$30,106, but were it not for a partial exemption in place, the property tax expense would be \$40,324,

according to Ms. Reidy. She reports the exemption extinguishes after \$105,000 in total property tax exemption. As of May 11, 2021, \$51,845 of the \$105,000 in cumulative exemption has been granted, leaving a remaining balance of \$53,155. The exemption is being granted in annual increments of approximately \$10,000.

To address the situation, the Owner has requested a loan from the Department for the additional funds needed to buy down the Bonneville first lien loan interest rate, from the current 4.90% to a lower interest rate to be determined at rate lock. The Owner is also requesting funding to replenish the Replacement and Operating Reserves accounts to qualify for the lower rate of the first lien debt. The additional loan from the Department would have an annual debt service payment of \$4,042.50, subject to available surplus cash. This additional loan payment will be more than offset by a reduction to the interest rate of the first lien debt, which could result in debt service savings of at least \$10K annually.

The additional funding warrants, per rule, two additional MFDL units, for a total of 12 MFDL units. The additional units would be at a 50% income level with Low HOME rents and 80% income level with the High HOME rents, and could be layered with other HTC units, although not the existing MFDL Units. Therefore, there is no impact to the Net Operating Income from the addition of these MFDL units.

Staff recommends restructuring the existing HOME loan to be payable out of surplus cash annually as well as approval of the requested \$161,700 new MFDL also to be payable out of surplus cash, but staff does not recommend granting the requested five-year forbearance, as in a surplus cash note no payments are due if there is insufficient cash flow. However, if the Development generates surplus cash, loan payments are made, and the repaid funds, which could be up to \$145,213 over the five-year period, can be used to assist other properties. This solution is in line with the guidelines the Department has adopted as required by 24 CFR §92.250(b).

The additional loan will be funded using Tax Credit Assistance Program Repayment Funds (TCAP RF). The \$161,700 TCAP RF loan will be structured as a subordinate third lien repayable out of surplus cash annually at an interest rate of 0% with a 40-year amortization and 35-year term to match the maturity year of the HOME loan, with a 15-year HOME Match Affordability period and a 35-year state affordability period (to run concurrently).

**UNIT MIX/RENT SCHEDULE**

*La Esperanza Del Rio, Rio Grande City, # 13046*

LOCATION DATA	
CITY:	Not Listed
COUNTY:	Starr
PROGRAM REGION:	11
PIS Date:	On or After 4/21/2015
IREM REGION:	N/A
Carryover Date:	1/18/2013 - 12/17/2013

UNIT DISTRIBUTION		
# Beds	# Units	% Total
Eff		
1	16	26.7%
2	26	43.3%
3	18	30.0%
4		
<b>TOTAL</b>	<b>60</b>	<b>100.0%</b>

Applicable Programs
9% Housing Tax Credits
HOME

PRO FORMA ASSUMPTIONS	
REVENUE GROWTH:	2.00%
EXPENSE GROWTH:	3.00%
HIGH COST ADJUSTMENT:	130%
APPLICABLE FRACTION:	82.19%
APP % - ACQUISITION:	
APP % - CONSTRUCTION:	9.00%
AVERAGE SF	993

**UNIT MIX / MONTHLY RENT SCHEDULE**

HTC		HOME (Rent/Inc)		Unit Mix				APPLICABLE PROGRAM RENT				APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENT	
Type	Gross Rent	Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Tenant Pd UA's (Verified)	Max Net Program Rent	Delta to Max Program	Rent per NRA	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent per NRA	Delta to Max Program	Rent Roll Rent	Rent per NRA	
TC30%	\$350	30%/30%	\$331	1	1	1	720	\$331	\$52	\$279	(\$7)	\$0.38	\$272	\$272	\$272	\$0.38		(\$7)	\$272	0.38	
TC50%	\$583	LH/50%	\$553	2	1	1	720	\$553	\$52	\$501	(\$13)	\$0.68	\$488	\$976	\$1,002	\$501	\$1.39	\$0	\$508	0.71	
TC60%	\$700	HH/60%	\$563	1	1	1	720	\$563	\$52	\$511	(\$27)	\$0.67	\$484	\$484	\$511	\$511	\$0.71	\$0	\$587	0.81	
TC50%	\$583	0%		2	1	1	720	\$583	\$52	\$531	(\$40)	\$0.68	\$491	\$982	\$1,017	\$508	\$1.41	(\$23)	\$508	0.71	
TC60%	\$700	0%		8	1	1	720	\$700	\$52	\$648	(\$52)	\$0.83	\$596	\$4,768	\$4,692	\$587	\$6.52	(\$61)	\$587	0.81	
MR		0%		2	1	1	720	\$0	\$52	NA		\$0.86	\$620	\$1,240	\$1,240	\$620	\$1.72	NA	\$620	0.86	
TC30%	\$420	30%/30%	\$397	1	2	2	990	\$397	\$69	\$328	(\$7)	\$0.32	\$321	\$321	\$319	\$319	\$0.32	(\$10)	\$319	0.32	
TC30%	\$420	0%		1	2	2	990	\$420	\$69	\$351	(\$35)	\$0.32	\$316	\$316	\$319	\$319	\$0.32	(\$33)	\$319	0.32	
TC50%	\$701	LH/50%	\$663	1	2	2	990	\$663	\$69	\$594	(\$8)	\$0.59	\$586	\$586	\$583	\$583	\$0.59	(\$12)	\$583	0.59	
TC50%	\$701	0%		2	2	2	990	\$701	\$69	\$632	(\$53)	\$0.58	\$579	\$1,158	\$1,165	\$583	\$1.18	(\$50)	\$583	0.59	
TC60%	\$841	HH/60%	\$714	1	2	2	990	\$714	\$69	\$645	(\$11)	\$0.64	\$634	\$634	\$645	\$645	\$0.65	\$0	\$714	0.72	
TC60%	\$841	0%		17	2	2	990	\$841	\$69	\$772	(\$91)	\$0.69	\$681	\$11,677	\$12,142	\$714	\$12.26	(\$58)	\$714	0.72	
MR		0%		3	2	2	990	\$0	\$69	NA		\$0.72	\$713	\$2,139	\$2,139	\$713	\$2.16	NA	\$713	0.72	
TC30%	\$486	30%/30%	\$459	1	3	2	1,240	\$459	\$85	\$374	(\$8)	\$0.30	\$366	\$366	\$366	\$366	\$0.30	(\$8)	\$366	0.30	
TC50%	\$810	LH/50%	\$766	1	3	2	1,240	\$766	\$85	\$681	(\$10)	\$0.54	\$671	\$671	\$672	\$672	\$0.54	(\$10)	\$672	0.54	
TC50%	\$810	0%		2	3	2	1,240	\$810	\$85	\$725	\$0	\$0.58	\$725	\$1,450	\$1,343	\$672	\$1.08	(\$54)	\$672	0.54	
TC60%	\$972	HH/60%	\$892	1	3	2	1,240	\$892	\$85	\$807	(\$14)	\$0.64	\$793	\$793	\$807	\$807	\$0.65	\$0	\$813	0.66	
TC60%	\$972	0%		8	3	2	1,240	\$972	\$85	\$887	(\$57)	\$0.67	\$830	\$6,640	\$6,501	\$813	\$5.24	(\$74)	\$813	0.66	
MR		0%		5	3	2	1,240	\$0	\$85	NA		\$0.66	\$823	\$4,115	\$4,115	\$823	\$3.32	NA	\$823	0.66	
<b>TOTALS / AVERAGES:</b>				<b>60</b>			<b>59,580</b>				<b>(\$46)</b>	<b>\$0.66</b>	<b>\$658</b>		<b>\$39,488</b>	<b>\$39,848</b>	<b>\$664</b>	<b>\$5.69</b>	<b>(\$40)</b>	<b>\$667</b>	<b>\$0.67</b>

<b>ANNUAL POTENTIAL GROSS RENT:</b>															<b>\$473,856</b>	<b>\$478,173</b>				
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**PRO FORMA ANALYSIS**

POTENTIAL GROSS RENT  
 Secondary Income  
 Other Income:  
 Other Income:  
 POTENTIAL GROSS INCOME  
 Vacancy & Collection Loss  
 EO/Non-Rental Units/Concessions  
**EFFECTIVE GROSS INCOME**

Per Unit/Month \$9.50  
  
  
  
% of PGI -8.5%

TDHCA
\$478,173
\$6,840
\$485,013
(\$41,226)
\$0
\$443,787

% DIFF  
-1%  
-27%  
#DIV/0!  
#DIV/0!  
-1%  
-3%  
#DIV/0!  
-1.09%

Owner
\$473,856
\$4,980
\$0
\$0
\$478,836
(\$9,887)
-
\$438,949

\$6.92 Per Unit Per Month  
\$0.00 Per Unit Per Month

2020 Audit	2019 Audit	2018 Audit
\$426,794	\$397,943	\$386,059
\$6,636	\$6,621	\$13,932
\$311	\$432	\$185
\$433,741	\$404,996	\$400,176
\$433,741	\$404,996	\$400,176

**EXPENSES**  
 General & Administrative  
 Management  
 Payroll & Payroll Tax  
 Repairs & Maintenance  
 Electric/Gas  
 Water, Sewer, & Trash  
 Property Insurance  
 Property Tax  
 Reserve for Replacements  
 Cable TV  
 Supportive service contract fees  
 TDHCA Compliance fees  
 USDA Guarantee Fee  
 Other  
**TOTAL EXPENSES**  
**NET OPERATING INCOME**

% of EGI  
5.51%  
5.00%  
17.71%  
11.38%  
1.67%  
11.04%  
7.08%  
6.78%  
4.06%  
0.00%  
0.68%  
0.45%  
1.56%  
0.14%  
73.05%  
26.95%

Per Unit  
\$407  
\$370  
\$1,310  
\$841  
\$124  
\$817  
\$524  
\$502  
\$300  
\$0  
\$50  
\$33  
\$115  
\$10  
\$5,403  
\$1,993

Per SF  
\$0.41  
\$0.37  
\$1.32  
\$0.85  
\$0.12  
\$0.82  
\$0.53  
\$0.51  
\$0.30  
\$0.00  
\$0.05  
\$0.03  
\$0.12  
\$0.01  
\$5.44  
\$2.01

\$24,440
\$22,189
\$78,605
\$50,488
\$7,421
\$49,002
\$31,438
\$30,106
\$18,000
\$0
\$3,000
\$2,000
\$6,904
\$600
\$324,194
\$119,593

44%  
-1%  
0%  
6%  
0%  
1%  
-4%  
0%  
0%  
#DIV/0!  
0%  
0%  
0%  
0%  
0%  
4%  
-15%

Per SF	Per Unit	% of EGI
\$0.59	\$587	8.02%
\$0.37	\$366	5.00%
\$1.32	\$1,310	17.91%
\$0.90	\$892	12.19%
\$0.12	\$124	1.69%
\$0.83	\$829	11.33%
\$0.51	\$502	6.87%
\$0.51	\$502	6.86%
\$0.30	\$300	4.10%
\$0.00	\$0	0.00%
\$0.05	\$50	0.68%
\$0.03	\$33	0.46%
\$0.12	\$115	1.57%
\$0.01	\$10	0.14%
\$5.66	\$5,619	76.81%
\$1.71	\$1,697	23.19%

\$66,158	\$68,100	\$66,815
\$26,182	\$25,181	\$24,553
\$174,640	\$48,284	\$52,692
\$48,526	\$43,164	\$45,699
\$34,284	\$30,624	\$29,406
\$34,907	\$34,384	\$36,172
\$18,000	\$18,000	\$18,000
\$402,697	\$267,737	\$273,337
\$31,044	\$137,259	\$126,839

92.8% 66.1% 68.3%

**DEBT**  
 First Lien: Bonneville Mortgage - USDA 538  
 Other: TDHCA  
 Other:  
**TOTAL DEBT SERVICE**  
**NET CASH FLOW**  
 AGGREGATE DEBT COVERAGE RATIO  
 RECOMMENDED DEBT COVERAGE RATIO

\$82,347
\$25,000
\$0
\$107,347
\$12,246
1.11

0%  
0%  
#DIV/0!  
0%  
-145%

\$82,347
\$25,000
\$0
\$107,347
(\$5,534)
0.95

\$83,554	\$83,498	\$83,505
\$25,000	\$25,000	\$25,000
\$108,554	\$108,498	\$108,505
(\$77,510)	\$28,761	\$18,334
0.29	1.27	1.17

**LONG TERM OPERATING PRO FORMA**

	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15	YEAR 20	YEAR 25	YEAR 30	YEAR 35	YEAR 40
<b>EFFECTIVE GROSS INCOME</b>	\$443,787	\$453,504	\$462,574	\$471,826	\$481,262	\$531,352	\$586,656	\$647,716	\$715,130	\$789,562	\$871,740	\$962,471
LESS: TOTAL EXPENSES	324,194	333,740	343,526	353,600	\$363,972	420,615	\$486,142	561,953	649,670	751,172	868,635	1,004,581
<b>NET OPERATING INCOME</b>	<b>\$119,593</b>	<b>\$119,764</b>	<b>\$119,049</b>	<b>\$118,226</b>	<b>\$117,290</b>	<b>\$110,737</b>	<b>\$100,514</b>	<b>\$85,763</b>	<b>\$65,460</b>	<b>\$38,390</b>	<b>\$3,105</b>	<b>(\$42,109)</b>
LESS: DEBT SERVICE	107,347	107,347	107,347	107,347	107,347	107,347	107,347	107,347	107,347	107,347	107,347	107,347
<b>NET CASH FLOW</b>	<b>\$12,246</b>	<b>\$12,417</b>	<b>\$11,702</b>	<b>\$10,879</b>	<b>\$9,943</b>	<b>\$3,390</b>	<b>(\$6,833)</b>	<b>(\$21,584)</b>	<b>(\$41,887)</b>	<b>(\$68,957)</b>	<b>(\$104,242)</b>	<b>(\$149,456)</b>
<b>CUMULATIVE NET CASH FLOW</b>	\$12,246	\$24,664	\$36,365	\$47,244	\$57,187	\$88,559	\$76,469	\$53	(\$166,328)	(\$453,993)	(\$901,027)	(\$1,553,528)
<b>DEFERRED DEVELOPER FEE BALANCE</b>	\$374,155	\$361,738	\$350,036	\$339,157	\$329,214	\$297,842	\$296,177	\$296,177	\$296,177	\$296,177	\$296,177	\$296,177
<b>DCR ON UNDERWRITTEN DEBT (Must-Pay)</b>	1.11	1.12	1.11	1.10	1.09	1.03	0.94	0.80	0.61	0.36	0.03	-0.39
<b>EXPENSE/EGI RATIO</b>	73.05%	73.59%	74.26%	74.94%	75.63%	79.16%	82.87%	86.76%	90.85%	95.14%	99.64%	104.38%

# ***Casa Linda Affordable Housing, LLC***

July 8, 2021

Mr. Rosalio Banuelos  
Director of Asset Management  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78711

**RE: La Esperanza Del Rio TDHCA #13046 – Request for deferral of cash flow payments for 5-year period for existing TDHCA HOME Loan and Requested additional funding**

Dear Mr. Banuelos,

Over the past couple of months we have provided you with detailed information related to the financial distress La Esperanza Del Rio has experienced since being placed in service in 2015 and magnified in 2020 due to Covid-19 and Hurricane Hanna. Per your email dated June 30<sup>th</sup>, below are the reasons for the deferral request of loan payments for our existing HOME loan and proposed additional loan for five years.

- USDA requires a replacement reserve balance of \$1,000/unit before any capital improvement draws can be made. The property is 5 years old and has quite a bit of deferred maintenance as previously detailed in our June letter. The additional cash flow will be an important financial resource to offset expenses related to the deferred maintenance/capital improvements.
- In addition, the deferral will allow the property to increase the monthly operating account balance to provide necessary funds if/when there is another emergency.

We estimate the cash flow for the 5-year deferral period to be approximately \$150,000. Please note the damage from Hurricane Hanna alone was \$111,240.

If the deferral of payment is approved by the TDHCA Board, Casa Linda Affordable Housing will agree not to receive cash flow from the property during the 5-year deferral period.

Thank you for your kind attention to this important request. Please let me know if you require any additional information or have any questions.

Sincerely,

*Sara Reidy*

Sara Reidy  
Managing Member  
Casa Linda Affordable Housing, LLC

Cc: Linda S. Brown, Manager, Casa Linda Affordable Housing, LLC

# ***Casa Linda Affordable Housing, LLC***

June 29, 2021

Mr. Rosalio Banuelos  
Director of Asset Management  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78711

**RE: La Esperanza Del Rio TDHCA #13046 – Follow up to request made on 05-11-2021 for a change to the existing TDHCA HOME Loan Payment Structure and Consideration for Possible Permanent Mortgage Replacement through a TDHCA Multifamily Direct Loan**

Dear Mr. Banuelos,

On behalf of CLDC RGC, L.P., (" Development Owner") thank you for taking time on 06-16-2021 to discuss our request to modify the current TDHCA HOME Loan Payment and possible permanent mortgage replacement for La Esperanza Del Rio emailed to you on 05-11-2021. Following our call, I reviewed the Annual Owner's Compliance Report provided and made several adjustments based on our conversation – see "Exhibit A". I have also provided support for the adjusted line items. Per the adjusted report La Esperanza Del Rio is currently operating at a loss of \$6,059 per year with a DCR of .94.

Below is a summary of our conversation and the suggested modification to current loan terms, addition of HOME/TCAP RF unit(s) and an additional TDHCA soft MFDL loan. We believe the following modifications to the La Esperanza Del Rio financial structure, if approved by the TDHCA Governing Board, will provide the needed financial plan that will bring La Esperanza Del Rio out of financial distress.

- TDHCA to take existing HOME loan below the line (payable from cash flow) and defer payments for 5 years after closing of 2<sup>nd</sup> TDHCA loan.
- TDHCA to provide soft loan for approximately \$160K at 0% interest to assist with Yield Maintenance Expense, to modify current interest rate for existing USDA 538 loan, and reimbursement to Replacement/Operating Reserve due to Hurricane Hanna damage/repair. Loan to be payable from Cash Flow starting 5 years after closing date.
- Owner to provide the number of HOME or TCAP RF unit(s) required for the funding – one additional HH 2-bedroom unit.

