



# Previous Participation Reviews A Peek Behind The Curtain

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November 2020

## Previous Participation Reviews

Sec. 2306.057. COMPLIANCE ASSESSMENT REQUIRED FOR PROJECT APPROVAL BY BOARD.

(a) Before the board approves any project application submitted under this chapter, the department, through the division with responsibility for compliance matters, shall:

Provide to the board a written report regarding the results of the assessments

- The written report must be included in the appropriate project file for board and department review
- The board shall fully document and disclose any instances in which the board approves a project application despite any noncompliance associated with the project, applicant, or affiliate
- In assessing the compliance of the project, applicant, or affiliate, the board shall consider any relevant compliance information in the department's database created under Section [2306.081](#), including compliance information provided to the department by the Texas State Affordable Housing Corporation

## Previous Participation Reviews

This training is focused on multifamily applications and multifamily ownership transfers

Pre-Request or Pre-Review to determine your status ahead of submitting an application is not allowable

Compliance Status is not static

Monitoring is an ongoing activity:

- (1) Complaints
- (2) Monitoring Reviews
- (3) Physical Inspections

TDHCA does not complete out of state requests

## Key Terms

### EARAC

- Executive Award and Review Advisory Committee

### Corrective Action Period

- 30 days for Annual Owner's Compliance Report (AOCR)
- All other Issues of Noncompliance 90 days with the option to extend to an additional 90 days (for good cause only)

### 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 Monitoring Review, an Affirmative Marketing Plan Review, or a Written Policy and Procedures Review





# Uniform Previous Participation Form for Multifamily and Ownership Transfers

2. Identify all Community Affairs and Single Family programs that the applicant/entity has participated in within the last three (3) years.

a. Place an "X" in the box, if there is NO prior TDHCA Community Affairs or Single Family program experience.

Community Affairs: Place an "X" next to the program(s) that the member has participated in within the last 3 years.

- |   |   |
|---|---|
| CEAP: Comprehensive Energy Assistance Program | HHSP: Homeless Housing & Services Program         |
| CSBG: Community Services Block Program        | LIHEAP: Low Income Home Energy Assistance Program |
| DOE: Department of Energy Program             | WAP: Weatherization Assistance Program            |
| ESG: Emergency Solutions Grant Program        |   |

HOME: Place an "X" next to the program(s) that the member has participated in within the last 3 years.

- |  |  |
|--|--|
| CFDC: Contract for Deed Conversion               | PWD: Persons with Disabilities Program       |
| DR: Disaster Relief Program                      | SFD: Single Family Development Program       |
| HBA: Homebuyer Assistance Program                | TBRA: Tenant Based Rental Assistance Program |
| HRA: Homeowner Rehabilitation Assistance Program |  |

HTF/OCI: Place an "X" next to the program(s) that the member has participated in within the last 3 years.

- |   |  |
|---|--|
| AYBR: Amy Young Barrier Removal Program | CFDC: Contract for Deed Conversion Program   |
| Bootstrap: Texas Bootstrap Program      | Self-Help: Colonia Self Help Centers Program |

Other: Identify the TDHCA Program Name if no other matches applied.

NSP: Place an "X" in the box if Neighborhood Stabilization Program experience.

a. Place an "X" in the box, if there is NO prior TDHCA multifamily rental experience.

TDHCA ID #: Enter the property number assigned by the TDHCA Compliance Monitoring & Tracking system.

2. Identify all Community Affairs (CA) and Single Family department programs that you have participated in within the last three(3) years by placing an "X" next to the program name.

By selecting this box I certify to not participating in a TDHCA CA or Single Family Program in the last 3 years.

Community Affairs:	CEAP		DOE		HHSP		WAP	
	CSBG		ESG		LIHEAP			
HOME:	CFDC		HBA		PWD		TBRA	
	DR		HRA		SFD			
HTF/OCI:	AYBR		Bootstrap		CFDC		Self-Help	
Other:							NSP	

## Previous Participation Reviews

Uniform Previous Participation Form for Multifamily and Ownership Transfers Form submitted to program area or Asset Management Division for transfers

Form is sent to the Compliance Division

Compliance Administrator reviews, begins the assessment and completes the written report for the Board's Review

# Previous Participation Reviews

Uniform Previous Participation Form for Multifamily and Ownership Transfers

Compliance Monitoring and Tracking System (CMTS) Database

Discloses four TDHCA rental developments that the member has owned or controlled

Database identifies five rental developments that the member has owner or controlled



Compliance Administrator will contact for clarification via email

Ensure a good contact person and email address is identified on the form



## Previous Participation Reviews

Items not taken into consideration during assessment:

Events of Noncompliance corrected within their Corrective Action Period

Events of Noncompliance that have been corrected for over three (3) years

Events of Noncompliance with a date prior to applicant's date of control, if corrected

