

BOARD MEETING OF APRIL 12, 2012

J. Paul Ozer, Chair



Tom Gann, Vice-Chair
Leslie Bingham Escareño, Member
Lowell Keig, Member
Juan Muñoz, Member
J. Mark McWatters, Member

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
BOARD MEETING

A G E N D A

10:00 a.m.
April 12, 2012

Capitol Extension, E2.036
1500 North Congress Ave.
Austin, TX

CALL TO ORDER, ROLL CALL
CERTIFICATION OF QUORUM

J. Paul Oxer, Chairman

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

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

CONSENT AGENDA

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

Various action items below, (including consent agenda items and other items) relating to awards or other actions under different programs list specific applicants by name. These lists are informational and do not limit the Board's ability to take action with respect to others under the specific program action items.

Item 1: Approval of the following items presented in the Board materials:

Executive

- a) Presentation, Discussion, and Possible Action regarding the Board Minutes Summaries for February 16, and March 6, 2012.

Brooke Boston
Board Secretary

Bond Finance

- b) Presentation, Discussion, and Possible Action on Resolution No. 12-021 authorizing the expenditure of Single Family Indenture Residual Funds to redeem bonds in order to mitigate the impact of the application of the Universal Cap Rules under the Internal Revenue Code
- c) Presentation, Discussion and Possible Action on Resolution 12-023 authorizing the Department's Interest Rate Swap Policy

Tim Nelson
Dir. Bond Finance

Rules

- d) Presentation, Discussion, and Possible Action to publish for public comment in the *Texas Register* the proposed repeal of 10 TAC §§60.301-.306, concerning the process for assessment of administrative penalties with regard to Compliance Administration, and the proposal of new 10 TAC §1.13, concerning Adjudicative Hearing Procedures, and new 10 TAC §1.14, concerning Administrative Penalties
- e) Presentation, Discussion, and Possible Action regarding approval for publication in the *Texas Register* of a Final Order adopting the repeal of current 10 TAC §1.10, Public Comment Procedures and Topics at Public Hearings and Meetings, a Final Order adopting new 10 TAC §1.10, Public Comment Procedures, and the rescission of Board Resolution #08-011
- f) Presentation, Discussion, and Possible Action regarding approval for publication in the *Texas Register* a final order adopting amendments to 10 TAC Chapter 5, Subchapter D, §§ 5.402, 5.407, 5.422 - 5.423, and 5.425, the Comprehensive Energy Assistance Program (CEAP)
- g) Presentation, Discussion, and Possible Action regarding approval for publication in the *Texas*

Barbara Deane
General Counsel

Jeff Pender
Deputy General Counsel

Michael DeYoung
Dir. Community Affairs

Tom Gouris

Community Affairs

Michael DeYoung
Dir. Community Affairs

- h) Presentation, Discussion, and Possible Approval of the Substantial Amendment to the 2011 State of Texas Consolidated Plan, One Year Action Plan and to the Substantial Amendment to the 2012 State of Texas Consolidated Plan, One Year Action Plan
- i) Presentation, Discussion, and Possible Approval of the Award of a term Comprehensive Energy Assistance Program contract to Community Council of South Central Texas to provide services in Maverick, Dimmitt, and LaSalle Counties

HOME Single Family

Sara Newsom
Dir. HOME

- j) Presentation, Discussion, and Possible Action regarding the 2011 Single Family Homeowner Rehabilitation Assistance, Homebuyer Assistance and Tenant Based Rental Assistance Programs contract award recommendations

Homeowner Rehabilitation Assistance

2011-0033	City of Anson	Anson
2011-0034	City of Madisonville	Madisonville
2011-0031	City of Rusk	Rusk
2011-0036	City of Ore City	Ore City
2011-0037	City of Sinton	Sinton
2011-0038	Central Texas Opportunities	Cities of: Brownwood, Bangs, Baird, Clyde, Cross Plains, Coleman, Comanche, DeLeon, Cisco, Eastland, Ranger, Brady, Ballinger and Winters
2011-0039	City of George West	George West
2011-0044	City of Wolfe City	Wolfe City
2011-0040	City of Skellytown	Skellytown
2011-0041	City of McCamey	McCamey
2011-0042	City of Muleshoe	Muleshoe
2011-0043	City of Seminole	Seminole
2011-0046	City of Rockport	Rockport
2011-0047	City of Roma	Roma

Homeowner Assistance

2011-0038	Central Texas Opportunities	Cities of: Brownwood, Bangs, Baird, Clyde, Cross Plains, Coleman, Comanche, DeLeon, Cisco, Eastland, Ranger, Brady, Ballinger and Winters
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Tenant Based Rental Assistance

2011-0038	Central Texas Opportunities	Cities of: Brownwood, Bangs, Baird, Clyde, Cross Plains, Coleman, Comanche, DeLeon, Cisco, Eastland, Ranger, Brady, Ballinger and Winters
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Neighborhood Stabilization Program

Marni Holloway
Dir. Neighborhood Stabilization Program

- k) Presentation, Discussion, and Possible Action to approve the Neighborhood Stabilization Program – Program Income (NSP-PI) Reservation System Participants

2012-515	Austin Housing Finance Corporation	Austin
2012-517	Willacy County	Willacy County
2012-600	Guadalupe Neighborhood Development Corporation	Austin

Multifamily Division

Cameron Dorsey
Dir. Multifamily Finance

- l) Presentation, Discussion, and Possible Issuance of Determination Notices for Housing Tax Credits Associated with Multifamily Mortgage Revenue Bonds from Other Issuers and of HOME Multifamily Development Program Awards to:

12402	Fox Run Apartments	Orange
12403	Village of Kaufman	Kaufman

- m) Presentation, Discussion, and Possible Action on Housing Tax Credit Program Extensions

060132 Vista Pines Apartment Homes
 060244 River Park Apartment Homes
 060421 Woodside Manor Senior Apts.

n) Presentation, Discussion, and Possible Action regarding Housing Tax Credit Amendments

05441 Cobblestone Manor Fort Worth
 11004 North Court Villas Frisco

REPORT ITEMS

The Board accepts the following reports:

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| 1. Status Report on the Implementation of the American Recovery and Reinvestment Act of 2009 (Recovery Act) | Brooke Boston
DED Community Based Programs |
| 2. Report on the award of a Master Servicer Contract to U.S. Bank for the "To Be Announced" Mortgage Purchase Program | Eric Pike
Dir. Texas Homeownership |
| 3. Report on selection of First Southwest to administer a taxable mortgage backed securities program | Eric Pike
Dir. Texas Homeownership |
| 4. Status Report on the HOME Program Contracts and Reservation System Participants | Sara Newsom
Dir. HOME |
| 5. Status Report on the Comprehensive Analysis of Farmworker Housing in Texas | Elizabeth Yevich
Dir. Housing Resource Ctr. |
| 6. Report on the Status of the Preparation of the State of Texas Plan for Fair Housing Choice: Analysis of Impediments | Jennifer Molinari
Fair Housing Coordinator |
| 7. Update on Department Implementation of Social Media as a Communication Strategy | Michael Lyttle
Dir. Policy & Public Affairs |
| 8. TDHCA Outreach Activities, March 2012 | Michael Lyttle
Dir. Policy & Public Affairs |

ACTION ITEMS

Item 2: Executive:

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| a) Presentation, Discussion, and Possible Action regarding approval of proposed organizational structure | Tim Irvine
Executive Director |
| b) Report on establishment of Board Committees | J. Paul Oxer
Board Chair |

Item 3: Bond Finance:

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| a) Presentation, Discussion and Possible Action on Resolution 12-022 authorizing the Department's Investment Policy | Tim Nelson
Dir. Bond Finance |
| b) Presentation and Discussion on an Update regarding Market conditions by the Department's Financial Advisor | |

Item 4: Rules:

- | | |
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| a) Presentation, Discussion, and Possible Action to publish in the <i>Texas Register</i> the proposed new 10 TAC Chapter 5, Subchapter J, §§5.101 – 5.104 regarding the Homeless Housing and Services Program (HHSP) | Michael DeYoung
Dir. Community Affairs |
| b) Presentation, Discussion, and Possible Approval of a final order adopting the repeal of existing 10 TAC §1.24, regarding Foreclosure Data Collection and new 10 TAC Chapter 1, Subchapter A, §1.24, concerning Foreclosure Data Collection, for publication in the <i>Texas Register</i> | Elizabeth Yevich
Dir. HRC |

Item 5: Appeals:

Timely Filed Appeals under any of the Department's Program or Underwriting Rules

	Tom Gouris DED Asset Analysis & Management
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Item 6: Asset Management:

Presentation, Discussion, and Possible Action to approve Issuance of a Request For Proposal for

	Tom Gouris DED Asset Analysis & Management
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Item 7: Multifamily Division:

- a) Presentation, Discussion, and Possible Action to Approve the Parameters, subject to Bond Review Board Approval, for Modification to Terms of Previous TDHCA Issued Multifamily Mortgage Revenue Bonds:

12600	Parkview Townhomes (fka Providence at Rush Creek)	Arlington
12601	Providence at Veteran's Memorial	Houston
12602	Timber Oaks	Grand Prairie

- b) Presentation, Discussion, and Possible Action regarding Disclosure and Possible Waivers of Ineligibility for Applications in the 2012 Competitive Housing Tax Credit Cycle

12066	Barron's Branch	Waco	Ineligible Unit Mix
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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):

J. Paul Oxer
Chairman

1. The Board may go into Executive Session Pursuant to Texas Government 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
2. 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, including:
 - a) *The Inclusive Communities Project, Inc. v. Texas Department of Housing and Community Affairs, et al filed in federal district court, Northern District of Texas*
 - b) *Heston Emergency Housing, LP and Naji Al-Fouzan vs. Texas Department of Housing and Community Affairs, Michael Gerber, Martin Rivera, Jr., Marisa Callan, and Timothy Irvine*
 - c) *Complaint of James Reedom filed with U.S. HHS/OCR (No. 09-99008)*
 - d) *TDHCA v. William Ross & Susan Ross; Cause No. D-1-GN-11-002226, filed in district court, Travis County*
3. 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; or
4. 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.
5. 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 & details on each agenda item in the board book, please visit our website at www.tdhca.state.tx.us or contact Nidia Hiroms, 512-475-3934; TDHCA, 221 East 11th Street, Austin, Texas 78701, and request the information. Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Gina Esteves, ADA Responsible Employee, at 512-475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made. Non-English speaking individuals who require interpreters for this meeting should contact Nidia Hiroms, 512-475-3930 at least three days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

1a

BOARD ACTION REQUEST

BOARD SECRETARY

April 12, 2012

Presentation, Discussion, and Possible Action regarding the Board Minutes Summaries for February 16 and March 6, 2012.

RECOMMENDED ACTION

Approve Board Meeting Minutes Summaries for February 16 and March 6, 2012.

RESOLVED, that the Board Meeting Minutes Summary for February 16 and March 6, 2012, as having been specifically approved, is hereby approved as presented.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
BOARD MEETING

February 16, 2012; 9:18 a.m.

1500 North Congress Ave.
Capitol Extension, E1.028
Austin, TX

SUMMARY OF MINUTES

CALL TO ORDER, ROLL CALL, CERTIFICATION OF QUORUM

The Board Meeting of the Texas Department of Housing and Community Affairs of February 16, 2012, was called to order by J. Paul Oxer, Chair, at 9:15 a.m. It was held at the Capitol Extension, E1.028, 1500 North Congress Ave, Austin, Texas. Roll call certified a quorum was present.

MEMBERS PRESENT:

J. Paul Oxer, Chair
Tom H. Gann, Vice Chair
Lowell Keig
Dr. Juan Muñoz

PUBLIC COMMENT

The Board will solicit Public Comment at the beginning of the meeting and will also provide for Public Comment on each agenda item after the presentation made by the department staff and motions made by the Board.

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 Texas Government Code, Texas Open Meetings Act.

Various action items below, (including consent agenda items and other items) relating to awards or other actions under different programs list specific applicants by name. These lists are informational and do not limit the Board's ability to take action with respect to others under the specific program action items.

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

Executive

a) Presentation, Discussion, and Possible Action regarding the Board Minutes Summary for January 17, 2012

Mr. Irvine noted a correction to the Minutes Summary for January 17, 2012. The name of Mr. Saleem Jafar's company should read Odyssey Residential instead of Fox.

Chairman Oxer would like for all Board Minute Summaries to reflect that at the end of the Board Meeting, the meeting was opened up for anyone to provide public comment on anything that was not addressed during the meeting and/or to request that an issue be placed on the next Board Meeting Agenda for discussion.

Internal Audit

b) Presentation, Discussion, and Possible Action regarding Approval of the 2012 Internal Audit Charter and Board Resolution (#12-018)

Community Affairs

c) Presentation, Discussion, and Possible Action regarding the Notice of Funding Availability for the Fiscal Year 2012 Emergency Solutions Grants Program (ESG)

d) Presentation, Discussion, and Possible Action regarding the PY 2012 Department of Energy (DOE) Weatherization Assistance Program (WAP) Plan

Compliance and Asset Oversight:

e) Presentation, Discussion, and Possible Action on a material amendment to the Land Use Restriction Agreement for Village Park North Apartments

HOME

- f) Presentation, Discussion, and Possible Action regarding the 2011 Single Family Homeowner Rehabilitation, Homebuyer Assistance and Tenant Based Rental Assistance Programs contract award recommendations
Homeowner Rehabilitation Assistance
2011-0017 City of East Bernard East Bernard
2011-0018 City of Ingleside Ingleside
2011-0019 City of Lindale Lindale
2011-0020 City of Bullard Bullard
2011-0021 City of Rising Star Rising Star
- g) Presentation, Discussion, and Possible Action regarding the 2011 Single Family Development contract award recommendations
11590 WREM Literacy Group DBA WREM Community Housing Development Organization Waller County

Housing Trust Fund

- h) Presentation, Discussion, and Possible Action to approve a Housing Trust Fund (HTF) Affordable Housing Match contract with Habitat for Humanity of San Antonio, Inc.
- i) Presentation, Discussion, and Possible Action regarding the Neighborhood Stabilization Program 3 (NSP3) Award Recommendation

Multifamily Finance

- j) Presentation, Discussion, and Possible Action on Housing Tax Credit Program Extensions
03178 Jacinto Manor Jacinto City
09946 Avalon Park Apartments Brownfield
10035 Zion Gardens Houston
10222 Citrus Gardens Brownsville
- k) Presentation, Discussion, and Possible Action regarding Housing Tax Credit Amendments
01096 The Orchard at Westchase Houston
04463 Lakeside Manor Little Elm
- l) Presentation, Discussion, and Possible Action regarding the recommendation to approve the Neighborhood Stabilization Program-Income (NSP-PI) Reservation System Participants

Motion by Mr. Gann to approve consent agenda with the noted changes to the January 17, 2012, Board Minute Summary; duly seconded by Mr. Keig; Chairman Oxer mentioned that the current protocol the Board is observing, is to consider the item, have a motion on the floor, and then invite the public to comment, hear the public comment and then vote on the motion.

Deborah Dennis, WREM Literacy Group, provided testimony in support of Consent Item g, WREM Literacy and thanked the Board for their support.

Nicholas Anderson, Little Elm, Ltd., provided testimony in support of Consent Item k, Lakeside Manor.

Motion to approve Consent Agenda. Motion passed unanimously.

ACTION ITEMS

AGENDA ITEM 2: FINANCIAL

Presentation, Discussion, and Possible Action regarding the Amended FY2012 Operating Budget

Motion by Mr. Keig to approve the Adoption of FY2012 Operating Budget; duly seconded by Dr. Muñoz; motion passed unanimously.

Chairman Oxer recognized Viveca Martinez with the Governor's Office and Hasan Mack with the Lt. Governor's Office, as being in the audience.

AGENDA ITEM 3: INTERNAL AUDIT

- a) Report from the Audit Committee Meeting
Lisa Collier, Assistant State Auditor, State Auditor's Office, reported on the audit results from the State Auditor's office.
Amadou N'Gaide, Project Manager, State Auditor's Office, reported on the audit results from the State Auditor's office.
- b) Annual Financial Report

Motion by Mr. Gann to approve the report from the Audit Committee for Agenda Items 3a and 3b; duly seconded by Mr. Keig; motion passed unanimously.

AGENDA ITEM 4: APPEALS

Appeals of any of the Department's Program or Underwriting Rules

- a) Real Estate Analysis

None filed.

- b) Multifamily Finance
- | | | |
|-------|---------------------------|------------|
| 12093 | Zion Vista | Magnolia |
| 12095 | Zion Timbers | Huntsville |
| 12306 | Stardust Apartments | Uvalde |
| 12368 | Heritage Plaza | Montgomery |
| 12369 | Brazos Bend Senior Villas | Waller |

Cynthia Bast, Locke Lord, provided testimony in support of Stardust Apartments.

Doak Brown, Brownstone, provided testimony in support of Stardust Apartments.

Michael Lyttle, TDHCA, Director of Policy & Public Affairs, read for the record a letter of support of Stardust Apartments, on behalf of the Honorable State Representative Carlos Uresti.

Chairman Oxer recognized Michael Ruggieri, Legislative Director, for the Honorable State Representative Carlos Uresti as being in the audience.

Michael Lyttle, TDHCA, Director of Policy & Public Affairs, read into record, a letter of support of Stardust Apartments on behalf of the Honorable State Representative Pete Gallego.

Michael Lyttle, TDHCA, Director of Policy & Public Affairs, on behalf of the Honorable State Representative Harold Dutton, Jr., read for the record a letter on the interpretation of the 2012-2013 Qualified Allocation Plan.

Tamea Dula, Coats Rose, provided testimony in support of Heritage Plaza.

The Board took a brief recess at 10:55 am and resumed at 11:15 am.

Tamea Dula, Coats Rose, continued her testimony, adding that they have a letter of support for Heritage Plaza from the Mayor of the city of Montgomery.

Michael Lyttle, TDHCA, Director of Policy & Public Affairs, on behalf of the Honorable Mayor John Fox, read into record a letter of support for Heritage Plaza.

David Marquez, provided testimony in opposition of the appeals requested.

Kimberly Keener, provided testimony in opposition of the appeals requested.

Motion by Dr. Muñoz to grant all the appeals with a cap of 150% of availability awarded if they make full application (deducting one point) and meet other eligible criteria; duly seconded by Mr. Keig;

Motion by Mr. Gann to amend the prior motion to reflect granting the appeals with the 150% cap and with a two-point penalty, up to four points in the full application; duly seconded by Mr. Keig;

Tamea Dula, Coats Rose, provided testimony on the pre-application and application process.

Blake Rue, provided testimony on the pre-application and application process.

Barry Palmer, Coats Rose, provided testimony on the interpretation of the 2012-2013 Qualified Allocation Plan.

Tim Irvine, Executive Director, TDHCA stated that it is required on the record that at the time of the motion that the Board summarize and state the rationale for deviating from staff recommendation and the specific factors that go into the actual motion. Mr. Irvine read §2306.6725, Subsection C, concerning awarding tax credit allocations, into the record: "The Board shall document the reasons for the process, projects selection, and this obviously affects their selection, including an explanation of all discretionary factors used in making the determination and the reasons for any decision that conflicts with the recommendation of Department staff."

Motion by Mr. Gann to amend the prior motion to reflect granting the appeals with the 150% cap and with a two-point penalty, up to four points in the full application; duly seconded by Mr. Keig; motion failed.

EXECUTIVE SESSION

At 12:00 p.m. Chairman Oxer convened the Executive Session.

1. The Board may go into Executive Session Pursuant to Texas Government 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;
2. 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, including:
 - a) *The Inclusive Communities Project, Inc. v. Texas Department of Housing and Community Affairs, et al* filed in federal district court, Northern District of Texas
 - b) *Heston Emergency Housing, LP and Naji Al-Fouzani vs. Texas Department of Housing and Community Affairs, Michael Gerber, Martin Rivera, Jr., Marisa Callan, and Timothy Irvine; Civil Action No. H-11-1121 in the United States District Court for the Southern District of Texas, Houston Division*

- c) *Complaint of James Reedom filed with U.S. HHS/OCR (No. 09-99008)*
- d) *TDHCA v. William Ross & Susan Ross; Cause No. D-1-GN-11-002226, filed in district court, Travis County*
- 3. 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; or
- 4. 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.
- 5. 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

At 1:00 p.m. Chairman Oxeer reconvened the Open Session and announced that no action had been taken during the Executive Session and certified that the posted agenda had been followed.

AGENDA ITEM 4b: APPEALS; Multifamily Finance, *Continued*

Motion still on the floor by Dr. Muñoz to grant the appeals with a cap of 150% of availability and up to five points awarded if they make full application (deducting one point) and meet other eligibility criteria administered on the application; Mr. Keig withdrew his second; Dr. Muñoz restated his motion to deviate from staff's recommendation in order to achieve an equitable resolution of these appeals and grant the appeals to enable these applications to move forward due to the apparent confusion over the QAP, and to direct staff to make available up to five points awarded to these pre-applications. Furthermore, that these pre-applications are deemed capped at and reduced to no more than 150 percent of the credit available in the sub-regions. And finally, that the staff should, as practical and applicable and reasonable follow TDHCA adopted eligibility rules moving forward; second by Mr. Keig; motion passed unanimously.

AGENDA ITEM 5: RULES:

- a) Presentation, Discussion, and Possible Action to withdraw 10 TAC §1.25, Right of First Refusal at Fair Market Value, as published in the December 30, 2011, issue of the *Texas Register*, due to substantial revisions in response to public comment, and to publish a proposed new rule, 10 TAC §1.25, Right of First Refusal at Fair Market Value, for public comment in the *Texas Register*

Yvonne Silva, provided testimony with regard to fair market value and appraisals.

Motion by Mr. Keig to approve staff recommendation to withdraw the proposed rule regarding right of first refusals at fair market value that was published in the Texas Register on December 30, and publish for public comment a new right of first refusal at fair market value, as orally amended; duly seconded by Dr. Muñoz; motion passed unanimously.

- b) Presentation, Discussion, and Possible Action to publish proposed amendments to 10 TAC Chapter 5, Subchapter D, Comprehensive Energy Assistance Program, for public comment in the *Texas Register*
- Motion by Mr. Keig to approve staff recommendation to publish proposed amendments for public comment; duly seconded by Mr. Gann; motion passed unanimously.**

- c) Presentation, Discussion, and Possible Action to publish the proposed repeal of existing 10 TAC §1.24, Foreclosure Data Collection, and the proposal of a new 10 TAC §1.24, Foreclosure Data Collection, for public comment in the *Texas Register*.
- Motion by Mr. Gann to approve staff recommendation to publish proposed repeal for public comment; duly seconded by Dr. Muñoz; motion passed unanimously.**

AGENDA ITEM 6: COMMUNITY AFFAIRS:

Presentation, Discussion, and Possible Action regarding the Draft Substantial Amendment to the 2011 State of Texas Consolidated Plan, One Year Action Plan and to the Draft Substantial Amendment to the 2012 State of Texas Consolidated Plan, One Year Action Plan

Motion by Mr. Gann to approve staff recommendation to submit a draft substantial amendment to the 2011 and 2012 State of Texas Consolidated Plan as amended; duly seconded by Mr. Keig; motion passed unanimously.

AGENDA ITEM 7: MULTIFAMILY DIVISION ITEMS – TAX CREDIT PROGRAM:

- a) Status Report on the 2012 Competitive Housing Tax Credit Cycle

No action taken.

- b) Presentation, Discussion, and Possible Action regarding Disclosure and Possible Waivers of Ineligibility for Applications in the 2012 Competitive Housing Tax Credit Cycle
- 12022 Galveston Initiative I Galveston

Motion by Mr. Gann to deny the waiver on the floodplain and to grant the waiver on the business district definition; duly

seconded by Dr. Muñoz;

Mike Duffy, Galveston Housing Authority, provided testimony in support of Galveston Initiative I.

Samson Babalola, Galveston Housing Authority, provided testimony in support of Galveston Initiative I.

Deyna Sims, Galveston Housing Authority, provided testimony in support of Galveston Initiative I.

Dr. Muñoz withdrew his second and Mr. Keig then seconded Mr. Gann's motion to deny the waiver on the floodplain and to grant the waiver on the business district definition; motion failed.

Motion by Dr. Muñoz to grant both waivers; no second initially; then later seconded by Chairman Oxer; motion failed.

Motion by Dr. Muñoz to grant the waiver on the business district definition; seconded by Mr. Keig; motion passed unanimously.

Motion by Dr. Muñoz to grant the waiver on the floodplain; seconded by Chairman Oxer; motion died.

Chairman Oxer stated to let the record reflect that the Board recognizes that this is an incredibly competitive event and those four points are going to be real valuable to them.

The Board took a brief recess at 2:35 p.m. and resumed at 2:45 p.m.

EXECUTIVE SESSION

At 2:52 p.m. Chairman Oxer convened a 2nd Executive Session.

OPEN SESSION

At 2:58 p.m. Chairman Oxer reconvened the Open Session and announced that no action had been taken during the Executive Session and certified that the posted agenda had been followed.

Motion by Dr. Muñoz to reconsider the request for a waiver on the floodplain issue in Galveston as an agenda item at the next Board meeting; seconded by Mr. Keig; motion passed unanimously.

AGENDA ITEM 7: MULTIFAMILY DIVISION ITEMS – TAX CREDIT PROGRAM *CONTINUED*:

b) Presentation, Discussion, and Possible Action regarding Disclosure and Possible Waivers of Ineligibility for Applications in the 2012 Competitive Housing Tax Credit Cycle

12062 Cadillac Apartments Dallas

Motion by Dr. Muñoz to accept staff recommendation to deny the waiver; seconded by Mr. Keig; motion passed unanimously.

12169 Texas & Pacific Warehouse Fort Worth

Motion by Mr. Keig to accept staff recommendation to deny the waivers; seconded by Mr. Gann; motion passed unanimously.

12252 Gulf Coast Arms Houston

Motion by Mr. Keig to accept staff recommendation to deny the waiver; seconded by Mr. Gann; motion passed unanimously.

Lee Zieben, President, Affordable Housing Group, provided testimony in support of Gulf Coast Arms.

Johnny Gant, President of Super Neighborhood 48, provided testimony in support of Gulf Coast Arms.

Toni Jackson, provided testimony in support of Gulf Coast Arms.

Debra Ann Guerrero, provided testimony in support of Gulf Coast Arms.

Motion by Mr. Keig to withdraw his previous motion to deny the two waivers; seconded also withdrawn from Mr. Gann.

Motion by Mr. Keig to approve the two requested waivers; seconded by Dr. Muñoz; reasoning would be that this rises to the definition of satisfying the need under 2306, Part 3; motion passed unanimously.

12291 Stonebridge of Sulphur Springs Sulphur Springs

Motion by Dr. Muñoz to approve staff recommendation to deny waiver; duly seconded by Mr. Keig

Dru Childre, State Street Housing, provided testimony in support of Stonebridge of Sulphur Springs.

Motion passed unanimously.