Please let me know if you have any questions or need additional information. I look forward to our continued efforts regarding this very important and much needed assistance for La Esperanza Del Rio.

Thank you Rosalio.

Sincerely,

*Sara Reidy*

Sara Reidy  
Managing Member  
Casa Linda Affordable Housing, LLC

Cc: Linda S. Brown, Manager, Casa Linda Affordable Housing, LLC

La Esperanza Del Rio			
Financial Summary Annual Report	Annual Compliance Report	Adjusted	Notations
Potential Annual Gross Income	\$ 468,120	\$ 468,120	
Vacancy and Collection Loss	\$ (41,326)	\$ (41,326)	
Secondary Income	\$ 6,947	\$ 6,947	
Effective Gross Annual Rent	\$ 433,741	\$ 433,741	
General and Administrative Management Fee	\$ 23,332	\$ 34,082	Correct Accounting Fees to Contract
Payroll	\$ 21,681	\$ 21,681	
Repairs and Maintenance	\$ 51,737	\$ 78,605	Correct Payroll to Actual
Utilities	\$ 31,302	\$ 39,000	Adjust to \$650/Unit
Property Insurance/Tax	\$ 56,423	\$ 58,347	Adjust Trash to Actual City Expense
Reserve for Replacement	\$ 56,926	\$ 60,182	Adjust Insurance to Actual
Support Service Fee	\$ 18,000	\$ 18,000	
TDHCA Compliance Fees	\$ 750	\$ 3,000	Adjust to Contract
USDA Guarantee Fee	\$ 1,000	\$ 2,000	Adjust to \$40/HTC Unit
Other Expense	\$ -	\$ 8,606	Adjusted to Actual per audit
Annual Physical Inspection	\$ 708	\$ 3,000	Adjust to Invoice - PE Pennington
Investor Service Fee	\$ -	\$ 750	Adjust to Actual - Mayfair
Total Expense	\$ -	\$ 5,200	Adjust to Actual - Not paid from Cash Flow
Net Operating Income	\$ 261,859	\$ 332,453	
	\$ 171,882	\$ 101,288	
First Lien Mortgage	\$ 82,347	\$ 82,347	
Second Lien Mortgage	\$ 25,000	\$ 25,000	
Debt Service	\$ 107,347	\$ 107,347	
DCR	1.60	0.94	
Net Cash Flow	\$ 64,535	\$ (6,059)	

# ***Casa Linda Affordable Housing, LLC***

May 11, 2021

Mr. Rosalio Banuelos  
Director of Asset Management  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78711

## **RE: La Esperanza Del Rio TDHCA #13046 – Request for a change to the existing TDHCA HOME Loan Payment Structure and Consideration for Possible Permanent Mortgage Replacement through a TDHCA Multifamily Direct Loan**

Dear Mr. Banuelos,

On behalf of CLDC RGC, L.P., the (" Development Owner"), please accept this letter as our request for the Department's consideration to provide a workout of the debt instruments of La Esperanza Del Rio, TDHCA #13046 ("La Esperanza"). Current Debt Instruments since 2015 are: (1) a TDHCA HOME \$1M loan at 0% for 40 years; and (2) a federally insured USDA 538 loan of \$1,442,882 with a fixed rate of 4.90% for 40 years. This request is due to the project's current fragile economic condition from the initial lease-up stage and two unforeseen natural disasters in 2020, (Covid-19 and Hurricane Hanna). This has created an economically distressed property in need of TDHCA intervention. A TDHCA workout will allow La Esperanza to be financially feasible while preserving affordable housing in Rio Grande City, Starr County, Texas the poorest county in the State of Texas (See Exhibit "A" - TEXAS) and the 42<sup>nd</sup> poorest county in the USA, according to the US Census SAIPE report released in December 2020 (See Exhibit "A"-USA).

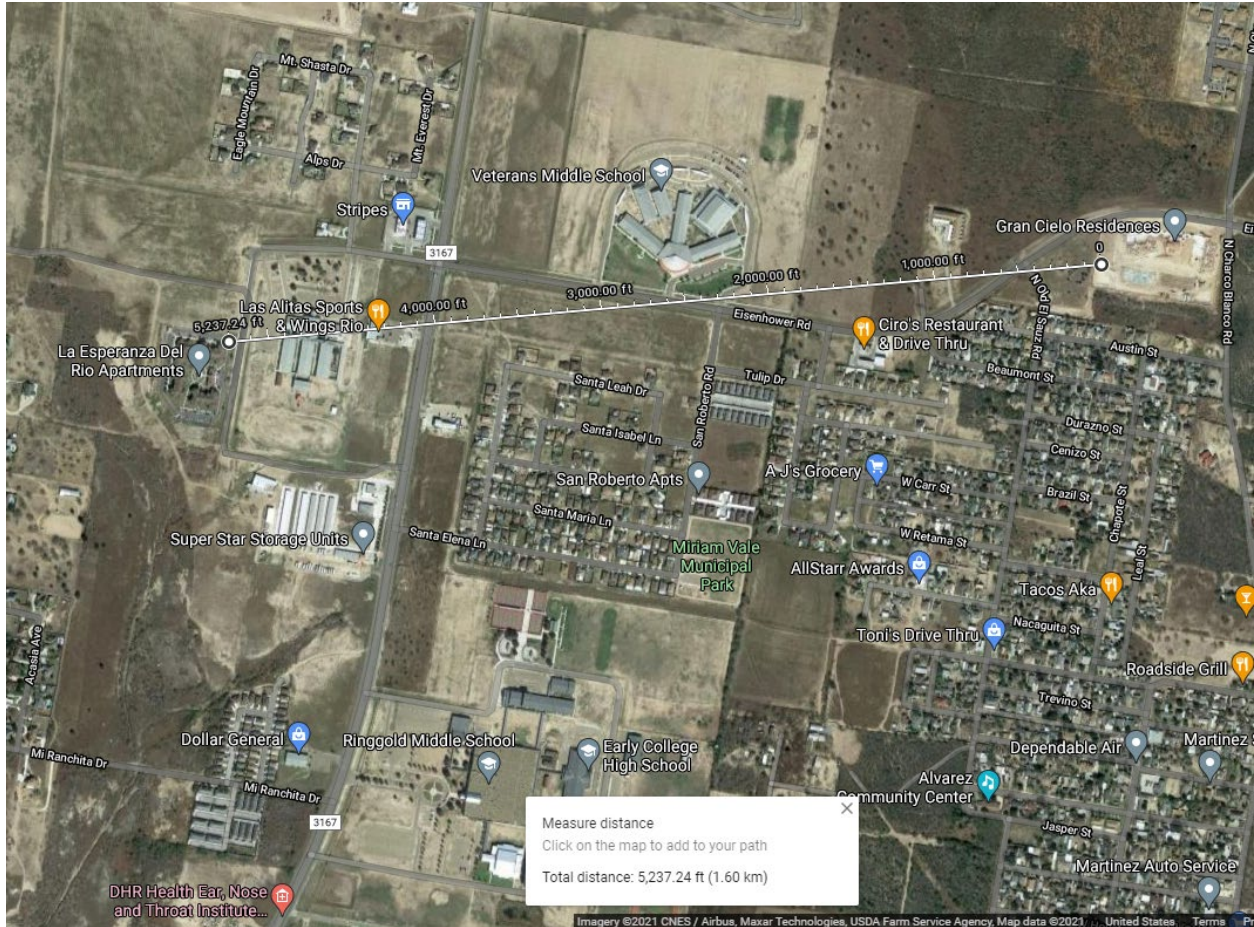
Our request herein describes in detail the economic conditions of La Esperanza since it was placed in service such as stagnant area median income levels, inability to achieve max rents, the inability for the local housing authority to provide max subsidy for the residents with vouchers, the deferral of maintenance due to lack of cash flow, and the challenge of hiring a maintenance manager and finding vendors to travel to Rio Grande City increasing the cost of these services. This summary will also describe the effects of the two natural disasters which occurred virtually simultaneously, Hurricane Hanna and the Covid-19 pandemic.

### **Background:**

La Esperanza Del Rio TDHCA #13046 ("La Esperanza") located in Rural Region 11 at 315 Butterfly Garden Drive, Rio Grande City, Starr County, Texas 78582 is a 60-unit multifamily two-story garden style apartment community developed on a 7-acre site just two miles north of the Texas/Mexico border. In December 2013 TDHCA awarded La Esperanza \$500,000 9% housing tax credits and a \$1M TDHCA HOME loan at a 0% interest rate for 40 years. The TDHCA HOME loan was structured as a hard debt. La Esperanza closed its construction/perm financing on November 1, 2014 with Bonneville Mortgage, DUS lender for a USDA 538 loan. Construction was completed December 2015, permanent loan conversion occurred 02-25-2016 and 8609's received on June 27, 2016.

Meanwhile in 2015 TDHCA awarded Gran Cielo Residences, TDHCA #15275, which is an 80-unit multifamily tax credit development located less than 1 mile east from La Esperanza. Gran Cielo has more competitive common amenities such as a swimming pool, gated entry, and fitness room. Furthermore, Gran Cielo's more visible location off Eisenhower Road, a main roadway by Veteran's Middle School, gives Gran Cielo an additional competitive advantage over La Esperanza.

# Casa Linda Affordable Housing, LLC



## Population Growth, Poverty Rates and Median HH Income Not Meeting Projected Underwriting Assumptions at Application

Rio Grande City, Starr County located just north of the Rio Grande River in deep South Texas has not experienced the population growth rate nor the increase in median household income as expected in La Esperanza’s market study and TDHCA underwriting criteria at application. Economic conditions in Rio Grande City, a rural ranching and agriculturally based economy has virtually remained the same since 2013. The US Census in their “2019 Poverty and Median Household Income Estimates from the US Census Bureau, Small Area Income and Poverty Estimates (SAIPE) Program” released in December 2020 reports Starr County with 32.5% poverty of population as the highest poverty percentage in Texas and the second lowest median household income statewide at \$32,516. (See Exhibit “B”)

Between 2014 to 2016, the census tract both tax credit properties share, experienced a decline in area median incomes and an increase in poverty levels. (See *TDHCA Site Demographics Median HH Income & Poverty Rates Table Below*). The TDHCA Table below is from table B19013 and the poverty data is from S1701 of the 2014-2018 5-year American Community Survey (ACS). This data shows the virtually unchanged Median HH Income, Poverty Rates and Population since Application from 2013 to 2020.

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Source: TDHCA Site Demographics Reports

CT 48427950104	2013	2014	2015 Placed in Service	2016	2017	2018	2019	2020	8 Year Average
Median HH Income	\$ 44,559	\$ 50,121	\$ 38,830	\$ 36,696	\$ 43,043	\$ 38,750	\$ 40,614	\$ 44,911	\$ 42,191
Poverty Rate	17%	23%	21%	29%	34%	25%	19%	22%	24%
County Population	60,968	60,525	60,882	61,351	62,040	62,648	63,008	63,420	61,855
City Population	13,834	13,784	13,826	13,905	14,033	14,154	14,242	14,310	14,011
County	Change in Population 2013-2020		2,452		City	Change in Population 2013-2020		476	
	Percentage Change 2013-2020		4.02%			Percentage Change 2013-2020		3.44%	

In addition, the South Texas region did not experience the rate of population growth as that of the State according to the Texas Comptroller’s South Texas 2020 Regional Report. Specifically, the report confirms that “from 2010 to 2019, the region’s population growth was slower than that of the state. Starr County’s population only increased 6% in the period versus the State’s growth population percentage of 15.3% (See Exhibit “C”).

These economic disparities in part have caused the Starr County Housing Authority (“SCHA”) payment standards to be far less than maximum 60% rents. In order to provide for as many individuals and families as possible throughout the County with a limited number of vouchers, the SCHA does not pay the maximum rent subsidy thereby reducing rental income to a below market level (See Exhibit “D”). Since 2016, the SCHA has subsidized an average of eight units in La Esperanza for families with housing choice vouchers.

### Challenges to Property Maintenance and Meeting USDA financial requirements due to limited and decreasing cash flow

In years 2016 to 2018 collections at La Esperanza were very challenging and many residents were unable to pay rent. Late fees started to accumulate to a point that it was virtually impossible for residents to clear accounts receivables. Many of the late fees and rent were written off as uncollectible. To date collections are much better but vacancy remains at an average of 8.33% and loss to lease is 7.5% of Gross Potential Rent. It is not realistic to assume the property will achieve max rents at any time in the near future.

In years 2015 through 2017 La Esperanza shared maintenance staff with another property 40 minutes away. This proved to be difficult as the communities began to age and required more preventative upkeep. The full-time maintenance staff position stayed open on and off for 1 ½ years due to lack of expertise, criminal background and other properties offering higher wages. In 2019 a part-time maintenance staff person was hired but sadly in August 2020, shortly after Hurricane Hanna hit Rio Grande City, he voluntarily resigned from his position due to health issues. On November 9, 2020, a full-time maintenance person was hired.

USDA requires a balance of \$1,000/unit in replacement reserve three years post conversion. The property must always maintain a balance of \$1,000/unit, or \$60,000. Because of the USDA replacement reserve requirements, lack of cash flow and the challenge to hire a full-time maintenance person, many repair items to the property have been deferred. We are working diligently to make these repairs as possible. To assist in paying for the roof replacement and other repairs after damage caused by Hurricane Hanna, USDA made an exception and allowed us to draw \$30,000 from replacement reserve. As of 03-31-2021 replacement reserve balance is \$46,052. It will take an additional 10 months to bring the replacement reserve balance back to \$60,000.

# ***Casa Linda Affordable Housing, LLC***

## **Starr County is a Texas Economically Distressed County**

Starr County is an economically distressed county. Starr County has a household income that is less than 75% of the State's median household income, below average per capita taxable property value and above average unemployment. Per the Bureau of Labor Statistics, the 03-2021 unemployment rate in Starr County was 18.4% which represents the highest unemployment rate in a county in the State of Texas.

## **La Esperanza's Financial Condition Further Weakens Because of Two 2020 Federal and State Designated Disasters- Hurricane Hanna and Covid 19 Public Health Pandemic**

On July 25, 2020, Hurricane Hanna made landfall approximately 90 miles south of Corpus Christi. Hurricane Hanna moved southwesterly and because of its path Starr County experienced tropical cyclone force winds (See Exhibit "E"). As a result, La Esperanza suffered \$111,240.95 of structural damage including roof replacement, interior repairs and temporary tarps.

The amount of damage was less than the property's insurance deductible which forced La Esperanza to negotiate with its lender and investor to release \$30K from Replacement Reserves and fund \$48K from the Operating Reserve to pay for the needed repairs. The investor required the \$48K in Operating Reserve funds to be paid in full by 12-31-2021 and would not allow replacement reserve draws in 2021 unless it is a safety/security issue (See Exhibit "F").

On July 26, 2020 President Trump declared Texas counties a federal disaster resulting from Hurricane Hanna which included Starr County (See Exhibit "G"). We have been contacting the Texas General Land Office since the declaration for any federal funds that could provide financial reimbursement for hurricane related expenses. As of April 6, 2021, the Texas General Land Office has not received any federal funding assistance and have no idea when or if any funds will be received.

In addition, Governor Abbott on July 25, 2020 declared Hurricane Hanna a disaster for 32 counties including Starr County. On September 22, 2020, the Governor recognized the state of disaster continues to exist in those same counties and thereby authorized all available resources to protect life or property threatened by the disaster (See Exhibit "H").

## **Covid-19 Pandemic Adversely Affects Starr County and Federal National Emergency & State Disaster Declaration**

Proclamation 9994 of March 13, 2020 beginning March 1, 2020 proclaiming the COVID-19 pandemic by the United States President a national emergency was extended on February 24, 2021 in effect beyond March 1, 2021 (See Exhibit "I"). Governor Abbott also declared a State Disaster Declaration in March 2020 and on April 5, 2021 extended the statewide declaration once again (See Exhibit "J"). The Covid-19 pandemic, like in so many other communities throughout the state, has added an additional level of economic distress to Starr County, Rio Grande City and La Esperanza. The County experienced one of the highest infection rates and death rates in the State and the United States. Starr County to date has experienced 295 deaths with total infections of 9,391; this equates to a County fatality rate of 3.14 according to Johns Hopkins University (See Exhibit "K").

The infection rate in Rio Grande City, Starr County exceeded higher metropolitan statistical areas because in this rural area of South Texas, the population has high poverty levels, and is 95% Hispanic, which is a demographic disproportionately affected by the virus due to poor health and a lack of health insurance.



# ***Casa Linda Affordable Housing, LLC***

## **Current Property Tax Valuation**

The Starr County Central Appraisal District maintained the same valuation from 2017 to 2020. Per our property tax consultants, PE Pennington, the valuation for La Esperanza should be approximately \$1.275M, based on income method which is statutorily required for affordable properties. For the calendar year 2021, the Appraisal District increased the valuation from \$1.334M to \$3.999M (\$66,663/unit). CLAH had to hire a Property Tax Consultant which creates an additional burden to the property and could potentially result in a lawsuit. Since drafting this letter, CLAH along with Erik Nelson with PE Pennington were able to negotiate a value of \$1,203,900.

## **Starr County Tax Abatement Expires at the earlier of either \$105,000 benefit is reached or 10 years**

Starr County awarded a tax abatement of County tax to La Esperanza in an amount up to \$105K. Through tax year 2020, La Esperanza has received a total of \$51,845 in tax abatement. In its current state, the burn-off of this tax abatement creates an additional impending financial burden for the property, which is already in a distressed state. The tax abatement worksheet can be found in Exhibit "L".

## **Developer Fee**

To date the deferred developer fee balance is \$466,743. Casa Linda Development Corporation (CLDC) received \$90,681 in developer fee and the property has earned -0- cash flow since initial lease up. This leaves CLDC unable to put funds back into the property. Prior to closing, Regions Bank required a guarantor on the transaction. Brownstone Affordable Housing, Ltd. served as guarantor through 8609 and received \$300,000 of developer fee.