Casualty loss if the restoration period has not expired

## Previous Participation Reviews

Items not taken into consideration during assessment:

Uncorrected Events of Noncompliance with an out of compliance date prior to the applicant's date of control and the Applicant has had control for less than one year, or the Event is still within the corrective action timeframe approved by the Department's Enforcement Committee

Failure to provide Fair Housing Disclosure Notice

Ineligible households if the household resided in the unit prior to an allocation of Department resources and Federal Regulations prevent the Owner from correcting the issue

## Previous Participation Reviews

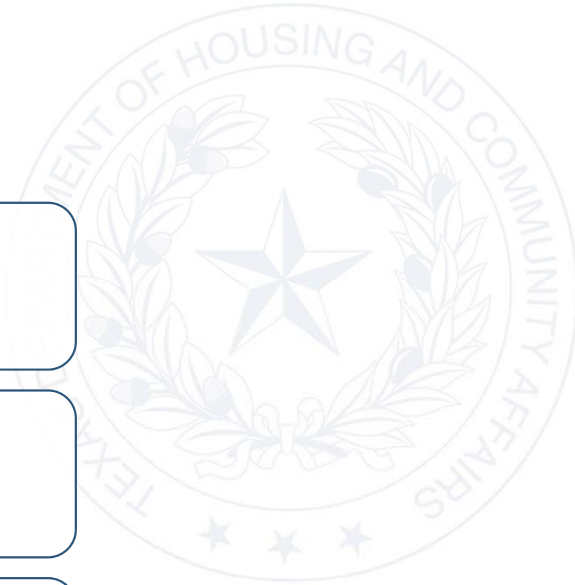
Items not taken into consideration during assessment:

Events of Noncompliance that the Applicant believes can never be corrected and the Department agrees in writing that such item should not be considered

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

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

## Previous Participation Reviews

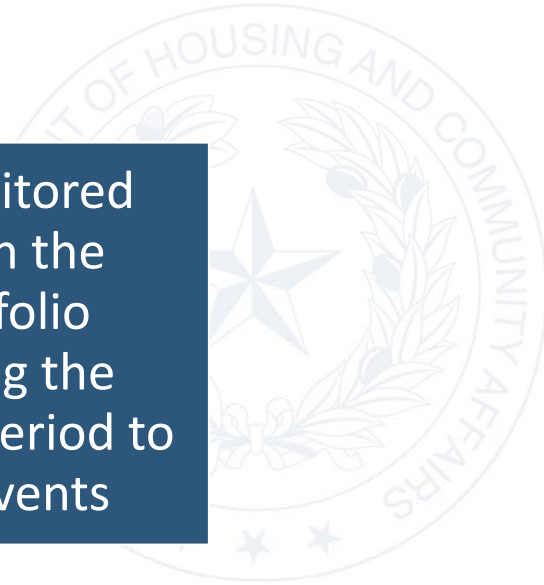


## Category 1

The Actively Monitored Developments in the Combined Portfolio have no issues that are currently uncorrected

The Actively Monitored Developments in the Combined Portfolio responded during the Corrective Action Period to all Monitoring Events

The Application does not meet any of the criteria of Category 2 or 3



## Category 1

### Compliance History Approved

Does not necessarily mean that your property is “uber” compliant

Properties that have lots of noncompliance that is getting cleaned up in CA period- may get a courtesy call

Recommend an open records request is completed prior to committing to a partnership to determine the “real” compliance track record





# Category 2

There are uncorrected Events of Noncompliance but the number number of Actively Monitored Developmen

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

One Event of Noncompliance

6

No Events of Noncompliance

7

No Events of Noncompliance

8

No Response to Events of Noncompliance

**TEXAS Department of Housing and Community Affairs**  
**Audit Certification Form (ACF)**

Supper Circular Subpart F, Audit Requirements, will apply to audits of the fiscal years that begin on or after 12/26/14.

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<b>Entity*:</b> <small>(Please indicate any DHA or affiliates)</small>	<b>Fiscal Year End (FYE):</b>	
<small>mm/dd/yy</small>		

*For State Funding Check appropriate box:*

<small>We <b>have exceeded</b> \$750,000 or more in state awards or have an outstanding loan balance associated with a state resource of \$750,000 or more with continuing compliance requirements, or a combination thereof for the fiscal year referenced above. We will have our Single Audit or Program Specific Audit completed and will submit the audit report within nine (9) months after the end of the audited fiscal year.</small>	
<small>We <b>did not exceed</b> \$750,000 or more in state awards or have an outstanding loan balance associated with a state resource of \$750,000 or more with continuing compliance requirements, or a combination thereof for the fiscal year referenced above. A Single Audit or a Program Specific Audit is not required for this fiscal year. <i>(Fill out Federal and State Funds Schedules below)</i></small>	