12375 Cypress Creek at Westheimer Houston

Motion by Dr. Gann to approve staff recommendation to deny waiver; duly seconded by Mr. Keig

Casey Bump, Stuart Shaw Bonner Carrington, LLC, provided testimony in support of Cypress Creek at Westheimer.

Barry Palmer, Coats Rose, provided testimony in support of Cypress Creek at Westheimer.

Mr. Keig withdrew his second.

Motion by Dr. Muñoz that the Board determines that this property adjacent to the development is not a high industrial area; duly seconded by Mr. Keig; motion passed unanimously.

c) Presentation, Discussion, and Possible Action Regarding a Request for Refund for a Housing Tax Credit Commitment Fee

Motion by Mr. Keig to approve the 50% refund; duly seconded by Mr. Gann

10232 EVERgreen Residences – 3800 Willow Dallas

Buddy Jordan, provided testimony in support of EVERgreen Residences.

Motion to approve the 50% refund passed unanimously.

AGENDA ITEM 8: EXECUTIVE:

Presentation, Discussion, and Possible Action to authorize staff to procure one or more providers to enter into prepositioned contracts to provide emergency temporary housing

Motion by Mr. Keig to authorize staff to procure one or more providers to enter into prepositioned contracts to provide emergency temporary housing; duly seconded by Mr. Gann; motion passed unanimously.

REPORT ITEMS

1. Status Report on the Implementation of the American Recovery and Reinvestment Act of 2009 (Recovery Act)
2. Presentation of the 1st Quarter Investment Report
3. Status Report on the Preparation of the State of Texas Plan for Fair Housing Choice: Analysis of Impediments
Mr. Keig requested that this item be moved up to the Action Item section of the Agenda in the future.
4. Report on Organizational Changes
5. Status Report on the Contracts for Deed Prevalence Project with the University of Texas at Austin
6. TDHCA Outreach Activities, January 2012

PUBLIC COMMENT

Chairman Oxer opened up the meeting for requests for public comment for anything that was not addressed at the meeting or for requests for any issues to be added to the next Board Meeting agenda.

Yvonne Silva, provided testimony with regard to fraud in foreclosures.

Sylvia Silva Adams, provided testimony with regard to fraud in foreclosures and thanked the Board for their professionalism in conducting the meeting.

ADJOURN

Since there was no other business to come before the Board, the meeting was adjourned at 4:49 p.m. on February 16, 2012.

Brooke Boston, Board Secretary

For a full transcript of this meeting, please visit the TDHCA website at www.tdhca.state.tx.us

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
BOARD MEETING

March 6, 2012; 9:00 a.m.

1500 North Congress Ave.
Capitol Extension, E1.028
Austin, TX

SUMMARY OF MINUTES

CALL TO ORDER, ROLL CALL, CERTIFICATION OF QUORUM

The Board Meeting of the Texas Department of Housing and Community Affairs of March 6, 2012, was called to order by J. Paul Oxer, Chair, at 9:10 a.m. It was held at the Capitol Extension, E1.028, 1500 North Congress Ave, Austin, Texas. Roll call certified a quorum was present.

Mr. J. "Mark" McWatters, new TDHCA Board Member, was introduced

MEMBERS PRESENT:

J. Paul Oxer, Chair
Lowell Keig
Dr. Juan Muñoz
J. Mark McWatters
Leslie Bingham-Escareño

Resolution recognizing April as Fair Housing Month, Resolution No. 12-020 was read into the record.

Motion by Dr. Muñoz to recognize April as Fair Housing Month; duly seconded by Mr. Keig; Motion passed unanimously.

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 Texas Government Code, Texas Open Meetings Act.

Various action items below, (including consent agenda items and other items) relating to awards or other actions under different programs list specific applicants by name. These lists are informational and do not limit the Board's ability to take action with respect to others under the specific program action items.

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

Executive

- a) Presentation, Discussion, and Possible Action regarding the Board Minutes Summary for February 16, 2012

Withdrawn from consideration.

- b) Presentation, Discussion, and Possible Action of the Board superseding Resolution No. 11-030 and adopting Resolution No. 12-019, due to department reorganization
c) Presentation, Discussion, and Possible Action to publish a proposed repeal of existing 10 TAC Chapter 54 concerning Disaster Recovery, for public comment in the *Texas Register*

HOME Single Family

- d) Presentation, Discussion, and Possible Action regarding the 2011 Single Family Homeowner Rehabilitation Assistance, Homebuyer Assistance and Tenant Based Rental Assistance Programs contract award recommendations

Homeowner Rehabilitation Assistance

2011-0025	City of Agua Dulce	Agua Dulce
2011-0026	City of Orange Grove	Orange Grove
2011-0027	City of Troup	Troup
2011-0029	City of Gilmer	Gilmer

2011-0030	City of New Summerfield	New Summerfield
Multifamily Finance		
e)	Presentation, Discussion, and Possible Action regarding HOME Multifamily Development Program Awards	
11081	Northwood Apartments	Navasota
11082	Oakwood Apartments	Madisonville
11123	Allegre Point	Travis County
12500	Creek View Apartments II	Johnson City

Motion by Ms. Bingham-Escareño to approve consent agenda as presented, with the exception of Agenda Item No. 1a which was withdrawn from consideration; duly seconded by Dr. Muñoz. Motion passed unanimously.

ACTION ITEMS

AT THE BOARD CHAIR'S DISCRETION, ITEMS ON THE AGENDA WERE TAKEN OUT OF ORDER

AGENDA ITEM 9: TEXAS HOMEOWNERSHIP PROGRAM:

Presentation, Discussion, and Possible Action on authorizing the Department to enter into a Memorandum of Understanding (MOU) with the Texas State Affordable Housing Corporation (TSAHC) for the operation of the Texas Statewide Homebuyer Education Program (TSHEP)

Motion by Mr. Keig to approve staff recommendation to enter into a Memorandum of Understanding with TSAHC; duly seconded by Ms. Bingham-Escareño. Motion passed unanimously.

AGENDA ITEM 3: LEGAL:

Presentation, Discussion, and Possible Action of the Board regarding Department compliance with revised regulations concerning the Americans with Disabilities Act of 1990 (ADA), as amended, and providing direction to staff

Dr. Muñoz recommended that hearings be held in border areas of the state. Mr. Oxer recommended utilizing social media.

Motion by Mr. Keig to approve staff recommendation as amended to include recommendations made by Dr. Muñoz and Mr. Oxer; duly seconded by Ms. Bingham-Escareño. Motion passed unanimously.

AGENDA ITEM 2: PROGRAM SERVICES:

Presentation by BBC on the Status of the Preparation of the State of Texas Plan for Fair Housing Choice: Analysis of Impediments

Sherrie Holland, BBC, provided testimony on Fair Housing Choice.

No action taken.

AGNEDA ITEM 4: APPEALS:

Appeals of any of the Department's Program or Underwriting Rules

None filed.

Agenda ITEM 5: COMMUNITY AFFAIRS:

Presentation, Discussion, and Possible Action on Approving the Program Year 2012 Community Services Block Grant (CSBG) Discretionary Notice of Funding Availability (NOFA)

Motion by Mr. Keig to approve staff recommendation to approve the Program Year 2012 CSBG Discretionary NOFA as presented; duly seconded by Ms. Bingham-Escareño. Motion passed unanimously.

AGENDA ITEM 6: HOUSING RESOURCE CENTER:

a) Presentation, Discussion, and Possible Action to approve the Final 2012 State of Texas Low Income Housing Plan and Annual Report and Final Order adopting amendments to 10 TAC §1.23 concerning the Final 2012 State of Texas Low Income Housing Plan and Annual Report

Motion by Mr. Keig to approve staff recommendation to approve the Final 2012 State of Texas Low Income Housing Plan and Annual Report and Final Order as presented; duly seconded by Dr. Muñoz. Motion passed unanimously.

b) Status Report on the Contracts for Deed Prevalence Project with the University of Texas at Austin

Kevin Hamby, provided testimony.

No action taken.

Donna Chatham, ARCIT, provided testimony on Agenda Item 2. Ms. Chatham's Witness Affirmation was inadvertently missed during discussion of the Agenda Item.

The Board took a brief recess at 10:30 a. m. and resumed Open Session at 10:50 a. m.

AGENDA ITEM 7: NEIGHBORHOOD STABILIZATION PROGRAM:

Presentation, Discussion, and Possible Action to approve the Neighborhood Stabilization Program – Program Income (NSP-PI) Reservation System Participants

2011-512	Elijah's Promise	Houston
2011-513	NHP Foundation	San Antonio

Motion by Dr. Muñoz to approve staff recommendation to approve NSP Reservation System Participants as presented; duly seconded by Ms. Bingham-Escareño. Motion passed unanimously.

AGENDA ITEM 8: MULTIFAMILY DIVISION:

Presentation, Discussion, and Possible Action regarding Disclosure and Possible Waivers of Ineligibility for Applications in the 2012 Competitive Housing Tax Credit Cycle

12022	Galveston Initiative	Galveston	Floodplain
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Mike Duffy, McCormack Baron Salazar, Inc., provided testimony in support of Galveston Initiative I.

Betty Massey, provided testimony in support of Galveston Initiative I.

Bill Fisher, provided testimony in support of Galveston Initiative I.

Motion by Dr. Muñoz to approve staff recommendation to grant waiver; duly seconded by Ms. Bingham-Escareño. Dr. Muñoz not present for final vote. Motion passed.

PUBLIC COMMENT

Mr. Oxer opened up the meeting for requests for public comment for anything that was not addressed at the meeting or for requests for any issues to be added to the next Board Meeting agenda.

Les Kilday, provided testimony regarding a letter that went to homeowner's associations that resulted in the Super-neighborhood he had been working with to withdraw their support. He requested relief from the Board.

REPORT ITEMS

1. Status Report on the Implementation of the American Recovery and Reinvestment Act of 2009 (Recovery Act)
2. Final Report on 2011 Competitive Housing Tax Credit Cycle
3. Status Report on the HOME Program Reservation System Participants
4. Status Report on the NSP Timeline for response to the January, 2012 Internal Audit report
5. TDHCA Outreach Activities, February 2012

EXECUTIVE SESSION

At 11:52 am Chairman Oxer convened the Executive Session.

1. The Board may go into Executive Session Pursuant to Texas Government 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;
2. 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, including:
 - a) *The Inclusive Communities Project, Inc. v. Texas Department of Housing and Community Affairs, et al* filed in federal district court, Northern District of Texas
 - b) *Heston Emergency Housing, LP and Naji Al-Fouzan vs. Texas Department of Housing and Community Affairs, Michael Gerber, Martin Rivera, Jr., Marisa Callan, and Timothy Irvine; Civil Action No. H-11-1121 in the United States District Court for the Southern District of Texas, Houston Division*
 - c) *Complaint of James Reedom filed with U.S. HHS/OCR (No. 09-99008)*
 - d) *TDHCA v. William Ross & Susan Ross; Cause No. D-1-GN-11-002226, filed in district court, Travis County*
3. 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; or
4. 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.
5. 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

At 12:12 p.m. Mr. Oxer reconvened the Open Session and announced that no action had been taken during the Executive Session and certified that the posted agenda had been followed.

ADJOURN

Since there was no other business to come before the Board, the meeting was adjourned at 12:13 pm on March 6, 2012.

Brooke Boston, Board Secretary

For a full transcript of this meeting, please visit the TDHCA website at www.tdhca.state.tx.us

1b

BOARD ACTION REQUEST

BOND FINANCE DIVISION

April 12, 2012

Presentation, Discussion, and Possible Action on Resolution No. 12-021 authorizing the expenditure of Single Family Indenture Residual Funds to redeem bonds in order to mitigate the impact of the application of the Universal Cap rules under the Internal Revenue Code.

RECOMMENDED ACTION

Approve Resolution No. 12-021 reauthorizing the allocation of Single Family Indenture Funds in accordance with Universal Cap Rules under the Internal Revenue Code.

WHEREAS, the Governing Board desires to authorize the reallocation of Single Family Trust Indenture surplus funds in order to assist several “under parity” bonds series; and

RESOLVED, that as approved and presented at the TDHCA Board meeting, the Department is hereby authorized to reallocate Single Family Trust Indenture surplus funds; and

FURTHER RESOLVED, that Resolution No. 12-021 is hereby adopted in the form presented to this meeting.

BACKGROUND

The Universal Cap rules under the Internal Revenue Code provide for an overall limitation to the amount of gross proceeds that may be allocated to a bond issue. Pursuant to the Universal Cap rules, the Department should determine the Universal Cap for each issue of bonds over time, but at least once each year. Once the Department has determined those bond issues that are over parity and under parity, the Department should allocate, or de-allocate investments, in accordance with the Universal Cap rules.

At the December 15, 2011 meeting, the Board authorized the execution of a Universal Cap Escrow Agreement relating to Residential Mortgage Revenue Bonds, Series 2009A/B. Staff recommended using the escrow agreement approach with the Residential Mortgage Revenue Bond (RMRB) Trust Indenture because surplus bond redemptions prior to the 10-year optional redemption date are not allowed, which necessitated the use of the Escrow Agreement to allow the Department to escrow the required monies until an optional redemption could be completed.

Today, staff is requesting authorization to reallocate and expend Single Family Trust Indenture Surplus Funds to redeem bonds as allowed in the Single Family Trust Indenture in order to mitigate the impact of the application of the Universal Cap rules under the Internal Revenue Code for each of the below referenced series in an amount not-to-exceed the following:

Series	Amount Not to Exceed
2004 Series A and B	\$600,000
2004 Series C, D, E and F	\$400,000
2005 Series B, C and D	\$3,700,000

This reallocation and redemption of bonds within the Single Family Trust Indenture will assist the Department in meeting the requirement of the Universal Cap rules set-forth in the Internal Revenue Code.

RESOLUTION NO. 12-021

RESOLUTION AUTHORIZING THE EXPENDITURE OF SINGLE FAMILY MORTGAGE REVENUE BOND TRUST INDENTURE SURPLUS FUNDS TO REDEEM BONDS; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

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

WHEREAS, the Act authorizes the Department: (a) to make and acquire and finance, and to enter into advance commitments to make and acquire and finance, mortgage loans and participating interests therein, secured by mortgages on residential housing in the State of Texas (the "State"); (b) to issue its bonds, for the purpose, among others, of obtaining funds to acquire, finance or acquire participating interests in such mortgage loans, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; (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 single family mortgage loans or participating interests, and to mortgage, pledge or grant security interests in such mortgages or participating interests, mortgage loans or other property of the Department, to secure the payment of the principal or redemption price of and interest on such bonds; and (d) to issue its revenue bonds for the purpose refunding any bonds theretofore issued by the Department or the Texas Housing Agency, its predecessor (the "Agency"), under such terms, conditions and details as shall be determined by the Board; and

WHEREAS, the Department has previously issued various series of its single family mortgage revenue bonds pursuant to that certain Single Family Mortgage Revenue Bond Trust Indenture dated as of October 1, 1980 between the Department, as successor to the Agency, and The Bank of New York Mellon Trust Company, N.A., as successor trustee to Fort Worth National Bank (as supplemented and amended from time to time, collectively, the "Indenture"), for the purpose of financing or acquiring participating interests in single family mortgage loans under the Indenture; and

WHEREAS, the Internal Revenue Code of 1986, as amended (the "Code"), and the Treasury Regulations promulgated thereunder (the "Regulations") provide an overall limitation (the "universal cap") to the amount of gross proceeds that may be allocated to a bond issue; and

WHEREAS, the Code and the Regulations further provide that, on a yearly basis, an issuer (i) determine the value of the investments allocable to an issue and the value of the outstanding bonds of that issue and (ii) if necessary, reallocate or deallocate investments so that the value of each bond issue and the investments allocated thereto are equal on that date (the "universal cap valuation requirements"); and

WHEREAS, the Department has determined that, as of May 1, 2012, the value of the investments allocated to each of the Department's (i) Single Family Mortgage Revenue Refunding Bonds, 2004 Series A and the Single Family Variable Rate Mortgage Revenue Refunding Bonds, 2004 Series B (collectively, the "2004 Series A/B Bonds"), (ii) Single Family Mortgage Revenue Bonds, 2004 Series C, Single Family Variable Rate Mortgage Revenue Bonds, 2004 Series D, Single Family Mortgage Revenue

Refunding Bonds, 2004 Series E and Single Family Mortgage Revenue Bonds, 2004 Series F (collectively, the “2004 Series C/D/E/F Bonds”), and (iii) Single Family Mortgage Revenue Refunding Bonds, 2005 Series B, Taxable Single Family Variable Rate Mortgage Revenue Refunding Bonds, 2005 Series C, and Single Family Mortgage Revenue Bonds, 2005 Series D (collectively, the 2005 Series B/C/D Bonds” and, collectively with the 2004 Series A/B Bonds and the 2004 Series C/D/E/F Bonds, the “Under Parity Issues”) will be less than the value of the bonds comprising each issue of the outstanding Under Parity Bonds; and

WHEREAS, , in order to meet the universal cap valuation requirements, the Board desires to authorize the use of surplus funds under the Indenture to effect redemptions, in accordance with the provisions of the Indenture, of a portion of the Under Parity Issues in order to mitigate the disparity in the value of the remaining bonds comprising each issue in comparison to the value of the investments allocated thereto;

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

ARTICLE I

USE OF SURPLUS FUNDS TO REDEEM BONDS

Section 1.1--Use of Surplus Funds to Redeem Bonds. The Board hereby authorizes use of surplus funds held under the Indenture to redeem the following issues of bonds in the following amounts in accordance with the Indenture in order to mitigate the disparity in the value of the remaining bonds comprising each issue in comparison to the value of the investments allocated thereto, all in accordance with the universal cap valuation requirements:

Bonds	Amount Not to Exceed
2004 Series A/B	\$600,000
2004 Series C/D/E/F	\$400,000
2005 Series B/C/D	\$3,700,000

Section 1.2--Execution and Delivery of Documents. The authorized representatives of the Department named in this Resolution each are authorized hereby to execute and deliver all agreements, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, 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 1.3--Authorized Representatives. The following persons are each hereby named as authorized representatives of the Department for purposes of executing and delivering the documents and instruments referred to in this Article I: the Chair of the Board; the Vice Chair of the Board; the Secretary to the Board; the Assistant Secretary to the Board, the Executive Director or Acting Director of the Department; the Deputy Executive Director for Administration of the Department; and the Director of Bond Finance of the Department.

ARTICLE II

GENERAL PROVISIONS

Section 2.1--Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

Section 2.2--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.

[Execution page follows]

PASSED AND APPROVED this 12th day of April, 2012.

Chair, Governing Board

ATTEST:

Secretary to the Governing Board

(SEAL)

1c

BOARD ACTION REQUEST

BOND FINANCE DIVISION

April 12, 2012

Presentation, Discussion and Possible Action on Resolution 12-023 authorizing the Department's Interest Rate Swap Policy.

RECOMMENDED ACTION

Authorize the Department's Interest Rate Swap Policy.

WHEREAS, the Department is authorized by Sections 1371.056 and 2306.351 of the Texas Government Code to enter into swaps from time to time to manage assets and liabilities and take advantage of market conditions to lower overall costs and reduce interest rate risk;

WHEREAS, the Chief of Agency Administration and the Director of Bond Finance have reviewed this Policy, and the Board approves this Policy on an annual basis;

RESOLVED, that Resolution No. 12-023 and the Department's Interest Rate Swap Policy are hereby adopted in the form presented to this meeting.

BACKGROUND

The Department initially adopted an Interest Rate Swap Policy on September 9, 2004, to establish guidelines for the use and management of all interest rate management agreements, including, but not limited to, interest rate swaps, caps, collars and floors incurred in connection with issuance of debt obligations. The Interest Rate Swap Policy sets forth the manner of execution of swaps, provides for security and payment provisions, risk considerations and certain other relevant provisions.

The Department's Interest Rate Swap Policy ("the Document") requires executive level staff, including the Director of Bond Finance, to review annually the Interest Rate Swap Policy. Our swap policy has performed well under the current tough economic conditions as staff, per our policy, has received mark-to-market updates periodically from our financial advisor, Raymond James and Associates. Raymond James also assisted Department staff with the implementation of GASB 53. Over the last several years, staff has sought advice from our former swap advisor, Swap Financial Group, and our current financial advisor, Raymond James, for an understanding of current operational parameters and to determine if the Document needed any changes due to current market conditions. Since the Swap Policy went through more substantial changes in 2009, and minor changes in 2010, there were only minimal changes recommended this year. A blackline version of the Interest Rate Swap Policy is attached for reference.

RESOLUTION NO. 12-023

**RESOLUTION OF THE GOVERNING BOARD APPROVING THE TEXAS
DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS INTEREST
RATE SWAP POLICY**

WHEREAS, the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas (the "Department"), was created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended (together with other laws of the State applicable to the Department, collectively, the "Act"); and

WHEREAS, the Governing Board of the Department (the "Board") desires to approve the Department's Interest Rate Swap Policy in the form presented to the Board;

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

Section -- 1 Approval of the Department's Interest Rate Swap Policy. The Interest Rate Swap Policy in the form presented to the Board is hereby authorized and approved.

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

[Execution page follows]

PASSED AND APPROVED this 12th day of April, 2012.

Chair, Governing Board

ATTEST:

Secretary to the Board

(SEAL)

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS INTEREST RATE SWAP POLICY

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 (the “Act”), as amended from time to time, 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.

The Act authorizes the Department: (a) to acquire, and to enter into advance commitments to acquire, mortgage loans (including participations therein) secured by mortgages on residential housing in the State of Texas (the “State”); (b) to issue its bonds, for the purpose of obtaining funds to make and acquire such mortgage loans or participations therein, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such mortgage loans or participations therein, and to mortgage, pledge or grant security interests in such mortgages, mortgage loans or other property of the Department, to secure the payment of the principal or redemption price of and interest on such bonds.

I. Introduction

The purpose of this Interest Rate Swap Policy (“Policy”) of the Texas Department of Housing and Community Affairs (the “Department”) is to establish guidelines for the use and management of all interest rate management agreements, including, but not limited to, interest rate swaps, swaptions, caps, collars and floors (collectively “Swaps” or “Agreements”) incurred in connection with the issuance of debt obligations. This Policy sets forth the manner of execution of Swaps, provides for security and payment provisions, risk considerations and certain other relevant provisions.

II. Authority

The Department is authorized by Sections 1371.056 and 2306.351 of the Texas Government Code to enter into Swaps from time to time to better manage assets and liabilities and take advantage of market conditions to lower overall costs and reduce interest rate risk.

This Policy shall govern the Department’s use and management of all Swaps. While adherence to this Policy is required in applicable circumstances, the Department recognizes that changes in the capital markets, agency programs, and other unforeseen circumstances may from time to time produce situations that are not covered by this Policy and will require modifications or exceptions approved or authorized by the Governing Board to achieve policy goals.

The Chief of Agency Administration and the Director of Bond Finance are the designated administrators of the Department’s Policy. The Bond Finance Division shall have the day-to-day responsibility for structuring, implementing, and managing Swaps.

The Department shall be authorized to enter into Swaps only with qualified Swap counterparties as defined herein. The Director of Bond Finance, in consultation with the Chief of Agency

Administration, or a Department designee, shall have the authority to recommend counterparties, so long as the criteria set forth in this Policy are met.

The Chief of Agency Administration and the Director of Bond Finance shall review this Policy on an annual basis and recommend any necessary changes to the Governing Board.

III. Purpose

The incurring of obligations by the Department involves a variety of interest rate payments and other risks for which a variety of financial instruments are available to offset, hedge, or reduce. It is the policy of the Department to utilize Swaps to better manage its assets and liabilities. The Department may execute Swaps if the transaction can be expected to result in one of, but not limited to, the following:

- Reduce exposure to changes in interest rates on a particular financial transaction or in the context of the management of interest rate risk derived from the Department's overall asset/liability balance.
- Result in a lower net cost of borrowing with respect to the Department's debt, a higher return on assets, and/or a stronger balance sheet.
- Manage variable interest rate exposure consistent with prudent debt practices.
- Achieve more flexibility in meeting overall financial and programmatic objectives that cannot be achieved in conventional markets.
- Lock in fixed rates in current markets for use at a later date.
- Manage the Department's exposure to the risk of changes in the legal or regulatory treatment of tax-exempt bonds.
- Manage the Department's credit exposure to financial institutions.

The Department will not use Agreements that:

- Are purely speculative or incorporate extraordinary leverage;
- Lack adequate liquidity to terminate without incurring a significant bid/ask spread;
- Are characterized by insufficient pricing transparency and therefore make reasonable valuation difficult.

IV. Evaluation of Risks Associated with Swaps

Before entering into a Swap, the Department shall evaluate the risks inherent in the transaction. The risks to be evaluated will include basis risk, tax risk, counterparty risk, credit risk, termination risk, rollover risk, liquidity risk, remarketing risk, amortization mismatch risk, mortgage yield risk, non-origination risk, and PAC band risk. The following table outlines these various risks and the Department's evaluation methodology for those risks.

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Risk	Description	Evaluation Methodology
Basis Risk	The mismatch between actual variable rate debt service and variable rate indices used to determine Swap payments.	The Department will review historical trading differentials between the variable rate bonds and the index.
Tax Risk	The risk created by potential tax events that could affect Swap payments or their relationship to future bond payments.	The Department will review the tax events in proposed Swap agreements. The Department will evaluate the impact of potential changes in tax law on LIBOR indexed Swaps.
Counterparty Risk	The failure of the counterparty to make required payments or the occurrence of an event modifying the credit rating of the counterparty.	The Department will monitor exposure levels, ratings thresholds, and collateralization requirements.
Termination Risk	The need to terminate the transaction in a market that dictates a termination payment by the Department.	The Department will compute its termination exposure for all existing and proposed Swaps at market value and under a worst-case scenario.
Rollover Risk	The mismatch of the maturity of the Swap and the maturity of the underlying bonds.	The Department will determine its capacity to service variable rate bonds that may be outstanding after the maturity of the Swap.
Liquidity Risk	The inability to continue or renew a liquidity facility, and the risk that the cost of a facility will increase beyond expectations.	The Department will evaluate the expected availability of liquidity support for swapped and unhedged variable rate debt, if any.
Remarketing Risk	The risk that a remarketing agent may be unable to remarket VRDBs.	The Department will obtain a standby bond purchase facility to provide the funds necessary to purchase the VRDBs.
Amortization Mismatch Risk	The mismatch of outstanding Swap notional amount versus the outstanding bond principal subject to the hedge.	The Department may incorporate one or a combination of the following features: par termination options, PAC or lockout bonds.
Mortgage Yield Risk	The bond issue may not comply with yield restrictions if the Swap is terminated.	The Department will obtain legal opinions and or certificates as appropriate.
Non-origination Risk	The bond proceeds may not originate within the prescribed timeframe and require an unused proceeds call and possible termination payment.	The Department will evaluate bond and mortgage market conditions and quantify the potential termination payment due upon non-origination.
PAC Band Break Risk	The targeted PAC bonds may amortize faster than anticipated based on the PAC amortization schedule.	The Department will rely upon credit rating agency cashflows to ensure adequate PAC/companion bond structural integrity.