<b>Developer Fee - CLDC RGC, LP - La Esperanza Del Rio</b>	
Developer Fee per Tab 10C - Cost Certification	\$ 857,424.00
Developer Fee Paid to Brownstone Affordable Housing, Ltd	\$ 300,000.00
Developer Fee Paid to Casa Linda Development Corporation	\$ 90,681.00
Deferred fee as of 12-31-2020	<u>\$ 466,743.00</u>

## **Refinancing Options Will Result in Financial Viability for La Esperanza**

Only through TDHCA's financial assistance will La Esperanza remain a financially feasible affordable housing option for the many low-income families in Starr County. The current economic condition of the property was unforeseen because of the two federally declared disasters, the near zero population and income growth since application and the award of a second tax credit property before La Esperanza was completed and stabilized, which has created this unfortunate outcome. Yet, our analysis indicates by TDHCA's intervention, La Esperanza can be preserved as a financially feasible affordable housing option serving Starr County. We propose three alternative financing options which are included in Exhibit "L".

# Casa Linda Affordable Housing, LLC

Below is a snapshot of the current financial position of La Esperanza as of 12-31-2020 and a summary of the three alternative financing options:

LA ESPERANZA DEL RIO as of 12-31-2020		
Income	Monthly	Annual
Gross Potential Rent	\$ 39,481	\$ 473,772
Other Income - (Cable- Late Fees- App Fees) 12 Month Rolling	\$ 415	\$ 4,983
Vacancy - 8.33% based on Average for 2020	\$ (3,323)	\$ (39,880)
<b>Total Income</b>	<b>\$ 36,573</b>	<b>\$ 438,875</b>
Expense	Monthly	Annual
Administrative Marketing - 12 month trailing	\$ 2,037	\$ 24,439
Accounting - Contract	\$ 896	\$ 10,750
Management Fee - 5% Total Income	\$ 1,829	\$ 21,944
Payroll Expense - Mayfair Management	\$ 6,550	\$ 78,605
Repairs and Maintenance (increased to \$650/unit - deferred maintenance)	\$ 3,250	\$ 39,000
Contracts (Social Service, Landscaping, Compliance Monitoring, Pest Control)	\$ 1,675	\$ 20,099
Utilities - 12 month trailing	\$ 4,762	\$ 57,142
Insurance with Fidelity Bond and Insurance Admn Fee	\$ 2,512	\$ 30,148
Real Estate Tax - Includes Tax Abatement	\$ 2,509	\$ 30,106
Guarantee Fee - USDA 538 (\$1,380,739* .50%)	\$ 575	\$ 6,904
Replacement Reserve	\$ 1,500	\$ 18,000
<b>Total Expense</b>	<b>\$ 28,095</b>	<b>\$ 337,136</b>
<b>Net Income before Debt Service</b>	<b>\$ 8,478</b>	<b>\$ 101,738</b>
Debt Service		
USDA 538 - Bonneville	\$ 6,862	\$ 82,347
TDHCA HOME Funds	\$ 2,083	\$ 25,000
<b>Net Income(Loss)</b>	<b>\$ (467)</b>	<b>\$ (5,609)</b>

Option 1 - TDHCA HOME Loan Soft Pay		
With Current Tax Abatement	DCR	
Gross Annual Income	\$ 438,875	
Total Annual Expense	\$ 337,136	
Net Operating Income	\$ 101,738	
Bonneville - USDA 538	\$ 82,347	
TDHCA MFDL BTL	\$ -	
Net Cash Flow	\$ 19,391	1.21%
Net Cash Flow Year 15	\$ (8,973)	0.86%
Option 2 - Revised Unit Mix and Debt Structure		
<b>Replace 8 - 60% HTC Units with 8 High HOME Units - Payoff USDA 538 and replace with TDHCA MFDL - Current TDHCA HOME Loan Due at Maturity</b>		
No Tax Abatement	DCR	
Gross Annual Income	\$ 434,239	
Total Annual Expense	\$ 340,218	
Net Operating Income	\$ 94,021	
<b>TDHCA MFDL - \$1,537,635 at 1.5%</b>	<b>\$ 56,497</b>	
Current TDHCA HOME (due at maturity)	\$ -	
Net Cash Flow	\$ 37,524	1.664%
Net Cash Flow Year 15	\$ 6,054	1.110%
Option 3 - Revised Unit Mix/Debt Structure		
<b>Replace 8 - 60% HTC Units with 8 - 50% HTC Units - Payoff USDA 538 and replace with TDHCA MFDL - Current TDHCA HOME Loan Due at Maturity</b>		
No Tax Abatement	DCR	
Gross Annual Income	\$ 435,188	
Total Annual Expense	\$ 340,265	
Net Operating Income	\$ 94,923	
<b>TDHCA MFDL - \$1,537,635 at 1.5%</b>	<b>\$ 56,497</b>	
Current TDHCA HOME (due at maturity)	\$ -	
Net Cash Flow	\$ 38,426	1.680%
Net Cash Flow Year 15	\$ 7,244	1.130%

## ***Casa Linda Affordable Housing, LLC***

La Esperanza, as a property asset financed in part with TDHCA HOME funds and federal housing tax credits, is in a distressed position that requires us to inform TDHCA and respectfully request the Department to take a proactive approach in assisting us with a financial restructuring that will preserve this multifamily affordable housing asset for low-income working families and individuals who rely on this property for their housing.

While we have provided several financial alternatives for your consideration to preserve the affordable housing, we are open to any and all recommendations and look forward to having these discussions with TDHCA Staff as soon as possible. Since La Esperanza has an existing MFDL, this property can potentially access funds reserved for workouts that are at risk of losing their affordability. Also, as provided in 10 TAC 11.302(h) Work Out Development and “also described in §11.302(h), should a subsequent underwriting be considered infeasible based on the guidelines of this section... but may be characterized as “the best available option” or “acceptable available option” depending on the circumstances and subject to the discretion of the Underwriter as long as the option analyzed and recommended is more likely to achieve a better financial outcome for the property and the Department than the status quo.” We believe there is an option that meets this guidance for a work-out for La Esperanza.

Thank you for your kind attention to this important request.

Sincerely,

*Sara Reidy*

Sara Reidy  
Managing Member  
Casa Linda Affordable Housing, LLC

C: Marni Holloway, Director-Multifamily Finance, TDHCA  
Linda S. Brown, Manager, Casa Linda Affordable Housing, LLC

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**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action regarding an increase to the Housing Tax Credit amount for Springs Apartments (HTC #18614)

**RECOMMENDED ACTION**

**WHEREAS**, Springs Apartments FKA 3 Springs (the Development) received a 4% Housing Tax Credit (HTC) and Bond award in 2018 to construct 221 affordable units in Balch Springs, Dallas County;

**WHEREAS**, construction of the Development has been completed, and LDG Springs Apartments, LP (the Development Owner or Owner) requests, at Cost Certification, to increase the annual HTC amount to \$1,469,419, an increase of \$154,712 or 11.77% from the amount reflected in the Determination Notice of \$1,314,707;

**WHEREAS**, §42(m)(2) of the Internal Revenue Code allows an increase of tax credits for a bond financed project when the increase is determined necessary as demonstrated through the submission of the cost certification package;

**WHEREAS**, 10 TAC §10.402(c) requires approval by the Board if an increase to the amount of tax credits exceeds 110% of the amount of credit reflected in the Determination Notice; and

**WHEREAS**, a review of the Cost Certification package submitted by the Development Owner supports the need for the additional tax credits requested, and staff has determined that the increase is necessary for the viability of the transaction;

**NOW, therefore, it is hereby**

**RESOLVED**, that the housing tax credit increase for Springs Apartments requested by the Development Owner is approved as presented to this meeting, and the Executive Director and his designees are each authorized, directed, and empowered to take all necessary action to effectuate the foregoing.

## BACKGROUND

Springs Apartments FKA 3 Springs received a 4% HTC and Bond award in 2018 to construct 221 affordable units in Balch Springs in Dallas County. A Determination Notice was issued on April 13, 2018, with an approved annual tax credit amount of \$1,314,707. The last residential building in the Development placed in service on June 19, 2020, and the final Cost Certification was received by the Department on April 9, 2021, following a Cost Certification extension that extended its deadline from January 15, 2021, to April 30, 2021.

In conjunction with the submission of the Cost Certification package, Jason Trevino, the representative for the Development Owner, requested an annual tax credit award of \$1,469,419, an increase of \$154,712 (11.77%) from the amount reflected in the Determination Notice of \$1,314,707.

A comparison of the development costs from the time of the closing analysis, in 2018, to Cost Certification indicates that the underwritten total development costs increased by approximately 12.6%, going from \$36,596,742 to \$41,211,180. The majority of the cost increases were in buildings costs (from \$18,657,141 to \$20,488,762, a 9.8% increase), in financing costs (from \$2,906,177 to \$4,081,238, a 40% increase), and in indirect costs (from \$1,835,843 to \$2,763,738, a 50% increase).

According to the Owner representative working on the cost certification file, there was also an increase in site work related to unforeseen excavation costs due to site development difficulty. The increases in building costs was related to increases in lumber costs after initial bid, changes in roof design from PVC to TPO, and installing vinyl flooring instead of carpet. The Owner explained that they used their best estimation of these costs at the time of application but did not have actual bids. Indirect costs, also referred to as soft costs, mainly increased in the categories for architectural fees, engineering fees, and property taxes during construction. The Owner indicated that the architectural costs increased due to minor design changes throughout construction. Additionally, the initial architectural estimate did not take into account the fact that this was a HUD transaction which carries additional costs due to the fact that there are two sets of architectural plans that are submitted: one to the city and one to HUD. According to the Owner, the engineering costs were underestimated at the time of the Application, and the property taxes were also estimated incorrectly at Application. The increase in financing costs is mainly due to an incorrect calculation at the time of Application and due to delays in construction, which further increased the final interest expense.

Staff's analysis of this transaction at cost certification has concluded that the Development supports a tax credit allocation of the requested amount, which is necessary for the viability of the transaction. This results in an 11.77% increase from the original annual allocation of \$1,314,707 awarded in the Determination Notice to \$1,469,419. In accordance with 10 TAC §10.402(c), Board approval is required because the requested tax credit amount exceeds 110% of the HTC amount reflected in the Determination Notice. The Development Owner will be required to submit the Tax-Exempt Bond Credit Increase Request Fee, as required in 10 TAC §11.901(8), for the increase to the HTC amount prior to issuance of IRS Forms 8609.

Staff recommends approval of the increase in the tax credit award as presented herein.

**UNIT MIX/RENT SCHEDULE**

*Springs Apartments, Balch Springs, # 18614*

LOCATION DATA	
CITY:	Balch Springs
COUNTY:	Dallas
PROGRAM REGION:	3
PIS Date:	On or After 6/9/2019
Carryover Date:	5/17/2018 - 4/23/2019

UNIT DISTRIBUTION			
# Beds	# Units	% Total	
Eff			
1	28	12.7%	
2	110	49.8%	
3	83	37.6%	
4			
TOTAL	221	100.0%	

Applicable Programs
4% Housing Tax Credits
Tax-Exempt Bonds

PRO FORMA ASSUMPTIONS	
REVENUE GROWTH:	2.00%
EXPENSE GROWTH:	3.00%
HIGH COST ADJUSTMENT:	130%
APPLICABLE FRACTION:	100.00%
APP % - ACQUISITION:	
APP % - CONSTRUCTION:	3.13%
AVERAGE SF	1,061

**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	Tenant Pd UA's (Verified)	Max Net Program Rent	Delta to Max Program	Rent per NRA	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent per NRA	Delta to Max Program	Market Rent	Rent per NRA	TDHCA Savings to Market
TC60%	\$1,001	28	1	1	743	\$1,001	\$53	\$948	(\$31)	\$1.23	\$917	\$25,676	\$26,544	\$948	\$1.28	\$0		0.00	
TC60%	\$1,201	110	2	2	935	\$1,201	\$59	\$1,142	(\$37)	\$1.18	\$1,105	\$121,550	\$125,620	\$1,142	\$1.22	\$0		0.00	
TC60%	\$1,389	83	3	2	1,335	\$1,389	\$64	\$1,325	(\$45)	\$0.96	\$1,280	\$106,240	\$109,975	\$1,325	\$0.99	\$0		0.00	
<b>TOTALS / AVERAGE</b>		<b>221</b>			<b>234,459</b>				<b>(\$39)</b>	<b>\$1.08</b>	<b>\$1,147</b>	<b>\$253,466</b>	<b>\$262,139</b>	<b>\$1,186</b>	<b>\$1.12</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0.00</b>	<b>(\$1,186)</b>

ANNUAL POTENTIAL GROSS RENT:												\$3,041,592	\$3,145,668						
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**PRO FORMA ANALYSIS & DEVELOPMENT COSTS**

	TDHCA CC	TDHCA -Prior	% DIFF	APP - Orig	Owner CC	\$ DIFF	EXPENSES			DEBT											
							% of EGI	Per Unit	Per SF	First Lien:	Other:	AGGREGATE DEBT COVERAGE RATIO	RECOMMENDED DEBT COVERAGE RATIO								
POTENTIAL GROSS RENT	\$3,145,668	\$2,474,856	-3%	\$2,477,832	\$3,041,592	(\$104,076)															
Secondary Income	\$39,780	\$53,040	-100%	\$53,040	\$0	(\$39,780)															
Other Income:																					
Other Income:																					
POTENTIAL GROSS INCOME	\$3,185,448	\$2,527,896	-3%	\$2,530,872	\$3,094,392	(\$91,056)															
Vacancy & Collection Loss	(\$238,909)	(\$189,592)	-3%	(\$189,815)	(\$232,079)	\$6,829															
EO/Non-Rental Units/Concessions	\$0					\$0															
<b>EFFECTIVE GROSS INCOME</b>	<b>\$2,946,539</b>	<b>\$2,338,304</b>	<b>-2.86%</b>	<b>\$2,341,057</b>	<b>\$2,862,313</b>	<b>(\$84,227)</b>															
General & Administrative	\$101,806	\$87,958	-17%	\$81,500	\$84,120	(\$17,686)															
Management	\$103,129	\$81,841	-29%	\$82,380	\$73,463	(\$29,666)															
Payroll & Payroll Tax	\$282,202	\$231,200	15%	\$231,200	\$324,000	\$41,798															
Repairs & Maintenance	\$158,892	\$132,600	-34%	\$131,760	\$104,100	(\$54,792)															
Electric/Gas	\$52,448	\$47,475	-7%	\$46,918	\$49,000	(\$3,448)															
Water, Sewer, & Trash	\$176,339	\$144,935	9%	\$131,800	\$192,000	\$15,661															
Property Insurance	\$60,775	\$61,432	0%	\$60,775	\$60,775	\$0															
Property Tax	\$403,570	\$190,450	-7%	\$211,000	\$374,754	(\$28,816)															
Reserve for Replacements	\$66,300	\$55,250	0%	\$55,250	\$66,300	\$0															
Cable TV	\$0	\$0	#DIV/0!	\$0	\$0	\$0															
Supportive service contract fees	\$22,600	\$0	0%	\$0	\$22,600	\$0															
TDHCA Compliance fees	\$14,365	\$8,840	0%	\$8,840	\$14,365	\$0															
TDHCA Bond Administration Fees (TDHCA as Bond I:	\$0	\$5,525	#DIV/0!	\$5,525	\$0	\$0															
Security	\$0	\$13,260	#DIV/0!	\$13,260	\$0	\$0															
Other	\$31,000	\$0	0%	\$0	\$31,000	\$0															
<b>TOTAL EXPENSES</b>	<b>\$1,473,426</b>	<b>\$1,060,766</b>	<b>-5.22%</b>	<b>\$1,060,188</b>	<b>\$1,396,477</b>	<b>(\$76,949)</b>															
<b>NET OPERATING INCOME</b>	<b>\$1,473,113</b>	<b>\$1,277,538</b>	<b>-0.49%</b>	<b>\$1,280,869</b>	<b>\$1,465,836</b>	<b>(\$7,278)</b>															
	\$1,061,986	\$1,113,762	0%	\$1,104,684	\$1,061,986	\$0															
	\$51,776		-1%		\$51,498	(\$278)															
<b>TOTAL DEBT SERVICE</b>	<b>\$1,113,762</b>	<b>\$1,113,762</b>	0%	<b>\$1,104,684</b>	<b>\$1,113,484</b>	<b>(\$278)</b>															
<b>NET CASH FLOW</b>	<b>\$359,352</b>	<b>\$163,776</b>	<b>-2%</b>	<b>\$176,185</b>	<b>\$352,352</b>	<b>(\$7,000)</b>															
	1.32	1.15		1.16	1.32																
	1.32																				

COMPARABLES USED		
TDHCA DB	DB Per Unit	Other
\$101,806	\$461	2.94%
\$100,259	\$454	2.57%
\$282,202	\$1,277	11.32%
\$158,892	\$719	3.64%
\$52,448	\$237	1.71%
\$176,339	\$798	6.71%
\$68,051	\$308	2.12%
\$188,085	\$851	13.09%
\$102,470	\$464	2.32%
		0.00%
		0.79%
		0.50%
		0.00%
		0.00%
		1.08%
		48.79%
		51.21%