*For Federal Funding Check appropriate box:*

<small>We <b>have exceeded</b> \$750,000 or more in federal awards or have an outstanding loan balance associated with a federal resource of \$750,000 or more with continuing compliance requirements, or a combination thereof for the fiscal year referenced above. We will have our Single Audit or Program Specific Audit completed and will submit the audit report to the Federal Audit Clearinghouse at <a href="https://harsvetter.census.gov/facweb/">https://harsvetter.census.gov/facweb/</a> and notify the Department of the upload within nine (9) months after the end of the audited fiscal year.</small>	
<small>We <b>did not exceed</b> \$750,000 or more in federal awards or have an outstanding loan balance associated with a federal of \$750,000 or more with continuing compliance requirements, or a combination thereof for the fiscal year referenced above. A Single Audit or a Program Specific Audit is not required for this fiscal year. <i>(Fill out Federal and State Funds Schedules below)</i></small>	

(Must be filled out if Single Audit or Program Audit is **NOT** required)

Federal Funds Schedule				
Federal Grantor	Pass-through Grantor	Program Name & CFDA Number	Contract Number	Expenditures
				\$
				\$
				\$
<b>Total Federal Expenditures for the Fiscal Year</b>				\$

State Funds Schedule				
State Grantor	Pass-through Grantor (if any)	Program Name	Contract Number	Expenditures
				\$
				\$
				\$
<b>Total State Expenditures for the Fiscal Year</b>				\$

<small>(authorized signature) <i>(Executive Director, Mayor, County Judge)</i></small>	<small>(printed name)</small>	<small>(title)</small>
<small>(mailing address)</small>	<small>(city, state)</small>	<small>(zip code)</small>
<small>(email address)</small>	<small>(telephone number)</small>	<small>(fax number)</small>

In accordance with the Texas Administrative Code, Title 10, Part 1, Chapter 1, Subchapter D, Rule §1403 (h), the Department may fail to renew, amend, extend and/or not enter into a new Contract with a Subrecipient until receipt of the required Single Audit Certification form...

**WARNING:** The U. S. Code, Title 18, Part 1, Chapter 47, §1001 (a)(1)-(3) indicates that an Entity is guilty of falsification and fraud for knowingly and willingly making false or fraudulent statements to any department of the United States Government.

Audit Certification Form March 2016

## Category 2

Applications will not be recommended for denial

May be awarded with conditions

Will be contacted and informed of status



# Category 3

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

1

One Event of  
No Events of  
Uncorrected  
Noncompliance  
Noncompliance

2

No Response to  
No Events of  
Events of  
Noncompliance  
Noncompliance

3

No Events of  
Noncompliance

4

No Response to  
No Events of  
Events of  
Noncompliance  
Noncompliance

5

No Events of  
Noncompliance

6

One Event of  
No Events of  
Uncorrected  
Noncompliance  
Noncompliance

7

No Events of  
Noncompliance

8

No Response to  
No Events of  
Events of  
Noncompliance  
Noncompliance

9

No Events of  
Noncompliance

10

No Events of  
Noncompliance

## Category 3

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

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

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

## Category 3

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

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

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



## Category 3

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

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

Any Person subject to previous participation review has or had Control of a TDHCA funded Development that has gone through a foreclosure

## Category 3

Applications may be recommended for approval, approval with conditions or denial

Will be notified of status

## Previously Approved- NEW

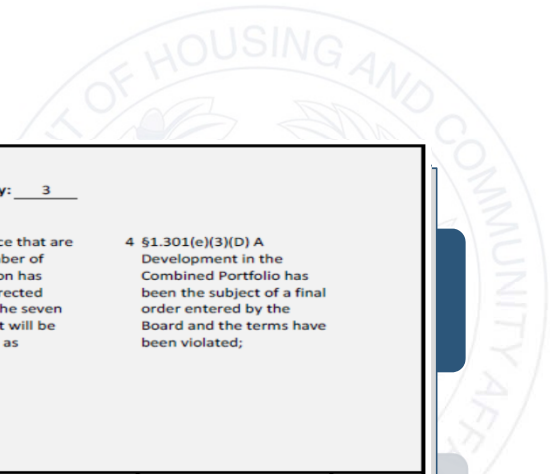
If EARAC or the Board previously approved the compliance history of an Applicant, with or without conditions (including approvals resulting from a Dispute under §1.303(g) of this Subchapter (relating to EARAC)) such conditions have not been violated, and no new Events of Noncompliance have occurred since 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

## Previously Approved- NEW

Treated like a Category 1

Could be approved with existing conditions, but no new conditions

# Previous Participation Reviews



### PPR Results Summary

PPR Name: SAMPLE APTS

PPR No. 3000000

Category: 3

If Category 2 or 3 - Reason(s)

1 §1.301(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. The Application will be classified in the highest applicable category, based upon all Persons for whom previous participation review is conducted.