Collateral Posting Risk	The risk that the Department may be required to post liquid collateral to the Counterparty. Inability to post such liquid collateral upon short notice may result in the early termination of a Swap transaction.	The Department will seek to structure Swap Agreements so that the risk of needing to post collateral is highly unlikely. This can be accomplished by using high posting thresholds or low rating triggers.
Accounting Risk	The risk that the Department may be required to record changes in fair value of a derivative transaction as a gain or loss in its annual financial statements.	The Department, when feasible, should aim to structure Transactions that would expect to qualify as effective hedges under GASB 53.

The Department will diversify its exposure to counterparties. To that end, before entering into a transaction, the Department will determine its exposure to the relevant counterparty or counterparties and determine how the proposed transaction would affect the exposure. The exposure will not be measured solely in terms of notional amount, but rather how changes in interest rates would affect the Department’s exposure (“Maximum Net Termination Exposure”). For purposes of these limits, “Maximum Net Termination Exposure” shall equal the aggregate termination payment for all existing and projected Swaps that would be paid by an individual counterparty. For purposes of this calculation, the aggregate termination payment is equal to the reasonably expected worse case termination payment of all existing Swaps plus the proposed transaction.

The Department will base the Maximum Net Termination Exposure on all outstanding derivative transactions. Limits will be established for each counterparty as well as the relative level of risk associated with each existing and projected Swap. In order to lessen counterparty risk, the Department will diversify exposure among multiple counterparties and avoid excessive concentration to any one counterparty. In situations where the Department may execute a swap transaction that would result in offsetting counterparty risk with an existing counterparty, the Department should seek to utilize that counterparty.

The Director of Bond Finance shall determine the appropriate term for a Swap on a case-by-case basis. The slope of the Swap curve, the marginal change in Swap rates from year to year along the Swap curve, and the impact that the term of the Swap has on the overall exposure of the Department shall be considered in determining the appropriate term of any Swap. The term of a Swap between the Department and a qualified Swap counterparty shall not extend beyond the final maturity date of the associated debt, or in the case of a refunding transaction, beyond the final maturity date of the refunding bonds.

The Department will review the use of forward-starting swaps and determine the duration based on market condition and the risk associated with using a forward-starting swap. The Department does not have any swaps with a knock-out option which could expose the Department to higher interest rates. The Department will advise the Board prior to entering into either a forward-starting swap or knock-out option.

The Department will inform the Board if the swap is a fixed notional value swap or a declining notional value swap. The Director of Bond Finance will review under its bond compliance monitoring process that the use of fixed notional value swaps do not place the Department at risk of incurring an incrementally higher expense if the related bond principal is paid off early.

The total “net notional amount” of all Swaps related to a bond issue should not exceed the amount of outstanding bonds, or bonds anticipated to be issued. For purposes of calculating the net notional amount, credit shall be given to any Swaps that offset another Swap for a specific bond transaction.

V. Long Term Financial Implications

In evaluating a particular transaction involving the use of derivatives, the Department shall review long-term implications associated with entering into derivatives, including costs of borrowing, historical interest rate trends, variable rate capacity, credit enhancement capacity, liquidity capacity, opportunities to refund related debt obligations and other similar considerations.

Impact of Use of Liquidity

The Department shall consider the impact of any variable rate demand bonds issued in combination with a Swap on the availability and cost of liquidity support for other Department variable rate programs.

Call Option Value considerations

When considering the relative advantage of a Swap versus fixed rate bonds, the Department will take into consideration the value of any call option on fixed rate bonds.

Qualified Hedges

The Department understands that, (1) if payments on and receipts from the Agreement are to be taken into account in computing the yield on the related bonds, the Agreement must meet the requirements for a “qualified hedge” under federal tax law (sometimes referred to as an “integrated Swap”); and (2) if one of the goals of entering into the Agreement is to convert variable yield bonds into fixed yield bonds (sometimes referred to as a “super integrated Swap”), then certain additional requirements must be met. In both of these situations, the terms of the Agreement and the process for entering into the Agreement must be reviewed and approved in advance by tax counsel.

VI. Form of Swap Agreements

Each Swap executed by the Department shall contain terms and conditions as set forth in the International Swap and Derivatives Association, Inc. (“ISDA”) Master Agreement, including any schedules and confirmations. The Swaps between the Department and each qualified Swap counterparty shall include payment, term, security, collateral, default, remedy, termination, and other terms, conditions and provisions as the Director of Bond Finance deems necessary, desirable or consistent with industry best practices.

VII. Qualified Swap Counterparties

The Department will make its best efforts to work with qualified Swap counterparties that (i) have, or has a credit support counterparty that has, a general credit rating of at least “Aa3” or “AA-” by two of the nationally recognized rating agencies and not rated lower than “A2” or “A” by any nationally recognized rating agency, or (ii) have a “AAA” rating by at least one nationally recognized credit rating agency. The nationally recognized rating agencies are Moody’s Investors Services, Inc., Standard and Poor’s Rating Services, and Fitch Ratings.

In addition to the rating criteria specified herein, the Department may seek additional credit enhancement and safeguards in the form of:

- i. Contingent credit support or enhancement;
- ii. Collateral consistent with the policies contained herein; and/or
- iii. Ratings downgrade triggers.

In addition, the Department will take into consideration a Swap counterparty's track record of successfully executing Swap transactions. The Department will only execute Swap transactions with qualified Swap counterparties.

VIII. Termination Provisions

The Department shall include in all Swaps provisions granting the Department the right to optionally terminate a Swap at any time at market over the term of the Agreement. The Chief of Agency Administration and Director of Bond Finance shall determine if it is financially advantageous for the Department to terminate a Swap.

A ratings-based additional termination event shall be included in all of the Department's Swaps if the provider (or its credit support provider) fails to maintain either:

1. A Credit Rating of at least A2 from Moody's; or
2. A Credit Rating of at least A from S&P; or,
3. An equivalent rating determined above by a nationally recognized ratings service acceptable to both parties.

A termination payment to or from the Department may be required in the event of termination of a Swap due to a default or a decrease in credit rating of either the Department or the counterparty. If the cause of the termination is a counterparty downgrade, termination payments will be calculated on the side of the bid-offer spread that favors the Department. Additionally, the termination amount of the Swap should seek to compensate the Department, as allowed under the ISDA Agreement, all other costs for creating a replacement transaction of like terms and conditions.

It is the intent of the Department not to make a termination payment to a counterparty that does not meet its contractual obligations. Prior to making any such termination payment, the Chief of Agency Administration and Director of Bond Finance shall evaluate whether it is financially advantageous for the Department to obtain a replacement counterparty to avoid making such termination payment or finance the termination payment through a long-term financing product.

For payments on early termination and optional termination, Market Quotation and the Second Method will apply, allowing for two way mark-to-market breakage (assuming the Swaps are documented under the 1992 form of the ISDA Master Agreements).

IX. Security and Source of Repayment

The Department may use the same security and source of repayment (pledged revenues) for Swaps as is used for the bonds that are hedged or carried by the Swap, if any, but shall consider the economic costs and benefits of subordinating the Department's payments and/or termination payment under the Swap. The use of the same security and source of repayment (pledged revenues) is subject to the respective bond indenture's covenants and the prior approval of the Department's bond counsel.

X. Specified Indebtedness

The specified indebtedness related to credit events in any Swap should be narrowly defined and refer only to indebtedness of the Department that could have a materially adverse effect on the Department's ability to perform its obligations under the Swap. Debt should typically only include obligations within the same lien as the Swap obligation.

XI. Governing Law

Governing law for Swaps will be the State of Texas. Issues relating to jurisdiction, venue, waiver of jury trial and sovereign immunity will be subject to prevailing law and approval of the Texas Attorney General Office. Preference will be given to language providing that the counterparty will consent to jurisdiction in the Texas courts with respect to enforcement of the Agreement.

XII. Events of Default

Events of default of a Swap counterparty shall include, but are not limited to the counterparty's:

1. Failure to make payments when due;
2. Breach of representations and warranties;
3. Illegality;
4. Failure to comply with downgrade provisions; and
5. Failure to comply with any other provisions of the Agreement after a specified notice period.

XIII. Collateral Requirements

As part of any Swap, the Department may require the counterparty or the counterparty may require the Department to post collateral or other credit enhancement to secure any or all Swap payment obligations. As appropriate, the Chief of Agency Administration and Director of Bond Finance may require collateral or other credit enhancement to be posted by each Swap counterparty under the following circumstances:

- Each counterparty to the Department may be required to post collateral if the credit rating of the counterparty or parent falls below a certain rating threshold, which varies by counterparty. Additional collateral for further decreases in credit ratings of each counterparty shall be posted by each counterparty in accordance with the provisions contained in the credit support annex to each Swap with the Department. At the current time, collateral posting rating triggers by the counterparties would range from A2/A to Baa1/BBB+.
- Collateral shall consist of cash, U.S. Treasury securities, or other mutually acceptable highly liquid securities.

- Collateral shall be deposited with an eligible third party custodian, or as mutually agreed upon between the Department and each counterparty.
- The market value of the collateral shall be determined on at least a weekly basis.
- The Department will determine reasonable threshold limits for increments of collateral posting based on a sliding scale reflective of credit ratings.
- The Chief of Agency Administration and Director of Bond Finance shall determine on a case-by-case basis whether a form of credit enhancement in lieu of, or in addition to, collateral is more beneficial to the Department.
- The Department shall seek to not post collateral to the counterparty unless the Department's ratings fall below "A2" or "A".

XIV. Other Criteria

The Department may use a competitive or a negotiated process to select a Swap counterparty and price a Swap as it believes business, market or competitive conditions justify such a process. The conditions under which a negotiated selection is best used are provided below.

- Marketing of the Swap will require complex explanations about the security for payment or credit quality.
- Demand is weak among Swap counterparties.
- Market timing is important, such as for refundings.
- Coordination of multiple components of the financing is required.
- The Swap has non-standard features.
- The par amount is large enough to move the market in a manner adverse to the Department's interests.
- Counterparties are likely to demand individual changes in bid documents.

If a transaction is awarded through a negotiated process, the counterparty will provide the Department with:

- A statement that, in the counterparty's judgment, the difference in basis points between the rate of the transaction and the mid-market rate for a comparable transaction falls within the commonly occurring range for comparable transactions.
- A statement of the amount of the difference as determined by the counterparty.
- If the counterparty does not know of a comparable transaction or mid-market rate, a statement of another suitable measure of pricing acceptable to the counterparty.

The Department will use a swap advisory firm to assist in the price negotiation. Also, the Department may obtain an opinion from an independent party that the terms and conditions of any derivative entered into reflect a fair market value of such derivatives as of the execution date.

The counterparty must provide to the Department disclosure of any payments the counterparty made to another person to procure the transaction.

Prior to or at execution of any new swap transaction, the swap dealer and/or swap advisor, as the case may be, shall provide information to the Department consistent with the rules and regulations in effect at the time. Such rules would include the Business Conduct Standards for Swap Dealers and Major Swap Participants as published and enacted by the Commodity Futures Trading Commission. In addition the swap dealer should represent to the Department that it is in compliance with such rules including pay-to-play restrictions.

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The Department will determine that the swap transaction will conform to this Interest Rate Swap Policy after reviewing a report of the Director of Bond Finance that identifies with respect to the transaction:

- its purpose;
- the anticipated economic benefit and the method used to determine the anticipated benefit;
- the use of the receipts of the transaction;
- the notional amount, amortization, and average life compared to the related obligation;
- any floating indices;
- its effective date and duration;
- the identity and credit rating of the counterparties;
- the cost and anticipated benefit of transaction insurance;
- the financial advisors and the legal advisors and their fees;
- any security for scheduled and early termination payments;
- any associated risks and risk mitigation features; and
- early termination provisions.

XV. Ongoing Monitoring and Reporting Requirements

Written records noting the status of all Swaps will be maintained by the Bond Finance Division and shall include the following information:

- Highlights of all material changes to Swaps or new Swaps entered into by the Department since the last report.
- Market value of each of the Swaps.
- The net impact of a 50 or 100 basis point parallel shift or other relevant shift in the appropriate Swap index or curve.
- For each counterparty, the total notional amount, the average life of each Swap and the remaining term of each Swap.
- The credit rating of each Swap counterparty and credit enhancer insuring Swap payments.
- Actual collateral posting by Swap counterparty, if any, in total by Swap counterparty.
- A summary of each Swap, including but not limited to the type of Swap, the rates paid by the Department and received by the Department, indices, and other key terms.
- Information concerning any default by a Swap counterparty to the Department, and the results of the default, including but not limited to the financial impact to the Department, if any.
- A summary of any Swaps that were terminated.

The Department will monitor its Swaps exposure on a periodic basis, as necessary, and will look for ways to reduce the cost of a Swap(s) or the overall Swap exposure.

The Department shall report its Swaps exposure in its annual financial statements and will reflect the use of derivatives in accordance with GASB requirements. With the adoption of GASB 53, the Department will be required to test hedge effectiveness on an annual basis. Any hedge deemed to

be ineffective will result in the change in fair value being recorded as a gain or loss. While the long term economic value of the transaction should be more important when structuring a derivative, the Department should seek to structure transactions that are expected to be effective and would not result in changes in fair value affecting net income. For example, while a transaction structured to meet the Consistent Critical Terms method of GASB 53 would ensure hedge effectiveness, the Department should consider the tradeoffs of utilizing a transaction structure that may provide greater expected economic benefits at the expense of potentially not meeting hedge effectiveness. The disclosure requirements include:

1. Objective of the Derivative
2. Significant Terms
3. Fair Value
4. Associated Debt
5. Risks including but not limited to Credit Risk, Termination Risk, Interest Rate Risk, Basis Risk, Rollover Risk, Market Access Risk, Foreign Currency Risk.

The Chief of Agency Administration and the Director of Bond Finance will review this Policy on an annual basis.

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TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS INTEREST RATE SWAP POLICY

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 (the “Act”), as amended from time to time, 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.

The Act authorizes the Department: (a) to acquire, and to enter into advance commitments to acquire, mortgage loans (including participations therein) secured by mortgages on residential housing in the State of Texas (the “State”); (b) to issue its bonds, for the purpose of obtaining funds to make and acquire such mortgage loans or participations therein, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such mortgage loans or participations therein, and to mortgage, pledge or grant security interests in such mortgages, mortgage loans or other property of the Department, to secure the payment of the principal or redemption price of and interest on such bonds.

I. Introduction

The purpose of this Interest Rate Swap Policy (“Policy”) of the Texas Department of Housing and Community Affairs (the “Department”) is to establish guidelines for the use and management of all interest rate management agreements, including, but not limited to, interest rate swaps, swaptions, caps, collars and floors (collectively “Swaps” or “Agreements”) incurred in connection with the issuance of debt obligations. This Policy sets forth the manner of execution of Swaps, provides for security and payment provisions, risk considerations and certain other relevant provisions.

II. Authority

The Department is authorized by Sections 1371.056 and 2306.351 of the Texas Government Code to enter into Swaps from time to time to better manage assets and liabilities and take advantage of market conditions to lower overall costs and reduce interest rate risk.

This Policy shall govern the Department’s use and management of all Swaps. While adherence to this Policy is required in applicable circumstances, the Department recognizes that changes in the capital markets, agency programs, and other unforeseen circumstances may from time to time produce situations that are not covered by this Policy and will require modifications or exceptions approved or authorized by the Governing Board to achieve policy goals.

The Chief of Agency Administration and the Director of Bond Finance are the designated administrators of the Department’s Policy. The Bond Finance Division shall have the day-to-day responsibility for structuring, implementing, and managing Swaps.

The Department shall be authorized to enter into Swaps only with qualified Swap counterparties as defined herein. The Director of Bond Finance, in consultation with the Chief of Agency

Administration, or a Department designee, shall have the authority to recommend counterparties, so long as the criteria set forth in this Policy are met.

The Chief of Agency Administration and the Director of Bond Finance shall review this Policy on an annual basis and recommend any necessary changes to the Governing Board.

III. Purpose

The incurring of obligations by the Department involves a variety of interest rate payments and other risks for which a variety of financial instruments are available to offset, hedge, or reduce. It is the policy of the Department to utilize Swaps to better manage its assets and liabilities. The Department may execute Swaps if the transaction can be expected to result in one of, but not limited to, the following:

- Reduce exposure to changes in interest rates on a particular financial transaction or in the context of the management of interest rate risk derived from the Department's overall asset/liability balance.
- Result in a lower net cost of borrowing with respect to the Department's debt, a higher return on assets, and/or a stronger balance sheet.
- Manage variable interest rate exposure consistent with prudent debt practices.
- Achieve more flexibility in meeting overall financial and programmatic objectives that cannot be achieved in conventional markets.
- Lock in fixed rates in current markets for use at a later date.
- Manage the Department's exposure to the risk of changes in the legal or regulatory treatment of tax-exempt bonds.
- Manage the Department's credit exposure to financial institutions.

The Department will not use Agreements that:

- Are purely speculative or incorporate extraordinary leverage;
- Lack adequate liquidity to terminate without incurring a significant bid/ask spread;
- Are characterized by insufficient pricing transparency and therefore make reasonable valuation difficult.

IV. Evaluation of Risks Associated with Swaps

Before entering into a Swap, the Department shall evaluate the risks inherent in the transaction. The risks to be evaluated will include basis risk, tax risk, counterparty risk, credit risk, termination risk, rollover risk, liquidity risk, remarketing risk, amortization mismatch risk, mortgage yield risk, non-origination risk, and PAC band risk. The following table outlines these various risks and the Department's evaluation methodology for those risks.

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Risk	Description	Evaluation Methodology
Basis Risk	The mismatch between actual variable rate debt service and variable rate indices used to determine Swap payments.	The Department will review historical trading differentials between the variable rate bonds and the index.
Tax Risk	The risk created by potential tax events that could affect Swap payments or their relationship to future bond payments.	The Department will review the tax events in proposed Swap agreements. The Department will evaluate the impact of potential changes in tax law on LIBOR indexed Swaps.
Counterparty Risk	The failure of the counterparty to make required payments or the occurrence of an event modifying the credit rating of the counterparty.	The Department will monitor exposure levels, ratings thresholds, and collateralization requirements.
Termination Risk	The need to terminate the transaction in a market that dictates a termination payment by the Department.	The Department will compute its termination exposure for all existing and proposed Swaps at market value and under a worst-case scenario.
Rollover Risk	The mismatch of the maturity of the Swap and the maturity of the underlying bonds.	The Department will determine its capacity to service variable rate bonds that may be outstanding after the maturity of the Swap.
Liquidity Risk	The inability to continue or renew a liquidity facility, and the risk that the cost of a facility will increase beyond expectations.	The Department will evaluate the expected availability of liquidity support for swapped and unhedged variable rate debt, if any.
Remarketing Risk	The risk that a remarketing agent may be unable to remarket VRDBs.	The Department will obtain a standby bond purchase facility to provide the funds necessary to purchase the VRDBs.
Amortization Mismatch Risk	The mismatch of outstanding Swap notional amount versus the outstanding bond principal subject to the hedge.	The Department may incorporate one or a combination of the following features: par termination options, PAC or lockout bonds.
Mortgage Yield Risk	The bond issue may not comply with yield restrictions if the Swap is terminated.	The Department will obtain legal opinions and or certificates as appropriate.
Non-origination Risk	The bond proceeds may not originate within the prescribed timeframe and require an unused proceeds call and possible termination payment.	The Department will evaluate bond and mortgage market conditions and quantify the potential termination payment due upon non-origination.
PAC Band Break Risk	The targeted PAC bonds may amortize faster than anticipated based on the PAC amortization schedule.	The Department will rely upon credit rating agency cashflows to ensure adequate PAC/companion bond structural integrity.

Collateral Posting Risk	The risk that the Department may be required to post liquid collateral to the Counterparty. Inability to post such liquid collateral upon short notice may result in the early termination of a Swap transaction.	The Department will seek to structure Swap Agreements so that the risk of needing to post collateral is highly unlikely. This can be accomplished by using high posting thresholds or low rating triggers.
Accounting Risk	The risk that the Department may be required to record changes in fair value of a derivative transaction as a gain or loss in its annual financial statements.	The Department, when feasible, should aim to structure Transactions that would expect to qualify as effective hedges under GASB 53.

The Department will diversify its exposure to counterparties. To that end, before entering into a transaction, the Department will determine its exposure to the relevant counterparty or counterparties and determine how the proposed transaction would affect the exposure. The exposure will not be measured solely in terms of notional amount, but rather how changes in interest rates would affect the Department’s exposure (“Maximum Net Termination Exposure”). For purposes of these limits, “Maximum Net Termination Exposure” shall equal the aggregate termination payment for all existing and projected Swaps that would be paid by an individual counterparty. For purposes of this calculation, the aggregate termination payment is equal to the reasonably expected worse case termination payment of all existing Swaps plus the proposed transaction.

The Department will base the Maximum Net Termination Exposure on all outstanding derivative transactions. Limits will be established for each counterparty as well as the relative level of risk associated with each existing and projected Swap. In order to lessen counterparty risk, the Department will diversify exposure among multiple counterparties and avoid excessive concentration to any one counterparty. In situations where the Department may execute a swap transaction that would result in offsetting counterparty risk with an existing counterparty, the Department should seek to utilize that counterparty.

The Director of Bond Finance shall determine the appropriate term for a Swap on a case-by-case basis. The slope of the Swap curve, the marginal change in Swap rates from year to year along the Swap curve, and the impact that the term of the Swap has on the overall exposure of the Department shall be considered in determining the appropriate term of any Swap. The term of a Swap between the Department and a qualified Swap counterparty shall not extend beyond the final maturity date of the associated debt, or in the case of a refunding transaction, beyond the final maturity date of the refunding bonds.

The Department will review the use of forward-starting swaps and determine the duration based on market condition and the risk associated with using a forward-starting swap. The Department does not have any swaps with a knock-out option which could expose the Department to higher interest rates. The Department will advise the Board prior to entering into either a forward-starting swap or knock-out option.

The Department will inform the Board if the swap is a fixed notional value swap or a declining notional value swap. The Director of Bond Finance will review under its bond compliance monitoring process that the use of fixed notional value swaps do not place the Department at risk of incurring an incrementally higher expense if the related bond principal is paid off early.

The total “net notional amount” of all Swaps related to a bond issue should not exceed the amount of outstanding bonds, or bonds anticipated to be issued. For purposes of calculating the net notional amount, credit shall be given to any Swaps that offset another Swap for a specific bond transaction.

V. Long Term Financial Implications

In evaluating a particular transaction involving the use of derivatives, the Department shall review long-term implications associated with entering into derivatives, including costs of borrowing, historical interest rate trends, variable rate capacity, credit enhancement capacity, liquidity capacity, opportunities to refund related debt obligations and other similar considerations.

Impact of Use of Liquidity

The Department shall consider the impact of any variable rate demand bonds issued in combination with a Swap on the availability and cost of liquidity support for other Department variable rate programs.

Call Option Value considerations

When considering the relative advantage of a Swap versus fixed rate bonds, the Department will take into consideration the value of any call option on fixed rate bonds.

Qualified Hedges

The Department understands that, (1) if payments on and receipts from the Agreement are to be taken into account in computing the yield on the related bonds, the Agreement must meet the requirements for a “qualified hedge” under federal tax law (sometimes referred to as an “integrated Swap”); and (2) if one of the goals of entering into the Agreement is to convert variable yield bonds into fixed yield bonds (sometimes referred to as a “super integrated Swap”), then certain additional requirements must be met. In both of these situations, the terms of the Agreement and the process for entering into the Agreement must be reviewed and approved in advance by tax counsel.

VI. Form of Swap Agreements

Each Swap executed by the Department shall contain terms and conditions as set forth in the International Swap and Derivatives Association, Inc. (“ISDA”) Master Agreement, including any schedules and confirmations. The Swaps between the Department and each qualified Swap counterparty shall include payment, term, security, collateral, default, remedy, termination, and other terms, conditions and provisions as the Director of Bond Finance deems necessary, desirable or consistent with industry best practices.

VII. Qualified Swap Counterparties

The Department will make its best efforts to work with qualified Swap counterparties that (i) have, or has a credit support counterparty that has, a general credit rating of at least “Aa3” or “AA-” by two of the nationally recognized rating agencies and not rated lower than “A2” or “A” by any nationally recognized rating agency, or (ii) have a “AAA” rating by at least one nationally recognized credit rating agency. The nationally recognized rating agencies are Moody’s Investors Services, Inc., Standard and Poor’s Rating Services, and Fitch Ratings.

In addition to the rating criteria specified herein, the Department may seek additional credit enhancement and safeguards in the form of:

- i. Contingent credit support or enhancement;
- ii. Collateral consistent with the policies contained herein; and/or
- iii. Ratings downgrade triggers.

In addition, the Department will take into consideration a Swap counterparty's track record of successfully executing Swap transactions. The Department will only execute Swap transactions with qualified Swap counterparties.

VIII. Termination Provisions

The Department shall include in all Swaps provisions granting the Department the right to optionally terminate a Swap at any time at market over the term of the Agreement. The Chief of Agency Administration and Director of Bond Finance shall determine if it is financially advantageous for the Department to terminate a Swap.

A ratings-based additional termination event shall be included in all of the Department's Swaps if the provider (or its credit support provider) fails to maintain either:

1. A Credit Rating of at least A2 from Moody's; or
2. A Credit Rating of at least A from S&P; or,
3. An equivalent rating determined above by a nationally recognized ratings service acceptable to both parties.

A termination payment to or from the Department may be required in the event of termination of a Swap due to a default or a decrease in credit rating of either the Department or the counterparty. If the cause of the termination is a counterparty downgrade, termination payments will be calculated on the side of the bid-offer spread that favors the Department. Additionally, the termination amount of the Swap should seek to compensate the Department, as allowed under the ISDA Agreement, all other costs for creating a replacement transaction of like terms and conditions.

It is the intent of the Department not to make a termination payment to a counterparty that does not meet its contractual obligations. Prior to making any such termination payment, the Chief of Agency Administration and Director of Bond Finance shall evaluate whether it is financially advantageous for the Department to obtain a replacement counterparty to avoid making such termination payment or finance the termination payment through a long-term financing product.

For payments on early termination and optional termination, Market Quotation and the Second Method will apply, allowing for two way mark-to-market breakage (assuming the Swaps are documented under the 1992 form of the ISDA Master Agreements).

IX. Security and Source of Repayment

The Department may use the same security and source of repayment (pledged revenues) for Swaps as is used for the bonds that are hedged or carried by the Swap, if any, but shall consider the economic costs and benefits of subordinating the Department's payments and/or termination payment under the Swap. The use of the same security and source of repayment (pledged revenues) is subject to the respective bond indenture's covenants and the prior approval of the Department's bond counsel.

X. Specified Indebtedness

The specified indebtedness related to credit events in any Swap should be narrowly defined and refer only to indebtedness of the Department that could have a materially adverse effect on the Department's ability to perform its obligations under the Swap. Debt should typically only include obligations within the same lien as the Swap obligation.