<b>CONSTRUCTION COST</b>			% of TOTAL	Per Unit	Per SF	TDHCA CC	TDHCA -Prior		APP - Orig	Owner CC		Per SF	Per Unit	% of TOTAL
Land Acquisition	3.10%	\$5,769	\$5.44	\$1,275,000	\$1,230,000	0%	\$1,250,000	\$1,275,000	\$0	\$5	\$5,769	3.09%		
Building Acquisition	0.00%	\$0	\$0.00	\$0	\$0	#DIV/0!	\$0	\$0	\$0	\$0	\$0	0.00%		
Closing costs & acq. legal fees	0.00%	\$0	\$0.00	\$0	\$0	#DIV/0!	\$0	\$0	\$0	\$0	\$0	0.00%		
Off-Sites	0.00%	\$0	\$0.00	\$0	\$56,697	#DIV/0!	\$0	\$0	\$0	\$0	\$0	0.00%		
Sitework	8.06%	\$14,998	\$14.14	\$3,314,500	\$2,317,370	0%	\$2,374,067	\$3,314,500	\$0	\$14	\$14,998	8.04%		
Site Amenities	0.00%	\$0	\$0.00	\$929,523	\$0	#DIV/0!	\$0	\$0	\$0	\$0	\$0	0.00%		
Other Construction Cost				\$0	\$0	#DIV/0!	\$0	\$0	\$0	\$0	\$0	0.00%		
Building Costs	49.82%	\$92,709	\$87.39	\$20,488,762	\$17,842,947	0%	\$18,017,510	\$20,488,762	\$0	\$87	\$92,709	49.72%		
Contingency				\$835,894	\$0	#DIV/0!	\$639,631	\$0	\$0	\$0	\$0	0.00%		
Contractor's Fees	8.10%	\$15,079	\$14.21	\$3,332,457	\$3,124,230	3%	\$2,984,942	\$3,418,105	\$85,648	\$15	\$15,467	8.29%		
Indirect Construction	6.72%	\$12,506	\$11.79	\$2,763,738	\$2,541,830	0%	\$1,835,843	\$2,763,738	\$0	\$12	\$12,506	6.71%		
Developer's Fees	15.00%	\$21,328	\$20.10	\$4,713,437	\$4,084,321	0%	\$4,084,321	\$4,713,437	\$0	\$20	\$21,328	11.44%		
Financing	9.92%	\$18,467	\$17.41	\$4,081,238	\$2,061,692	0%	\$2,906,177	\$4,081,238	\$0	\$17	\$18,467	9.90%		
Reserves	2.81%	\$5,233	\$4.93	\$1,156,400	\$506,471	0%	\$1,574,728	\$1,156,400	\$0	\$5	\$5,233	2.81%		
<b>TOTAL COST</b>	<b>100%</b>	<b>\$186,088</b>	<b>\$175</b>	<b>\$41,125,532</b>	<b>\$35,530,975</b>	<b>0%</b>	<b>\$36,596,742</b>	<b>\$41,211,180</b>	<b>\$85,648</b>	<b>\$176</b>	<b>\$186,476</b>	<b>100%</b>		
<b>Construction Cost Recap</b>	<b>57.88%</b>	<b>\$107,707</b>	<b>\$101.52</b>	<b>\$23,803,262</b>				<b>\$23,803,262</b>		<b>\$101.52</b>	<b>\$107,707</b>	<b>57.76%</b>		

<b>SOURCES OF FUNDS</b>						% IDC	RECOMMENDED	
First Lien: Orix Real Estate Capital LLC	50%	\$93,712	\$88	\$20,710,400	\$20,710,400	0%	\$20,710,400	Developer Fee Available
Other:	0%	\$0	\$0	\$0	\$0	#DIV/0!	\$0	\$4,713,437
HTC Equity: US Bank	33%	\$61,779	\$58	\$13,653,206	\$12,489,715	-9%	\$12,489,715	\$13,653,227
LDG Multifamily, LLC - GP Advances	5%	\$9,657	\$9	\$2,134,137	\$0	#DIV/0!	\$0	\$2,134,137
Deferred Developer Fee: LDG Multifamily, LLC	11%	\$21,328	\$20	\$4,713,437	\$3,376,627	-40%	\$3,102,450	\$4,713,437
Additional (Excess) Funds Req'd	0%	(\$388)	(\$0)	(\$85,648)	(\$1,045,767)	100%	(\$858,823)	\$0
<b>TOTAL SOURCES</b>				<b>\$41,125,532</b>	<b>\$35,530,975</b>	<b>-16%</b>	<b>\$36,596,742</b>	<b>\$41,211,180</b>

**MULTIFAMILY COMPARATIVE ANALYSIS (continued)**  
**Springs Apartments, Balch Springs, # 18614**

**PROPOSED PAYMENT COMPUTATION**

<b>First Lien: Orix Real Estate Capital LLC</b>	\$20,710,400	Amort	480
Int Rate	4.15%	DCR	1.39
<b>Other:</b>	\$0	Amort	0
Int Rate	0.00%	DCR	1.32

**RECOMMENDED FINANCING STRUCTURE: TDHCA NOI**

First Lien: Orix Real Estate Capital LLC	\$1,061,986
Other: MIP	51,776
Other:	0
<b>TOTAL DEBT SERVICE</b>	<b>\$1,113,762</b>

<b>First Lien: Orix Real Estate Capital LLC</b>	\$20,710,400	Amort	480
Int Rate	4.15%	DCR	1.39
<b>Other:</b>	\$0	Amort	0
Int Rate	0.00%	Aggregate DCR	1.32

**LONG TERM OPERATING PRO FORMA**

	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15	YEAR 20	YEAR 25	YEAR 30	YEAR 35	YEAR 40
<b>EFFECTIVE GROSS INCOME</b>	\$2,946,539	\$3,005,470	\$3,065,580	\$3,126,891	\$3,189,429	\$3,521,387	\$3,887,896	\$4,292,552	\$4,739,324	\$5,232,596	\$5,777,209	\$6,378,506
LESS: TOTAL EXPENSES	1,473,426	1,516,598	1,561,044	1,606,802	1,653,912	1,911,176	2,208,774	2,553,064	2,951,409	3,412,336	3,945,725	4,563,016
<b>NET OPERATING INCOME</b>	<b>\$1,473,113</b>	<b>\$1,488,872</b>	<b>\$1,504,536</b>	<b>\$1,520,089</b>	<b>\$1,535,517</b>	<b>\$1,610,212</b>	<b>\$1,679,122</b>	<b>\$1,739,488</b>	<b>\$1,787,915</b>	<b>\$1,820,260</b>	<b>\$1,831,484</b>	<b>\$1,815,489</b>
LESS: DEBT SERVICE	1,113,762	1,113,762	1,113,762	1,113,762	1,113,762	1,113,762	1,113,762	1,113,762	1,113,762	1,113,762	1,113,762	1,113,762
<b>NET CASH FLOW</b>	<b>\$359,352</b>	<b>\$375,111</b>	<b>\$390,774</b>	<b>\$406,328</b>	<b>\$421,756</b>	<b>\$496,450</b>	<b>\$565,361</b>	<b>\$625,726</b>	<b>\$674,153</b>	<b>\$706,498</b>	<b>\$717,723</b>	<b>\$701,728</b>
<b>CUMULATIVE NET CASH FLOW</b>	<b>\$359,352</b>	<b>\$734,463</b>	<b>\$1,125,237</b>	<b>\$1,531,564</b>	<b>\$1,953,320</b>	<b>\$4,288,013</b>	<b>\$6,979,818</b>	<b>\$9,991,763</b>	#####	#####	#####	\$23,875,026
<b>DEFERRED DEVELOPER FEE BALANCE</b>	<b>\$4,268,416</b>	<b>\$3,893,305</b>	<b>\$3,502,530</b>	<b>\$3,096,203</b>	<b>\$2,674,447</b>	<b>\$339,754</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>DCR ON UNDERWRITTEN DEBT (Must-Pay)</b>	1.32	1.34	1.35	1.36	1.38	1.45	1.51	1.56	1.61	1.63	1.64	1.63
<b>EXPENSE/EGI RATIO</b>	50.01%	50.46%	50.92%	51.39%	51.86%	54.27%	56.81%	59.48%	62.27%	65.21%	68.30%	71.54%



**HTC ALLOCATION ANALYSIS - Springs Apartments, Balch Springs, # 18614**

CATEGORY	APPLICANT'S TOTAL AMOUNTS	TDHCA TOTAL AMOUNTS	APPLICANT'S ACQUISITION ELIGIBLE BASIS	TDHCA ACQUISITION ELIGIBLE BASIS	APPLICANT'S REHAB/NEW ELIGIBLE BASIS	TDHCA REHAB/NEW ELIGIBLE BASIS
<b>Acquisition Cost</b>						
Purchase of land	\$1,275,000	\$1,275,000				
Purchase of buildings	\$0	\$0				
Closing costs & Acq. Legal Fees	\$0	\$0				
<b>Off-Site Improvements</b>	\$0	\$0				
<b>Sitework</b>	\$3,314,500	\$3,314,500			\$3,314,500	\$3,314,500
<b>Building Costs</b>	\$20,488,762	\$20,488,762			\$20,069,155	\$20,069,155
<b>Contingency</b>	\$0	\$0				\$0
<b>Contractor's Fees</b>	\$3,418,105	\$3,332,457			\$3,273,712	\$3,273,712
<b>Indirect Construction</b>	\$2,763,738	\$2,763,738	\$0	\$0	\$2,415,699	\$2,415,699
<b>Interim Financing</b>	\$4,081,238	\$4,081,238	\$0	\$0	\$2,349,850	\$2,349,850
<b>Developer Fees</b>						
Developer Fees	\$4,713,437	\$4,713,437	\$0	\$0	\$4,713,437	\$4,713,437
<b>Development Reserves</b>	\$1,156,400	\$1,156,400				
<b>TOTAL DEVELOPMENT COSTS</b>	\$41,211,180	\$41,125,532	\$0	\$0	\$36,136,353	\$36,136,353

<b>Deduct from Basis:</b>						
	\$0					
Describe:						
Describe:						
Describe:						
Describe:						
Describe:					\$0	\$0
<b>TOTAL ELIGIBLE BASIS</b>			\$0	\$0	\$36,136,353	\$36,136,353
High Cost Area Adjustment					130%	130%
<b>TOTAL ADJUSTED BASIS</b>			\$0	\$0	\$46,977,259	\$46,977,259
Applicable Fraction			100%	100%	100%	100%
<b>TOTAL QUALIFIED BASIS</b>			\$0	\$0	\$46,977,259	\$46,977,259
Applicable Percentage			0.00%	0.00%	3.13%	3.13%
<b>TOTAL AMOUNT OF TAX CREDITS</b>			\$0	\$0	\$1,469,419	\$1,469,419

<b>Syndication Rate</b>	<b>0.9292</b>	<b>\$0</b>	<b>\$0</b>	<b>\$13,653,231</b>	<b>\$13,653,231</b>
<b>Total Tax Credits (Eligible Basis Method)</b>				<b>\$1,469,419</b>	<b>\$1,469,419</b>
<b>Syndication Proceeds</b>				<b>\$13,653,231</b>	<b>\$13,653,231</b>
<b>Approved Tax Credits</b>				<b>\$1,314,707</b>	
<b>Syndication Proceeds</b>				<b>\$12,215,708</b>	
<b>Requested Tax Credits</b>				<b>\$1,469,419</b>	
<b>Syndication Proceeds</b>				<b>\$13,653,231</b>	
<b>Gap of Syndication Proceeds Needed</b>				<b>\$18,280,995</b>	
<b>Total Tax Credits (Gap Method)</b>				<b>\$1,967,479</b>	
<b>Recommended Tax Credits</b>				<b>1,469,419</b>	
<b>Syndication Proceeds</b>				<b>\$13,653,227</b>	

6/21/2021

Mark Fugina  
Texas Department of Housing and Community Affairs  
221 E. 11<sup>th</sup> Street  
Austin, TX 78701

Re: Springs Apartments # 18614 – Request for Additional Tax Credits

Mr. Fugina:

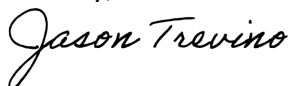
The Determination Notice dated 4/13/2018 for the above referenced application reflected an Annual Tax Credit Amount of \$1,314,707. The final Eligible Basis of \$36,136,353 (Adjusted-\$46,977,260) now calculates an Annual Tax Credit amount of \$1,469,419 which is approximately 11.7% higher. Based on TDHCA rules any increase over 10% from the initial must be approved by the board. Therefore, LDG is formally requesting the additional credits for Springs Apartments at the July 22, 2021 board meeting.

Below are some of the main reason for the cost increases since the time of the initial application:

1. Increase in Lumber cost from the time of bid to actual
2. Unforeseen site excavation costs as this site proved more difficult to develop than originally anticipated
3. Change in Roof design: TPO roofing was installed versus PVC
4. Flooring: Vinyl flooring was installed in the units versus carpet

Please let us know if you need any further information to process this request.

Sincerely,



Jason Trevino  
LDG Development, LLC  
512-578-8488

**From:** [Jason Trevino](#)  
**To:** [Mark Fugina](#)  
**Cc:** [Rosalio Banuelos](#); [Justin Hartz](#); [Keith Musanje](#)  
**Subject:** Re: Springs Apts Board Issue  
**Date:** Tuesday, August 10, 2021 5:15:56 PM  
**Attachments:** [image001.png](#)

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Hi Mark,

See below regarding the items you requested further explanations on:

**Architectural Costs:** The Architectural Costs increased due to minor design changes throughout construction. Additionally, the initial Architectural estimate did not take into account the fact that this was a HUD deal which carries additional costs compared to a non HUD deal. As a HUD deal there are two sets of architectural plans that are submitted; one to the City and one to HUD. Submittal time and submittal costs are increased as the plans are being reviewed by a City reviewer and a HUD reviewer. Therefore, the comment and response phase is doubled. Attached is a printout from our Accounting department for all Architectural related transactions. All paid invoices associated with the Architectural work of Springs Apartments are in the below attached link under "A 18 GL 1510 and A 19 GL 1510.01".

**Engineering:** The engineering costs were under estimated at the time of the application. All paid invoices associated with the Engineering of Springs Apartments are in the below attached link under "Engineering Invoices".

**Construction Interest:** The estimated interest calculation was incorrect at the time of application. Additionally, this particular project had some delays in construction which further increased the final interest expense. The interest reflected in the Cost Certification package is the actual interest paid during construction. Attached is the summary calculation for the eligible interest of \$1,801,334. The itemized statements supporting monthly interest are in the below attached link under "Eligible Interest Calc".

**Property Taxes:** The estimated property taxes were incorrect at the time of application. The itemized statements supporting paid taxes are in the below attached link under "Property Tax Calc summary and support".

**Construction Costs:** It appears we under estimated the direct construction costs at the time of application. As previously explained, we did not have actual construction bids at the time of the application. Additionally, there were several changes orders which increased the direct construction costs. Attached are change orders totaling \$2,154,309.70 which increased the overall cost of construction:

- Exhibit 1 - \$495,380.28
- Exhibit 2 - \$915,236.25
- Exhibit 3 - \$743,693.26

[https://ldgdevelopment.sharepoint.com/:f:/s/Texas/Euujobn74atJPr\\_J3l6d6GLYBU0VhDvlyW5C7W39wJ1ldA?e=AK0cPY](https://ldgdevelopment.sharepoint.com/:f:/s/Texas/Euujobn74atJPr_J3l6d6GLYBU0VhDvlyW5C7W39wJ1ldA?e=AK0cPY)

Thank you,

Jason L. Trevino  
LDG Development, LLC  
6300 La Calma Dr., Ste. 520  
Austin, TX 78752  
512-578-8488  
[www.ldgdevelopment.com](http://www.ldgdevelopment.com)



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**From:** Mark Fugina <mark.fugina@tdhca.state.tx.us>  
**Date:** Monday, July 19, 2021 at 11:18 AM  
**To:** Jason Trevino <jtrevino@ldgdevelopment.com>

**Subject:** Springs Apts Board Issue

Hi Jason,

Based on these tables there are still questions we have and are asking explanations in order to discuss in the board write-up. Many of the costs for the credit increase are in indirect and interim financing. The third table are a few specific items that we hope to have addressed.

Regarding direct construction, you mentioned lumber costs have gone up, yet our research shows the significant increases didn't occur until June 2020, by that time you were already done with lumber purchases and construction. So we're having problems understanding that line times for increases in direct construction.

**Please submit explanations in the next hour or two**

<b>Eligible Basis Costs</b>					
	<b>Cost Cert</b>	<b>Application</b>	<b>Difference</b>	<b>% Change</b>	<b>% of Whole</b>
Off-Site Improvements	\$0.00	\$0.00	\$0.00	0.0%	0.0%
*Sitework	\$3,314,500.00	\$2,374,067.00	\$940,433.00	39.6%	17.9%
*Site Amenities	\$0.00	\$929,523.00	-\$929,523.00	-100.0%	-17.7%
*Building Costs	\$20,488,762.00	\$17,696,999.00	\$2,791,763.00	15.8%	53.2%
*Contingency	\$0.00	\$639,631.00	-\$639,631.00	-100.0%	-12.2%
Contractor's Fees	\$3,273,711.70	\$2,984,942.00	\$288,769.70	9.7%	5.5%
Indirect Construction	\$2,415,699.00	\$1,603,981.00	\$811,718.00	<b>50.6%</b>	15.5%
Interim Financing	\$2,349,850.00	\$999,744.00	\$1,350,106.00	<b>135.0%</b>	25.8%
Developer Fees	<u>\$4,713,437.00</u>	<u>\$4,084,321.00</u>	<u>\$629,116.00</u>	<u>15.4%</u>	<u>12.0%</u>
<b>TOTAL DEVELOPMENT COSTS</b>	<b>\$36,555,959.70</b>	<b>\$31,313,208.00</b>	<b>\$5,242,751.70</b>	<b>16.7%</b>	<b>100.0%</b>
*Total Direct Construction	\$23,803,262.00	\$21,640,220.00	\$2,163,042.00	<b>10.0%</b>	41.3%

<b>Total Costs</b>					
	<b>Cost Cert</b>	<b>Application</b>	<b>Difference</b>	<b>% Change</b>	
Off-Site Improvements	\$0.00	\$0.00	\$0.00	0.0%	0.0%
*Sitework	\$3,314,500.00	\$2,374,067.00	\$940,433.00	39.6%	18.8%
*Site Amenities	\$0.00	\$929,523.00	-\$929,523.00	-100.0%	-18.6%
*Building Costs	\$20,069,155.00	\$18,017,510.00	\$2,051,645.00	11.4%	41.0%
*Contingency	\$0.00	\$639,631.00	-\$639,631.00	-100.0%	-12.8%
*Other	\$419,607.00	\$0.00	\$419,607.00	0.0%	8.4%
Contractor's Fees	\$3,418,105.00	\$2,984,942.00	\$433,163.00	14.5%	8.6%
Indirect Construction	\$2,763,738.00	\$1,835,843.00	\$927,895.00	<b>50.5%</b>	18.5%
Interim Financing	\$4,081,238.00	\$2,906,177.00	\$1,175,061.00	<b>40.4%</b>	23.5%
Developer Fees	<u>\$4,713,437.00</u>	<u>\$4,084,321.00</u>	<u>\$629,116.00</u>	<u>15.4%</u>	12.6%
<b>TOTAL DEVELOPMENT COSTS</b>	<b>\$38,779,780.00</b>	<b>\$33,772,014.00</b>	<b>\$5,007,766.00</b>	<b>16.7%</b>	<b>100.0%</b>
*Total Direct Construction	\$23,803,262.00	\$21,960,731.00	\$1,842,531.00	<b>8.4%</b>	36.8%

<b>Eligible Costs</b>					
Arch Costs	\$1,332,413.00	\$1,043,131.00	\$289,282.00	27.7%	
Engineering	\$409,855.00	\$160,000.00	\$249,855.00	156.2%	
Interest	\$1,801,334.00	\$263,727.00	\$1,537,607.00	583.0%	
Property Taxes	\$194,972.00	\$50,000.00	\$144,972.00	289.9%	

Thanks

**Mark Fugina**

Senior Asset Manager – Region 3  
Texas Department of Housing and Community Affairs  
221 E. 11th Street | Austin, TX 78701  
Office: 512.475.2109

**About TDHCA**

The Texas Department of Housing and Community Affairs is committed to expanding fair housing choice and opportunities for Texans through the administration and funding of affordable housing and homeownership opportunities, weatherization, and community-based services with the help of for-profits, nonprofits, and local governments. For more information about fair housing, funding opportunities, or services in your area, please visit [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us) or the [Learn about Fair Housing in Texas](#) page.