2 §1.301(e)(3)(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 properties in the Combined Portfolio;

3 §1.301(e)(3)(B) The number of Events of Noncompliance that are currently uncorrected total 10% or more than the number of properties in the Combined Portfolio. If corrective action has been uploaded to CMTS or if the noncompliance is corrected and evidence of corrective action is submitted during the seven day period referenced in Subsection (f) of this section it will be reviewed and the Category determination may change as appropriate;

4 §1.301(e)(3)(D) A Development in the Combined Portfolio has been the subject of a final order entered by the Board and the terms have been violated;

Applicant Contact Info #1: SAMPLE  
Applicant Contact Info #2: SAMPLE

SAMPLE  
SAMPLE

Date Contacted: SAMPLE

Date Response Due: SAMPLE

Associated Developments				Compliance					FALS			FAPS				
Program	TDHCA ID	Property #	Property Name	# of Events	Event Description	Corrected? (Y or N)	Was any type of response submitted within CAP?	Event Description	Corrected? (Y or N)	Was any type of response submitted within CAP?	Subject to final order	Terms Violated	Past Due Loan	No evidence of Insurance	No evidence of current taxes	Past Due Fees
HTF	100000	123456	Apartment Phase I	3	Event 1 Failure to provide pre-onsite documentation	Y	n/a Pre-19	Event 2 Noncompliance with tenant selection regs in §10.610	Y	n/a Pre-19	Yes	YES				
					Event 3 Noncompliance with lease requirements in §10.613	Y	n/a Pre-19									
					Event 1 Failure to provide pre-onsite documentation	Y	n/a Pre-19									
HTF	100001	7891230	Apartment Phase II	5	Event 1 Failure to provide pre-onsite documentation	Y	n/a Pre-19	Event 2 HH income above limit upon occ/Unit not leased to LI HH	Y	n/a Pre-19	Yes	YES				
					Event 3 Noncompliance with tenant selection regs in §10.610	Y	n/a Pre-19									
					Event 4 Noncompliance with lease requirements in §10.613	Y	n/a Pre-19	Event 5 Noncompliance with tenant selection regs in §10.610	N	Y						
					Event 1 Failure to provide pre-onsite documentation	Y	n/a Pre-19									
HTF	100002	123159357	Apartments Phase III	8	Event 1 Failure to provide pre-onsite documentation	Y	n/a Pre-19	Event 2 HH income above limit occ/Unit not leased to LI HH (*16 onsite)	Y	n/a Pre-19	Yes	YES				
					Event 3 Units occupied by nonqualified full-time students	Y	n/a Pre-19									
					Event 4 Low-income units used on a transient basis	Y	n/a Pre-19	Event 5 Noncompliance with tenant selection regs in §10.610	Y	n/a Pre-19						
					Event 6 Noncompliance with lease requirements in §10.613	Y	n/a Pre-19									
					Event 7 HH income above limit/Unit not leased to LI HH (*19 Onsite)	N	Y	Event 8 Failure to provide Tenant Income Certification & Doc	N	Y						
Event 1 Failure to resolve final construction deficiencies	Y	n/a Pre-19														
HTC	100003	98764555	Apartments Phase IV	1	Event 1 Failure to resolve final construction deficiencies	Y	n/a Pre-19									
HTC	100004	1254893	Apartments Phase V	0												
<b>5</b> Total # of Projects				<b>17</b> Total Events	<b>3</b> Total Uncorrected		<b>0</b> Total with no response provided to Dept during CAP									

# First Opportunity To Respond (there are two!)

The Control form can be found on the Departments website on the Compliance Forms page, under Program Forms (labeled 2019 Control Form):