XI. Governing Law

Governing law for Swaps will be the State of Texas. Issues relating to jurisdiction, venue, waiver of jury trial and sovereign immunity will be subject to prevailing law and approval of the Texas Attorney General Office. Preference will be given to language providing that the counterparty will consent to jurisdiction in the Texas courts with respect to enforcement of the Agreement.

XII. Events of Default

Events of default of a Swap counterparty shall include, but are not limited to the counterparty's:

1. Failure to make payments when due;
2. Breach of representations and warranties;
3. Illegality;
4. Failure to comply with downgrade provisions; and
5. Failure to comply with any other provisions of the Agreement after a specified notice period.

XIII. Collateral Requirements

As part of any Swap, the Department may require the counterparty or the counterparty may require the Department to post collateral or other credit enhancement to secure any or all Swap payment obligations. As appropriate, the Chief of Agency Administration and Director of Bond Finance may require collateral or other credit enhancement to be posted by each Swap counterparty under the following circumstances:

- Each counterparty to the Department may be required to post collateral if the credit rating of the counterparty or parent falls below a certain rating threshold, which varies by counterparty. Additional collateral for further decreases in credit ratings of each counterparty shall be posted by each counterparty in accordance with the provisions contained in the credit support annex to each Swap with the Department. At the current time, collateral posting rating triggers by the counterparties would range from A2/A to Baa1/BBB+.
- Collateral shall consist of cash, U.S. Treasury securities, or other mutually acceptable highly liquid securities.

- Collateral shall be deposited with an eligible third party custodian, or as mutually agreed upon between the Department and each counterparty.
- The market value of the collateral shall be determined on at least a weekly basis.
- The Department will determine reasonable threshold limits for increments of collateral posting based on a sliding scale reflective of credit ratings.
- The Chief of Agency Administration and Director of Bond Finance shall determine on a case-by-case basis whether a form of credit enhancement in lieu of, or in addition to, collateral is more beneficial to the Department.
- The Department shall seek to not post collateral to the counterparty unless the Department's ratings fall below "A2" or "A".

XIV. Other Criteria

The Department may use a competitive or a negotiated process to select a Swap counterparty and price a Swap as it believes business, market or competitive conditions justify such a process. The conditions under which a negotiated selection is best used are provided below.

- Marketing of the Swap will require complex explanations about the security for payment or credit quality.
- Demand is weak among Swap counterparties.
- Market timing is important, such as for refundings.
- Coordination of multiple components of the financing is required.
- The Swap has non-standard features.
- The par amount is large enough to move the market in a manner adverse to the Department's interests.
- Counterparties are likely to demand individual changes in bid documents.

If a transaction is awarded through a negotiated process, the counterparty will provide the Department with:

- A statement that, in the counterparty's judgment, the difference in basis points between the rate of the transaction and the mid-market rate for a comparable transaction falls within the commonly occurring range for comparable transactions.
- A statement of the amount of the difference as determined by the counterparty.
- If the counterparty does not know of a comparable transaction or mid-market rate, a statement of another suitable measure of pricing acceptable to the counterparty.

The Department will use a swap advisory firm to assist in the price negotiation. Also, the Department may obtain an opinion from an independent party that the terms and conditions of any derivative entered into reflect a fair market value of such derivatives as of the execution date.

The counterparty must provide to the Department disclosure of any payments the counterparty made to another person to procure the transaction.

Prior to or at execution of any new swap transaction, the swap dealer and/or swap advisor, as the case may be, shall provide information to the Department consistent with the rules and regulations in effect at the time. Such rules would include the Business Conduct Standards for Swap Dealers and Major Swap Participants as published and enacted by the Commodity Futures Trading Commission. In addition the swap dealer should represent to the Department that it is in compliance with such rules including pay-to-play restrictions.

The Department will determine that the swap transaction will conform to this Interest Rate Swap Policy after reviewing a report of the Director of Bond Finance that identifies with respect to the transaction:

- its purpose;
- the anticipated economic benefit and the method used to determine the anticipated benefit;
- the use of the receipts of the transaction;
- the notional amount, amortization, and average life compared to the related obligation;
- any floating indices;
- its effective date and duration;
- the identity and credit rating of the counterparties;
- the cost and anticipated benefit of transaction insurance;
- the financial advisors and the legal advisors and their fees;
- any security for scheduled and early termination payments;
- any associated risks and risk mitigation features; and
- early termination provisions.

XV. Ongoing Monitoring and Reporting Requirements

Written records noting the status of all Swaps will be maintained by the Bond Finance Division and shall include the following information:

- Highlights of all material changes to Swaps or new Swaps entered into by the Department since the last report.
- Market value of each of the Swaps.
- The net impact of a 50 or 100 basis point parallel shift or other relevant shift in the appropriate Swap index or curve.
- For each counterparty, the total notional amount, the average life of each Swap and the remaining term of each Swap.
- The credit rating of each Swap counterparty and credit enhancer insuring Swap payments.
- Actual collateral posting by Swap counterparty, if any, in total by Swap counterparty.
- A summary of each Swap, including but not limited to the type of Swap, the rates paid by the Department and received by the Department, indices, and other key terms.
- Information concerning any default by a Swap counterparty to the Department, and the results of the default, including but not limited to the financial impact to the Department, if any.
- A summary of any Swaps that were terminated.

The Department will monitor its Swaps exposure on a periodic basis, as necessary, and will look for ways to reduce the cost of a Swap(s) or the overall Swap exposure.

The Department shall report its Swaps exposure in its annual financial statements and will reflect the use of derivatives in accordance with GASB requirements. With the adoption of GASB 53, the Department will be required to test hedge effectiveness on an annual basis. Any hedge deemed to be ineffective will result in the change in fair value being recorded as a gain or loss. While the long term economic value of the transaction should be more important when structuring a derivative, the Department should seek to structure transactions that are expected to be effective and would not

result in changes in fair value affecting net income. For example, while a transaction structured to meet the Consistent Critical Terms method of GASB 53 would ensure hedge effectiveness, the Department should consider the tradeoffs of utilizing a transaction structure that may provide greater expected economic benefits at the expense of potentially not meeting hedge effectiveness. The disclosure requirements include:

1. Objective of the Derivative
2. Significant Terms
3. Fair Value
4. Associated Debt
5. Risks including but not limited to Credit Risk, Termination Risk, Interest Rate Risk, Basis Risk, Rollover Risk, Market Access Risk, Foreign Currency Risk.

The Chief of Agency Administration and the Director of Bond Finance will review this Policy on an annual basis.

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BOARD ACTION REQUEST

LEGAL SERVICES DIVISION

April 12, 2012

Presentation, Discussion, and Possible Action to publish for public comment in the *Texas Register* the proposed repeal of 10 TAC §§60.301 - 60.306, concerning the process for assessment of administrative penalties with regard to Compliance Administration, and the proposal of new 10 TAC §1.13, concerning Adjudicative Hearing Procedures, and new 10 TAC §1.14, concerning Administrative Penalties.

RECOMMENDED ACTION

WHEREAS, in 2007 the Texas Legislature, 80th Session, amended Texas Government Code, Chapter 2306, Subchapter B, to authorize the assessment of administrative penalties by the Board for any violation of Chapter 2306 or a rule or order adopted under Chapter 2306 (Tex. Gov't Code §§2306.041 -.2306.0503);

WHEREAS, in 2011, the Board adopted 10 TAC Chapter 60, Subchapter C, to provide for the assessment of administrative penalties for compliance monitoring violations with regard to developments receiving assistance from the Department (10 TAC §§60.301 - 60.306);

WHEREAS, the Board now seeks to implement fully the authority, as provided by the legislature, to assess administrative penalties for *any* violation of Chapter 2306 or a rule or order adopted under Chapter 2306, including but not limited to compliance monitoring violations; and,

WHEREAS, the Board desires to designate the State Office of Administrative Hearings to conduct all adjudicative hearings (contested case and other evidentiary hearings) on behalf of the Board;

RESOLVED, that 10 TAC §§60.301 - 60.306 be proposed for repeal, and that new 10 TAC §1.13, concerning Adjudicative Hearing Procedures, and new 10 TAC §1.14, concerning Administrative Penalties, be proposed for adoption; and,

FURTHER RESOLVED, that the Executive Director and his designees be and each of them is hereby authorized, empowered and directed, for and on behalf of the Department, to cause the proposed repeal and the proposed adoption, in the forms 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.

BACKGROUND

Summary Statement: The existing compliance monitoring administrative penalty rules are proposed for repeal so that they may be incorporated into a new, broader administrative penalty program, new rules 10 TAC §1.13 and §1.14, that will cover **any** violations of Texas Government Code, Chapter 2306, or a rule or order adopted under Chapter 2306.

In 2007, the Legislature authorized the Governing Board of the Texas Department of Housing and Community Affairs to assess administrative penalties for violations of Texas Government Code, Chapter 2306, or a rule or order adopted under Chapter 2306. (Tex. Gov't Code §2306.041). To implement this authority, the Board began in 2007 by adopting 10 TAC, Ch. 60 regarding Compliance Administration.

Chapter 60 provides for Department monitoring of developments receiving assistance through the Department. Compliance monitoring begins with the commencement of construction and continues to the end of the long term "Affordability Period." The Compliance and Asset Oversight Division monitors to ensure owners comply with the program rules and regulations, including Chapter 2306, Texas Government Code, the LURA requirements and conditions, and representations imposed by the application or award of funds by the Department. Developments monitored by the Department are subject to the Department's enforcement rules, found at 10 TAC, Ch. 60, Subchapter C, relating to Administrative Penalties.

The current enforcement program has yielded results, with numerous properties coming into compliance and, when warranted, paying administrative penalties for violations. The success of this program supports the expansion of the enforcement program to fully implement the authority already given by the Legislature. The existing rules related to the administrative penalty process for compliance monitoring will be repealed and folded into new proposed rules establishing a process for the imposition of penalties for *any* violation of Texas Government Code, Chapter 2306, or a rule or order adopted under Chapter 2306, not just compliance monitoring violations. Examples may include: lying on applications, presenting false or fraudulent documents in applications or in opposition to competing applications, failure to maintain crucial records as required by statute or rule; failure to disclose interested persons on applications (Tex. Gov't Code §2306.6707), or committing a prohibited act such as locking out or seizing personal property of tenants (Tex. Gov't Code §2306.6738).

Also in 2011, the Board designated the State Office of Administrative Hearings (SOAH) to conduct all compliance monitoring administrative penalty hearings on the Board's behalf (10 TAC §60.306). At the request of a grantee, the Department recently filed a request for an evidentiary hearing with SOAH related to a CSBG grant. The Department was advised that SOAH is concerned that it lacks jurisdiction over such hearings, since the existing delegation to SOAH only covers compliance monitoring administrative penalty hearings. This rule package contains a delegation to SOAH of all adjudicative hearings, including administrative penalty contested case and other evidentiary hearings, together with rules for referring and docketing cases at SOAH.

Upon approval of the Board, the Department will propose this rule by publication in the *Texas Register* for a 30 day public comment period. The public comment period will close at 5:00 p.m. on May 29, 2012.

Attachment A: Preamble and Proposed Repeal of 10 TAC §§60.301 - 60.306, concerning Compliance Administration, Administrative Penalties.

The Governing Board of the Texas Department of Housing and Community Affairs (TDHCA) proposes the repeal of §§60.301 - 60.306, concerning the process for assessment of administrative penalties. The sections are proposed for repeal because the Board is proposing new §1.13, regarding Adjudicative Hearing Procedures, and new §1.14, regarding Administrative Penalties. The proposed new sections are also published in this issue of the *Texas Register*.

FISCAL NOTE. Executive Director Timothy K. Irvine, has determined that, for each year of the first five years the repeal will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal, and there will be no effect on local employment or local economy as result of the proposed repeal.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal will be in effect, the public benefit anticipated as a result of this repeal and the adoption of the new sections will be a consistent and orderly adjudicative case process for contested case proceedings and other evidentiary hearings across the entire agency. There will be no economic cost to any individuals, or insurers or other Department regulated entities, regardless of size, as a result of the proposed repeal.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. In accordance with §2006.002(c) of the Texas Government Code, the Department has determined that this proposed repeal will not have an adverse economic effect on small or micro businesses. Therefore, in accordance with the §2006.002(c) of the Texas Government Code, the Department is not required to prepare a regulatory flexibility analysis.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under §2007.043 of the Texas Government Code.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held April 27, 2012 to May 29, 2012 to receive input on the proposed repeal. Written comments may be submitted to Texas Department of Housing and Community Affairs, Rule Comments, Legal Division, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 469.9606. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M., Tuesday, May 29, 2012. If a hearing is held, oral and written comments presented at the hearing will be considered.

STATUTORY AUTHORITY. This repeal is proposed pursuant to the authority of Chapter 2306 of the Texas Government Code, which provides the Board and the Department with the authority to adopt rules governing the administration of the Department and its programs; specifically

including §2306.141, §2306.053, and §§2306.041 - 2306.046. No other statutes, articles, or codes are affected by the proposed repeal.

§60.301. Definitions.

§60.302. Initiation of the Process to Assess an Administrative Penalty.

§60.303. Informal Conference.

§60.304. Informal Meetings.

§60.305. Report to the Board.

§60.306. Hearings.

Attachment B: Preamble and Proposed new 10 TAC §1.13, concerning Adjudicative Hearing Procedures.

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC §1.13, regarding Adjudicative Hearing Procedures. The purpose of the new section is to establish procedures for adjudicative hearings, and to designate the State Office of Administrative Hearings (SOAH) to hold adjudicative hearings on behalf of the Governing Board of the Department.

The proposed new section designates SOAH to conduct adjudicative hearings on behalf of the Governing Board of the Department, provides procedures for referral of matters to SOAH, for service of pleadings and other notices, and for issuance of a Proposal for Decision.

FISCAL NOTE. Mr. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the new section, and there will be no effect on local employment or local economy as result of the proposed new section.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section will be in effect, the public benefit anticipated as a result of the new section will be a timely and orderly adjudicative case process for contested case proceedings and other evidentiary hearings. There will be no economic cost to any individuals, or insurers or other Department regulated entities, regardless of size, as a result of the proposed new section.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. In accordance with §2006.002(c) of the Texas Government Code, the Department has determined that this proposed rule will not have an adverse economic effect on small or micro businesses. Therefore the Department is not required to prepare a regulatory flexibility analysis.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under §2007.043 of the Texas Government Code.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held April 27, 2012 to May 29, 2012, to receive input on the proposed new section. Written comments may be submitted to Texas Department of Housing and Community Affairs, Rule Comments, Legal Division, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 469.9606. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Tuesday, May 29, 2012.

STATUTORY AUTHORITY. The new section is proposed pursuant to the authority of Chapter 2306 of the Texas Government Code, which provides the Board and the Department with the authority to adopt rules governing the administration of the Department and its programs; specifically including §§2306.141, 2306.053, and 2306.041 – 2306.046.

CROSS REFERENCE TO STATUTE. The proposed new section affects no other code, article, or statute.

§1.13. Adjudicative Hearing Procedures.

(a) Purpose. The purpose of this section is to provide procedures for contested case and other evidentiary hearings (adjudicative hearings). This section does not apply to matters such as programmatic appeals or waivers, and this section does not in itself create any right to an adjudicative hearing, but merely provides a process for hearings that are otherwise expressly granted by law.

(b) SOAH Designation. The Board designates the State Office of Administrative Hearings (SOAH) to hold all adjudicative hearings on the Board's behalf.

(c) Initiation of Hearing.

(1) Upon receipt of a pleading or other document that is intended to initiate a contested case or evidentiary proceeding before the Department, the Department shall determine if an adjudicative hearing is provided under the relevant statutory provisions and rules and, if so, will docket the same as a pending proceeding, number it in accordance with any established docket numbering system of the Department, and refer the matter to SOAH for hearing.

(2) SOAH shall acquire jurisdiction over a case when the Department completes and files a Request to Docket Case form, or other form acceptable to SOAH, together with the complaint, petition, application, or other pertinent documents giving rise to the case. Once SOAH acquires jurisdiction, all subsequent documents are to be filed with SOAH, with appropriate service upon the opposing party in accordance with this chapter and the rules of SOAH.

(3) The SOAH Administrative Law Judge has the authority under SOAH rules, 1 TAC, Chapter 155 (relating to Service Documents on Parties, as may be amended from time to time), to issue interim orders, to regulate the conduct of the proceeding, rule on motions, establish deadlines, clarify the scope of the proceeding, schedule and conduct prehearing and post hearing conferences for any purpose related to any matter in the case, set out additional requirements for participation in the case, and take any other steps conducive to a fair and efficient process in the contested case, including referral of the case to a mediated settlement conference or other appropriate alternative dispute resolution procedure as provided by Chapter 2003 of the Government Code.

(4) Except upon a showing of good cause, all adjudicative hearings in which the Department is a party shall be held at the offices of SOAH located in Austin, Texas.

(5) Nothing in this subchapter shall in any way limit, alter, or abridge the ability of the Department to enter into mediation or alternative dispute resolution at any time prior to or after the holding of the administrative hearing but prior to the adoption of a final order.

(d) Service.

(1) Service of a notice of adjudicative hearing shall be made by hand delivery, regular, first class, registered or certified mail, courier service, or by any other means that is in accordance with the Administrative Procedures Act (APA) and the SOAH rules. The notice of adjudicative hearing shall be delivered to the Responsible Party at the address of record on file with the Department in accordance with §1.22 of this title (relating to Providing Contact Information to the Department).

(2) Service in the manner provided for subparagraphs (A) – (C) of this paragraph shall be prima facie evidence of proper service of notice of adjudicative hearing.

(A) Service by hand delivery shall be complete upon hand delivery to the Responsible Party or the Responsible Party's agent at the Responsible Party's address of record.

(B) Service by mail shall be complete upon deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service.

(C) Service by courier service shall be complete upon deposit of the paper, enclosed in a properly addressed wrapper, in a depository under the care and custody of a courier service.

(3) Service of the Complaint. On the same date the Complaint is filed at SOAH, it shall be served on each party or the party's representative in compliance with the SOAH rule, 1 TAC §155.103(a) - (d) (relating to Service Documents on Parties, as may be amended from time to time). In addition, the Complaint shall include the following in 12-point bold face type: *"If you do not file a written answer to this Complaint with the State Office of Administrative Hearings within 20 days after the date of receipt, a default order may be entered against you, which may include any or all of the requested sanctions. A copy of any answer you file with the State Office of Administrative Hearings shall also be provided to the department."*

(4) Service of other documents in adjudicative cases pending before SOAH shall be governed by the rules of SOAH.

(e) Proposal for Decision.

(1) Within the time line set out in SOAH rules, after the conclusion of the hearing, the Administrative Law Judge (ALJ) shall prepare and serve on the parties a proposal for decision that includes the ALJ's findings of fact and conclusions of law. Exceptions to the proposal for decision may be filed in accordance with §2001.062 of the Texas Government Code and SOAH

rules. Once the proposal for decision is provided to the Executive Director, the matter shall be placed on the agenda to be considered at a subsequent meeting of the Board.

(2) The Board reserves the right to remand the matter back to SOAH, when warranted in the Board's sole discretion.

Attachment C: Preamble and Proposed new 10 TAC §1.14, concerning Administrative Penalties.

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC §1.14, regarding Administrative Penalties. The purpose of the new section is to establish procedures for the assessment of administrative penalties. The proposed new section sets out the procedures for initiation and assessment of administrative penalties by the Governing Board of the Department (the Board) for any violation of Texas Government Code, Chapter 2306 or a rule or order adopted under Chapter 2306. This proposal includes provisions for establishment of an Administrative Penalty Committee, for issuance of Notice of Noncompliance and Notice of Violation, for conducting an Informal Conference, and, where warranted, for issuance of a report to the Board recommending administrative penalties.

In 2007, the Legislature authorized the Board to assess administrative penalties for violations of Texas Government Code, Chapter 2306, or a rule or order adopted under Chapter 2306. (Tex. Gov’t Code §2306.041). To implement this authority, the Board began in 2007 by adopting 10 TAC, Ch. 60 regarding Compliance Administration. Chapter 60 provides for Department monitoring of developments receiving assistance through the Department. Developments monitored by the Department are subject to the Department's current enforcement rules, found at 10 TAC, Ch. 60, Subchapter C, relating to Administrative Penalties.

The current enforcement program has yielded results, with numerous properties coming into compliance and, when warranted, paying administrative penalties for violations. The success of this program recommends the expansion of the enforcement program to fully implement the authority already given by the Legislature. In a separate submission, the existing rules related to the administrative penalty process for compliance monitoring, found at 10 TAC §§60.301 - 60.306, are proposed for repeal, so that they may be incorporated into this new proposed rule establishing a process for the imposition of penalties for *any* violation of Texas Government Code, Chapter 2306, or a rule or order adopted under Chapter 2306, not just compliance monitoring violations.

FISCAL NOTE. Mr. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the new section, and there will be no effect on local employment or local economy as result of the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section will be in effect, the public benefit anticipated as a result of the new section will be a timely and orderly adjudicative case process for contested case proceedings and other due process hearings. There will be no economic cost to any individuals, or insurers or other Department regulated entities, regardless of size, as a result of the proposed new section.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. In accordance with §2006.002(c) of the Texas Government Code, the Department has determined that this proposed rule will not have an

adverse economic effect on small or micro businesses. Therefore the Department is not required to prepare a regulatory flexibility analysis.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under §2007.043 of the Texas Government Code.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held April 27, 2012, to May 29, 2012 to receive input on the proposed new section. Written comments may be submitted to Texas Department of Housing and Community Affairs, Rule Comments, Legal Division, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 469.9606. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. on Tuesday, May 29, 2012.**

STATUTORY AUTHORITY. The new section is proposed pursuant to the authority of Chapter 2306 of the Texas Government Code, which provides the Board and the Department with the authority to adopt rules governing the administration of the Department and its programs; specifically including §§2306.141, 2306.053, and 2306.041 - 046.

CROSS REFERENCE TO STATUTE. The proposed new section affects no other code, article, or statute.

§1.14. ADMINISTRATIVE PENALTIES.

(a) Purpose. The purpose of this section is to set forth a procedure for the imposition of an administrative penalty as authorized by §2306.041 of the Texas Government Code for violations of Chapter 2306 of the Texas Government Code, or a rule or order adopted under Chapter 2306 of the Texas Government Code, including but not limited to actions arising under Chapter 60 of this title, (relating to Compliance Administration).

(b) Definitions. The words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Administrative Penalty Committee ("Committee")--A committee of employees of the Department appointed by the Executive Director. The members of that Committee shall be no fewer than five (5) and no more than nine (9). The Executive Director may designate certain members as *ex officio* and non-voting. Legal Services will designate a person to serve as Secretary to the Committee, who shall not be a member of the Committee. Voting Committee members may designate a substitute who shall be permitted to attend and vote in their absence.

(2) Responsible Party--A person or persons, whether a natural person or otherwise, such as a corporation, partnership, limited partnership, or trust, or their successors in interest or assigns, that are subject to Chapter 2306 of the Texas Government Code, or a rule or order adopted under Chapter 2306 of the Texas Government Code, including but not limited to persons that have received or will receive funds or other financial assistance administered or awarded by the Department and/or are legally responsible for the administration of such assistance in accordance with the terms of the rules or a written agreement with the Department and each person capable of controlling or directing the policies and activities of such a person or persons.

(c) Notice of Noncompliance.

(1) If a Department division or program (the originating division) identifies a violation of Chapter 2306 of the Texas Government Code or a rule or order adopted under Chapter 2306 of the Texas Government Code, the originating division will issue a written Notice of Noncompliance to the Responsible Party, identifying the nature of the noncompliance and providing a stated number of days to remedy the violation. The deadline for compliance may be extended in writing by the originating division. The Notice of Noncompliance will include a statement that the matter may result in a referral to the Committee for further action.

(2) Should the Responsible Party fail to respond and/or fail to correct the violation, or if the originating division determines that administrative penalties are otherwise warranted, the originating division may refer the matter to the Committee for further action.

(d) Committee Review and Informal Conference.

(1) The Committee shall review referrals from the originating divisions. The Committee may remand the matter back to the originating division for further development, may request additional information from the originating division, or arrange for an Informal Conference. The Responsible Party will be offered the opportunity to attend an Informal Conference with the Committee to discuss resolution of the matter.

(2) An Informal Conference may result in:

(A) An agreement to dismiss the matter with no further action, which will then be reported to the Executive Director;

(B) An agreement to resolve the matter through corrective action without penalty. In this circumstance, the agreement shall be reported to the Executive Director;

(C) An agreement to resolve the matter through corrective action with the assessment of an administrative penalty. In this circumstance, a proposed agreed order and draft report will be prepared and presented to the Executive Director for approval and issuance to the Board;

(D) A recommendation by the Committee to the Executive Director regarding the issuance of a report to the Board and issuance of a Notice of Violation to the Responsible Party seeking the assessment of administrative penalties; or

(E) Other action as the Committee deems appropriate.

(3) Should the Responsible Party fail or refuse to attend the informal conference, the Committee may take whatever lawful action it deems appropriate, including but not limited to dismissal of the matter or a recommendation to the Executive Director regarding issuance of a report and a Notice of Violation.

(e) Report and Notice of Violation.

(1) Upon receipt of a recommendation from the Committee, the Executive Director shall determine whether a violation has occurred. If needed, the Executive Director may request additional information and/or return the recommendation to the Committee for further development. If the Executive Director determines that a violation has occurred, the Director will issue a report to the Board in accordance with §2306.043 of the Texas Government Code.

(2) Not later than fourteen (14) days after issuance of the report to the Board, the Executive Director will issue a Notice of Violation to the Responsible Party. The Notice of Violation issued by the Executive Director will include:

(A) a brief summary of the alleged violation(s) together with reference to the particular sections of the statutes and rules alleged to have been violated;

(B) the amount of the recommended penalty;

(C) a statement informing the Responsible Party of the right to a hearing before the Board, as conducted by SOAH, on the occurrence of the violation, the amount of penalty, or both; and

(D) any other matters deemed relevant.

(3) The amount of recommended penalty will be determined with reference to a penalty schedule or schedules that shall be developed according to the criteria in §2306.042 of the Texas Government Code and published in the *Texas Register*.

(4) Not later than twenty (20) days after the Responsible Party receives the Notice of Violation, the Responsible Party may accept the determination and recommended penalty or request a hearing.

(5) If the Responsible Party requests a hearing or does not respond to the Notice of Violation, the Executive Director, with the approval of the Board, shall cause the hearing to be docketed before a SOAH administrative law judge in accordance with §1.13 of this title (relating to Adjudicative Hearing Procedures).

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BOARD ACTION REQUEST

LEGAL SERVICES DIVISION

April 12, 2012

Presentation, Discussion, and Possible Action regarding approval for publication in the *Texas Register* of a Final Order adopting the repeal of 10 TAC §1.10, Public Comment Procedures and Topics at Public Hearings and Meetings, a Final Order adopting new 10 TAC §1.10, Public Comment Procedures, and the rescission of Board Resolution #08-011.