*Any person receiving guidance from TDHCA staff should be mindful that, as set forth in [10 TAC Section 11.1\(b\)](#), there are important limitations and caveats (Also see [10 TAC §10.2\(b\)](#)).*

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action regarding an increase to the Housing Tax Credit amount for Pointe at Crestmont (HTC #16429)

**RECOMMENDED ACTION**

**WHEREAS**, Pointe at Crestmont (the Development) received a 4% Housing Tax Credit (HTC) award in 2016 to construct 192 multifamily units in Houston, Harris County;

**WHEREAS**, construction of the Development has been completed, and The Pointe at Crestmont, LP (the Development Owner or Owner) requests, at Cost Certification, to increase the annual HTC amount to \$1,332,702, which is an increase of \$229,903 or 20.85% from \$1,102,799, the amount of tax credits reflected in the Determination Notice;

**WHEREAS**, §42(m)(2) of the Internal Revenue Code allows an increase of tax credits for a bond financed project when the increase is determined necessary as demonstrated through the submission of the cost certification package;

**WHEREAS**, 10 TAC §10.402(c) requires approval by the Board if an increase to the amount of tax credits exceeds 110% of the amount of credit reflected in the Determination Notice; and

**WHEREAS**, a review of the Cost Certification package submitted by the Development Owner supports the need for the additional tax credits requested, and staff has determined that the increase is necessary for the viability of the transaction;

**NOW, therefore, it is hereby**

**RESOLVED**, that the housing tax credit increase for Pointe at Crestmont requested by the Development Owner is approved as presented to this meeting, and the Executive Director and his designees are each authorized, directed, and empowered to take all necessary action to effectuate the foregoing.

## **BACKGROUND**

Pointe at Crestmont received a 4% HTC award in 2016 to construct 192 multifamily units in Houston, Harris County. On May 26, 2017, a Determination Notice was issued with an approved annual tax credit amount of \$1,102,799. The residential buildings in the Development placed in service by September 13, 2019, and the final cost certification was received by the Department on July 9, 2020.

In conjunction with the cost certification, Keith Musanje, the representative for the Development Owner, requested to increase the annual tax credit award to \$1,332,702, an increase of \$229,903 (20.85%) from the amount reflected in the Determination Notice. Through the cost certification review process, the representative for the Development Owner explained that the Development incurred increased costs during construction.

The construction contract was signed in April 2017, and construction started timely. According to the Owner, after the construction contract was signed, construction delays occurred due to a roof fire caused by subcontractor negligence. A City of Houston waterline break and delays in the permit issuance also caused additional costs. The City of Houston required compliance with Section 3 and Davis Bacon, which also increased indirect construction costs. Property taxes and water/sewer tap fees were inadvertently omitted from the cost schedule at Application. Construction costs also increased due to unforeseen site work and upgrades made throughout construction. The total amount of change orders was \$3,410,292.

A comparison of the development costs from the time of the Application, in late 2016, to cost certification indicates that total development costs increased over \$5M (15.32%), from \$32,797,192 to approximately \$37.8 million. Construction costs, including contractor fees, increased over \$2.7M (12.39%), from \$22,071,621 to \$24,805,276. Indirect construction costs increased \$976,856 (63.78%), from \$1,531,634 to \$2,508,490. Developer fees increased over \$35K or 0.94%. Financing costs increased over \$2M (75.17%), from \$2,668,554 to \$4,674,430. According to the Owner, financing costs increased significantly as a result of payment of interest during the extended construction period that was not included in the original budget at the time of application.

The syndication rate decreased from \$1.07 to \$0.97. However, the requested additional credits will result in an increase of over \$1,129,180 (9.57%) in syndication proceeds, including a negative timing adjuster of \$796,180. The deferred developer fee amount increased by \$949,610 from \$2,832,447 to \$3,782,057 (a 33.53% increase); however, in the Department analysis, the deferred developer fee is actually reduced to \$2,538,918 due to developer fees being capped in accordance with Department rules. Total third-party debt increased over \$1.4M (7.89%) from \$18,167,160 to \$19.6M, and related party debt of \$2,028,737 was added as a source of funds.

Staff's analysis of this transaction at cost certification has concluded that the Development supports a tax credit allocation of the requested amount, and that the requested increase is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period. This results in a 20.85% increase from the annual HTC amount in the Determination Notice, going from \$1,102,799 to \$1,332,702. In accordance with 10 TAC §10.402(c), Board approval is required because the requested tax credit amount exceeds 110% of the HTC amount reflected in the

Determination Notice. The Development Owner will be required to submit the Tax-Exempt Bond Credit Increase Request Fee required in 10 TAC §11.901(8) for the increase to the HTC amount prior to issuance of Forms 8609.

Staff recommends approval of the increase in the tax credit award as presented herein.





**DEBT**

First Lien: CITI Bank  
 Other: Houston Esperanza - CDBG  
 Other: LDG Multifamily LLC  
 Other: LDG Multifamily LLC  
 TOTAL DEBT SERVICE  
 NET CASH FLOW  
 AGGREGATE DEBT COVERAGE RATIO  
 RECOMMENDED DEBT COVERAGE RATIO

\$824,811	\$792,477	0%	\$784,352	\$824,811	\$0
\$86,517		#VALUE!		\$86,517	#VALUE!
\$43,149		0%		\$43,149	\$0
\$954,477	\$792,477	0%	\$784,352	\$954,477	\$0
\$279,353	\$130,514	5%	\$153,712	\$294,336	\$14,983
1.29	1.16		1.20	1.31	
				1.31	

**CONSTRUCTION COST**

	% of TOTAL	Per Unit	Per SF	TDHCA CC	TDHCA -Prior		APP - Orig	Owner CC		Per SF	Per Unit	% of TOTAL
Land Acquisition	5.19%	\$9,901	\$9.18	\$1,901,000	\$1,872,000	0%	\$1,872,000	\$1,901,000	\$0	\$9	\$9,901	5.03%
Building Acquisition	0.00%	\$0	\$0.00	\$0	\$0	#DIV/0!	\$0	\$0	\$0	\$0	\$0	0.00%
Closing costs & acq. legal fees	0.27%	\$513	\$0.48	\$98,541	\$0	0%	\$0	\$98,541	\$0	\$0	\$513	0.26%
Off-Sites	0.00%	\$0	\$0.00	\$0	\$0	#DIV/0!	\$0	\$0	\$0	\$0	\$0	0.00%
Sitework	11.50%	\$21,928	\$20.32	\$4,210,121	\$3,364,270	0%	\$3,364,270	\$4,210,121	\$0	\$20	\$21,928	11.13%
Site Amenities					\$299,463		\$299,463					
Other Construction Cost					\$0	#DIV/0!	\$0		\$0			
Building Costs	45.03%	\$85,852	\$79.57	\$16,483,495	\$15,316,698	0%	\$14,774,001	\$16,483,495	\$0	\$80	\$85,852	43.58%
Contingency					\$921,887	#DIV/0!	\$921,887		\$0			
Contractor's Fees	7.91%	\$15,089	\$13.99	\$2,897,106	\$2,712,000	42%	\$2,712,000	\$4,111,660	\$1,214,554	\$20	\$21,415	10.87%
Indirect Construction	6.85%	\$13,065	\$12.11	\$2,508,490	\$1,531,634	0%	\$1,531,634	\$2,508,490	\$0	\$12	\$13,065	6.63%
Developer's Fees	13.72%	\$19,974	\$18.51	\$3,835,057	\$3,799,180	0%	\$3,799,180	\$3,835,057	\$0	\$19	\$19,974	10.14%
Financing	12.77%	\$24,346	\$22.56	\$4,674,430	\$2,668,554	0%	\$2,668,554	\$4,674,430	\$0	\$23	\$24,346	12.36%
Reserves	0.00%	\$0	\$0.00	\$0	\$857,398	#DIV/0!	\$854,203	\$0	\$0	\$0	\$0	0.00%
TOTAL COST	100%	\$190,668	\$177	\$36,608,240	\$33,343,084	3.32%	\$32,797,192	\$37,822,794	\$1,214,554	\$183	\$196,994	100%
Construction Cost Recap	56.53%	\$107,779	\$99.89	\$20,693,616			\$20,693,616			\$99.89	\$107,779	54.71%

**SOURCES OF FUNDS**

									% TDC	RECOMMENDED	
First Lien: CITI Bank	40%	\$76,042	\$70	\$14,600,000	\$13,167,160	-11%	\$13,167,160	\$14,600,000	40%	\$14,600,000	Developer Fee Available
Other: Houston Esperanza - CDBG	14%	\$26,042	\$24	\$5,000,000	\$3,404,932	-47%	\$3,404,932	\$5,000,000	14%	\$5,000,000	\$3,835,057
Other:	0%	\$0	\$0	\$0	\$1,595,068	100%	\$1,595,068	\$0	0%	\$0	
Other: LDG Multifamily LLC	3%	\$6,263	\$6	\$1,202,527	\$0	#DIV/0!	\$0	\$1,202,527	3%	\$1,202,527	
Other: LDG Multifamily LLC	2%	\$4,303	\$4	\$826,210	\$0	#DIV/0!	\$0	\$826,210	2%	\$826,210	
HTC Equity: R4 PCTX Acquisition LLC	35%	\$67,327	\$62	\$12,926,765	\$11,797,585	-5%	\$11,797,585	\$12,412,000	35%	\$12,926,765	
Supplemental Capital Contribution	1%	\$1,615	\$1	\$310,000	\$0	#DIV/0!	\$0	\$0	1%	\$310,000	
Timing Adjuster	-2%	(\$4,147)	(\$4)	(\$796,180)	(\$0)	100%	\$0	\$0	-2%	(\$796,180)	% of Dev. Fee Deferred
Deferred Developer Fee: LDG Multifamily LLC	7%	\$13,224	\$12	\$2,538,918	\$2,832,448	-34%	\$2,832,447	\$3,782,057	7%	\$2,538,918	66%
Additional (Excess) Funds Req'd	0%	\$0	\$0	\$0	\$545,892	100%	\$0	\$0	0%	\$0	15-Yr Cumulative Cash Flow
TOTAL SOURCES				\$36,608,240	\$33,343,084	-13%	\$32,797,192	\$37,822,794	100%	\$36,608,240	\$6,083,063

**MULTIFAMILY COMPARATIVE ANALYSIS (continued)**

**Pointe at Crestmont, Houston, # 16429**

DIRECT CONSTRUCTION COST ESTIMATE					
CATEGORY	FACTOR	UNITS/ SF	PER SF	AMOUNT	
Base Cost:			\$68.28	\$14,144,799	
Adjustments					
Exterior Wall Finish	2.56%		1.747991165	\$362,107	
	0.00%		0	0	
	0.00%		0	0	
Roofing			0.00	0	
Subfloor			(0.16)	(33,145)	
Floor Cover			7.68	1,590,958	
Breezeways	\$29.97	33,120	4.79	992,717	
Balconies	\$29.97	9,576	1.39	287,025	
Plumbing Fixtures	\$1.070	504	2.60	539,280	
Rough-ins	\$525	384	0.97	201,600	
Built-In Appliances	\$1,780	192	1.65	341,760	
Exterior Stairs	\$2,450	600	7.10	1,470,000	
Heating/Cooling			2.33	482,673	
Enclosed Corridors	\$53.90		0.00	0	
Carpets	\$13.05	5,280	0.33	68,904	
Garages	\$44.75	5,760	1.24	257,760	
Comm &/or Aux Bldgs	\$92.74	4,051	1.81	375,708	
Other:			0.00	0	
Other: fire sprinkler	\$3.90	207,156	3.90	807,908	
<b>SUBTOTAL</b>			<b>105.67</b>	<b>21,890,054</b>	
Current Cost Multiplier	0.99		-1.06	(218,901)	
Local Multiplier	0.89		-11.62	(2,407,906)	
<b>TOTAL DIRECT CONSTRUCTION COSTS</b>			<b>92.99</b>	<b>\$19,263,248</b>	
Plans, specs, survey, bldg permits	3.30%		-3.07	(\$635,687)	
Contractor's OH & Profit	11.50%		-10.69	(2,215,273)	
<b>NET DIRECT CONSTRUCTION COSTS</b>			<b>79.23</b>	<b>\$16,412,287</b>	

# of floors

**PROPOSED PAYMENT COMPUTATION**

<b>First Lien: CITI Bank</b>	\$14,600,000	Amort	420
Int Rate	4.46%	DCR	1.50
<b>Other: Houston Esperanza - CDBG</b>	\$5,000,000	Amort	0
Int Rate	6.00%	DCR	1.50
<b>Other:</b>	\$0	Amort	0
Int Rate	0.00%	DCR	1.50
<b>Other: LDG Multifamily LLC</b>	\$1,202,527	Amort	360
Int Rate	6.00%	DCR	1.35
<b>Other: LDG Multifamily LLC</b>	\$826,210	Amort	360
Int Rate	3.25%	DCR	1.29

**RECOMMENDED FINANCING STRUCTURE: APPLICANT'S NO1**

First Lien: CITI Bank	\$824,811
Other: Houston Esperanza - CDBG	0
Other:	0
Other: LDG Multifamily LLC	86,517
Other: LDG Multifamily LLC	43,149
Other:	0
Other:	0
Other:	0
<b>TOTAL DEBT SERVICE</b>	<b>\$954,477</b>

<b>First Lien: CITI Bank</b>	\$14,600,000	Amort	420
Int Rate	4.46%	DCR	1.51
<b>Other: Houston Esperanza - CDBG</b>	\$5,000,000	Amort	0
Int Rate	6.00%	Aggregate DCR	1.51
<b>Other:</b>	\$0	Amort	0
Int Rate	0.00%	Aggregate DCR	1.51
<b>Other: LDG Multifamily LLC</b>	\$1,202,527	Amort	360
Int Rate	6.00%	Aggregate DCR	1.37
<b>Other: LDG Multifamily LLC</b>	\$826,210	Amort	360
Int Rate	3.25%	Aggregate DCR	1.31

**LONG TERM OPERATING PRO FORMA**

	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15	YEAR 20	YEAR 25	YEAR 30	YEAR 35	YEAR 40
<b>EFFECTIVE GROSS INCOME</b>	\$2,207,468	\$2,251,617	\$2,296,650	\$2,342,583	\$2,389,434	\$2,638,129	\$2,912,707	\$3,215,864	\$3,550,574	\$3,920,121	\$4,328,130	\$4,778,605
LESS: TOTAL EXPENSES	958,655	987,832	1,016,904	1,046,837	\$1,077,656	1,246,002	\$1,440,817	1,666,283	1,927,242	2,229,302	2,578,963	2,983,753
<b>NET OPERATING INCOME</b>	<b>\$1,248,813</b>	<b>\$1,263,786</b>	<b>\$1,279,746</b>	<b>\$1,295,746</b>	<b>\$1,311,778</b>	<b>\$1,392,127</b>	<b>\$1,471,890</b>	<b>\$1,549,581</b>	<b>\$1,623,332</b>	<b>\$1,690,818</b>	<b>\$1,749,167</b>	<b>\$1,794,852</b>
LESS: DEBT SERVICE	954,477	954,477	954,477	954,477	954,477	954,477	954,477	954,477	954,477	954,477	954,477	954,477
<b>NET CASH FLOW</b>	<b>\$294,336</b>	<b>\$309,309</b>	<b>\$325,269</b>	<b>\$341,269</b>	<b>\$357,302</b>	<b>\$437,650</b>	<b>\$517,413</b>	<b>\$595,104</b>	<b>\$668,855</b>	<b>\$736,342</b>	<b>\$794,690</b>	<b>\$840,375</b>
<b>CUMULATIVE NET CASH FLOW</b>	\$294,336	\$603,645	\$928,915	\$1,270,184	\$1,627,485	\$3,655,018	\$6,083,063	\$8,904,373	\$12,103,152	\$15,652,925	\$19,513,986	\$23,630,356
<b>DEFERRED DEVELOPER FEE BALANCE</b>	\$2,244,582	\$1,935,273	\$1,610,004	\$1,268,734	\$911,433	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>DCR ON UNDERWRITTEN DEBT (Must-Pay)</b>	1.31	1.32	1.34	1.36	1.37	1.46	1.54	1.62	1.70	1.77	1.83	1.88
<b>EXPENSE/EGI RATIO</b>	43.43%	43.87%	44.28%	44.69%	45.10%	47.23%	49.47%	51.81%	54.28%	56.87%	59.59%	62.44%