Completed by the requesting entity

An organizational chart is required with the submittal of the form

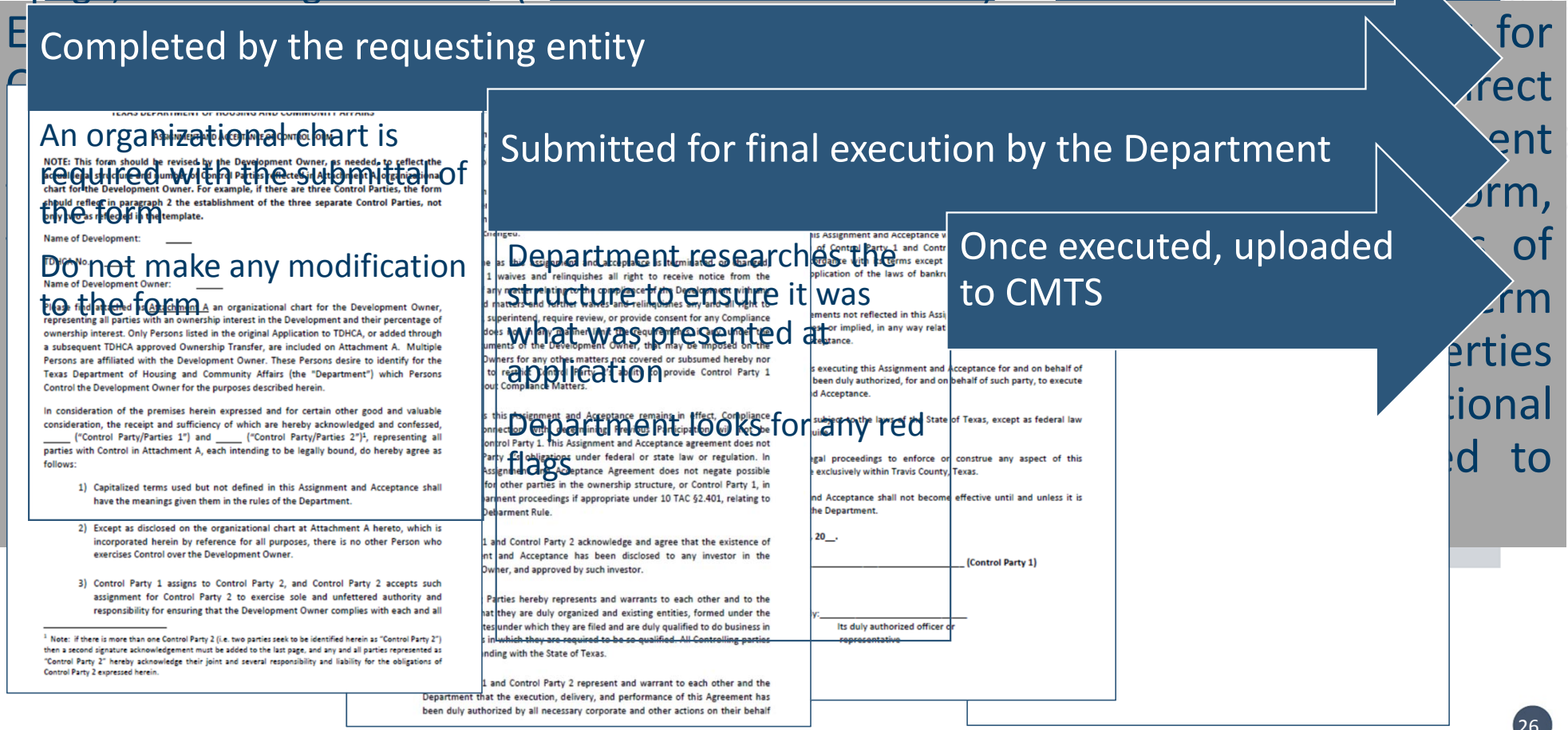
Do not make any modification to the form

Submitted for final execution by the Department

Department researches the structure to ensure it was what was presented in application

Department looks for any red flags

Once executed, uploaded to CMMS





## Preparing The Response

### Submit a written explanation on the compliance history

- Outline any extenuating circumstances
- What created the noncompliance
- Why was it not corrected during the Corrective Action Period
- Is additional staff training needed
- Are the right people in the right positions
- Is there enough staff to handle the work load
- Evidence that changes are or have been made to move toward future compliance
- Propose conditions

## Review of the Response

The Compliance Division reviews the responses

Category 2- either award with conditions or no conditions

Category 3- approve with or without conditions, or recommend denial



## 10TAC, Chapter 1, Subchapter C, Rule §1.303(e)



Household income above  
income limit upon initial  
occupancy

§1.303(e)(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

§1.303(e)(9) Owner or Sub recipient 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

## 10TAC, Chapter 1, Subchapter C, Rule §1.303(e)

One (1) Event of  
Noncompliance with  
unresponsiveness

§1.303(e)(7) Owner agrees to establish an email distribution group in CMTS, to be kept in place until no later than a given date, and include agreed upon employee positions and/or designated Applicant members