RECOMMENDED ACTION

WHEREAS, that the proposed repeal of TAC §1.10, regarding public comment and the proposed new rule TAC §1.10 were published in the *Texas Register* for public comment, and no comments were received;

RESOLVED, that the adoption of the proposed repeal of 10 TAC §1.10, Public Comment Procedures and Topics at Public Hearings and Meetings, without changes, and the adoption of the proposed new 10 TAC §1.10, Public Comment Procedures, without changes, are hereby ordered and they are approved, together with the preambles presented to this meeting, for publication in the *Texas Register*;

RESOLVED, that with the adoption of new 10 TAC §1.10, Public Comment Procedures, Board Resolution #08-011 is no longer necessary and Board resolution #08-011 is hereby rescinded, effective on the date that new 10 TAC §1.10, Public Comment Procedures, becomes effective;

FURTHER RESOLVED, that the Executive Director and his designees be and each of them is hereby authorized, empowered and directed, for and on behalf of the Department, to cause the adopted repeal and the adopted new rule, in the form presented to this meeting, to published in the *Texas Register*, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

Texas Government Code §§2306.032 and 2306.066(d) require the board to provide opportunities for the public to participate and comment at board meetings. To meet this requirement the Board adopted 10 TAC §1.10, providing a general outline for the public comment process. In addition, the Board adopted Resolution #08-011 implementing specific time limits and other procedures, pursuant to 10 TAC §1.10. In response to the need to improve the efficiency of the conduct of the public comment process, staff proposed changes to the current public comment rule and the rescission of Board Resolution #08-011 on January 17, 2012.

The proposed repeal and proposed new rule were open for public comment from January 27, 2012 through February 21, 2012. No comments were received.

The following is a summary of the major changes to the public comment process that would be implemented if the proposed new rule is adopted:

1. The concepts of “general public comment” and “specific public comment” are introduced. General public comment is comment related to the business of the Department but not related to a specific posted item. Specific public comment is comment on a particular posted item.
2. The use of witness affirmation forms is eliminated and replaced with a process requiring speakers to queue up and decide among themselves the speaking order and time limits subject to the chair’s adjustment.
3. Persons wishing to comment for or against a posted item but who will not be speaking may register their position with the Board Secretary who will tally the positions and announce on the record the results of the tally at the end of public comment on the item.
4. The Board reserves the right to adjust the number and length of public presentations at any time during a board meeting based on a consideration of certain permissible factors.
5. Persons wishing to provide printed materials to the Board must provide the materials to staff not less than 5 business days prior to the meeting. In exceptional circumstances, as determined by the chair of the board, a person may be able to provide materials at the Board meeting provided several conditions are met.

Attachment A: Preamble and Adopted Repeal of 10 TAC 1, §1.10, Public Comment Procedures and Topics at Public Hearings and Meetings.

The Texas Department of Housing and Community Affairs (“Department”) adopts the repeal of 10 TAC Chapter 1, §1.10, concerning Public Comment Procedures and Topics at Public Hearings and Meetings without changes to the proposed rule text as published in the February 3, 2012, issue of the *Texas Register* (37 TexReg 440) and will not be republished.

Repeal of the rule is necessary because the Department is separately proposing a new rule which significantly changes the scope and content of the current rule.

The repeal is proposed pursuant to authority under §§2306.032 and 2306.066(d) of the Texas Government Code which generally requires the board to adopt rules to give the public a reasonable amount of time for testimony at meetings.

The public comment period was held from February 3 – 27, 2012. No public comments were received.

The Board approved the Final Order adopting this repeal on April 12, 2012

The repeal is adopted pursuant to the authority of Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

§1.10. Public Comment Procedures and Topic at Public Hearings and Meetings.

Attachment B: Preamble and Adopted New 10 TAC Chapter 1, §1.10, Public Comment Procedures.

The Texas Department of Housing and Community Affairs (“Department”) adopts new 10 TAC Chapter 1, §1.10, concerning public comment procedures without changes to the proposed rule text of the rule as published in the February 3, 2012, issue of the *Texas Register* (37 TexReg 440) and will not be republished.

REASONED JUSTIFICATION. The purpose of this rule is to improve the efficiency of the receipt of public comment at meetings of the board. The rule accomplishes this by making several major changes to current rule including eliminating witness affirmation forms and implementing a queue process. Experience has shown that using witness affirmation forms can sometimes cause unnecessary delay and confusion. Therefore the forms are being eliminated and persons desiring to give public comment are invited to queue up, prior to the item, and arrange speaking order and time limits among themselves, subject to the limits provided in the rule.

Experience has shown that general public comment can often exceed the time planned thereby jeopardizing the board’s ability to finish its business as posted in the agenda. Accordingly, the new rule requires taking public comment on posted items only when the posted item is called, and makes general public comment the last posted item of the open meeting. Moreover, the new rule allows the board chair to adjust the number and length of public presentations during a board meeting under certain conditions.

Often, persons attending board meetings have a strong interest in a particular posted item but choose not to address the board. The board believes that these individuals who have taken the time and effort to come to the board meeting should have an opportunity for their position on a posted item to be included in the record. Therefore, the new rule provides an opportunity for such persons to register their position with the Board Secretary, or her/his designate, and to have the tally of those positions entered into the record.

Often persons addressing the board desire to present the board with documents at the board meeting. In order to prevent ex parte communications and to enforce the public’s right to see all materials presented to the board by the staff, the new rule proposes requiring any such documentation to be provided to staff at least five (5) days in advance of the meeting so staff can review it and include it in the 3-day posting, if necessary.

The public comment period was held February 3 – 27, 2012. No public comments were received.

The new section is adopted pursuant to authority under §2306.032 and §2306.066(d) of the Texas Government Code which generally require the board to adopt rules to give the public a reasonable amount of time for testimony at meetings.

§1.10.Public Comment Procedures.

(a) Purpose. The purpose of this section is to establish procedures for hearing public comments at meetings open to the public held by the Texas Department of Housing and Community Affairs in accordance with §2306.032(f) and §2306.066(d) of the Texas Government Code.

(b) Procedures for taking public comment.

(1) At each meeting open to the public the board shall provide opportunity for members of the public to make:

(A) General public comment, such as reports, recommendations, or other testimony on matters of relevance to the Department's business or to request that the board place specific items on future agendas for consideration, after the board has taken action on all posted agenda items on which it intends to take action; and

(B) Specific public comment on each posted agenda item after the presentation made by department staff and motions made by the board. For purposes of this rule the board may consider the staff's presentation to be staff's written presentation in the board's meeting book and posted on the Department's website.

(2) The opportunity for general public comment under paragraph (1)(A) of this subsection may not be used to advocate for or against any specific action relating to any posted item, the opportunity for any such testimony to be limited to the appointed time when action on such matter is formally considered as a posted agenda item.

(3) At the time general or specific public comment is taken, speakers shall queue up behind the podium or other place designated for speakers. They may, if they wish, agree among themselves on an order in which they will speak. If a large number of speakers wish to testify, the chair may, in his or her reasonable discretion, establish appropriate limits on the total amount of time to be devoted to testimony on any given item or items. As each individual speaker begins his or her testimony, they shall state on the record their name and on whose behalf they are speaking.

(4) Individuals not speaking who wish to register positions for or against a posted agenda item may register their positions, for or against, with the secretary of the meeting, or another person designated by the chair, on a form, which the person wishing to register must sign, stating their name, who they represent, the action item, and their position. At the end of the public comment on the item the chair will have registered positions for and against read into the record.

(5) Additional limits on public comment.

(A) The board chair, in her/his sole discretion, may additionally limit the number and length of presentations of public comment, both general and specific, at any time during a meeting based on a consideration of:

(i) the number of persons wishing to give public comment;

(ii) the number of agenda items to be heard;

(iii) the time available for the meeting; and

(iv) the risk of losing a quorum of board members.

(B) If the board chair limits presentations, she or he will not limit them in a manner that inappropriately favors a particular point of view.

(C) The board chair may, in her or his reasonable discretion, grant deference to elected officials and other persons who have traveled great distances.

(6) Presenting printed materials. An individual providing testimony to the board may provide printed materials only if they are provided as outlined in subparagraphs (A) - (C) of this paragraph:

(A) In order to ensure that members of the board and the public are given an opportunity to review any such materials, they must be provided to the Department staff not less than five (5) business days prior to the meeting at which they are to be used. They must be made available in Acrobat electronic format;

(B) Department staff will post such materials to the department's website no later than three (3) business days prior to the meeting at which they are to be used;

(C) In exceptional circumstances the chair may, in her/his sole discretion, provided no member of the board objects, allow materials to be provided at a meeting in hard copy format provided:

(i) they are not so voluminous as to cause inordinate delay while members of the board and public review them;

(ii) they are provided in hard copy format to all members of the public in attendance; and

(iii) they are provided to staff in Acrobat (.pdf) format for inclusion in the electronic records of board materials available to the public via the Department's website.

(7) The fact that an individual provides testimony to the board shall not establish any presumption that a board member or the board collectively gave particular weight or credence to that testimony.

This proposed new section has been reviewed by legal counsel and found to be within the Department's authority to adopt.

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BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
April 12, 2012

Presentation, Discussion, and Possible Action regarding approval for publication in the *Texas Register* a Final Order adopting amendments to 10 TAC Chapter 5, Subchapter D, §§5.402, 5.407, 5.422 - 5.423, and 5.425, the Comprehensive Energy Assistance Program (CEAP).

RECOMMENDED ACTION

Approve for publication in the *Texas Register* a final order adopting amendments to 10 TAC Chapter 5, Subchapter D, §§5.402, 5.407, 5.422 - 5.423, and 5.425, the Comprehensive Energy Assistance Program (CEAP) without changes to the text as published in the March 2, 2012 issue of the *Texas Register*.

WHEREAS, the Comprehensive Energy Assistance Program rules were approved for publication in the *Texas Register* for public comment at the February Board meeting and the public comment period has ended; therefore,

It is hereby,

RESOLVED, that the final order adopting amendments to 10 TAC Chapter 5, Subchapter D, amendments related to the Comprehensive Energy Assistance Program (CEAP), is hereby ordered and it is approved, together with the preamble presented to this meeting, for publication in the *Texas Register*.

FURTHER RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the amendments to 10 TAC Chapter 5, Subchapter D, regulations related to the Comprehensive Energy Assistance Program (CEAP), in the form presented to this meeting, to be published in the *Texas Register* for final adoption, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of subchapter specific preambles.

BACKGROUND

The Board approved the proposed amendments at the February 16, 2012 meeting to be published in order to receive public comment. A Public Hearing was held on March 14, 2012 and the Department accepted public comments through March 23, 2012. Comments regarding the amendments were accepted in writing and by email, with comments received from Stella Rodriguez, Texas Association of Community Action Agencies.

Attachment A: Preamble and Adopted Amendments to 10 TAC Chapter 5, Subchapter D, §§5.402, 5.407, 5.422, 5.423, and 5.425, regarding the Comprehensive Energy Assistance Program.

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 5, Subchapter D, §§5.402, 5.407, 5.422, 5.423, and 5.425, regarding the Comprehensive Energy Assistance Program without changes to the proposed text as published in the March 2, 2012, issue of the *Texas Register* (37 TexReg 1454) and will not be republished.

REASONED JUSTIFICATION. To keep the Comprehensive Energy Assistance Program (CEAP) in compliance with requirements of Chapter 181 of the Texas Health and Safety Code regarding Medical Records Privacy, the Department adopts the removal of any requirement that a CEAP client provide certain medical information in order to qualify for services from this chapter. This amendment removes any reference to medical vulnerability and all requirements for the collection and inclusion of documentation from medical professionals.

REASONED RESPONSE TO PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

The Department's response to all comments received is included in this attachment. The comments and responses include both administrative clarifications and corrections to the amendments recommended by staff and substantive comments on the amendments and the corresponding Departmental responses. Comments and responses are presented in the order they appear in the rules.

Public comments were accepted through March 23, 2012, with comments received in writing by email from Stella Rodriguez, Texas Association of Community Action Agencies.

§5.423(d)(3). Household Crisis Component.

COMMENT SUMMARY: Commenter submitted four questions related to allowable activities within the Household Crisis Component. (1) Is the service and repair of central systems an allowed activity? (2) If a client does not have any heating/cooling units and the weather crisis conditions are met, is the purchase of one or more portable heating/cooling units allowed? (3) If a client's central system is not repairable, is the Subrecipient allowed to purchase portable heating/cooling units for the client? (4) If a client has a working portable heating/cooling unit but requests another unit when the weather crisis conditions are met, is it an allowed expense/activity?

STAFF RESPONSE:

(1) Service and repair of central systems is an allowable activity up to \$2,500. (2) As indicated in the proposed amendments to §5.423(d)(3), Household Crisis Component, portable air conditioning and heating units may be purchased for households that include at least one member that is elderly, disabled, or a child aged 5 or younger when Subrecipient has met local weather

crisis criteria. (3) If a client's central system is not repairable, the Subrecipient is allowed to purchase portable heating/cooling units for the client in order to resolve the crisis. (4) Provision of any service under the CEAP must be based on an assessment of the needs of the client household, not on client request. If the needs assessment indicates that existing portable heating/cooling units are not sufficient to resolve the existing crisis, the Subrecipient can purchase another unit to resolve the crisis. *Staff recommends no changes based on this comment.*

§5.423(g). Household Crisis Component.

COMMENT SUMMARY: Commenter submitted two questions related to the determination of a life threatening condition. (1) Historically, medical documentation was used to define "life threatening" situations. Federal and state statute requires Subrecipients to respond to life threatening situations within 18 hours. Since Subrecipients can no longer collect medical documentation, what constitutes life threatening? (2) Who makes the life threatening determination?

STAFF RESPONSE: (1) Life-threatening situation will be determined at the subrecipient level, within program guidelines. Pursuant to the requirements of the proposed amendments to §§5.402, 5.422 5.423 and 5.425 of this Subchapter, life-threatening situations may not include those that would require the collection of medical documentation to substantiate, as indicated in §5.423(d). (2) Subrecipients must ensure that for clients who have already lost service or are in immediate danger of losing service, some form of assistance to resolve the crisis will be provided. *Staff recommends no changes based on this comment.*

The Board approved the final order adopting the amendments on April 12, 2012.

The amendments are adopted pursuant to the authority of the Chapter 2306 of the Texas Government Code which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

§5.402.Purpose and Goals.

The purpose of CEAP is to assist low-income households, particularly those with the lowest incomes, that pay a high proportion of household income for home energy, primarily in meeting their immediate home energy needs. The program encourages priority be given to those with the highest home energy needs, meaning low income households with high residential energy use, a high energy burden and/or the presence of a "vulnerable" individual in the household, such as a child age 5 and younger, disabled person, or an elderly individual. CEAP services include: energy education, needs assessment, budget counseling (as it pertains to energy needs), utility payment assistance, crisis-related repair of existing heating and cooling units, and crisis-related purchase of portable heating and cooling units.

§5.407.Subrecipient Requirements for Establishing Priority for Eligible Households and Client Eligibility Criteria.

(a) The subrecipients shall set the client income eligibility level at or below 125% of the federal poverty level in effect at the time the client makes an application for services.

(b) Subrecipient shall determine client income. Income inclusions and exclusions to be used to determine total household income are those noted in §5.19 of this chapter (relating to Client Income Guidelines).

(c) Subrecipients shall base annualized eligibility determinations on household income from the thirty (30) day period prior to the date of application for assistance. Each subrecipient shall document and retain proof of income from all sources for all household members eighteen (18) years and older for the entire thirty (30) day period prior to the date of application and multiply by twelve (12) to annualize income.

(d) In the case of migrant, or seasonal workers, or similarly situated workers, a longer period than thirty (30) days may be used for annualizing income.

(e) If proof of income is unavailable, the applicant must complete and sign a Declaration of Income Statement (DIS). In order to use the DIS form, each subrecipient shall develop and implement a written policy and procedure on the use of the DIS form, including policies requiring a client statement of efforts to obtain documentation of income with a notarized client signature. In developing the policy and procedure, subrecipients shall give consideration to limiting the use of the DIS form to cases where there are serious extenuating circumstances that justify the use of the form. Such circumstances might include crisis situations such as applicants that are affected by natural disaster which prevents the applicant from obtaining income documentation, applicants that flee a home due to physical abuse, applicants who are unable to locate income documentation of a recently deceased spouse, or whose work is migratory, part-time, temporary, self-employed or seasonal in nature. To ensure limited use, the Department will review the written policy and its use, as well as client-provided descriptions of the circumstances requiring use of the form, during on-site monitoring visits.

(f) Social security numbers are not required for applicants for CEAP.

(g) The subrecipients shall establish priority criteria to serve persons in households who are particularly vulnerable such as the elderly, persons with disabilities, families with young children, high residential energy users, and households with high energy burden. High residential energy users and households with high energy burden are defined as follows:

(1) Households with Energy Burden which exceeds the median energy burden of income-eligible households characterized by the Department as experiencing high energy burden. The Department calculates energy burden by dividing home energy costs by the household's gross income.

(2) Households with annual energy expenditures which exceed the median home expenditures for income-eligible households are characterized by the Department as high energy consumers.

(h) Homeowners and renters will be treated equitably under all programs funded in whole or in part from LIHEAP funds. For those renters who pay heating and/or cooling bills as part of their rent, the subrecipient shall make special efforts to determine the portion of the rent that constitutes the fuel heating and/or cooling payment. If "sub metering" is not available, the subrecipient shall exercise care when negotiating with the landlords so the cost of utilities quoted is in line with the consumption for similar residents of the community. If the subrecipient pays the landlord, then the landlord shall furnish evidence that he/she has paid the bill and the amount of assistance must be deducted from the rent, if the utility payment is not stated separately from the rent. An agreement stating the terms of the payment negotiations must be signed by the landlord.

(i) A household unit cannot be served if the meter is utilized by another household.

§5.422. General Assistance and Benefit Levels.

(a) Subrecipients shall not discourage anyone from applying for CEAP assistance. Subrecipients shall provide all potential clients with opportunity to apply for LIHEAP programs.

(b) CEAP provides assistance to targeted beneficiaries, with priority given to the elderly, persons with disabilities, families with young children; households with the highest energy costs or needs in relation to income, and households with high energy consumption.

(c) CEAP includes activities, as defined in Assurances 1-16 in Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35), as amended; such as education; and financial assistance to help very low- and extremely low-income consumers reduce their utility bills to an affordable level. CEAP services include energy education, needs assessment, budget counseling (as it pertains to energy needs), utility payment assistance; crisis related repair of existing heating and cooling units, and crisis-related purchase of portable heating and cooling units.

(d) Sliding scale benefit for all CEAP components:

(1) Benefit determinations are based on the household's income, the household size, the energy cost and/or the need of the household, and the availability of funds;

(2) Energy assistance benefit determinations will use the following sliding scale:

(A) Households with Incomes of 0 to 50% of Federal Poverty Guidelines may receive an amount needed to address their energy payment shortfall not to exceed \$1,200;

(B) Households with Incomes of 51% to 75% of Federal Poverty Guidelines may receive an amount needed to address their energy payment shortfall not to exceed \$1,100; and

(C) Households with Incomes of 76% to at or below 125% of Federal Poverty Guidelines may receive an amount needed to address their energy payment shortfall not to exceed \$1,000; and

(3) A household may receive crisis-related repair of existing heating and cooling units, and/or crisis-related purchase of portable heating and cooling units not to exceed \$2,500.

(e) Subrecipient shall not establish lower local limits of assistance for any component.

(f) Total maximum possible annual household benefit (all components combined) equals \$6,100.

(g) Subrecipient shall determine client eligibility for utility payments and/or retrofit based on the agency's household priority rating system and household's income as a percent of poverty.

(h) Subrecipients shall provide only the following types of assistance with funds from CEAP:

(1) Payment to vendors and suppliers of fuel/utilities, goods, and other services, such as electrical wiring, propane or butane tanks, and lines, etc. for 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;

(2) Payment to vendors--only one energy bill payment per month as required by component;

(3) Needs assessment and energy conservation tips, coordination of resources, and referrals to other programs;

(4) Energy assistance to low-income elderly and disabled individuals most vulnerable to high cost of energy for heating and cooling needs of the residence;

(5) Payment of water bills only when such costs include expenses from operating an evaporative water cooler unit or when the water bill is an inseparable part of a utility bill. As a part of the intake process, outreach, and coordination, the subrecipient shall confirm that a client owns an operational evaporative cooler and has used it to cool the dwelling within sixty (60) days prior to application. Payment of other utility charges such as wastewater and waste removal are allowable only if these charges are an inseparable part of a utility bill. Documentation from vendor is required. Whenever possible, subrecipient shall negotiate with the utility providers to pay only the "home energy"--heating and cooling--portion of the bill;

(6) Energy bills already paid by householders may not be reimbursed by the program;

(7) 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;

(8) 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. Subrecipients shall not pay such security deposits that the energy provider will eventually return to the client;

(9) 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 LIHEAP payments from the Subrecipient;

(10) 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 client is deducted from client's rent; and

(11) In lieu of deposit required by an energy vendor, Subrecipient may make advance payments. The Department does not allow LIHEAP expenditures to pay deposits, except as noted in paragraph (7) of this subsection. Advance payments may not exceed an estimated two months' billings. Funds for the Texas CEAP shall not be used to weatherize dwelling units, for medicine, food, transportation assistance (i.e., vehicle fuel), income assistance, or to pay for penalties or fines assessed to clients.

§5.423. Household Crisis Component.

(a) A bona fide household crisis exists when extraordinary events or situations resulting from extreme weather conditions and/or fuel supply shortages or a terrorist attack have depleted or will deplete household financial resources and/or have created problems in meeting basic household expenses, particularly bills for energy so as to constitute a threat to the well-being of the household, particularly the elderly, the disabled, or children age 5 and younger.

(b) A utility disconnection notice may constitute a household crisis.

(c) Crisis assistance for one household cannot exceed the maximum allowable benefit level in one year. Crisis assistance payments cannot exceed the minimum amount needed to resolve the crisis. If the client's crisis requires more than the household limit to resolve, it exceeds the scope of this program. If the crisis exceeds the household limit, subrecipient may pay up to the household limit but the rest of the bill will have to be paid from other funds to resolve the crisis. Payments may not exceed client's actual utility bill. The assistance must result in resolution of the crisis.

(d) Where necessary to prevent undue hardships from a qualified crisis, subrecipients may directly issue vouchers to provide:

(1) Temporary shelter not to exceed the annual household expenditure limit for the duration of the contract period in the limited instances that supply of power to the dwelling is disrupted--causing temporary evacuation;

(2) Emergency deliveries of fuel up to 250 gallons per crisis per household, at the prevailing price. This benefit may include coverage for safety precautions, including propane or butane tank repair or replacement--up to the maximum household benefit;

(3) Service and repair of existing heating and cooling units or purchase of portable heating/cooling units (portable electric heaters are allowable only as a last resort) not to exceed \$2,500 during the contract period. Documentation of service/repair and related warranty must be included in the client file. Portable air conditioning and heating units may be purchased for households that include at least one member that is elderly, disabled, or a child aged 5 or younger when Subrecipient has met local weather crisis criteria ;

(4) Purchase of more than two portable heating/cooling units per household will require prior written approval from the Department;

(5) Replacement of central systems and combustion heating units is not an approved use of crisis funds; and

(6) Portable heating/cooling units must be Energy Star® or International Residential Code (IRC) compliant.

(e) Crisis funds, whether for emergency fuel deliveries, repair of existing heating and cooling units, purchase of portable heating/cooling units, or temporary shelter, shall be considered part of the total maximum household allowable assistance.

(f) When natural disasters result in energy supply shortages or other energy-related emergencies, LIHEAP will allow home energy related expenditures for the following:

(1) Costs to temporarily shelter or house individuals in hotels, apartments or other living situations in which homes have been destroyed or damaged, i.e., placing people in settings to preserve health and safety and to move them away from the crisis situation;

(2) Costs for transportation (such as cars, shuttles, buses) to move individuals away from the crisis area to shelters, when health and safety is endangered by loss of access to heating or cooling;

(3) Utility reconnection costs;

(4) Blankets, as tangible benefits to keep individuals warm;

(5) Crisis payments for utilities and utility deposits; and

(6) Purchase of fans, air conditioners and generators. The number, type, size and cost of these items may not exceed the minimum needed to resolve the crisis.

(g) Time Limits for Assistance--Subrecipients ensure that for clients who have already lost service or are in immediate danger of losing service, some form of assistance to resolve the crisis shall be provided within a 48-hour time limit (18 hours in life-threatening situations). The time limit commences upon completion of the application process. The application process is considered to be complete when an agency representative accepts an application and completes the eligibility process. For applications for assistance received from these clients on Fridays after

12:00 p.m. local time, the application process must be completed prior to 12:00 p.m. local time on the following Monday.

(h) Subrecipients must maintain written documentation in client files showing crises resolved within appropriate timeframes. The Department may disallow improperly documented expenditures.

§5.425.Elderly and Disabled Component.

(a) Elderly households include at least one member age sixty (60) or above. Disabled households include at least one member living with a disability. Documentation of disability, (i.e. Social Security, Supplemental Security Income statement) kept in client file will validate eligibility.

(b) Subrecipients make utility payments on behalf of elderly and disabled persons based on the previous twelve (12) month's home energy consumption history, including allowances for cost inflation. In the absence of an available home energy consumption history, subrecipient may base payments on current program year's bill. Subrecipients note such exceptions in client files. Benefit amounts exceeding the actual bill shall be treated as a credit with the utility company for the client.

(c) Elderly and/or disabled clients may receive benefits to cover up to 100% of the eight highest remaining bills within the contract year as long as the cost does not exceed the maximum annual benefit.

(d) The Department requires Subrecipients to expend a minimum of 10% of their Direct Service funds in the Elderly/Disabled Component.

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ASSET ANALYSIS & MANAGEMENT DIVISION

BOARD ACTION REQUEST

April 12, 2012

Presentation, Discussion, and Possible Action regarding approval for publication in the *Texas Register*, the Final Order adopting new 10 TAC §1.25, Right of First Refusal at Fair Market Value and Final Order adopting amendments to 10 TAC §1.9 Qualified Contract Policy

RECOMMENDED ACTION

Adopt the final rule.

WHEREAS, at its February 2012 meeting the Board approved for publication and public comment in the *Texas Register*, a proposed new rule to address the Right of First Refusal requirements for certain Land Use Restriction Agreements (LURAs). The proposed new rule was published in the *Texas Register* on March 2, 2012. Public comment was accepted through March 23, 2012. Staff received comments from three commenter's and incorporated those non-substantive changes into the proposed final rule for adoption; and

WHEREAS, at its December 2011 meeting the Board approved the publication in the *Texas Register* for public comment of a proposed amendment to the rule regarding the Qualified Contract Policy. The proposed amendment to the rule was published in the *Texas Register* on December 30, 2011. Public comments were accepted through January 20, 2012. Staff received no public comment.

Now therefore it is hereby,

RESOLVED, that the adoption of the proposed new 10 TAC, Chapter 1, §1.25, Right of First Refusal at Fair Market Value and amended 10 TAC §1.9, Qualified Contract Policy are hereby ordered and approved, together with the preambles presented to this meeting, for publication in the *Texas Register*.