**HTC ALLOCATION ANALYSIS - Pointe at Crestmont, Houston, # 16429**

CATEGORY	APPLICANT'S TOTAL AMOUNTS	TDHCA TOTAL AMOUNTS	APPLICANT'S ACQUISITION ELIGIBLE BASIS	TDHCA ACQUISITION ELIGIBLE BASIS	APPLICANT'S REHAB/NEW ELIGIBLE BASIS	TDHCA REHAB/NEW ELIGIBLE BASIS
<b>Acquisition Cost</b>						
Purchase of land	\$1,901,000	\$1,901,000				
Purchase of buildings	\$0	\$0				
Closing costs & Acq. Legal Fees	\$98,541	\$98,541				
<b>Off-Site Improvements</b>	\$0	\$0				
<b>Sitework</b>	\$4,210,121	\$4,210,121			\$3,738,702	\$3,738,702
<b>Building Costs</b>	\$16,483,495	\$16,483,495			\$16,483,495	\$16,483,495
<b>Contingency</b>	\$0	\$0				
<b>Contractor's Fees</b>	\$4,111,660	\$2,897,106			\$2,801,982	\$2,801,982
<b>Indirect Construction</b>	\$2,508,490	\$2,508,490	\$0	\$0	\$2,207,953	\$2,207,953
<b>Interim Financing</b>	\$4,674,430	\$4,674,430	\$0	\$0	\$2,721,737	\$2,721,737
<b>Developer Fees</b>						
Developer Fees	\$3,835,057	\$3,835,057	\$0	\$0	\$3,835,057	\$3,835,057
<b>Development Reserves</b>	\$0	\$0				
<b>TOTAL DEVELOPMENT COSTS</b>	<b>\$37,822,794</b>	<b>\$36,608,240</b>	<b>\$0</b>	<b>\$0</b>	<b>\$31,788,926</b>	<b>\$31,788,926</b>

<b>Deduct from Basis:</b>						
	\$0					
Describe: COMMERCIAL SPACE					\$208,037	\$208,037
Describe:						
Describe:						
Describe:					\$0	\$0
Describe:						
<b>TOTAL ELIGIBLE BASIS</b>			\$0	\$0	\$31,580,889	\$31,580,889
High Cost Area Adjustment					130%	130%
<b>TOTAL ADJUSTED BASIS</b>			\$0	\$0	\$41,055,156	\$41,055,156
Applicable Fraction			100%	100%	100%	100%
<b>TOTAL QUALIFIED BASIS</b>			\$0	\$0	\$41,055,156	\$41,055,156
Applicable Percentage			0.00%	0.00%	3.25%	3.25%
<b>TOTAL AMOUNT OF TAX CREDITS</b>			\$0	\$0	\$1,332,702	\$1,332,702

<b>Syndication Rate</b>	<b>0.9700</b>	<b>\$0</b>	<b>\$0</b>	<b>\$12,926,768</b>	<b>\$12,926,768</b>
<b>Total Tax Credits (Eligible Basis Method)</b>				<b>\$1,332,702</b>	<b>\$1,332,702</b>
<b>Syndication Proceeds</b>				<b>\$12,926,768</b>	<b>\$12,926,768</b>
<b>Approved Tax Credits</b>				<b>\$1,102,799</b>	
<b>Syndication Proceeds</b>				<b>\$10,696,783</b>	
<b>Requested Tax Credits</b>				<b>\$1,332,709</b>	
<b>Syndication Proceeds</b>				<b>\$12,926,833</b>	
<b>Gap of Syndication Proceeds Needed</b>				<b>\$15,465,683</b>	
<b>Total Tax Credits (Gap Method)</b>				<b>\$1,594,455</b>	
<b>Recommended Tax Credits</b>				<b>1,332,702</b>	
<b>Syndication Proceeds</b>				<b>\$12,926,765</b>	

8/20/2021

Lucy Trevino, Senior Asset Manager  
Texas Department of Housing and Community Affairs  
221 E. 11<sup>th</sup> Street  
Austin, TX 78701

Re: Crestmont #16429 – Request for Additional Tax Credits

Mrs. Trevino:

The Determination Notice dated 5/24/2017 for the above referenced application reflected an Annual Tax Credit Amount of \$1,102,799. The final Eligible Basis of \$31,580,889 (Adjusted \$41,055,156) now calculates an Annual Tax Credit amount of \$1,332,709 which is approximately 20.84% higher. Based on TDHCA rules any increase over 10% from the initial must be approved by the board. Therefore, LDG is formally requesting the additional credits for Crestmont at the September 2, 2021 board meeting.

Below are some of the main reasons for the cost increases since the time of the initial application:

**Construction Costs:**

- Unforeseen site excavation costs as this site proved more difficult to develop than originally anticipated.
- Roof: The roof was upgraded to 30-year TPO shingles versus PVC. This material is more durable and provides a longer warranty.
- Flooring: LVT plank tile and Accusound floor underlayment was installed in the units versus carpet.
- Costs associated with plumbing, electrical, and mechanical also increased due to Architectural plan revisions throughout construction.

**Indirect Construction Costs:**

- Construction delays from a residential building catching fire (roof subcontractor negligence), a City of Houston waterline break, and delays in permit issuance caused an increase to indirect costs such as builders risk insurance.
- Additionally, property taxes and water/sewer tap fees were incorrectly omitted from the development costs at the time of the application.
- Soft funds received from the City of Houston required compliance with Section 3 and Davis Bacon. Administrative costs associated with these requirements were not budgeted at the time of application.

**Financing Costs:**

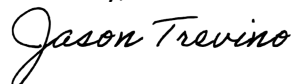
- Construction delays from a residential building catching fire (roof subcontractor negligence), a City of Houston waterline break, and delays in permit issuance caused an increase to financing costs such as construction interest and financing fees.

**Developer Fees:**

- Developer fees are calculated at 15% of the project's eligible costs and this increase is a direct result of the increases detailed above.

Please let us know if you need any further information to process this request.

Sincerely,



Jason Trevino  
LDG Development, LLC  
512-578-8488

10a

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**SEPTEMBER 2, 2021**

Presentation, Discussion, and Possible Action on a waiver relating to 10 TAC §11.101(b)(2), related to Development Size Limitations for Bluff View Apartments in Boerne

**RECOMMENDED ACTION**

**WHEREAS**, new construction Tax-Exempt Bond developments located in Rural Areas are limited to a maximum number of 120 units pursuant to 10 TAC §11.101(b)(2) of the Qualified Allocation Plan (QAP);

**WHEREAS**, the Department received a request from an applicant to build a 200-unit development in Boerne, Kendall County, which is considered a Rural Area pursuant to the 2021 Site Demographic Characteristics Report released by the Department;

**WHEREAS**, staff has performed an evaluation of the proposed primary market area, demand calculations, number of units proposed, drive times to major employers in the area and population trends of Boerne, and believes granting the waiver supports the requirements articulated in 10 TAC §11.207 relating to waivers granted by the Board; and

**WHEREAS**, the granting of the waiver is specific to the facts and circumstances relating to this request and information provided by the applicant; should those change at the time the housing tax credit application is submitted or should the application be submitted in a subsequent program year, a re-evaluation of the request may be warranted;

**NOW, therefore, it is hereby**

**RESOLVED**, that the waiver relating to 10 TAC §11.101(b)(2) of the QAP concerning Development Size Limitations for a proposed development in Boerne, Kendall County, planned for submission in the 2021 program year is hereby granted.

**BACKGROUND**

The QAP contains a provision relating to limitations of the size of a development which reads in part *“Competitive Housing Tax Credit or Multifamily Direct Loan-only Developments involving New Construction or Adaptive Reuse in Rural Areas are limited to a maximum of 80 total Units. Tax-Exempt Bond Developments involving New Construction or Adaptive Reuse in a Rural Area are limited to a maximum of 120 total Units.”*



This requirement stems, in part, from the definition of a Rural Development as found in Tex. Gov't Code §2306.004(28-b), which reads *"a development or proposed development that is located in a rural area, other than rural new construction developments with more than 80 units."* This definition has applicability as it relates to Competitive 9% HTC applications under what is known as the Rural Set-Aside, which requires a certain amount of the HTC ceiling be reserved for developments in a rural area. Staff believes the definition represents a characterization of a development that would have greater implication under the Competitive 9% HTC program considering the Rural Set-Aside and other provisions that relate to the scoring of a rural application. Under the Non-competitive 4% HTC program, set-aside and scoring provisions do not exist. Moreover, staff modified the maximum number of units under the 4% HTC program from 80 to 120 units starting with the 2019 QAP. The requirement in the rule that limits the size of multifamily developments in rural areas, regardless of funding source, is representative of Department policy in preventing the over-burdening of units in a rural area.

The request was represented to involve a new construction, 200-unit development located in Boerne, Kendall County that will serve the general population. It has been represented that all 200 units will be restricted to 60% of Area Median Income (AMI).

Boerne is located northwest of San Antonio and is considered an Urban Area according to the Department's 2021 Site Demographic Characteristics Report. According to 10 TAC §11.1(d)(114), an area is considered Rural if it is within a metropolitan statistical area that has a population of less than 25,000, and does not share a boundary with an Urban Area. The 2021 Site Demographics Characteristics Report indicated the population of Boerne is 14,799 and part of the San Antonio-New Braunfels, TX MSA. According to the U.S. Census Bureau, the population of Boerne was 10,471 in 2010 and has increased to 18,232 in 2019. The city limit boundaries of Boerne and San Antonio are separated by less than one mile and driving distance from the limits of Boerne to San Antonio at highway speeds is less than two minutes, according to the applicant. Staff notes that if Boerne and San Antonio shared a boundary, Boerne would have been considered urban, despite the population figure. Based on the growing population, proximity to San Antonio, presence of multiple large employers nearby, and new commercial and single family development occurring in Boerne, the applicant believes that Boerne is growing at such a rapid pace and is characteristic of what would be seen in areas considered urban.

Included with the waiver request, the applicant provided a complete market study for the proposed development that evaluates capture rates and demand calculations based on the Primary Market Area. From a limited review of the market study, the capture rates for the project are within the required parameters for both rural and urban areas under 10 TAC §11.302(i)(1) of the Underwriting Rules and Guidelines.

According to information provided by the applicant, there are 161 employers with 50+ employees, totaling over 5,200 jobs within a 20-minute drive of the proposed development site, not to mention the 45 employers with 50+ employees within a 5-mile radius of the site.

Moreover, information from the applicant indicated that single family development continues to grow at an average of 29 new homes completed per month over the past three years while multifamily construction has been more limited. According to the Department's property inventory, there are five multifamily developments in Boerne and two of those serve a general population while the other three serve elderly. The two general population developments were constructed in 1998 and 2019 under the Competitive 9% HTC program, and are 96% occupied and 100% occupied, respectively.

The general process for a waiver granted by the Board, as articulated under 10 TAC §11.207 of the QAP, requires an applicant to demonstrate that the need for such waiver is beyond the applicant's control, and also requires an applicant to demonstrate how, by granting the waiver, the Department would better serve its policies and purposes under Tex. Gov't Code §2306. It is important to note that 4% HTC transactions are financially feasible only on a larger scale in order for the development to be able to absorb the costs associated with issuing bonds. The applicant cannot control these costs and this application is not proposed to be part of a portfolio of other transactions where such costs could be absorbed. As previously noted, the Department's property inventory reflects only two general population developments in Boerne and both have high occupancy rates as previously noted. Both of these developments were constructed under the size limitations relating to the Competitive 9% HTC program. Also worth noting is that a similar rural waiver for a 162-unit senior development in Boerne was granted by the Board in 2018.

Within the request, applicant argues that due to the growing population and current lack of affordable housing within and near the City of Boerne, the need for affordable housing in the community will go unmet, which speaks to Tex. Gov't Code §2306.001(2). Staff believes the proposed development would also serve to stimulate economic development in Boerne as articulated under Tex. Gov't Code §2306.002 and would maximize the number of affordable units added to the state's housing supply as identified under Tex. Gov't Code §2306.6701. Moreover, the applicant represented that the Boerne Independent School District is one of the fastest-growing school districts in Texas and according to the Boerne Kendall County Economic Development Corporation, more affordable housing options in Boerne would reduce the commuting time for many of the residents.

Considering all of the aforementioned facts, staff believes Boerne has some of the characteristics that would be representative of an urban area, and that the area could support the number of units proposed by the applicant based on the preliminary information received.

10b

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**SEPTEMBER 2, 2021**

Presentation, discussion and possible action regarding eligibility under 10 TAC §11.101(b)(1)(C) related to Ineligibility of Developments within Certain School Attendance Zones for Marine Park Apartments in Fort Worth

**RECOMMENDED ACTION**

**WHEREAS**, pursuant to 10 TAC §11.101(b)(1)(C) of the 2021 Qualified Allocation Plan (QAP) any development that falls within the attendance zone of a school that has a Texas Education Agency (TEA) Accountability Rating of F for the most recent year available prior to Application and an Improvement Required Rating for the most recent year preceding is ineligible with no opportunity for mitigation;

**WHEREAS**, a request for a waiver was submitted for Marine Park Apartments, a proposed 4% Housing Tax Credit application in Fort Worth;

**WHEREAS**, it was disclosed that the elementary school serving the development, Marilyn Miller Elementary School, received a 2019 TEA Rating of F and 2018 Rating of Improvement Required;

**WHEREAS**, the Applicant has proposed various mitigation efforts to facilitate school performance of the residents that are more fully described in Exhibit A;

**WHEREAS**, there is no provision under the rule by which staff has the discretion to review the information submitted as part of the waiver request in order to find Marine Park Apartments eligible; and

**WHEREAS**, if the waiver was granted it would be specific to the facts and circumstances relating to this request and information provided by the applicant; should those change at the time the application is submitted or should the application be submitted in a subsequent program year, a re-evaluation of the request would be warranted;

**NOW, therefore, it is hereby,**

**RESOLVED**, that the proposed site of Marine Creek Apartments is ineligible based on the aforementioned factors and information specific to Marilyn Miller Elementary School, as noted herein.

**BACKGROUND**

A request was submitted that proposes the acquisition and rehabilitation of Marine Park Apartments, an existing general population development located at 3314 NW 33<sup>rd</sup> Street, in the northern part of Fort Worth, in a census tract with a 21.2% poverty rate. The development is comprised of 124 units, and the applicant has stated 50% of the units will be for households at 50% of the Area Median Family Income (AMFI) and the remaining 50% will be for households at 60% of AMFI. The applicant has also represented that 66% of the units are covered by a Section 8 Housing Assistance Payment (HAP) Contract that expires in 3 years and which the applicant intends to renew for another 20 years.

The development is located within the Lake Worth Independent School District (ISD), a district with an overall rating of C according to the 2019 TEA Accountability Ratings. Specifically, the development is in the attendance zone of Marilyn Miller Elementary School (Miller) which received a 2019 TEA Accountability Rating of F and a 2018 Improvement Required rating. In reviewing the TEA Accountability reports for 2015, 2016, and 2017, Miller achieved a Met Standard rating for two of the three years.

10 TAC §11.101(b)(1)(C) reads as follows:

*“(C) Ineligibility of Developments within Certain School Attendance Zones. Any Development that falls within the attendance zone of a school that has a TEA Accountability Rating of F for the most recent year available prior to Application and an Improvement Required Rating for the most recent available year preceding is ineligible with no opportunity for mitigation. Developments that are encumbered by a TDHCA LURA on the first day of the Application Acceptance Period or at the time of Pre-application (if applicable), an Elderly Development, or a Supportive Housing SRO Development or Supportive Housing Development where all Units are Efficiency Units are exempt.”*

Although Marine Park Apartments is an existing development, it is not currently encumbered by a TDHCA LURA, nor does it meet any of the other criteria in the rule that would allow it to be considered eligible despite the school rating. According to 10 TAC §11.207 of the QAP, the applicant must demonstrate how the need for the waiver is not within control of the applicant, and establish how, by granting the waiver, the Department would better serve its policies and purposes under Tex. Gov’t Code §2306. Included in this Board item is the applicant’s response regarding how granting the waiver furthers the purposes of the Department and its policies, which highlight the following:

- The zip code in which the development is located has seen rental rates increase 13% in the last 3 years while wages have only increased 7% and the preservation and restrictions placed on the property would help ease the burden of rising rental rates;
- Currently, only 66% of the units are restricted through a Section 8 HAP Contract and the proposal will restrict 100% of the units;
- The applicant proposes to maximize the number of affordable units by deep income targeting to households at 50% of AMFI;
- The development will provide supportive services to residents that would not otherwise be provided; and
- The development was originally built in 1977, and proposes approximately \$77k/unit in rehabilitation costs which is \$47k/unit more than what the QAP requires.

Moreover, the applicant has suggested mitigating factors to which they plan to commit to in conjunction with an application for 4% Housing Tax Credits. These are included herein (Exhibit A) and include but are not limited to providing an early childhood pre-K program at no cost to the residents, operate an after-school learning center and constructing an additional on-site community space for use by Lake Worth ISD or other local community agencies to provide children's learning classes for children within the school district.

Due to the COVID-19 pandemic, TEA did not provide Accountability Ratings for the 2019-2020 school year. Moreover, TEA recently announced that Accountability Ratings would be paused for the 2020-2021 school year. The disruptions caused to the TEA accountability system could be determined to not be within the applicant's control. An accurate picture of school performance following the 2019 Rating of "F" could not be obtained based on TEA measurements.