## 10TAC, Chapter 1, Subchapter C, Rule §1.303(e)

### Varying Events of Noncompliance indicating concerning movement towards a Category 3 or denial

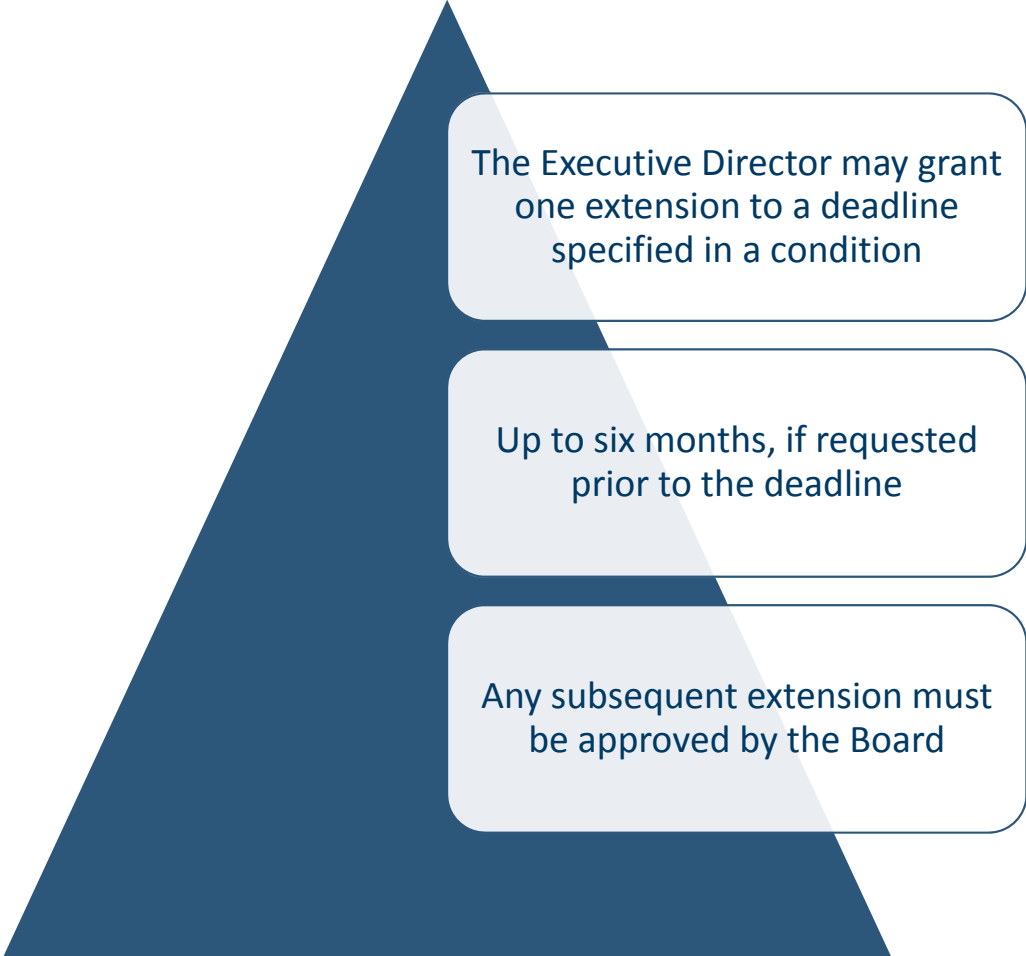
§1.303(e)(2) Owner is required to have qualified personnel or a qualified third party perform a one-time review of an agreed upon percentage of files and complete the recommended actions of the reviewer on or before a specified deadline for an agreed upon list of Developments. Evidence of reviews and corrections must be submitted to the Department upon request

§1.303(e)(6) Owner agrees to replace the existing management company, consultant, or management personnel, with another of its choosing

§1.303(e)(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



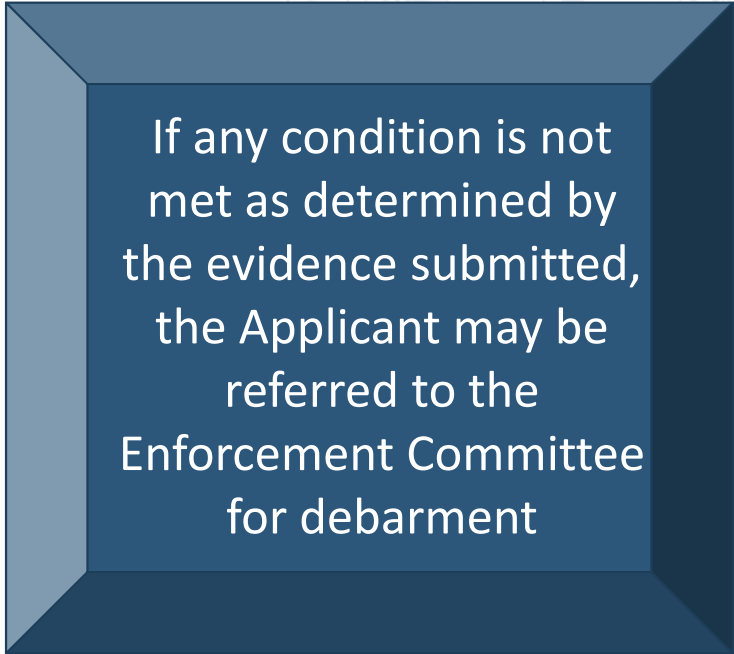
## Failure To Meet Conditions



The Executive Director may grant one extension to a deadline specified in a condition