FURTHER RESOLVED, that the Executive Director and his designees be and each them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause §1.25, Right of First Refusal Policy and §1.9. Qualified Contract Policy rules, in the form presented to this meeting, to be published in the *Texas Register* for final adoption, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The Department's current rules regarding the Right of First Refusal requirement were embedded in the Department's Qualified Contract Policy at 10 TAC §1.9. That rule reflects the more recent QAP requirements which would require the property to be offered for sale at the Minimum Purchase Price under 26 USC §42(i)(7)(B). This has caused confusion. Therefore, staff is recommending adoption of a new rule to address specifically the Right of First Refusal requirements for those properties that agreed to offer the property for sale at fair market value. A roundtable public discussion was held on October 13, 2011, to solicit input for a proposed rule which was approved for comment on December 15, 2011. A public hearing was held on January 18, 2012. Several comments were made that if accepted would have materially changed the rule, and, therefore, the originally proposed rule was withdrawn and a revised proposed rule was presented to the Board on February 17, 2012. The new proposed rule was published in the March 2, 2012, issue of the *Texas Register* to allow for public comment. The public comment period closed on March 23, 2012. Comments were received from three people. Staff has incorporated the non-substantive changes into the rule proposed today for final adoption. Attachment A includes the Preamble, Reasoned Response, and New Right of First Refusal at Fair Market Value Rule for publication in the *Texas Register*.

The clarification of the Right of First Refusal requirements for those properties that agreed to offer the property for sale at fair market value necessitates the amendment of 10 TAC §1.9 the Qualified Contract Policy. The proposed amendment to the rule was presented to the Board in December 2011 and approved for publication in the *Texas Register* for public comment. It was published in the December 30, 2011, issue of the *Texas Register* to allow for public comment. The public comment period closed on January 20, 2012, and no comments were received. Attachment B includes the Preamble, Reasoned Response, and Amended Qualified Contract Policy Rule for publication in the *Texas Register*.

Attachment A: Preamble, Reasoned Response, and New §1.25. Right of First Refusal at Fair Market Value.

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 1, §1.25, concerning Right of First Refusal at Fair Market Value with changes to the proposed text as published in the March 2, 2012 issue of the *Texas Register* (37 TexReg 1452) and will be republished.

REASONED JUSTIFICATION FOR THE RULE. The right of first refusal for a non-profit organization is a right that is provided as a result of an award of certain low income housing tax credits and is generally codified in the regulatory agreement or Land Use Restriction Agreement ("LURA") executed and recorded by the owner for the benefit of the state. The LURA provides specific rights and responsibilities for the owner, the state, tenants, and in some cases, certain non-profit organizations. The language for the right of first refusal in the LURA in some cases was insufficiently descriptive of the process for determining the appropriate "fair market value" when such a value was identified as the benchmark purchase price at which a right of first refusal offer or sale could be required. The proposed rule provides definition and process for determining the fair market value and implementing this requirement in a manner which the department believes is consistent with the original intent of the right of first refusal condition of the award of low income housing tax credits.

REASONED RESPONSE TO PUBLIC COMMENT AND STAFF RECOMMENDATIONS. The Department's response to all comments received are set out below. The comments and responses include both administrative clarifications and corrections to the amendments recommended by staff and substantive comments on the amendments and the corresponding Departmental responses. Comments and responses are presented in the order they appear in the rules.

Public comments were accepted through March 23, 2012, with three comments received in writing from: (1) Dan Allgeier, NuRock Companies, (2) Cynthia Bast, Locke Lord LLP, and (3) Neil Brown, Southside Realty Corporation.

COMMENT SUMMARY:

Commenter #3 recommended deleting subsection (c) in its entirety indicating their belief that having an option not to provide an appraisal would lead to excessive prices which could prevent non-profit organizations from being owners.

STAFF RESPONSE: Staff disagrees with the commenter. Option One (without Appraisal) allows the market to set the price between a willing buyer and willing seller. The non-profit community will have the ability to purchase the property at that price or to determine the price of the property through an open bidding process. In order for the market price to be set by this option the deal would have to close which would establish the most accurate market price for a property and would be an element in establishing appraised value for other properties. In addition other financial parties would likely be involved and an appraisal for such lenders purpose may be required.

Commenter #2 stated that providing copies of the actual restrictive covenants will give a more accurate description of the restrictions and avoid error and suggested the following change to subsection (c)(2)(C):

“(C) ~~a description of all~~ copies of all documents imposing income, rental and other restrictions, if any, applicable to the operation of the property;...”

STAFF RESPONSE: Staff agrees with the commenter and recommends this clarification.

Commenter #2 stated that providing the “most recent” physical needs assessment is meaningless if that assessment is 15 years old and proposed a one-year time frame for property condition. Additionally, the commenter believes the owner should not be required to pay for a physical needs assessment if it does not already have one in its possession and suggested the following amendments to subsection (c)(2)(D) and (E):

“(D) a copy of the most current title report, commitment or policy in the owner’s possession;
(E) ~~the most recent~~ any physical needs assessment conducted by a third party that is less than one (1) year old and in the owner’s possession;...”

STAFF RESPONSE: Staff agrees with the commenter and recommends this clarification.

Commenter #2 suggested clarifying the need for copies of leases should apply only to non-residential leases with the following amendment to subsection (c)(2)(J):

“(J) if any portion of the land or improvements is leased for other than residential purposes, copies of the commercial leases;...”

STAFF RESPONSE: Staff agrees with the commenter and recommends this clarification.

Commenter #2 suggested that the Department be required to keep the seller informed as to the status of the marketing effort and recommends the following amendment to subsection (c)(3):

“(3) Within five (5) business days of receipt of all required documentation, the Department will list the property for sale on the Department's website (<http://www.tdhca.state.tx.us>) and contact non-profits to inform them of the availability of the property at the price and on the terms and conditions set forth in the sales contract. The Department will notify the owner when the property has been listed and of any inquiries or offers generated by such listing.”

STAFF RESPONSE: Staff agrees with the commenter and recommends this change.

Commenter #2 suggested additional language to cover the circumstance where a non-profit is identified and offers to buy the property but does not close the transaction. The commenter proposes the following new language for subsection (c)(5):

“(5) If within ninety (90) days from the date listed on the website, the Department identifies a non-profit who can match the price, terms and conditions of the for-profit offer, the owner accepts the offer, and the non-profit fails to consummate the purchase, the owner may proceed in accordance with subsection (6), below.”

STAFF RESPONSE: Staff agrees with the commenter and recommends this change.

Commenter #2 suggested clarifications to the language in subsection (c)(6) and (7) (previously marked as (5) and (6)) to mimic the actual sequence of events clarify language as follows:

~~“(5)-(6) If within ninety (90) days from the date listed on the website, the Department is not able to identify an eligible non-profit buyer that can meet the price, terms and conditions of the for-profit offer, the property may be sold~~ owner may pursue the qualified contract process or proceed with the sale to the for-profit buyer, subject to the following. Prior to closing, a sale of the property, the final settlement statement and final sales contract with all amendments must be submitted to the Department. If the closing price is materially less than the amount identified in sales contract that was submitted in accordance with paragraph (2)(A) of this subsection or the terms and conditions of the sale change materially, in the Department's sole determination, the procedures in paragraphs (3) and (4) of this subsection will be repeated.

~~“(6)-(7) If there is no material change in the sales price or terms and conditions of the sale, as set forth above, Department is not able to identify a non profit that can meet the price, terms and conditions of the final sales contract taking into consideration all amendments,~~ the Department will notify the owner in writing that the Right of First Refusal Requirement has been met. Following notice that the right of first refusal requirements have been met, if the property is not transferred to the for-profit entity at the price, terms, and conditions set out in the final sales contract reviewed by the Department, the owner must again offer the property to non-profits in accordance with this Section 1.25 prior to any transfer, unless the owner pursues the qualified contract process within the timeframe set forth below.”

STAFF RESPONSE: Staff agrees with the commenter and recommends these clarifications.

Commenter #2 suggested clarification should be added to Section (c) to make it clear that the owner is not required to use the without appraisal mechanism next time it goes through the ROFR and can use either option and recommends the following addition:

(8) If the right of first refusal requirement is met and the owner fails to proceed with a request for a qualified contract or sell the property to the for-profit entity within twenty-four (24) months of the Department's notice that the right of first refusal requirement has been met, the owner must again offer the property to non-profits in accordance with this Section 1.25 prior to any transfer.

STAFF RESPONSE: Staff agrees with the commenter and recommends the clarifying language.

Commenter #2 suggested the following addition to subsection (d)(1) to make it consistent with subsection (c):

“(d)(1) The owner may market the property for sale and may sell the property to any eligible non-profit.”

STAFF RESPONSE: Staff agrees with the commenter and recommends the clarifying language.

Commenter #1 suggested that subsection (d)(1)(J) be changed to expand the language to include a reference to the TDHCA's current REA Rules so that it will be required to be prepared by a State licensed appraiser by accepted real estate appraisal procedures with due care and professionalism.

STAFF RESPONSE: Staff agrees that the appraisal should comply with the Department's REA rules but believes that they would already apply; therefore, it does not need be restated.

Commenter #1 suggested that that the Department should rely solely on the value provided by the appraiser provided for in subsection (d) and the language contained in this section to obtain another appraisal at the discretion of the Department should be eliminated.

STAFF RESPONSE: Staff believes there may be instances where a conflict in the anticipated valuation of a property could necessitate clarification and believes that it is prudent to leave this option in the rule to address such potential conflict. Staff recommends no changes as a result of this comment.

Commenter #2 suggested that subsection (d)(2)(B) be amended to add that copies of the actual restrictive covenants be provided which will give a more accurate description of the restrictions and avoid error.

"copies of all documents imposing income, rental and other restrictions, if any, applicable to the operation of the property;"

STAFF RESPONSE: Staff agrees with the commenter and recommends the clarifying language.

Commenter #2 suggested that subsection (d)(2)(C) be amended to reflect that the seller should not be required to pay for a new title report, commitment or policy if it does not already have one in its possession.

"a copy of the most current title report, commitment or policy in the owners possession;"

STAFF RESPONSE: Staff agrees with the commenter and recommends the clarifying language.

Commenter #2 suggested that subsection (d)(2)(D) be revised to require the "most recent" physical needs assessment is meaningless if that assessment is 15 years old. Thus, the one-year time frame is proposed. Additionally, the seller should not be required to pay for a physical needs assessment if it does not already have one in its possession.

"any ~~the most recent~~ physical needs assessment conducted by a third party that is less than one (1) year old and in the owner's possession;"

STAFF RESPONSE: Staff agrees with the commenter and recommends the clarifying language.

Commenter #2 suggested that subsection (d)(2)(I) be revised to clarify that copies of residential tenant leases are not required.

“if any portion of the land or improvements is leased, for other than residential purposes, copies of the commercial leases;”

STAFF RESPONSE: Staff agrees with the commenter and recommends the clarifying language.

Commenter #2 suggested that subsection (d)(4) be changed in an effort to make this section as procedurally consistent as possible.

“When all required documentation is received and the owner and the Department come to an agreement on the fair market value of the property, ~~the ninety (90) day period will begin, as evidenced by a written communication of the agreement from the Department~~ the Department will list the property for sale on the Department’s website (<http://www.tdhca.state.tx.us>) and contact non-profits to inform them of the availability of the property and the fair market value. The Department will notify the owner when the property has been listed and of any inquiries or offers generated by such listing.”

STAFF RESPONSE: Staff agrees with the commenter and recommends the clarifying language.

Commenter #2 recommended a change to subsection (d)(5) that would clarify that an offer can be made at more than the appraised value.

“~~The owner may offer the property for sale below, at or above the appraised value. Prospective non-profit purchasers may submit offers at, above, or below the appraised value.~~”

STAFF RESPONSE: Staff agrees with the commenter and recommends the clarifying language.

Commenter #2 suggested that subsection (d)(5) be deleted in its entirety since it is addressed in paragraph (4).

“~~(5) The Department will list the property for sale on the Department's website and notify non-profits that the property is available for sale.~~”

STAFF RESPONSE: Staff agrees with the commenter and recommends the deletion.

Commenter #2 suggested that subsection (d)(6) be revised which would clarify the intent of the passage.

“~~If the property was offered for sale at or below the fair market value, and no offers are received during the ninety (90) day period~~ after the date listed on the website, the Department will notify the owner in writing that the right of first refusal requirement has been met.”

STAFF RESPONSE: Staff agrees with the commenter and recommends the clarifying language.

Commenter #2 suggested that subsection (d)(7) be deleted and replaced with the following language which would make it more consistent with subsection (c)(5).

“~~(7) Once the right of first refusal requirements have been satisfied, the owner may proceed with a request for a qualified contract or sell the property to a for profit entity. If within ninety (90)~~”

days from the date listed on the website, the Department identifies a non-profit who is willing to acquire the property at or above the fair market value, the owner accepts the offer, and the non-profit fails to consummate the purchase, the right of first refusal requirement will be deemed met.”

STAFF RESPONSE: Staff agrees with the commenter and recommends the amended language.

Commenter #2 suggested that subsection (d)(8) be deleted and replaced with the language below which would make it more consistent with subsection (c).

“(8) If an offer from an eligible non profit is received at or above the fair market value, and the owner does not accept the offer, the right of first refusal requirement will not be satisfied. If within ninety (90) days from the date listed on the website, an offer from a non-profit is received at or above the fair market value, and the owner does not accept the offer, the right of first refusal requirement will not be satisfied.”

STAFF RESPONSE: Staff agrees with the commenter and recommends the amended language.

Commenter #2 suggested that subsection (d)(9) be revised to be consistent with subsection (c).

“(9) If an offer from a non-profit is received at or below the lesser of the listing price or a price below the fair market value, the owner is not required to accept the offer, and the right of first refusal requirement will be deemed met if no other offers at or above the fair market value are received during the 90-day period.”

STAFF RESPONSE: Staff agrees with the commenter and recommends the amended language.

Commenter #2 suggested that subsection (d)(10) (previously marked as (7)) be revised to be consistent with subsection (c).

“Once the right of first refusal requirements have been satisfied, the owner may proceed with a request for a qualified contract or sell the property to a for-profit entity for an amount at or above the fair market value, provided that the owner must provide the Department with a copy of the final settlement statement and final sales contract with all amendments to verify the price prior to closing.”

STAFF RESPONSE: Staff agrees with the revision.

Commenter #2 suggested that Section (d)(11) be revised for clarification purposes.

“(11) If the property was offered for sale at greater than the fair market value and no offers were received, before the owner can request a qualified contract request, the Department will have ninety (90) days to identify an eligible non profit to acquire the property at the fair market value. If the Department successfully identifies a non profit willing to buy the property at or above the fair market value and the owner does not accept the offer, the right of first refusal requirements will not be satisfied. If the right of first refusal requirement is met and the owner fails to proceed with a request for a qualified contract or sell the property to a for-profit entity within twenty-four (24) months of the Department’s notice that the right of first refusal requirement has been met,

the owner must again offer the property to non-profits in accordance with this Section 1.25 prior to any transfer.”

STAFF RESPONSE: Staff agrees with the commenter and recommends the amended language.

Commenter #2 suggested that subsection (d)(12) (previously (10)) be changed to make it clear that the owner is not required to use the appraisal mechanism next time it goes through the ROFR but can choose either option.

“(13) If, during the course of marketing the property, the owner receives an offer to purchase the property from a for-profit entity that the owner would like to accept, the owner may execute a sales contract, conditioned upon satisfaction of the right of first refusal requirements. ~~The sales contract must be submitted to the Department and the procedures in subsection (c)(3) – (6) of this section must be followed.”~~

STAFF RESPONSE: Staff agrees with the commenter and recommends the amended language.

Commenter #2 suggested that subsection (d)(13) be deleted and replaced with the following language for clarification purposes.

~~“If the property is not transferred within twenty four (24) months of the Department's notice that the right of first refusal requirement has been met, the owner must again offer the property to nonprofits in accordance with this section prior to any transfer. The sale of the property, either to a non-profit or a for-profit, does not terminate the LURA.”~~

STAFF RESPONSE: Staff agrees with the commenter and recommends the amended language.

The Board approved the final order adopting the amendments and new section on April 12, 2012.

The amendments are adopted pursuant to the authority of the Chapter 2306 of the Texas Government Code which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

§1.25.Right of First Refusal at Fair Market Value.

(a) Purpose and Overview. This section applies to Land Use Restriction Agreements (LURA) that provided an incentive for owners to offer a right of first refusal to nonprofit organizations and use fair market value to establish all or a portion of the sales price. The purpose of this section is to provide administrative procedures for implementation of this requirement.

(b) General.

(1) The Department reviews and approves all ownership transfers, including transfers to a non-profit through a right of first refusal. Property subject to a LURA may not be transferred to an entity that is considered an ineligible entity under the Department's most recent Qualified Allocation Plan. In addition, Department staff will not approve an ownership transfer to an entity that controls a property in Material Noncompliance as defined in §60.102 of this title (relating to

Definitions). However, an entity that controls a property in Material Noncompliance that wishes to pursue the acquisition of a TDHCA administered property may follow the procedures outlined in §60.128 of this title (relating to Temporary Suspension of Previous Participation Reviews).

(2) If a LURA includes a provision creating a right of first refusal at fair market value, an owner may not request a qualified contract until the requirements outlined in this section have been satisfied.

(3) Satisfying the right of first refusal ~~requirements~~ requirement does not terminate the LURA.

(c) Option One (Without Appraisal).

(1) The owner may market the property for sale and may sell the property to any eligible non-profit.

(2) If the owner receives an offer to purchase the property from any buyer other than an eligible non-profit that the owner would like to accept, the owner may execute a sales contract, conditioned upon satisfaction of the right of first refusal ~~requirements~~ requirement, and the items in subparagraphs (A) - (K) of this paragraph must be submitted to the Department:

(A) the executed sales contract, conditioned upon satisfaction of the right of first refusal requirements;

(B) a description of the property, including all amenities;

(C) ~~a description of all copies of all documents imposing~~ income, rental and other restrictions, if any, applicable to the operation of the property;

(D) a copy of the most current title report, commitment or policy in the owner's possession;

(E) ~~the most~~ any recent physical needs assessment conducted by a third party that is less than one (1) year old and in the owner's possession;

(F) a copy of the monthly operating statements, including income statements and balance sheets identifying amounts held in reserves, for the property for the most recent twelve (12) consecutive months;

(G) the three (3) most recent consecutive audited annual operating statements, if available;

(H) a detailed set of photographs of the development, including interior and exterior of representative units and buildings, and the property's grounds (including digital photographs that may be easily displayed on the Department's website);

(I) a current and complete rent roll for the entire property;

(J) if any portion of the land or improvements is leased for other than residential purposes, copies of the commercial leases; and

(K) a \$2500 processing fee.

(3) Within five (5) business days of receipt of all required documentation, the Department will list the property for sale on the Department's website (<http://www.tdhca.state.tx.us>) and contact non-profits to inform them of the availability of the property at the price and on the terms and conditions set forth in the sales contract. The Department will notify the owner when the property has been listed and of any inquiries or offers generated by such listing.

(4) If within ninety (90) days from the date listed on the website, the Department identifies a non-profit who can match the price, terms and conditions of the for-profit offer, and the owner does not accept the offer, the right of first refusal requirement will not be satisfied.

~~(5) If within ninety (90) days from the date listed on the website, the Department identifies a nonprofit who can match the price, terms and conditions of the for-profit offer, the owner accepts the offer, and the nonprofit fails to consummate the purchase, the owner may proceed in accordance with paragraph (6) of this subsection.~~

~~(6) If within ninety (90) days from the date listed on the website, the Department is not able to identify an eligible non-profit buyer that can meet the price, terms and conditions of the for-profit offer, the property may be sold owner may pursue the qualified contract process or proceed with the sale to the for-profit buyer, subject to:-~~

~~(A) prior~~~~Prior~~ to closing a sale of the property, the final settlement statement and final sales contract with all amendments must be submitted to the Department-; and

~~(B) if~~ the closing price is materially less than the amount identified in the sales contract that was submitted in accordance with paragraph (2)(A) of this subsection or the terms and conditions of conditions of the sale change materially, in the Department's sole determination, the procedures in paragraphs (3) and (4) of this subsection will be repeated.

~~(6) (7) If there is no material change in the sales price or terms and conditions of the sale, as set forth in subsection (c) of this section Department is not able to identify a non-profit that can meet the price, terms and conditions of the final sales contract taking into consideration all amendments, the Department will notify the owner in writing that the Right of First Refusal Requirement has been met. Following notice that the Right of First Refusal Requirement requirements have has been met, if the property is not transferred to the for-profit entity at the price, terms, and conditions set out in the final sales contract reviewed by the Department, the owner must again offer the property to non-profits in accordance with this section prior to any transfer, unless the owner pursues §1.9 of this title (relating to the Qualified Contract Process) within the timeframe set forth in paragraph (8) of this subsection.~~

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~~(8) If the Right of First Refusal Requirement is met and the owner fails to proceed with a request for a qualified contract or sell the property to the for-profit entity within twenty-four (24) months of the Department's notice that the Right of First Refusal Requirement has been met, the owner must again offer the property to nonprofits in accordance with this section prior to any transfer.~~

~~(9) (7) The sale of the property, either to a non-profit or a for-profit, does not terminate the LURA.~~

(d) Option Two (With Appraisal).

(1) The owner may market the property for sale and may sell the property to any eligible nonprofit.

(2) If the owner of the property chooses to establish fair market value using an appraisal, the owner shall submit the following information:

(A) a description of the property, including all amenities;

- (B) ~~copies of documents imposing a description of all~~ income, rental and other restrictions, if any, applicable to the operation of the property;
 - (C) a copy of the most current title report, commitment or policy in the owner's possession;
 - (D) ~~the most recent~~ any physical needs assessment conducted by a third party that is less than (1) one year old and in the owners possession;
 - (E) a copy of the monthly operating statements, including income statements and balance sheets identifying amounts held in reserves, for the Development for the most recent twelve (12) consecutive months;
 - (F) the three most recent consecutive audited annual operating statements, if available;
 - (G) a detailed set of photographs of the property, including interior and exterior of representative units and buildings, and the property's grounds (including digital photographs that may be easily displayed on the Department's website);
 - (H) a current and complete rent roll for the entire property;
 - (I) if any portion of the land or improvements is leased for other than residential purposes, copies of the commercial leases;
 - (J) an appraisal of the property completed during the last three (3) months, establishing a value for the property using the income approach and taking into account the existing and continuing requirements to operate the property under the LURA and any other restrictions that may exist. For the purposes of satisfying the right of first refusal requirements, this will be considered the fair market value of the property. Notwithstanding the forgoing, if the owner accepts an offer at a lower price from an eligible non-profit or an offer consistent with paragraph (10) of this subsection, such offer will be considered fair market value; and
 - (K) a \$2500 processing fee.
- ~~(2)(3)~~ Department staff will review all materials within thirty (30) days of receipt. If after the review the Department does not agree with the fair market value proposed in the owner's appraisal, the Department may order another appraisal at the owner's expense.
- ~~(3)(4)~~ When all required documentation is received and the owner and the Department come to an agreement on the fair market value of the property, ~~the ninety (90) day period will begin, as evidenced by a written communication of the agreement from the Department~~ the Department will list the property for sale on the Department's website (<http://www.tdhca.state.tx.us>) and contact nonprofits to inform them of the availability of the property and the fair market value. The Department will notify the owner when the property has been listed and of any inquiries or offers generated by such listing.
- ~~(4)(5)~~ The owner may offer the property for sale Prospective nonprofit purchases may submit offers ~~below, at, or above, or below~~ the appraised value.
- ~~(5)~~ The Department will list the property for sale on the Department's website and notify nonprofits that the property is available for sale.
- (6) If ~~the property was offered for sale at or below the fair market value, and~~ no offers are received during the ninety (90) day period after the date listed on the website, the Department will notify the owner in writing that the right of first refusal requirement has been met.

(7) If within ninety (90) days from the date listed on the website, the Department identifies a nonprofit who is willing to acquire the property at or above the fair market value, the owner accepts the offer, and the nonprofit fails to consummate the purchase, the Right of First Refusal Requirement will be deemed met.

(8) If within ninety (90) days from the date listed on the website, an offer from a nonprofit is received at or above the fair market value, and the owner does not accept the offer, the Right of First Refusal Requirement will not be satisfied.

(9) If an offer from a nonprofit is received at a price below the fair market value, the owner is not required to accept the offer, and the Right of First Refusal Requirement will be deemed met if no other offers at or above the fair market value are received during the 90-day period.

(10) Once the Right of First Refusal Requirementright of first refusal requirements havehas been satisfied, the owner may proceed with a request for a qualified contract or sell the property to a for-profit entity for an amount at or above the fair market value, provided that the owner must provide the Department with a copy of the final settlement statement and final sales contract with all amendments to verify the price prior to closing.

(11) If the Right of First Refusal Requirement is met and the owner fails to proceed with a request for a qualified contract or sell the property to a for-profit entity within twenty-four (24) months of the Department's notice that the Right of First Refusal Requirement has been met, the owner must again offer the property to nonprofits in accordance with this section prior to any transfer.

~~(8) If an offer from an eligible non-profit is received at or above the fair market value, and the owner does not accept the offer, the right of first refusal requirement will not be satisfied.~~

~~(9) If an offer from a non-profit is received at or below the lesser of the listing price or fair market value, the owner is not required to accept the offer.~~

~~(10) If, during the course of marketing the property, the owner receives an offer to purchase the property from a for-profit entity that the owner would like to accept, the owner may execute a sales contract, conditioned upon satisfaction of the right of first refusal requirements. The sales contract must be submitted to the Department and the procedures in subsection (c)(3) – (6) of this section must be followed.~~

~~(11) If the property was offered for sale at greater than the fair market value and no offers were received, before the owner can request a qualified contract request, the Department will have ninety (90) days to identify an eligible non-profit to acquire the property at the fair market value. If the Department successfully identifies a non-profit willing to buy the property at or above the fair market value and the owner does not accept the offer, the right of first refusal requirements will not be satisfied.~~

~~(12) If the Department is not successful in identifying a non-profit to acquire the property at or above the fair market value, the Department will notify the owner in writing that the right of first refusal requirement has been met.~~

~~(13) If the property is not transferred within twenty four (24) months of the Department's notice that the right of first refusal requirement has been met, the owner must again offer the property to nonprofits in accordance with this section prior to any transfer.~~

(e) Appeals.

(1) An owner may appeal a staff decision regarding subsection (c)~~(5)~~(6) or (d)(2) of this section by submitting a written request to appeal to the Executive Director in accordance with §1.7 of this title, relating to the Staff Appeals Process.

(2) If the appealing party is not satisfied with the Executive Director's response to the appeal, ~~they~~ such party may appeal directly to the Board within seven (7) days of the date of the Executive Director's response in accordance with §1.8 of this title, relating to the Board Appeals Process. The matter will be placed on the next possible agenda.

(3) The decision of the Board will be final.