There is no framework within the QAP by which staff could review the information submitted and arrive at a recommendation other than a recommendation of ineligibility. Included herein is information provided by the applicant that would serve as the basis for the Board's review (Exhibit A). While the QAP currently provides owners with the option of providing after-school programs to its residents if they so choose, if the Board were to find the Development Site eligible, the Board could do so on the basis that the applicant agrees to offer after-school programs to the residents as a required tenant supportive service throughout the life of the Land Use Restriction Agreement. Moreover, since the applicant has proposed the construction of an additional on-site community learning space, the Board's approval could be conditioned upon the application, when ultimately submitted, reflecting such space. These requirements would be reflected in the Land Use Restriction Agreement.

# Exhibit A

August 4, 2021

Ms. Teresa Morales  
Director of Multifamily Bonds  
TX Dept. of Housing & Community Affairs

RE: Waiver Request - Marine Park Apartments - 3144 NW. 33<sup>rd</sup> St. Fort Worth

Dear Ms. Morales:

Think Housing Development (the "Developer") seeks to acquire and renovate the above referenced project with 4% housing tax credits and tax-exempt bonds. The project is currently ineligible under §11.101(b)(1)(C) of the Rules – Ineligibility of Developments within Certain School Attendance Zones. The elementary school serving the project, Marilyn Miller Elementary School, received an overall "F" rating in 2019, and an "Improvement Required" rating in 2018, thereby making it ineligible under this section.

The Developer submits this request for Waiver under §11.107 of the Rules for §11.101(b)(1)(C) with the following justifications and mitigating factors. More detail on each justification is included in the attached pages.

- By granting the waiver, the policies under Texas Government Codes §2306.001, 2306.002, 2306.359 and 2306.6701 will be better served if the waiver is granted, and the project is otherwise allowed to proceed under the Rules.
- Other mitigating factors as detailed in the attached pages.

We appreciate your review of our request. Please don't hesitate to reach out for any further information or materials as needed for your review.

Sincerely,

Christian Szymczak  
Managing Partner  
Think Housing Development



§11.207 of the 2021 QAP states that:

“The waiver request must establish how, by granting the waiver, it better serves the policies and purposes articulated in Tex. Gov't Code §2306.001, 2306.002, 2306.359, and 2306.6701, (which are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program) than not granting the waiver.”

The following sections are copied verbatim from TX Gov't Codes §2306.001, 2306.002, 2306.359 and 2306.6701

Shown in red is the Developer's input as to how the approval of the requested waiver may better serve these sections of the Gov't Code.

**Sec. 2306.001. PURPOSES. The purposes of the department are to:**

(1) assist local governments in:

(A) providing essential public services for their residents; and. **In granting the waiver, the Department will assist in the preservation of the project as an affordable housing asset for the long-term future, which in turn will provide the public service of providing safe, sanitary and affordable housing to local residents.**

(B) overcoming financial, social, and environmental problems; **the construction and preservation of affordable housing helps low income families live in areas that would otherwise be difficult for them to afford. The zip code in which the project is located has seen rental rates increase 13% in the last 3 years, while wages have only increased 7%. The preservation of Marine Park would ease the burden of rising rental rates for local residents, which in turn will ease the financial hardship suffered by those families, and social issues that may arise from those hardships.**

(2) provide for the housing needs of individuals and families of low, very low, and extremely low income and families of moderate income; **If the waiver is granted and Marine Park allowed to proceed with an HTC allocation, the Development Owner will sign a new 35 year LURA restricting at least 50% of all units at 50% AMI**

or lower, and the remaining at 60% of AMI. Currently, only 66% of the units at Marine Park are restricted to low-income families. Owner will also extend the existing HAP contract, currently set to expire within 3 years, to the maximum allowable period of 20 years. These factors will ensure that the 124 families and individuals at Marine Park will be provided with safe, sanitary and affordable housing for the long-term future.

- (3) contribute to the preservation, development, and redevelopment of neighborhoods and communities, including cooperation in the preservation of government-assisted housing occupied by individuals and families of very low and extremely low income; **The planned renovation of Marine Park will amount to over \$8mm in interior improvements and site work. Part of the renovation budget will include a large, newly constructed community center. The Owner will make the center available for the residents and to public agencies to provide services to the local residents. If permitted by TDHCA, the renovation of Marine Park will provide an increased perceived value to the local area, thereby increasing other investment in the area. Additionally, the planned social services of school tutoring and jobs training at the project by the Owner and public agencies will encourage economic growth in the area by producing more educated children and trained workforce.**
- (4) assist the governor and the legislature in coordinating federal and state programs affecting local government; **N/A**
- (5) inform state officials and the public of the needs of local government; **N/A**
- (6) serve as the lead agency for:
  - (A) addressing at the state level the problem of homelessness in this state;
  - (B) coordinating interagency efforts to address homelessness; and
  - (C) addressing at the state level and coordinating interagency efforts to address any problem associated with homelessness, including hunger; and **Increased cost of rental housing is one of the factors responsible for the recent rise in homelessness in local communities. Providing additional low-income units, like the new long-term rent restrictions proposed by the development owner at Marine Park, will ease the burden of increased housing costs for local residents.**
- (7) serve as a source of information to the public regarding all affordable housing resources and community support services in the state. **N/A**

**Sec. 2306.002. POLICY. (a) The legislature finds that:**

- (1) every resident of this state should have a decent, safe, and affordable living environment; **With the recent rise of homelessness and increased housing costs in local communities like the one in which Marine Park is located, the need for affordable housing is greater than ever. The granting of the requested waiver and TDHCA approval of Marine Park will provide additional low-income units to the local community, thereby easing the burden of increased housing costs on local residents.**
- (2) government at all levels should be involved in assisting individuals and families of low income in obtaining a decent, safe, and affordable living environment; **and By granting a waiver and approving the project, TDHCA will assist the local area government in housing low-income families, who may otherwise find it difficult to afford local housing in the area. The addition of affordable housing provided by the State will help ease the burden on local governments who may otherwise be compelled to alleviate housing affordability issues faced by their residents.**
- (3) the development and diversification of the economy, the elimination of unemployment or underemployment, and the development or expansion of commerce in this state should be encouraged.
  - (b) The highest priority of the department is to provide assistance to individuals and families of low and very low income who are not assisted by private enterprise or other governmental programs so that they may obtain affordable housing or other services and programs offered by the department. **As stated previously, the recent rise in housing costs has increased the demand for affordable housing to all-time high levels. With the approval of Marine Park, the Department can ensure that they are using their resources to serve low and very low-income families and individuals.**

**Sec. 2306.359. ISSUANCE OF PRIVATE ACTIVITY BONDS.**

- (a) In evaluating an application for an issuance of private activity bonds, the department shall score and rank the application using a point system based on criteria that are adopted by the department, including criteria regarding: **The Development Owner will request an issuance of private activity bonds from either TDHCA or a local issuer. The Development Owner believes that an issuance of private activity bonds, regardless of the Issuer, is a priority for the state based on the following criteria:**
- (1) the income levels of tenants of the development, consistent with the funding priorities provided by Section [1372.0321](#); **The PAB application for Marine Park will be Priority 1a, with at least 50% of the project units reserved for families or individuals at 50% AMI or less.**
  - (2) the rent levels of the units; **66% of the project units are / will be covered under a project-based HAP contract. A significant number of residents will have incomes at or below 30% of AMI. Currently, only 66% of the project is restricted to low-income tenants. If approved, 100% of the units will be low-income restricted.**
  - (3) the level of community support for the application; **The Developer anticipates that local officials will support the renovation and long term use designation of the project.**
  - (4) the period of guaranteed affordability for low income tenants; **The Developer will elect the maximum allowable use period of 35 years, and maximum HAP contract extension of 20 years.**
  - (5) the cost per unit of the development; **Total rehab costs are anticipated at \$9.5mm, or \$77,223 per unit. Total development costs are estimated at \$30mm.**

(6) the size, quality, and amenities of the units; **The project is a renovation of existing buildings, and therefore unit sizes will be as existing. Numerous site and unit amenities will be added as part of the renovation including installation of new high quality interior finishes and newly constructed community center.**

(7) the services to be provided to tenants of the development; and **A full-time service coordinator will be on-site to assist with school tutoring for children, and jobs training courses for adults. The community center will be made available to local agencies for their use in providing services to the local community at large.**

(8) other criteria as developed by the board. **N/A**

(b) The department shall make available on its website details of the scoring system used by the department to score applications. **N/A**

(c) The department shall underwrite the applications by determining:

(1) that the general contractor's profit, overhead, and general requirements are within the maximum limit published by the department;

(2) that the developer fee for the proposed project does not exceed the maximum amount allowed by the department; and

(3) if applicable, the amount of tax credits available to the proposed development. **The Developer will underwrite the project within Department rules.**

(d) In adopting criteria for underwriting applications under this section, the department shall attach additional weight to criteria that will determine the maximum amount that can be awarded that will:

(1) result in an issuance of private activity bonds for developments serving the lowest income tenants; and

(2) produce the greatest number of high-quality units committed to remaining affordable to qualified tenants for extended periods. **As stated previously, the Developer's PAB application will be Priority 1a, with at least 50% of units restricted at 50% AMI or lower.**

**Sec. 2306.6701. PURPOSE. The department shall administer the low-income housing tax credit program to:**

- (1) encourage the development and preservation of appropriate types of rental housing for households that have difficulty finding suitable, affordable rental housing in the private marketplace; **The waiver and approval of Marine Park will align with the Department's goal to preserve affordable housing via the reservation of 4% low-income housing tax credits.**
- (2) maximize the number of suitable, affordable residential rental units added to the state's housing supply; **The Developer plans to submit an application for 4% HTC under the 2022 QAP. As of late in the State of Texas, the allocation of 4% HTC to low-income projects has been limited due to the oversubscription of PAB in the State. As Marine Park is anticipated to be a Priority 1a PAB project, this would ensure competitiveness of the project for a bond issuance, and therefore an allocation of 4% HTC as a deeply affordable project. The approval of this project would therefore align with the Department's goals of maximizing the number of affordable units supplied with the Department's resources. Not approving the project may cause available funds to be allocated to a less deeply affordable project in the pool of PAB projects.**
- (3) prevent losses for any reason to the state's supply of suitable, affordable residential rental units by enabling the rehabilitation of rental housing or by providing other preventive financial support under this subchapter; and **The allocation of 4% HTC and PAB for Marine Park would increase the long-term availability of low-income units in the local community.**
- (4) provide for the participation of for-profit organizations and provide for and encourage the participation of nonprofit organizations in the acquisition, development, and operation of affordable housing developments in urban and rural communities. **N/A**

The following are mitigating factors that the Board and Staff may consider that, in the opinion of the Developer, help to further the goals and purposes of the Department and its policies.

1. The Developer pledges to enter into an agreement with the Lake Worth Independent School District or Marilyn Miller Elementary School to provide an early childhood pre-K program at no cost to the residents of Marine Park. Adequate space will be provided for the program within the new community center to be constructed as part of the proposed renovation.
2. The Developer pledges to operate an after-school learning center within the new community center for a minimum of 15 hours weekly, to include on-site educational services to middle and high school children by a dedicated service coordinator.
3. Marine Park is an existing, federally assisted family project with a Housing Assistance Payments contract from HUD that currently covers 82 of the 124 units. The Developer pledges to renew the HAP contract for the maximum allowable period of 20 years.
4. The Developer will construct additional on-site community space for use by the LWISD or other local community agency to provide children's learning classes for children within the project's school district, but who are not necessarily residents of Marine Park.
5. Marine Park will apply with for private activity bonds with a Priority 1a designation, having more than 50% of units reserved for families at or below 50% of AMI, with the remaining units reserved for 60% of AMI or below. As a Priority 1a designated project, Marine Park would be more deeply affordable than most other bond financed projects in the State.

10c



**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**SEPTEMBER 2, 2021**

Presentation, discussion, and possible action regarding the issuance of Determination Notices for 4% Housing Tax Credit Applications

**RECOMMENDED ACTION**

**WHEREAS**, two applications as further detailed below were submitted to the Department for consideration of a Determination Notice of 4% Housing Tax Credits;

**WHEREAS**, one of the applications, W. Leo Daniels (#21450), was previously determined by the Board in October, 2020, to be eligible despite the presence of crime rates in the subject and adjacent census tracts that exceeded the threshold in the rule based on local police beat data;

**WHEREAS**, the crime rate for the subject census tract is currently below the threshold in the rule and although the crime rate for the adjacent tract has decreased since the Board's previous determination, it remains over the threshold in the rule;

**WHEREAS**, staff is recommending the Board affirm its previous finding on eligibility regarding the crime rate;

**WHEREAS**, the Executive Award and Review Advisory Committee (EARAC) considered the compliance history associated with both applications listed herein; and

**WHEREAS**, EARAC recommends both of the applications for an award of 4% Housing Tax Credits, in the specific amounts 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**, the Board hereby affirms its previous finding of eligibility relating to the crime rate associated with W. Leo Daniels (#21450);

**FURTHER RESOLVED**, that the issuance of Determination Notices in the respective amounts for each of the applications listed herein, subject to underwriting conditions as found in the Real Estate Analysis report posted to the Department's website, and subject to any EARAC conditions as reflected in Exhibit A, is hereby approved in the form presented at this meeting; and

**FURTHER RESOLVED**, since the compliance conditions as reflected in Exhibit A for W. Leo Daniels (#21450) apply to ITEX as an applicant, if approved by the Board, they will be applicable and satisfy the requirements of a written report to the Board of compliance history for ITEX under Tex. Gov't Code §2306.057(a) for other applications by ITEX that may be administratively approved in near future without further presentation to the Board (e.g. Sandpiper Cove, where there are no additional affiliates with compliance histories to report, and there are no compliance issues associated with the proposed project).

### **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 \$1.56 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<sup>th</sup>.

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.

The Reservations from the BRB for the developments described herein were issued under the Priority 3 designation unless noted otherwise, which does not have a prescribed restriction on the percentage of Area Median Family Income (AMFI) that must be served (beyond the federal requirement). The AMFI levels proposed to be served for each of the projects are indicated below in their respective summaries.

#### **21450 W. Leo Daniels Towers**

The W. Leo Daniels Towers project involves the acquisition and rehabilitation of an eight-story multifamily project originally built in 1979. The building contains 100 units and is located at 8826 Harrell Street in Houston, Harris County. The development proposes 10 units to be rent and income restricted

at 30% of AMFI, 20 units to be rent and income restricted at 50% of AMFI, and the remaining 70 units to be rent and income restricted at 60% of AMFI. Moreover, the project-based Section 8 rental assistance is expected to continue for all of the units. The development will serve the elderly population. The Department received a letter of support for the development from State Representative Armando L. Walle, dated July 8, 2021.

*Poverty, Blight, and Crime:* There are three Neighborhood Risk Factors associated with the development relating to the poverty rate, blight, and the Part I violent crime rate. The application was previously submitted to the Department on June 11, 2020 (20482), but was subsequently withdrawn on October 22, 2020. The poverty rate and blight risk factors were previously considered mitigated by staff. The crime rate for the subject census tract and the adjacent census tract were not considered mitigated by staff as local police beat data did not yield a crime rate below the threshold in the rule. At the Board meeting of October 8, 2020, the Board found the site eligible despite the crime rates. Updated crime rates indicate the subject census tract is now below the threshold in the rule and although the adjacent census tract has seen a decrease in the crime rate, it is still above the threshold in the rule. Although typically because of the rule staff would present this as a recommendation of ineligibility, given the Board's prior decision staff is recommending the Board affirm its prior decision and find the site eligible.

*Previous Participation:* The Previous Participation review for the applicant falls under the Previously Approved category with the conditions as noted in Exhibit A recommended by EARAC.

Recommended HTC Amount: \$1,222,178

### 21451 Horizon Pointe

The development involves the new construction of 312 units for the general population at Interstate Highway 10 and Woodlake Parkway, which is located within the City of San Antonio and partially within its extraterritorial jurisdiction in Bexar County. The income averaging minimum set-aside has been elected and the application reflects that 20 units will be rent and income restricted at 30% of AMFI, 35 units will be rent and income restricted at 40% of AMFI, 106 units will be rent and income restricted at 50% of AMFI, and the remaining 151 units will be rent and income restricted at 70% of AMFI. The Las Varas Public Facility Corporation 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 application was previously submitted to the Department on August 18, 2020 (20489), and received approval from the Board on November 5, 2020. Mitigation for the school performance was not required as a waiver had been granted by the Board on April 23, 2020, in response to the COVID-19 pandemic. The waiver was applicable to those 4% HTC applications submitted under the 2020 QAP that received a Reservation from the Bond Review Board in the 2020 calendar year. 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.

*Previous Participation:* The Previous Participation review for the applicant resulted in a Category 2 designation and EARAC recommended approval subject to the conditions noted in Exhibit A.