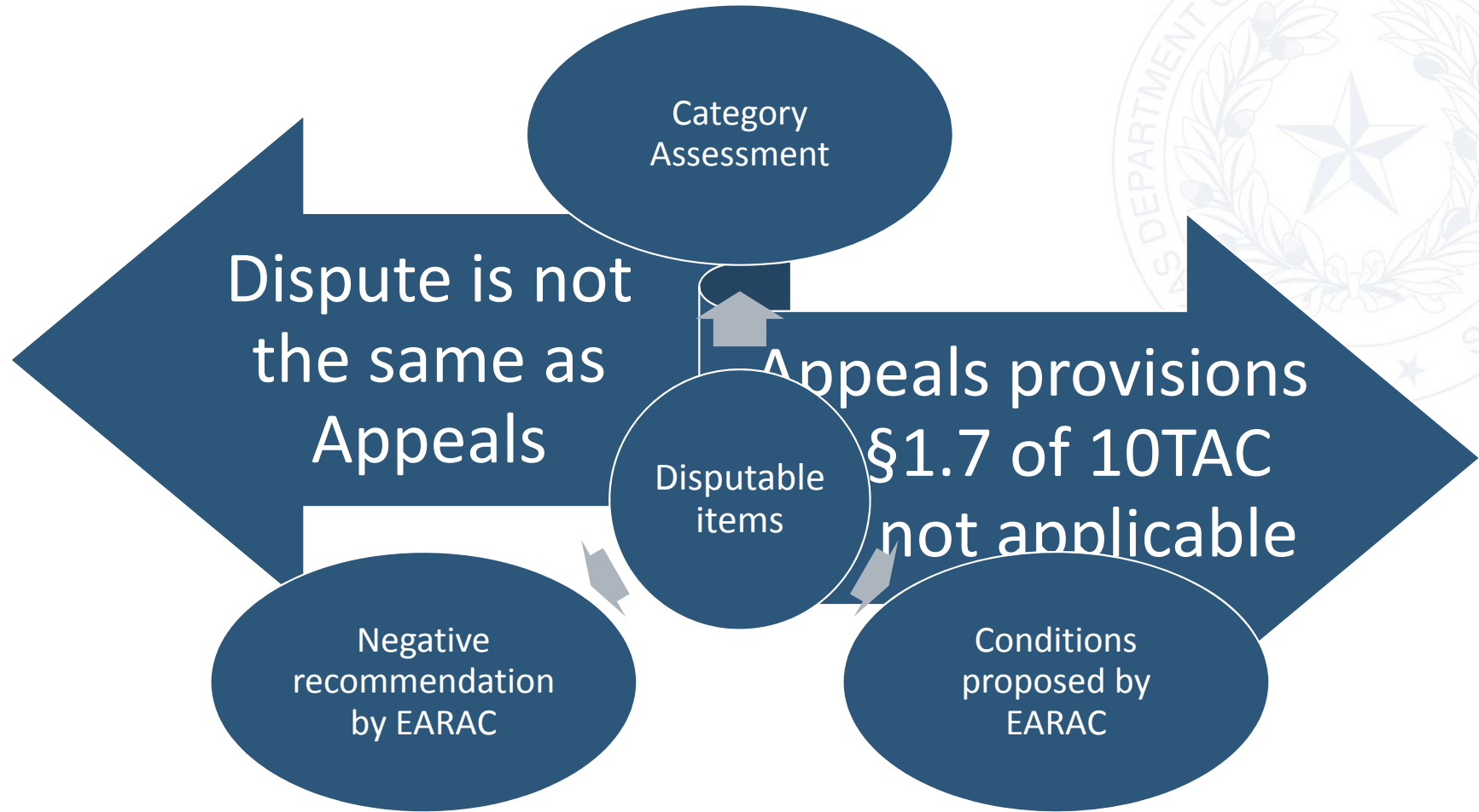
Up to six months, if requested prior to the deadline

Any subsequent extension must be approved by the Board



If any condition is not met as determined by the evidence submitted, the Applicant may be referred to the Enforcement Committee for debarment

# Dispute of EARAC Recommendations



## Dispute of EARAC Recommendations

**Applicant must  
file a written  
dispute**

- No later than the seventh calendar day after notice of the recommendation of denial or award with conditions has been provided
- Must include any materials that the Applicant wishes EARAC and/or the Board to consider

**Applicant may  
request to meet  
with EARAC**

- EARAC not obligated to meet with the Applicant
- EARAC not required to consider a Dispute prior to making its recommendation to the Board