(4) The following issues will be considered in the appeal process:

(A) The best interests of the residents of the Development;

(B) The impact the decision would have on other developments in the Department's portfolio;

(C) The source of the data used as the basis for the owner's appeal;

(D) The rights of nonprofits under the Right of First Refusal;

(E) Any offers from an eligible nonprofit to purchase the Development; and

(F) Other factors as deemed relevant by the Executive Director.

(f) Waiver. The Executive Director may waive the requirement to supply any of the required information listed in subsection (c)(2) or (d)~~(1)~~(2) of this section if there is good cause to do so and an evaluation of the request can still be made.

Attachment B: Preamble, Reasoned Response, and Amended §1.9. Qualified Contract Policy.

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 1, §1.9, concerning the Qualified Contract Policy without change to the proposed text as published in the December 30, 2011 issue of the *Texas Register* (37 TexReg 9145) and will not be republished.

REASONED JUSTIFICATION FOR THE RULE. This rule is amended to reference to a new rule, §1.25, the Right of First Refusal Requirement. The Department's rules regarding the Right of First Refusal requirement were embedded in §1.9, the Qualified Contract Rule. That rule reflected the more recent QAP requirements which would require the property to be offered for sale at the Minimum Purchase Price under 26 USC §42(i)(7)(B). This caused confusion. Therefore, staff drafted a separate rule, §1.25 Right of First Refusal Requirement to clear up confusion. The purpose of the proposed amendments to §1.9, Qualified Contract Rule is to delete information about the Right of First Refusal requirement, provide reference to the new rule, and revise the language to be less confusing and consistent with the more recent QAP.

Public comments were accepted through March 23, 2012. No comments were received.

The Board approved the final order adopting the amendments on April 12, 2012.

The amendments are adopted pursuant to the authority of the Chapter 2306 of the Texas Government Code which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

§1.9. Qualified Contract Policy.

(a) Purpose. Pursuant to §42(h)(6) of the Internal Revenue Code, after the end of the 14th year of the compliance period, the owner of a development utilizing housing tax credits can request that the allocating agency find a buyer at the qualified contract price. If a buyer cannot be located within one (1) year, the extended use commitment will expire. This section provides the procedures for the submittal and review of the qualified contract requests.

(b) Definitions. Many of the terms used in this section are defined in the Department's Housing Tax Credit Program Qualified Allocation Plan and Rules (QAP). Those terms that are not defined in the QAP or which may have another meaning when used in this section shall have the meaning set forth in this subsection unless the context clearly indicates otherwise.

(1) Code--The Internal Revenue Code of 1986 as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the United States Department of Treasury or the Internal Revenue Service.

(2) Compliance Period--With respect to a building, the period of fifteen (15) taxable years, beginning with the first taxable year of the credit period pursuant to §42(i)(1) of the Code.

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

(4) Extended Use Period--The period beginning with the first day of the Compliance Period and ending on the date which is fifteen (15) years after the end of the Initial Affordability Period.

(5) Initial Affordability Period--The Compliance Period or such longer period as shall have been elected by the owner as the minimum period for which units in the development shall be retained for low-income tenants and rent restricted, as set forth in the Land Use Restriction Agreement (LURA).

(6) Land Use Restriction Agreement (LURA)--An agreement between the Department and the owner which is binding upon the owner's successors in interest, that maintains the affordability of a development pursuant to the requirements of Chapter 2306 of the Texas Government Code, and the requirements of §42 of the Code.

(7) One Year Period (1YP)--Period commencing on the date on which the Department and the owner agree to the Qualified Contract price in writing and lasting twelve (12) calendar months.

(8) Qualified Contract (QC)--A bona fide contract to acquire the non-low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the applicable fraction (specified in the LURA) of the calculation as defined within §42(h)(6)(F) of the Code.

(9) Qualified Contract Price (QC Price)--Calculated purchase price of the development as defined within §42(h)(6)(F) of the Code and as further delineated in subsection (g) of this section.

(10) Qualified Contract Request (Request)--A request containing all information and items required by the Department.

(11) Qualified Purchaser--Proposed purchaser of the development who meets all eligibility and qualification standards stated in the QAP of the year the request is received. The purchaser must also attend, or assign another individual to attend, the Department's Property Compliance Training.

(c) Eligibility. An owner may submit a Qualified Contract Request at any time after the end of the year preceding the last year of the Initial Affordability Period, following the Department's determination that the owner is eligible, as hereinafter provided in subsection (f) of this section . The Initial Affordability Period starts concurrently with the credit period; therefore, beginning at placement in service or deferred until the beginning of the next tax year, if there is an election. Unless the owner has elected an Initial Affordability Period longer than the Compliance Period, this can commence at any time after the end of the 14th year of the Compliance Period. References in this section to actions which can occur after the 14th year of the Compliance Period shall refer, as applicable, to the year preceding the last year of the Initial Affordability Period, if the owner shall have elected an Initial Affordability Period longer than the Compliance Period.

(1) If there are multiple buildings placed in service in different years, the end of the Initial Affordability Period will be based upon the date the last building placed in service. For example, if five buildings in the development began their credit periods in 1990 and one began in 1991, the 15th year would be 2005.

(2) If a development received an allocation in multiple years, the end of the Initial Affordability Period will be based upon the last year of a multiple allocation. For example, if a development received its first allocation in 1990 and a subsequent allocation and began the credit period in 1992, the 15th year would be 2006.

(3) Owners who received an allocation of credits on or after January 1, 2002 are not eligible to request a qualified contract.

(d) Preliminary Qualified Contract Request. An owner must file a preliminary Qualified Contract Request (Pre-request) any time after the end of the year preceding the last year of the Initial Affordability Period.

(1) In addition to determining the basic eligibility described in subsection (c) of this section , the Pre-request will be used to determine the following:

(A) the property does not have any outstanding instances of noncompliance, with the exception of the physical condition of the property;

(B) there is a right of first refusal connected to the property that has not been offered to the Department;

(C) the Compliance Period has not been extended in the LURA; and

(D) the owner has all of the necessary documentation to submit a Request.

(2) In order to assess the validity of the pre-request, the Owner must submit:

(A) Preliminary Request Form;

(B) \$250 nonrefundable processing fee;

(C) copy of recorded LURA;

(D) first year's 8609s for all buildings showing Part II completed;

(E) documentation from original application regarding right of first refusal, if applicable; and

(F) local code compliance report within the last twelve (12) months or HUD-certified UPCS inspection.

(3) The Pre-request will not bind the owner to submit a Request and does not start the 1YP. A review of the pre-request will be conducted by the Department within ninety (90) days of receipt of all documents described in paragraph (2) of this subsection . If the Department determines that this stage is satisfied, a letter will be sent to the owner stating that they are eligible to submit a Request.

(e) Right of First Refusal. If the owner elected at the time of application to provide a right of first refusal, the owner must first satisfy the right of first refusal requirements. If the owner agreed to a Right of First Refusal at Fair Market Value, the procedures in §1.25 of this chapter (relating to Right of First Refusal at Fair Market Value) must be followed. All requests for right of first refusal submitted to Department, regardless of existing regulations, must adhere to this process.

(1) If at any time following the end of the Compliance Period or Initial Affordability Period, as applicable, the owner shall determine to sell the development and the owner has agreed to provide a right of first refusal to purchase the property for the minimum purchase price provided in, and in accordance with the requirements of §42(i)(7)(B) of the Code (the "Minimum Purchase Price"), to a Qualified Nonprofit Organization, the Department, or either an individual tenant with respect to a single family building, or a tenant cooperative, a resident management corporation in the Development or other association of tenants in the Development with respect to multifamily developments (together, in all such cases, including the tenants of a single family building, a "Tenant Organization"), the right of first refusal shall be subject to the following terms.

(A) Upon the earlier to occur of:

(i) the owner's determination to sell the Development, or

(ii) the owner's request to the Department, pursuant to §42(h)(6)(H) of the Code, to find a buyer who will purchase the Development pursuant to a "qualified contract" within the meaning of §42(h)(6)(F) of the Code, the owner shall provide a notice of intent to sell the Development ("Notice of Intent") to the Department and to such other parties as the Department may direct at that time. If the owner determines that it will sell the Development at the end of the Compliance Period or Initial Affordability Period, as applicable, the Notice of Intent shall be given no later than two (2) years prior to expiration of the Compliance Period or Initial Affordability Period, as applicable. If the owner determines that it will sell the Development at some point later than the end of the Compliance Period, the Notice of Intent shall be given no later than two (2) years prior to date upon which the owner intends to sell the Development. If the Development is already within two (2) years of the expiration of the Compliance Period or Initial Affordability Period, as applicable, and the owner intends to sell the Development at the end of the Compliance Period or Initial Affordability Period, as applicable, the two year period referenced in subparagraph (B) of this paragraph will begin when the owner files a Notice of Intent.

(B) During the two (2) years following the giving of Notice of Intent, the Sponsor may enter into an agreement to sell the Development only in accordance with a right of first refusal for sale at the Minimum Purchase Price with parties in the following order of priority:

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

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

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

(iv) If, during such two-year period, the owner shall receive an offer to purchase the Development at the Minimum Purchase Price from one of the organizations designated in clauses (i) - (iii) of this subparagraph (within the period(s) appropriate to such organization), the owner shall sell the Development at the Minimum Purchase Price to such organization. If, during such period, the owner shall receive more than one offer to purchase the Development at the

Minimum Purchase Price from one or more of the organizations designated in clauses (i) - (iii) of this subparagraph (within the period(s) appropriate to such organizations), the owner shall sell the Development at the Minimum Purchase Price to whichever of such organizations it shall choose.

(C) After whichever occurs the later of:

(i) the end of the Compliance Period or Initial Affordability Period, as applicable, or

(ii) two (2) years from delivery of a Notice of Intent, the owner may sell the Development without regard to any right of first refusal established by the LURA if no offer to purchase the Development at or above the Minimum Purchase Price has been made by a Qualified Nonprofit Organization, a Tenant Organization or the Department, or a period of one-hundred-twenty (120) days has expired from the date of acceptance of all such offers as shall have been received without the sale having occurred, provided that the failure(s) to close within any such 120-day period shall not have been caused by the owner or matters related to the title for the Development.

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

(E) The Department shall, at the request of the owner, identify in the LURA a Qualified Nonprofit Organization or Tenant Organization which shall hold a limited priority in exercising a right of first refusal to purchase the Development at the Minimum Purchase Price, in accordance with and subject to the priorities set forth in subparagraph (B) of this paragraph.

(F) The Department shall have the right to enforce the owner's obligation to sell the Development as herein contemplated by obtaining a power-of-attorney from the owner to execute such a sale or by obtaining an order for specific performance of such obligation or by such other means or remedy as shall be, in the Department's discretion, appropriate.

(2) The owner must submit evidence of the calculation of the Minimum Purchase Price with the Notice of Intent.

(3) The 1YP for the Qualified Contract process will begin eighteen (18) months after the right of first refusal process has commenced if the owner and the Department have agreed to the QC Price in writing.

(f) Qualified Contract Request. An owner may file a Qualified Contract Request (Request) anytime after approval that the owner is eligible to submit a Request has been received in writing from the Department.

(1) The documentation that must be submitted with a Request are outlined in subparagraphs (A) - (P) of this paragraph :

(A) a completed application and certification ;

(B) the qualified contract price calculation worksheets completed by a third party certified public accountant (CPA). The CPA shall certify that they have reviewed annual partnership tax returns for all years of operation, loan documents for all secured debt, and partnership agreements. They shall also certify that they are not being compensated for the assignment based upon a predetermined outcome ;

(C) a thorough description of the Development, including all amenities ;

(D) a description of all income, rental and other restrictions, if any, applicable to the operation of the Development ;

(E) a current title report ;

(F) a current appraisal consistent with 10 TAC §1.34 of this chapter (relating to Appraisal Rules and Guidelines);

(G) a current Phase I Environmental Site Assessment (Phase II if necessary) consistent with 10 TAC §1.35 of this chapter (relating to Environmental Site Assessment Rules and Guidelines);

(H) a current property condition assessment consistent with 10 TAC §1.36 of this chapter (relating to Property Condition Assessment Guidelines);

(I) a copy of the monthly operating statements for the Development for the most recent twelve (12) consecutive months ;

(J) the three (3) most recent consecutive annual operating statements ;

(K) a detailed set of photographs of the development, including interior and exterior of representative units and buildings, and the property's grounds (including digital photographs that may be easily displayed on the Department's website) ;

(L) a current and complete rent roll for the entire property ;

(M) a certification that all tenants in the Development have been notified in writing of the request for a Qualified Contract. A copy of the letter used for the notification must also be included ;

(N) if any portion of the land or improvements is leased, copies of the leases ;

(O) non-refundable processing fee in an amount equal to the lesser of \$3,000.00 or one fourth of one percent of the QC Price determined by the CPA ; and

(P) additional information deemed necessary by the Department.

(2) Unless otherwise directed by the Department pursuant to subsection (i) of this section , the owner shall contract with a broker approved by the Department to market and sell the property. The fee for this service will be paid by the seller, not to exceed 6 percent of the QC Price.

(3) Within ninety (90) days of the submission of a complete Request, the Department will notify the owner in writing of the acceptance or rejection of the owner's QC Price calculation. The Department will have one year from the date of the acceptance letter to find a Qualified Purchaser and present a Qualified Contract. The Department's rejection of the owner's QC Price calculation will be processed in accordance with subsection (h) of this section and the 1YP will commence as provided therein.

(g) Determination of Qualified Contract Price. The CPA contracted by the owner will determine the QC Price in accordance with §42(h)(6)(F) of the Code and guidelines :

(1) Distributions to the owner include any and all cash flowing to the owner, including incentive management fees and reserve balance distributions or future anticipated distributions, but excluding payments of any eligible deferred developer fee. These distributions can only be confirmed by a review of all prior year tax returns for the development ;

(2) All equity contributions will be adjusted based upon the lesser of the consumer price index or 5 percent for each year, from the end of the year of the contribution to the end of year 14 or the end of the year of the request for a Qualified Contract Price if requested at the end of the year or the year prior if the request is made earlier than the last year of the month ;

(3) These guidelines are subject to change based upon future IRS Rulings and/or guidance on the determination of owner distributions, equity contributions and/or any other element of the QC Price ; and

(4) The QC Price calculation is not the same as the Minimum Purchase Price calculation for the right of first refusal.

(h) Appeal of Qualified Contract Price. The Department reserves the right, at any time, to request additional information to document the QC Price calculation or other information submitted. If the documentation does not support the price indicated by the CPA hired by the owner, the Department may engage its own CPA to perform a QC Price calculation. Cost of such service will be paid for by the owner. If an owner disagrees with the QC Price calculated by the Department, an owner may appeal in writing. A meeting will be arranged with representatives of the owner, the Department and the CPA contracted by the Department to attempt to resolve the discrepancy. The 1YP will not begin until the Department and owner have agreed to the QC Price in writing.

(i) Marketing of Property.

(1) By submitting a Request, the owner grants the Department the authority to market the development and provide development information to interested parties. Development information will consist of pictures of the development, location, amenities, number of units, age of building, etc. Owner contact information will also be provided to interested parties. The owner is responsible for providing staff to assist with site visits and inspections. Marketing of the development will continue until such time that a Qualified Contract is presented or the 1YP has expired.

(2) Notwithstanding subsection (f)(2) of this section , the Department reserves the right to contract directly with a third party in marketing the development. Cost of such service, including a broker's fee not to exceed 6 percent, will be paid for by the existing owner.

(3) The Department must have continuous cooperation from the owner. Lack of cooperation will cause the process to cease and the owner will be required to comply with requirements of the LURA for the remainder of the Extended Use Period. Responsibilities of the owner include but are not limited to:

- (A) allowing access to the property and tenant files;
 - (B) keeping the Department informed of potential purchasers; and
 - (C) notifying the Department of any offers to purchase.
- (4) A prospective purchaser must complete all exhibits required for an ownership transfer request. The Department will then assess if the prospective purchaser is a Qualified Purchaser.

(j) Presentation of a Qualified Contract.

(1) If the Department finds a Qualified Purchaser willing to present an offer to purchase the property for an amount at the QC Price, the owner must agree to enter into a commercially reasonable form of earnest money agreement or other contract of sale for the property and provide a reasonable time for necessary due diligence and closing of the purchase.

(2) Although the owner is obligated to sell the development for the QC Price pursuant to a Qualified Contract, the consummation of such a sale is not required for the LURA to continue to bind the development for the remainder of the extended use period. Once the Department presents a Qualified Contract to the owner, the possibility of terminating the extended use period is removed forever and the property remains bound by the provisions of the LURA.

(3) The Department will attempt to procure a QC for the acquisition of the low income portion of any project only once during the extended use period.

(4) If the transaction closes under the contract, the new owner will be required to fulfill the requirements of the LURA for the remainder of the extended use period.

(5) If the Department fails to present a QC before the end of the 1YP, the Department will file a release of the LURA and the development will no longer be restricted to low-income requirements and compliance. However, in accordance with §42(h)(6)(E)(ii) of the Code, for a three-year period commencing on the termination of the extended use period, the owner may not evict or displace tenants of low-income units for reasons other than good cause and will not be permitted to increase rents beyond the maximum tax credit rents. Additionally, the owner should submit evidence, in the form of a signed certification and a copy of the letter to be created by the Department, that the tenants in the Development have been notified in writing that the LURA has been terminated and have been informed of their protections during the three-year time frame.

(6) Prior to the Department filing a release of the LURA, the owner must correct all instances of noncompliance with the physical condition of the property.

(k) Compliance Monitoring during Extended Use Period. For developments that continue to be bound by the LURA and remain as affordable after the end of the Compliance Period, the Department will implement modified compliance monitoring policies and procedures. Refer to the Extended Use Period Compliance Policy §60.122 of this title (relating to Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period) for more information.

(l) Waiver and Amendment of Rules.

- (1) The Board, in its discretion, may waive any one or more of these Rules if the Board finds that a waiver is appropriate to fulfill the purposes or policies of Chapter 2306 of the Texas Government Code, or for other good cause, as determined by the Board.
- (2) The Department may amend this section to comply with IRS guidance, if and when issued.

1h

BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
April 12, 2012

Presentation, Discussion, and Possible Approval of the Substantial Amendment to the 2011 State of Texas Consolidated Plan, One Year Action Plan and to the Substantial Amendment to the 2012 State of Texas Consolidated Plan, One Year Action Plan.

RECOMMENDED ACTION

Approve the Substantial Amendment to the 2011 State of Texas Consolidated Plan, One Year Action Plan and to the Substantial Amendment to the 2012 State of Texas Consolidated Plan, One Year Action Plan and required certifications for submission to the U.S. Department of Housing and Urban Development.

FURTHER RESOLVED, that the board approves the Substantial Amendment to the 2011 State of Texas Consolidated Plan, One Year Action Plan and to the Substantial Amendment to the 2012 State of Texas Consolidated Plan, One Year Action Plan and required certifications for submission to the U.S. Department of Housing and Urban Development.

Background

On December 5, 2011, the U.S. Department of Housing and Urban Development (HUD) issued the Emergency Solutions Grants Program (ESG) Interim Rule and notified recipients that in order to receive fiscal year (FY) 2011 second allocation ESG funds and FY 2012 ESG funds, recipients must submit a Substantial Amendment to the 2011 State of Texas Consolidated Plan, One Year Action Plan and to the Substantial Amendment to the 2012 State of Texas Consolidated Plan, One Year Action Plan. The documents presented have been prepared in adherence to the January 20, 2012 Notice of the FY 2011 Substantial Amendment Process and Other Related Information for Recipients of ESG Funds issued by HUD.

At the February 16, 2012 Board meeting, the board approved the draft Substantial Amendment to the 2011 State of Texas Consolidated Plan, One Year Action Plan and to the draft Substantial Amendment to the 2012 State of Texas Consolidated Plan, One Year Action Plan and authorized the publication of the notice regarding the acceptance of public comments to these documents. The Department provided for a 30-day public comment period on these documents through a notice published in the *Texas Register*, by posting the document on the Department's website, and by notifying parties signed up to receive e-mail notifications.

The Department did not receive public comment, but did receive guidance from the U.S. Department of Housing and Urban Development to make revisions to the sections describing performance standards to be used for evaluating the outcomes of the project and activities funded with ESG and the procedures to be used to monitor performance and compliance with written standards for providing Emergency Solutions Program assistance. The requested revisions have been made to the referenced sections.

Staff is requesting Board approval of these documents. Upon approval, the substantial amendments and required certifications will be submitted to HUD.

**Texas Department of Housing and Community Affairs
Emergency Solutions Grants Program (ESG)
Substantial Amendment to the
2012 State of Texas Consolidated Plan, One Year Action Plan**

The Texas Department of Housing and Community Affairs (the Department) has prepared a substantial amendment to its the 2012 State of Texas Consolidated Plan, One Year Action Plan in accordance with the Department's citizen participation plan and the requirements of 24 CFR part 91, as amended by the Interim Rule.

1. SF-424 – signed and including DUNNS (to be submitted with amendment)

2. Summary of Consultation Process

Describe how the recipient consulted with the Continuum(s) of Care on:

- o determining how to allocate ESG funds for eligible activities;
- o developing the performance standards for activities funded under ESG; and
- o developing funding, policies, and procedures for the operation and administration of the HMIS.

The Texas Department of Housing and Community Affairs (the Department) sought the input of Continua of Care (CoCs) in Texas on the topics of 1) allocating 2012 ESG Funds for eligible activities and 2) performance standards for activities funded with 2012 ESG funds through the completion of two different surveys. Through a Data Warehouse Governing Body, which has met five times since May 2011, the Department has consulted with CoCs on funding, policies, and procedures related to HMIS.

Consultation regarding the allocation of ESG funds for eligible activities

On February 2, 2012 the Department distributed an e-mail and survey to CoCs requesting comments from all CoC Leads on the allocation of 2012 funds. The survey specifically sought comments on different sections of the proposed 2012 ESG NOFA including TDHCA's ESG Strategic Goals for 2012 funds; eligible applicant organizations; eligible activities; and the review process and selection of awardees. The input was received through an electronic survey that was e-mailed to all 16 CoC Leads in the State of Texas. The Department requested CoC Leads to forward the survey to CoC member agencies to broaden participation. The Department reviewed all comments and considered them in the developing the final draft of the 2012 ESG NOFA.

Consultation regarding performance standards for activities funded under ESG

On January 19, 2012, the Department shared with CoCs a list of proposed performance standards for 2012 ESG activities and provided them an opportunity to provide comment. The performance standards included short-term outputs and long-term outcomes. The Department reviewed all input received and revised the performance standards based on the comments received.

Consultation regarding funding, policies, and procedures for the operation and administration of the HMIS

Since May 2011, the Department has worked with all sixteen CoCs in Texas to develop a statewide HMIS data warehouse, which will aggregate HMIS data from all sixteen systems in the State. Representatives from the CoCs have convened five times, twice in person, to discuss HMIS policy and procedures pertaining to the data warehouse. To facilitate project implementation and statewide decision-making, the Department has worked closely with all CoCs to establish a Data Warehouse Governing Body. The Governing Body, which consists of representatives from all CoCs in Texas, will advise the Department on HMIS policy and establish policies and procedures guiding the development and use of the data warehouse. The Governing Body will facilitate statewide data sharing agreements among CoCs. The Department anticipates using the data warehouse to streamline reporting and performance measurement related to ESG.

3. Summary of Citizen Participation Process

Summarize citizen participation process used;

Summarize the public comments or views received; and

Summarize the comments or views not accepted and include the reasons for not accepting those comments or views.

The Department will provide for a 30-day public comment period of the Draft Substantial Amendment to the FY 2012 Consolidated Plan Annual Action Plan. The public input process will include notification through a notice published in the Texas Register, by posting the document on the Department's web-site, and by notifying parties signed up to receive e-mail notifications. The public will also have an opportunity to provide public comment at the Department's board meeting on February 16, 2012 at the time the Board considers approval of the draft substantial amendment. A Spanish speaking translator will be available at the Board meeting for persons providing public comment which require a Spanish speaking translator.

After public comments are received, the Department will summarize the public comments or views received, and will summarize the comments or views not accepted and include the reasons for not accepting those comments or views.

4. Match

Describe:

- types of cash and/or non-cash resources used as match*
- specific amounts of resources used as match*
- proposed uses of match resources*

At this time, the Department has not obligated the FY 2012 ESG funds and therefore does not have actual match figures by types of match. ESG subrecipients of 2012 ESG funds will be required to provide 100% match to the funds awarded. Matching sources may include cash contributions expended for allowable costs, and non-cash contributions including, but not limited to, the value of any real property, equipment, goods, or services provided that the costs would have been allowable. Costs

paid by program income during the contract period will count towards meeting the match requirement provided that the costs are eligible ESG costs that supplement the ESG program.

5. Proposed Activities and Overall Budget

a. Proposed Activities

All recipients must include the following details for each proposed activity:

1) *corresponding priority needs from recipient's Annual Action Plan*

The Department anticipates using ESG funds for Street Outreach, Emergency Shelters, Homelessness Prevention, Rapid Re-Housing, HMIS, and administrative activities. These activities will be targeted to the State's Priority Housing/Special Needs Groups including small related households, large related households, elderly households, and all other households whose income is 0-30% of Area Median Family Income and to persons with priority special needs including elderly, frail elderly, severe mental illness, developmentally disabled, persons with alcohol and other addictions, persons with HIV/AIDS, victims of domestic violence, and Colonia residents and migrant farmworkers.

2) *concise description of the activity, including the number and types of persons to be served*

The Department anticipates using ESG funds for the eligible activities: Street Outreach, Emergency Shelters, Homelessness Prevention, Rapid Re-Housing, HMIS, and administrative costs. The Department anticipates serving both persons who meet the definition of homeless and at-risk of homelessness. The Department estimates serving a total of serving 46,812 persons.

The table below is an estimate on how 2012 ESG funds will be allocated to the eligible activities. The Department will release the FY 2012 ESG NOFA in March 2012. After awards are made and contracts are executed, the amount allocated by activity will be different than the proposed allocations indicated in the following table. The Department will share administrative funds with all subrecipients.

FY 2012 ESG Funds Estimated Allocations by Sub-Activity

Activity	Funding Amount
Street Outreach – essential services	\$912,951
Emergency Shelter - essential services	\$1,369,426
Emergency Shelter - renovation	\$1,369,426
Emergency Shelter – shelter operations	\$1,825,903
Homelessness Prevention – housing relocation and stabilization services	\$612,000
Homelessness Prevention –rental assistance	\$940,018
Rapid Re-Housing – housing relocation and stabilization services	\$433,652
Rapid Re-Housing - rental assistance	\$433,652
HMIS	\$547,770
Administration (State and amount shared with subrecipients)	\$684,713
Total Funds Committed	\$9,129,511

Estimated allocations by activity. Allocations will change once 2012 budgets are negotiated.