Recommended HTC Amount: \$2,753,225

**EXHIBIT A**  
**Previous Participation Results**

Application Number	Development Name	Category	PPR Conditions
21450	W. Leo Daniels Towers	Previously Approved	<ol style="list-style-type: none"> <li data-bbox="776 430 1466 709">1. ITEX agrees to replace the existing management company, consultant, or management personnel with another of its choosing, for any of their properties identified with new Events of Noncompliance (defined as those not corrected during the corrective action period) on any Audits notified from March 1, 2021 through December 31, 2022.</li> <li data-bbox="776 716 1466 919">2. ITEX will hire a third party compliance auditor to review their existing portfolio on a quarterly basis and have them provide reports and guidance to ITEX and independent reports to TDHCA upon request, through December 31, 2022.</li> <li data-bbox="776 926 1466 1066">3. ITEX will actively engage with TDHCA compliance staff to use better processes and best practices to reduce compliance issues through December 31, 2022.</li> <li data-bbox="776 1073 1466 1352">4. Owner has designated the Director of Compliance and Asset Management to receive Compliance correspondence and provide timely responses to the Department on behalf of the proposed Development and all other Developments subject to a TDHCA LURAs over which the Owner has the power to exercise Control.</li> <li data-bbox="776 1358 1466 1827">5. ITEX will require that at least one the of the following employees: VP of Operations, Compliance Director, Compliance Auditor(s), Regional Manager(s), or Site Staff annually attend the trainings listed and provide certifications to TDHCA upon request through December 31, 2022.               <ol style="list-style-type: none"> <li data-bbox="873 1604 1466 1675">a. Housing Tax Credit Trainings sponsored by the Texas Apartment Association;</li> <li data-bbox="873 1682 1466 1753">b. 1st Thursday Income Eligibility Training conducted by TDHCA;</li> <li data-bbox="873 1759 1466 1827">c. Review one or more of the TDHCA Compliance Training Webinars:</li> </ol> </li> </ol>

			<ul style="list-style-type: none"> <li>i. 2012 Income and Rent Limits Webinar Video;</li> <li>ii. 2012 Supportive Services Webinar Video;</li> <li>iii. Income Eligibility Presentation Video;</li> <li>iv. 2013 Annual Owner’s Compliance Report (AOCR) Webinar Video;</li> <li>v. Most current Tenant Selection Criteria Presentation;</li> <li>vi. Most current Affirmative Marketing Requirements Presentation;</li> <li>vii. Fair Housing Webinars (including but not limited to the 2017 FH Webinars)</li> </ul>
21451	Horizon Pointe	2	<ol style="list-style-type: none"> <li>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 with associated development 05437 (ID 4316) The Ravello on or before <b>August 31, 2021</b> and provide the Department with evidence of such correction within 30 calendar days of that date.</li> <li>2. The San Antonio Housing Authority (SAHA) 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 Developments subject to TDHCA LURAs over which the Owner has the power to exercise Control. A list of the person or persons positions should be provided to the Department no later than <b>December 31, 2021</b>.</li> <li>3. SAHA agrees to establish an email distribution group in CMTS, to be kept in place until no later than <b>December 31, 2022</b>, and include agreed upon employee positions and/or designated Applicant members.</li> </ol>

# 21450 W. Leo Daniels Towers - Application Summary

REAL ESTATE ANALYSIS DIVISION  
August 20, 2021

PROPERTY IDENTIFICATION		RECOMMENDATION				KEY PRINCIPALS / SPONSOR		
Application #	21450	TDCHCA Program	Request	Recommended		<ul style="list-style-type: none"> <li>• Christopher Akbari / ITEX Development, LLC (55% of Fee)</li> <li>• Jeshurun Development, LLC (10%)</li> <li>• J. Allen Affordable Housing Development, LLC (20%)</li> <li>• AHDPC Holdings, LLC (10%)</li> <li>• W. Leo Daniels Towers, Inc. (5%)</li> </ul>		
Development	W. Leo Daniels Towers	LIHTC (4% Credit)	\$1,222,178	\$1,222,178	\$12,222/Unit			\$0.86
City / County	Houston / Harris							
Region/Area	6 / Urban							
Population	Elderly Preference							
Set-Aside	General							
Activity	Acquisition/Rehab (Built in 1979)					Related Parties	Contractor - Yes	Seller - Yes

## TYPICAL BUILDING ELEVATION/PHOTO

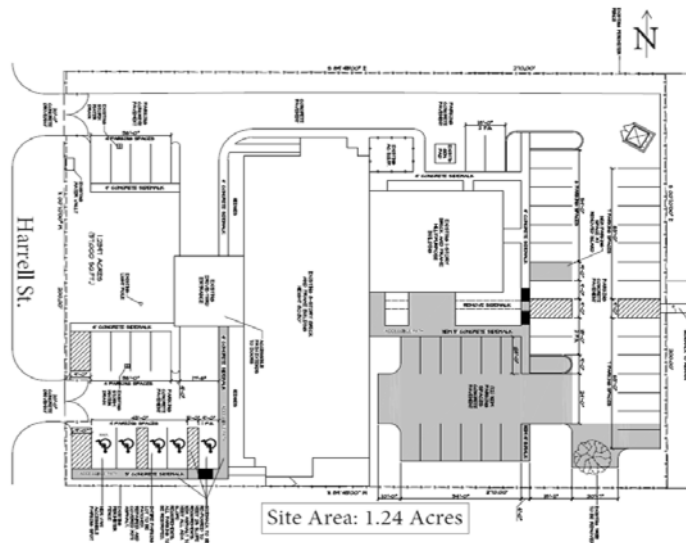


UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	57	57%	20%	-	0%
1	43	43%	30%	10	10%
2	-	0%	40%	-	0%
3	-	0%	50%	20	20%
4	-	0%	60%	70	70%
			70%	-	0%
			80%	-	0%
			MR	-	0%
<b>TOTAL</b>	100	100%	<b>TOTAL</b>	100	100%

## PRO FORMA FEASIBILITY INDICATORS

Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	✓ 1.32	Expense Ratio	✗ 71.4%
Breakeven Occ.	✓ 86.1%	Breakeven Rent	\$864
Average Rent	\$928	B/E Rent Margin	① \$65
Property Taxes	\$765/unit	Exemption/PILOT	0%
Total Expense	\$7,449/unit	Controllable	\$4,682/unit

## SITE PLAN



## MARKET FEASIBILITY INDICATORS

Gross Capture Rate (10% Maximum)		#DIV/0!	
Highest Unit Capture Rate	N/A	N/A	N/A
Dominant Unit Cap. Rate	N/A	N/A	N/A
Premiums (↑60% Rents)	N/A	N/A	
Rent Assisted Units	100	100% Total Units	

## DEVELOPMENT COST SUMMARY

Costs Underwritten		Applicant's Costs	
Avg. Unit Size	480 SF	Density	80.7/acre
Acquisition	\$45K/unit		\$4,500K
Building Cost	\$212.61/SF	\$102K/unit	\$10,205K
Hard Cost		\$120K/unit	\$11,981K
Total Cost		\$272K/unit	\$27,163K
Developer Fee	\$3,215K	(18% Deferred)	Paid Year: 8
Contractor Fee	\$1,677K	30% Boost	Yes

## REHABILITATION COSTS / UNIT

Site Work	\$4K	3%	Finishes/Fixture	\$45K	37%
Building Shell	\$43K	36%	Amenities	\$3K	2%
HVAC	\$12K	10%	Total Exterior	\$50K	46%
Appliances	\$2K	2%	Total Interior	\$59K	54%

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES	
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount
Citi Community Capital	18/35	4.50%	\$4,000,000	1.32	Houston CDBG (Leo Daniels Conduit)	50/0	1.00%	\$10,000,000	1.32	RBC Capital Markets	\$10,509,675
					Seller Note-Land Proceeds	50/0	1.00%	\$2,081,423	1.32	W. Leo Daniels Towers I Developer, LLC	\$571,634
<b>TOTAL DEBT (Must Pay)</b>			<b>\$4,000,000</b>		<b>CASH FLOW DEBT / GRANTS</b>			<b>\$12,081,423</b>		<b>TOTAL EQUITY SOURCES</b>	<b>\$11,081,308</b>
										<b>TOTAL DEBT SOURCES</b>	<b>\$16,081,423</b>
										<b>TOTAL CAPITALIZATION</b>	<b>\$27,162,731</b>

**CONDITIONS**

1 Receipt and acceptance before Determination Notice:

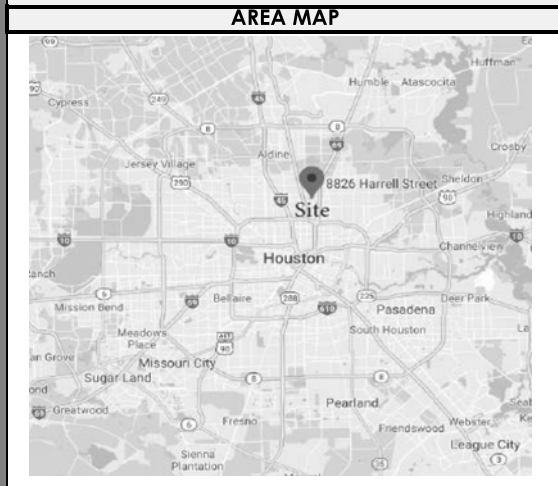
- Evidence of Houston City Council approval of the \$10M CDBG DR loan to provide construction and permanent financing for the project along with a final term sheet stating all terms and conditions.

2 Receipt and acceptance by Cost Certification:

- Certification of comprehensive testing for asbestos and that any appropriate abatement procedures were implemented, and that any remaining asbestos-containing materials are being managed in accordance with an acceptable Operations and Maintenance (O&M) program.
- Attorney opinion validating federally sourced funds can be considered bona fide debt with a reasonable expectation that it will be repaid in full and further stating that the funds should not be deducted from eligible basis.

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	Texas State Affordable Housing Corporation
Expiration Date	10/18/2021
Bond Amount	\$15,000,000
BRB Priority	Priority 3
% Financed with Tax-Exempt Bonds	62.7%







# ARMANDO L. WALLE

STATE REPRESENTATIVE  
HOUSE DISTRICT 140

July 8, 2021

Teresa Morales  
Director of Multifamily Bonds  
Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, Texas 78711-3941

RE: W. Leo Daniels Towers, TDHCA Application No.: 21450

Dear Ms. Morales:

Pursuant to the Texas Government Code and applicable TDHCA administrative rules, please accept this letter of support for W. Leo Daniels Towers' application for the 4% Housing Tax Credit Program. I have the privilege of representing District 140 in the Texas House of Representatives, where this proposed development of senior affordable rental housing is located for the.

The redevelopment of W. Leo Daniels Towers will provide much needed affordable housing and services to my constituents and the development will continue the revitalization of the Eastex/Jensen neighborhood.

I appreciate your consideration of my letter in support. Please do not hesitate to contact my office if I can be of assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Armando Walle".

Armando Walle  
State Representative  
House District 140

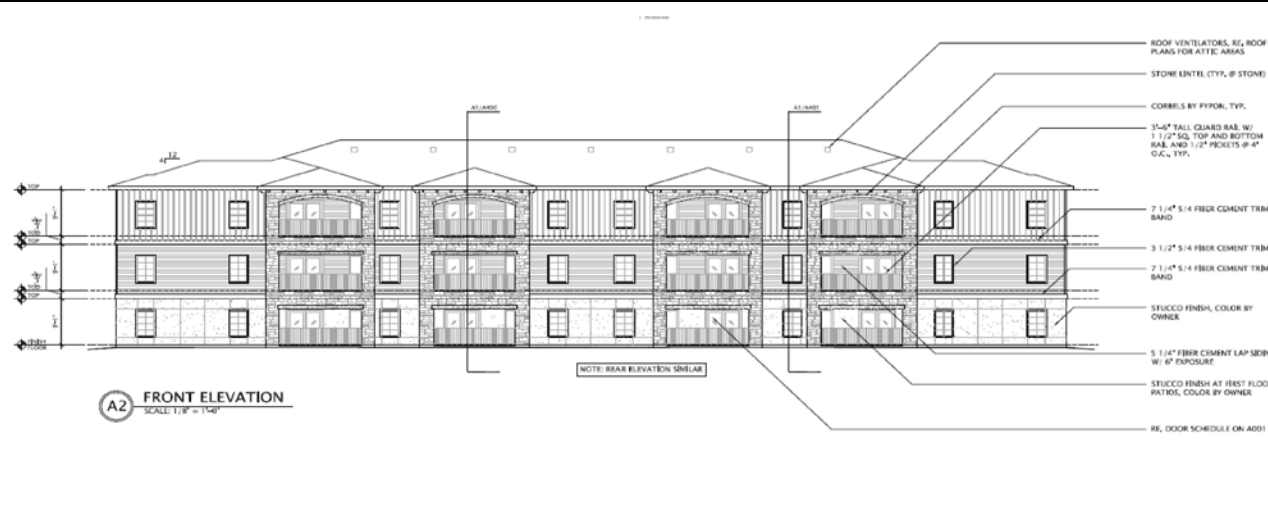
# 21451 Horizon Pointe - Application Summary

PROPERTY IDENTIFICATION	
Application #	21451
Development	Horizon Pointe
City / County	San Antonio / Bexar
Region/Area	9 / Urban
Population	General
Set-Aside	General
Activity	New Construction

RECOMMENDATION				
TDHCA Program	Request	Recommended		
LIHTC (4% Credit)	\$2,760,813	\$2,753,225	\$8,824/Unit	\$0.81

KEY PRINCIPALS / SPONSOR			
San Antonio Housing Facility Corporation			
Related Parties	Contractor -	No	Seller -
		Yes	

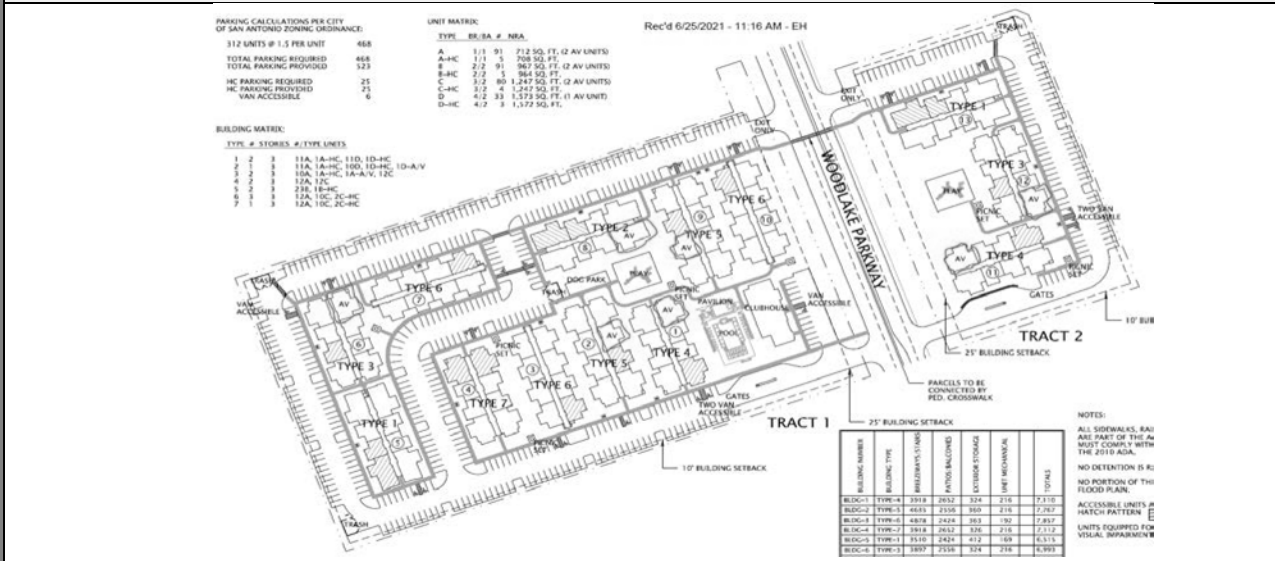
### TYPICAL BUILDING ELEVATION/PHOTO



UNIT DISTRIBUTION			INCOME AVERAGING		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	20%	-	0%
1	96	31%	30%	20	6%
2	96	31%	40%	35	11%
3	84	27%	50%	106	34%
4	36	12%	60%	-	0%
			70%	151	48%
			80%	-	0%
			MR	-	0%
<b>TOTAL</b>	<b>312</b>	<b>100%</b>	<b>TOTAL</b>	<b>312</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	1.17	Expense Ratio	41.4%
Breakeven Occ.	84.6%	Breakeven Rent	\$821
Average Rent	\$899	B/E Rent Margin	\$79
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	\$3,315/unit	Controllable	\$3,058/unit

### SITE PLAN



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (15% Maximum)			4.9%
Highest Unit Capture Rate	19%	3 BR/30%	5
Dominant Unit Cap. Rate	13%	1 BR/70%	55
Premiums (↑60% Rents)	#DIV/0!		#DIV/0!
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY			
Costs Underwritten		Applicant's Costs	
Avg. Unit Size	1,019 SF	Density	24.2/acre
Acquisition		\$08K/unit	\$2,528K
Building Cost	\$91.77/SF	\$94K/unit	\$29,177K
Hard Cost		\$108K/unit	\$33,548K
Total Cost		\$186K/unit	\$58,129K
Developer Fee	\$6,906K	(41% Deferred)	Paid Year: 8
Contractor Fee	\$4,697K	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	
Berkadia (HUD 221d4)	40/40	3.40%	\$33,000,000	1.17						Affordable Housing Partners, Inc.	\$22,296,660	
										Deferred Developer Fee	\$2,832,674	
<b>TOTAL DEBT (Must Pay)</b>			<b>\$33,000,000</b>		<b>CASH FLOW DEBT / GRANTS</b>				<b>\$0</b>		<b>TOTAL EQUITY SOURCES</b>	<b>\$25,129,334</b>
											<b>TOTAL DEBT SOURCES</b>	<b>\$33,000,000</b>
											<b>TOTAL CAPITALIZATION</b>	<b>\$58,129,334</b>

**CONDITIONS**

- Receipt and acceptance by Cost Certification:
- Architect certification that all noise assessment recommendations were implemented and the Development is compliant with HUD noise guidelines.

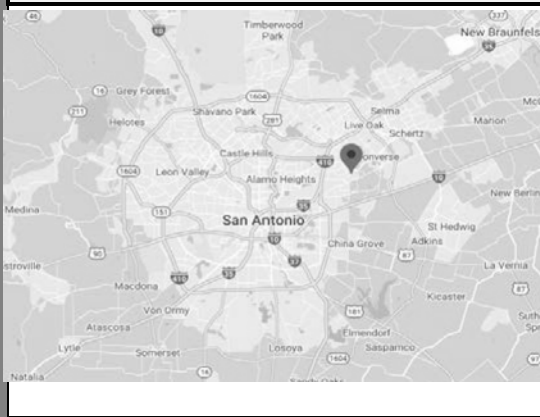
Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

BOND RESERVATION / ISSUER	
<b>Issuer</b>	Las Varas Public Facility Corporation
<b>Expiration Date</b>	10/26/2021
<b>Bond Amount</b>	\$35,000,000
<b>BRB Priority</b>	Priority 3
<b>Bond Structure</b>	
<b>% Financed with Tax-Exempt Bonds</b>	<b>67.8%</b>

**AERIAL PHOTOGRAPH(s)**



**AREA MAP**



10d

**TO BE POSTED  
NOT LATER THAN  
THE THIRD DAY  
BEFORE THE  
DATE OF THE  
MEETING**