## Dispute of EARAC Recommendations

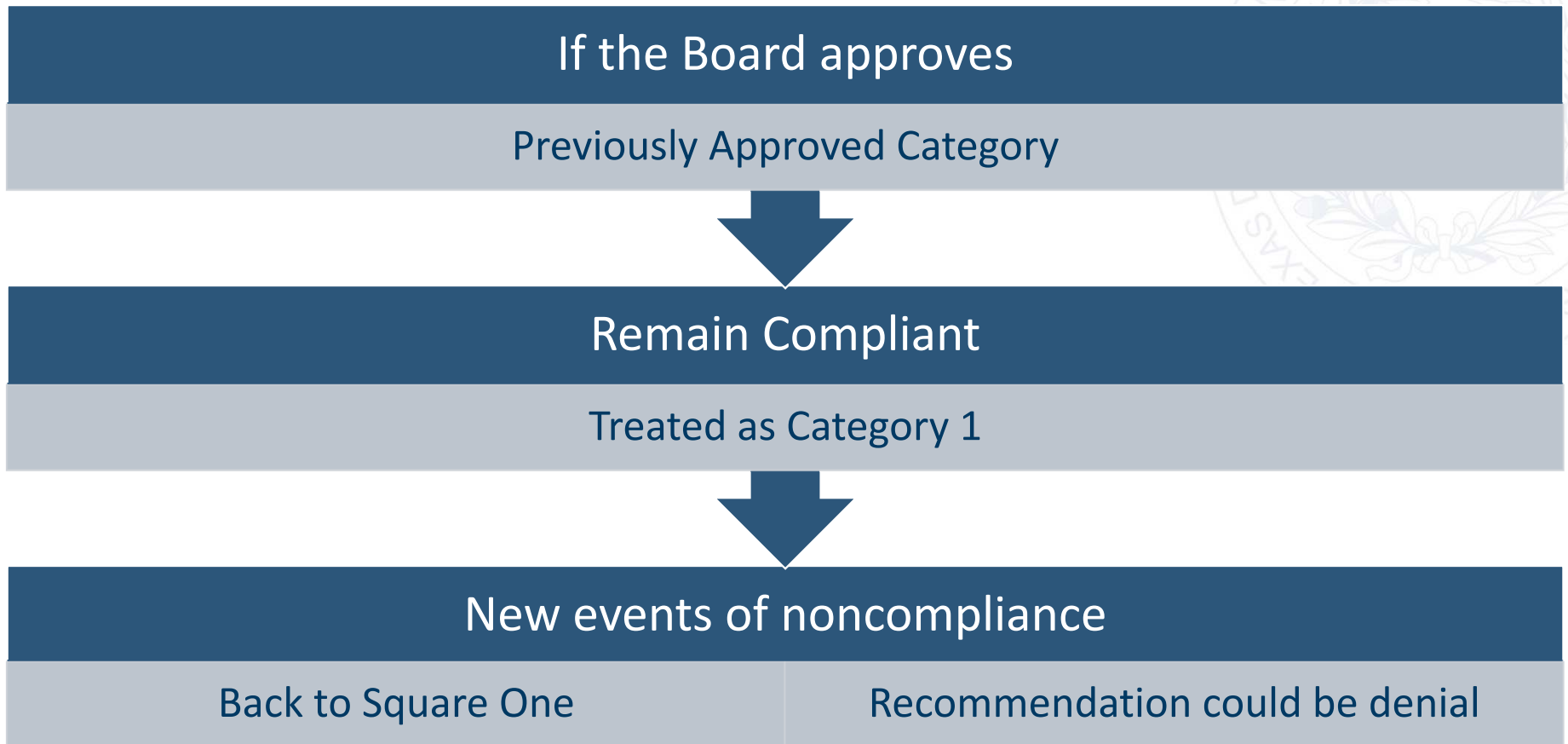
Dispute will be included on the Board agenda if received at least seven calendar days prior to the required posting date of that agenda

*§2306.057(c) "The board shall fully document and disclose any instances in which the board approves a project application despite any noncompliance associated with the project, applicant, or affiliate."*

Prepare to convince the Board that despite the record there is some reason the deal should be approved

For competitive funding, there is probably another application that will fulfill the same public purpose

## Dispute of EARAC Recommendations



## Contact Information



Patricia Murphy Director of Compliance

- [patricia.murphy@tdhca.state.tx.us](mailto:patricia.murphy@tdhca.state.tx.us)
- 512-475-3140



Jo En Taylor Compliance Administrator

- [joen.taylor@tdhca.state.tx.us](mailto:joen.taylor@tdhca.state.tx.us)
- 512-475-0250



Wendy Quackenbush Director of Compliance Monitoring

- [wendy.quackenbush@tdhca.state.tx.us](mailto:wendy.quackenbush@tdhca.state.tx.us)
- 512-305-8860



Cody Campbell Manager of Physical Inspections

- [Cody.Campbell@tdhca.state.tx.us](mailto:Cody.Campbell@tdhca.state.tx.us)
- 512-475-4603



*That's all Folks!*

# Thank You

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**TEXAS DEPARTMENT OF HOUSING  
AND COMMUNITY AFFAIRS**

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P.O. BOX 13941, AUSTIN, TX 78711-3941

PHONE: 512-475-3800

TOLL FREE: 800-525-0657

WEB: [WWW.TDHCA.STATE.TX.US](http://WWW.TDHCA.STATE.TX.US)

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