3) corresponding standard objective and outcome categories

OBJECTIVES AND OUTCOMES
CPD Outcome Performance Measurement System Reporting
ESG Annual Action Plan Planned Project Results
ESG Performance Measures, PY 2012

Outcomes and Objectives	Performance Indicators	Expected Number	Activity Description
<p style="text-align: center;">SL-1</p> <p style="text-align: center;">Availability/ Accessibility and Create a Suitable Living Environment</p>	<p>Provide funding to support the provision of emergency and/or transitional shelter to homeless persons.</p>	<p>45,074</p>	<ul style="list-style-type: none"> • Emergency Shelter • Shelter Operations • Shelter Renovations
<p style="text-align: center;">DH-2</p> <p style="text-align: center;">Affordability and Provide Decent Housing</p>	<p style="text-align: center;">The provision of non-residential services including homelessness prevention assistance.</p>	<p>1,738</p>	<ul style="list-style-type: none"> • Street Outreach essential services. • Homelessness Prevention - housing relocation and stabilization services. • Homelessness Prevention rental assistance. • Rapid Re-Housing housing relocation and stabilization services. • Rapid Re-Housing rental assistance.

4) start date and completion date

ESG funds which will be received for FY 2012 will be awarded within 60 days of receipt of the HUD grant agreement. The State ESG contracts for FY 2012 funds are anticipated to begin on September 1, 2012 and will end August 31, 2013. However, the contract period will be dependent upon the date that the HUD grant agreement is executed. Any unexpended funds will be re-distributed in the following ESG program year in separate contracts.

5) ESG and other funding amounts

The Department will not provide additional funding. Subrecipients will utilize other fund sources to support ESG activities.

**FY 2012 ESG Funds Estimated Allocations by Activity
ESG Homeless and Special Needs Goals**

ANNUAL AFFORDABLE HOUSING GOALS	Expected Annual Number of Units To Be Completed
Homeless households	18,030*
Non-homeless households	695*
Special needs households	30*

*These numbers are estimates; ESG is planning to collect data on persons and not households, unless required by HUD reporting guidelines.

ESG only provides rental assistance, but cannot be utilized to purchase a home. Consequently, ESG does not impact the number of properties that are affordable. ESGP funds are utilized to assist all homeless persons and persons at-risk of homelessness.

6) – 8) Performance Indicators and Projected Accomplishments

Local governments and territories are required, and States are encouraged, to include the following details for each proposed activity:

- 1) one or more performance indicators*
- 2) projected accomplishments, in accordance with each indicator, to be made within one year*
- 3) projected accomplishments, in accordance with each performance indicator, to be made over the period for which the grant will be used for that activity*

OBJECTIVES AND OUTCOMES
CPD Outcome Performance Measurement System Reporting
ESG Annual Action Plan Planned Project Results
ESGP Performance Measures, PY 2012

Outcomes and Objectives	Performance Indicators	Expected Number	Activity Description
<p style="text-align: center;">SL-1</p> <p style="text-align: center;">Availability/ Accessibility and Create a Suitable Living Environment</p>	<p>Provide funding to support the provision of emergency and/or transitional shelter to homeless persons.</p>	45,074	<ul style="list-style-type: none"> • Emergency Shelter • Shelter Operations • Shelter Renovations
<p style="text-align: center;">DH-2</p> <p style="text-align: center;">Affordability and Provide Decent Housing</p>	<p style="text-align: center;">The provision of non-residential services including homelessness prevention assistance.</p>	1,738	<ul style="list-style-type: none"> • Street Outreach essential services. • Homelessness Prevention - housing relocation and stabilization services. • Homelessness Prevention rental assistance. • Rapid Re-Housing housing relocation and stabilization services. • Rapid Re-Housing rental assistance.

The Department will also incorporate performance standards related to, but not limited to, client’s exiting into temporary/transitional housing destination, exiting to permanent housing destination, receiving case management, maintaining permanent housing, persons with higher incomes at program exit, persons with more non-cash benefits at program exit, and persons placed in shelters or Safe Havens.

b. Discussion of Funding Priorities

□ Explain why the recipient chose to fund the proposed activities at the amounts specified (recommended: if available, use locally-relevant data to support the funding priorities, and explain how the funding priorities will support the national priorities established in Opening Doors: Federal Strategic Plan to Prevent and End Homelessness)

The Department will select the proposed activities by funding the applicants that rank the highest according to the Department’s ESG 2012 NOFA application scoring criteria. The Department has embedded the priorities established in *Opening Doors: Federal Strategic Plan to Prevent and End Homelessness* in the scoring criteria to be utilized to rate FY 2012 ESG applications. In following *Opening Doors* objectives, the Department emphasized the following objectives: increased collaboration, increased outcomes related to client’s accessing permanent housing, increased economic

security, and changing funding priorities from emergency shelter to rapid re-housing and homelessness prevention.

The Department will emphasize these objectives by awarding points to applicants whose projects propose to achieve the following outcomes: exiting into temporary/transitional housing destination, exiting to permanent housing destination, receiving case management, maintaining permanent housing, persons with higher incomes at program exit, persons with more non-cash benefits at program exit, and persons placed in shelters or Safe Havens. Applications whose proposed projects meet these objectives will rank more competitively.

The table below identifies the activities to be funded and the estimated amount budgeted for each activity with 2012 ESG funds. The Department anticipates that the final amounts budgeted to the activities will be different than the proposed allocations indicated in the following table. The only activity which will remain as indicated is administration.

FY 2012 ESG Funds Estimated Allocations by Activity

Activity	Funding Amount	Percentage
Administration (State and amount shared with subrecipients)	\$684,713	7.5%
Street Outreach	\$912,951	10%
Shelter	\$4,564,755	50%
Homeless Prevention	\$1,552,018	17%
Rapid Re-Housing	\$867,304	9.5%
HMIS	\$547,770	6%
Total Funds Committed	\$9,129,511	

Estimated allocations by activity. Allocations will change once 2012 budgets are negotiated.

☐ Identify any obstacles to addressing underserved needs in the community.

Texas is a state with many rural areas which have limited service providers addressing the needs of homeless persons and those at-risk of homelessness. To address this need, the Department’s ESG NOFA scoring criteria for 2012 provided points for applicants serving persons in rural counties.

Balance of State (BoS) communities in Texas, which cover 202 predominantly rural counties, received only \$3.4 million in FY2010 CoC grant funds, compared to a total \$71.7 million for the state. Agencies in BoS lack administrative capacity to successfully apply for and manage CoC funds. Lack of CoC funding leaves the Department few transitional and permanent supportive housing projects to

coordinate with ESG funds allocated to rural counties. The Department is exploring options to increase funding for rural counties, possibly by applying for CoC funds through BoS to increase permanent supportive housing in these regions.

With local agencies dedicating an increasingly large percentage of CoC grant funds to leasing transitional and permanent supportive housing units, service providers struggle to fund supportive services, including case management and treatment for persons with substance abuse and mental health issues. The Department is working with state agencies through the Texas Interagency Council for the Homeless to increase individuals’ access to mainstream programs and make supportive services more available to local agencies. One example involves partnering with the Department of Assistive and Rehabilitative Services to connect individuals experiencing homelessness at entry to the Vocational Rehabilitation program, which provides job training services, with re-housing services through ESG.

c. Detailed Budget

□ Include detailed budget of planned activities and funding levels accounting for entire and any reprogrammed funds from the first allocation (may use Table 3 in this Notice).

ESG funds which will be received for FY 2012 will be utilized to fund all eligible activities. The Department will not place limits on the use of funds, with the exception of the 60% which can be used for Street Outreach and Shelter components. However, the Department notes that this is a preliminary budget on proposed use of funds and the allocations of funds by activity will likely change once budgets are negotiated with awardees.

FY 2012 ESG Funds Estimated Allocations by Sub-Activity

Activity	Funding Amount
Street Outreach – essential services	\$912,951
Emergency Shelter - essential services	\$1,369,426
Emergency Shelter - renovation	\$1,369,426
Emergency Shelter – shelter operations	\$1,825,903
Homelessness Prevention – housing relocation and stabilization services	\$612,000
Homelessness Prevention –rental assistance	\$940,018
Rapid Re-Housing – housing relocation and stabilization services	\$433,652
Rapid Re-Housing - rental assistance	\$433,652
HMIS	\$547,770
Administration (State and amount shared with subrecipients)	\$684,713
Total Funds Committed	\$9,129,511

Note: The figures in this table are budget estimates, allocations will change once budgets are negotiated with awardees.

6. Written Standards for Provision of ESG Assistance

□ If the recipient is a metropolitan city, urban county, or territory: include written standards for providing the proposed assistance.

□ If the recipient is a state: include written standards for providing the proposed assistance or describe the requirements for subrecipients to establish and implement written standards.

The Department will require FY 2012 ESG awardees to establish and implement written standards for the ESG program prior to executing contracts.

The Department will require awardees to establish written standards that include:

- a) Standard policies and procedures for evaluating individuals' and families' eligibility for ESG assistance;
- b) standards for targeting and providing essential services.
- c) policies and procedures for admission, diversion, referral and discharge by emergency shelters assisted under ESG, including standards regarding length of stay, if any, and safeguards to meet the safety and shelter needs of special populations and persons with the highest barriers to housing.
- d) policies and procedures for assessing, prioritizing, and reassessing individuals' and families' needs for essential services related to emergency shelter.
- e) policies and procedures for coordination among emergency shelter providers, essential service providers, homelessness prevention, and rapid re-housing assistance providers; and mainstream service and housing providers in accordance for 24 C.F.R.476.400(e).
- f) policies and procedures for determining and prioritizing which eligible families and individuals will receive homelessness prevention assistance and which will receive rapid re-housing assistance;
- g) standards for determining what percentage or amount of rent and utilities costs each program participant must pay while receiving homelessness prevention assistance;
- h) standards for determining how long a particular program participant will be provided with rental assistance and how or whether that amount will be adjusted; and,
- i) standards for determining the type, amount, and duration of housing stabilization and/or relocation services as per 24 C.F.R.476.400(e)(3)(ix).

The Department's monitoring review will include a review of documentation to determine that subrecipients are adhering to the written monitoring standards submitted to the Department.

The Department will conduct a risk assessment to determine which ESG subrecipients to monitor. The Department will utilize a standardized monitoring instrument to monitor subrecipients and the areas to monitor include those identified in Attachment 1, Monitoring Standards and Procedures. Refer to 10. Certifications, monitoring sub-header in this document for information on areas to be monitored. The Department will provide a written monitoring report to subrecipients of the results of the monitoring review and require a written response within 30 days from receipt of the report.

7. Describe Process for Making Sub-awards

The Department's process for making sub-awards was:

- The Department will release of FY 2012 ESG Notice of Funding Availability (NOFA) in March 2012. The NOFA adhere to the ESG Interim Rule.
- Funds will be allocated by the State's 13 Service Regions according to 2009 Census poverty population from the Small Area Income and Poverty Estimates (SAIPE) program.
- The recommended applicants will be those eligible applicants that ranked highest in their region based on the scoring criteria in the 2012 ESG NOFA and met threshold.
- Upon receipt of the FY 2012 grant agreement, the Department will obligate funds and negotiate budgets.

Funds were made available to eligible applicants, including private nonprofit organizations and units of general purpose local governments through the 2012 ESG NOFA.

8. Homeless Participation Requirement

□ For those recipients who cannot meet the participation requirement in § 576.405(a), the substantial amendment must include a plan that meets the requirements under §576.405(b).

The requirement is not applicable to States.

9. Performance Standards

□ The recipient must describe the performance standards for evaluating ESG activities, which must be developed in consultation with the Continuum(s) of Care.

In developing performance standards, the Department conducted extensive research on performance measures and standards described in the HEARTH Act and recommended by entities across the country, notably, the Community Shelter Board in Columbus, Ohio; the National Alliance to End Homelessness; and the Urban Institute. Staff members also considered which data elements were required to be collected in HMIS for ESG, and additional data elements included in the March 2010 HMIS Data Standards. Based on all the mentioned research, the Department developed draft performance standards for evaluating the outcome of projects and activities assisted with 2012 ESG funds.

On February 3, 2012, the Department consulted with CoCs through a survey on the proposed performance standards. The performance standards surveyed included long-term outcomes related to client's exiting into temporary/transitional housing destination, exiting to permanent housing destination, receiving case management, maintaining permanent housing, persons with higher incomes at program exit, persons with more non-cash benefits at program exit, and persons placed in shelters or Safe Havens.

The Department carefully reviewed all input received and revised the performance standards based on the feedback provided by CoCs. The following tables outlines the final standards subrecipients will be required to use to report to evaluate the outcome of projects and activities assisted with 2012 ESG

funds. These measures are subject to change based on additional guidance from HUD and the release of the final ESG regulation (24 CFR Part 576).

Performance Standards for 2012 ESG Funds

Component	Activity	Persons to be Served	Outputs and Outcome Measures
Street Outreach	Engagement 24 CFR 576.101(a)(1)	Unduplicated number of persons living on the streets who are engaged through repeated contacts and delivery of basic services: _____	<p>1.1 Unduplicated number of persons placed in temporary or transitional housing destinations or permanent housing destinations* as a result of street outreach assistance: _____</p> <p>1.2 Unduplicated number of persons with more non-cash benefits at program exit than at program entry, as a result of street outreach assistance: _____</p> <p>1.3 Unduplicated number of persons receiving case management: _____</p>
	Case Management 24 CFR 576.101(a)(2)	Unduplicated number of persons served with case management: _____	
Emergency Shelter	Emergency Shelter 24 CFR 576.102	Unduplicated number of persons housed in emergency shelters or served in day shelters: _____	<p>1.4 Unduplicated number of persons exiting to temporary or transitional housing destinations as a result of receiving ESG emergency shelters and/or essential services: _____</p> <p>1.5 Unduplicated number of persons exiting to Permanent Housing destinations as a result of receiving ESG emergency shelters and/or essential services: _____</p> <p>1.6 Unduplicated number of persons receiving case management: _____</p>
	Essential Services 24 CFR 576.102 (a)(1)	Unduplicated number of persons served with essential services: _____	

Component	Activity	Population to be Served	Outputs and Outcome Measures
Homelessness Prevention	Housing Relocation and Stabilization Services-- <i>Financial Assistance</i> ²⁴ <i>CFR 576.105 (a)</i>	Unduplicated number of persons receiving financial assistance: _____	1.7 Unduplicated number of persons who maintained their housing for 3 months as a result of receiving ESG homelessness prevention assistance: _____
	Housing Relocation and Stabilization Services-- <i>Housing Search and Placement</i> <i>24 CFR 576.105 (b)(1)</i>	Unduplicated number of persons receiving housing search and placement services: _____	1.8 Unduplicated number of persons exiting to Permanent Housing destinations* as a result of receiving ESG homelessness prevention assistance: _____
	Housing Relocation and Stabilization Services-- <i>Housing Stability Case Management</i> <i>24 CFR 576.105 (b)(2)</i>	Unduplicated number of persons receiving housing stability case management services: _____	1.9 Unduplicated number of persons with higher income** at program exit than at program entry as a result of receiving ESG homelessness prevention assistance: _____
	Rental Assistance <i>24 CFR 576.106</i>	<p>a. Unduplicated number of persons receiving rental assistance: _____</p> <p>b. Identify the number of persons expected to receive rental assistance for the listed time periods (the sum of the numbers in b, should equal the number in a).</p> <ul style="list-style-type: none"> - for less than 90 days: _____ - 90 to 180 days: _____ - 181 to 365 days: _____ 	<p>1.10 Unduplicated number of persons with more non-cash benefits*** at program exit than at program entry as a result of receiving ESG homelessness prevention assistance: _____</p> <p>1.11 Unduplicated number of persons receiving case management: _____</p>

Component	Activity	Population to be Served	Outputs and Outcome Measures
Rapid Re-Housing	Housing Relocation and Stabilization Services -- <i>Financial Assistance</i> 24 CFR 576.105 (a)	Unduplicated number of persons receiving financial assistance: _____	1.12 Unduplicated number of persons who maintained their housing for 3 months as a result of receiving ESG rapid re-housing assistance: _____
	Housing Relocation and Stabilization Services -- Housing Search and Placement 24 CFR 576.105 (b)(1)	Unduplicated number of persons receiving housing search and placement services: _____	1.13 Unduplicated number of persons exiting to Permanent Housing destinations* as a result of receiving ESG rapid re-housing assistance: _____ 1.14 Unduplicated number of persons with higher income** at program exit than at program entry as a result of receiving ESG Rapid Re-housing assistance: _____
	Housing Relocation and Stabilization Services -- Housing Stability Case Management 24 CFR 576.105 (b)(2)	Unduplicated number of persons receiving housing stability and case management services: _____	1.15 Unduplicated number of persons with more non-cash benefits*** at program exit than at program entry as a result of receiving ESG Rapid Re-housing assistance: _____
	Rental Assistance 24 CFR 576.106	Unduplicated number of persons receiving rental assistance: _____ b. Identify the number of persons expected to receive rental assistance (the sum of the numbers in b, should equal the number in a). - for less than 90 days: _____ - 90 to 180 days: _____ - 181 to 365 days: _____	1.16 Unduplicated number of persons receiving case management: _____

The Department, like HUD, recognizes that performance standards will evolve over the next few years as the ESG Interim Rule is implemented and as ESG subrecipients improve their program outcomes through the evaluation of HMIS data and through integration of ESG services into their local Continuum of Care. This first year of implementation of the Emergency *Solutions* Grant will allow the Department to gain baseline data about specific performance measures and performance standards. Baseline information from FY 2012 will be used to further refine measures and standards for the FY 2013 ESG funds.

Finally, the Department is researching and working with representatives from the sixteen CoCs in Texas to plan a data warehouse, where data from each CoC's HMIS would be collected and aggregated. The data warehouse would allow state government and local CoCs to see a more accurate and complete picture of homelessness statewide.

10. Certifications (to be submitted with amendment)

C. Written standards required for recipients who are eligible and decide to use part of the of FY 2012 funds for emergency shelter and street outreach activities.

1. *If the recipient is a metropolitan city, urban county, or territory: include written standards for providing the proposed assistance, as follows.*
2. *If the recipient is a state, either: (1) include written standards for providing the proposed assistance or (2) describe the requirements for subrecipients to establish and implement written standards.*

The Department will require FY 2012 ESG awardees to establish and implement written standards for providing emergency shelter and street outreach activities the ESG program prior to executing contracts.

The Department will require awardees to establish written standards that include:

- j) Standard policies and procedures for evaluating individuals' and families' eligibility for ESG assistance;
- k) standards for targeting and providing essential services.
- l) policies and procedures for admission, diversion, referral and discharge by emergency shelters assisted under ESG, including standards regarding length of stay, if any, and safeguards to meet the safety and shelter needs of special populations and persons with the highest barriers to housing.
- m) policies and procedures for assessing, prioritizing, and reassessing individuals' and families' needs for essential services related to emergency shelter.
- n) policies and procedures for coordination among emergency shelter providers, essential service providers, homelessness prevention, and rapid re-housing assistance providers; and mainstream service and housing providers in accordance for 24 C.F.R.476.400(e).
- o) policies and procedures for determining and prioritizing which eligible families and individuals will receive homelessness prevention assistance and which will receive rapid re-housing assistance;
- p) standards for determining what percentage or amount of rent and utilities costs each program participant must pay while receiving homelessness prevention assistance;
- q) standards for determining how long a particular program participant will be provided with rental assistance and how or whether that amount will be adjusted; and,

- r) standards for determining the type, amount, and duration of housing stabilization and/or relocation services as per 24 C.F.R.476.400(e)(3)(ix).

D. Requirements for recipients who plan to use the risk factor under paragraph (1)(iii)(G) of the “at risk of homelessness” definition.

□ If recipient plans to serve persons “at risk of homelessness,” based on the risk factor “otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness:” describe specific characteristics associated with instability and increased risk of homelessness.

The Department does not plan to use, nor allow its ESG subrecipients to use, the risk factor in 24 C.F.R. 576.2, under paragraph (1)(iii)(G) of the “at risk of homelessness” definition: “otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness.”

The Department believes that in the implementation of the FY 2012 ESG contracts, subrecipients will have ample opportunity to identify and serve persons deemed to be at risk of homelessness based on the six other conditions in the “at risk of homelessness” definition in 24 C.F.R.576.2 Definitions.

The Department plans to coordinate with the sixteen CoCs in Texas over the coming year to analyze data and identify any additional “at risk of homelessness” housing characteristics whose inclusion in the list of at-risk conditions would enable subrecipients to prevent more persons from falling into homelessness.

E. Requirements for Optional Changes to the FY 2012 Annual Action Plan

1. Centralized or Coordinated Assessment System

□ If the recipient’s jurisdiction, or a portion of the recipient’s jurisdiction, currently has a centralized or coordinated assessment system and the recipient or subrecipients utilize the centralized or coordinated assessment system, the recipient should describe the assessment system in the substantial amendment.

Texas’s sixteen CoCs do not currently use centralized or coordinated assessment systems. Recipients in Harris and Fort Bend counties, along with the lead agency of the Continuum of Care, will develop a homelessness prevention eligibility tool to target those most at-risk of becoming literally homeless. The tool will be developed using HUD’s ESG eligibility criteria and local data regarding characteristics common among people who are literally homeless. Depending on the level of need of potential clients, the agency initially conducting intake will either admit the person to their program or will conduct a warm hand-off to another homelessness prevention provider in the ESG-funded homelessness prevention system that is skilled in meeting the person’s needs for housing.

Recipients in Harris and Fort Bend counties, along with the lead agency of the Continuum of Care, will develop formal agreements with providers serving people who are literally homeless (emergency shelters, day centers, and street outreach providers) to identify people who are eligible for rapid re-housing services. This system will be integrated into a more robust coordinated intake process for the homeless residential system that is currently under development.

FY 2012 subrecipients will not be required to participate in a centralized or coordinated assessment system until HUD provides additional standards to Continuums of Care through the publication of the Continuum of Care program rule. If the recipient's jurisdiction, or a portion of the recipient's jurisdiction, currently has a centralized or coordinated assessment system, the Department will encourage the recipient to participate in the CoC's centralized or coordinated assessment system.

2. Monitoring

□ If existing monitoring procedures are not sufficient to allow recipients to monitor compliance with the new requirements, HUD encourages recipients to update their monitoring standards and procedures in the process of submitting this substantial amendment. This should address appropriate levels of staffing.

Based on the new requirements in the ESG Interim Rule, the Department updated the monitoring standards and procedures for ESG and is including them in Attachment 1. Attachment 1 identifies the activities to be monitored including, but not limited to: area-wide systems of coordination, documenting eligibility, to determine that assistance is provided in accordance with housing stabilization services requirements, lead-based paint requirements for shelters and housing occupied by ESG participants, compliance with subrecipient written standards for provision of ESG assistance, review of client files for eligibility and support documentation and to determine if maximum amounts and period of assistance are met, review of financial support documentation related to expenditures, HMIS documentation, review of general program management and program oversight, review of documentation related to housing and shelter habitability standards, review of compliance with accessibility standards, review of compliance with Section 3 and other applicable federal requirements, compliance with uniform administrative requirements, use of program income, and review of procurement documentation.

**Texas Department of Housing and Community Affairs
Emergency Solutions Grants Program (ESG)
Substantial Amendment to the 2011
State of Texas Consolidated, One Year Action Plan**

The Texas Department of Housing and Community Affairs (the Department) has prepared a substantial amendment to the 2011 State of Texas Consolidated Plan, One Year Action Plan in accordance with the Department's citizen participation plan and the requirements of 24 CFR part 91, as amended by the Interim Rule.

1. SF-424 – signed and including DUNNS (to be submitted with amendment)

2. Summary of Consultation Process

□ Describe how the recipient consulted with the Continuum(s) of Care on:

- determining how to allocate ESG funds for eligible activities;*
- developing the performance standards for activities funded under ESG; and*
- developing funding, policies, and procedures for the operation and administration of the HMIS.*

From December 9, 2011 through December 13, 2011, the Texas Department of Housing and Community Affairs (the Department) sought the input of Continua of Care (CoCs) in Texas on the topics of 1) allocating 2011 second Allocation ESG Funds for eligible activities, and 2) performance standards for activities funded with 2011 ESG second Allocation funds. The Department has consulted with CoCs through a Data Warehouse Governing Body on funding, policies, and procedures related to HMIS. The Department has met with the Data Warehouse Governing Body five times since May 2011.

Consultation regarding the allocation of ESG funds for eligible activities

The Department's FY 2011 ESGP NOFA, published in December 2010, adhered to the Homeless Emergency and Rapid Transition to Housing (HEARTH) Act of 2009. The Department used the same application pool and selection process for the second allocation of 2011 ESG funds as it used for the first allocation of 2011 ESG Funds. On December 9, 2011 the Department distributed an e-mail to CoCs that announced recommended agencies for the 2011 ESGP second allocation. The recommended agencies were those eligible applicants that stood next in line for 2011 ESGP funding based on the Department's 2011 ESGP scoring criteria.

In the 12/9/11 Survey, the Department requested comments from all CoC Leads on the allocation and use of funds in areas served by each Continuum of Care. The e-mail included a list of 29 recommended applicants and their requested funding amount by eligible activities. CoC members provided their comments on the organizations funded, on the funds available for their regions, and on the estimated amount of funds to be distributed to the different eligible activities.

The input was received through an electronic survey that was e-mailed to all 16 CoCs Leads in the State of Texas. On December 12, 2012 the Department called each of the CoC Leads to ensure receipt

of the sent e-mail and survey. The Department requested for CoC Leads to forward the survey to CoC member agencies to broaden participation. The Department carefully reviewed all comments and will consider them in final budget negotiations with the selected awardees.

Consultation regarding performance standards for activities funded under ESG

On December 9, 2011 the Department also shared a list with CoCs of the proposed performance standards for activities funded under ESG. The performance standards included short-term outputs and long-term outcomes. The Department carefully reviewed all input received and revised the performance measures for the 2011 ESG NOFA contracts based on the comments received. When the Department finalizes the 2011 ESG performance measures for the second allocation contracts, the Department will also consider input on performance measures received from the CoCs during the development of the 2012 ESG NOFA input on the proposed outcomes for FY 2012 ESG NOFA.

Consultation regarding funding, policies, and procedures for the operation and administration of the HMIS

Since May 2011, the Department has worked with all sixteen CoCs in Texas to develop a statewide HMIS data warehouse, which will aggregate HMIS data from all sixteen systems in the State. Representatives from the CoCs have convened five times, twice in person and three tele-conferences, to discuss HMIS policy and procedures pertaining to the data warehouse.

To facilitate project implementation and statewide decision-making, the Department has worked closely with all CoCs to establish a Data Warehouse Governing Body. The Governing Body, which consists of representatives from all CoCs in Texas, will advise the Department on HMIS policy and establish policies and procedures guiding the development and use of the data warehouse. The Governing Body will also facilitate statewide data sharing agreements among CoCs. The Department anticipates using the data warehouse to streamline reporting and performance measurement related to ESG.

3. Summary of Citizen Participation Process

- Summarize citizen participation process used;*
- Summarize the public comments or views received; and*
- Summarize the comments or views not accepted and include the reasons for not accepting those comments or views.*

The Department will provide for a 30-day public comment period of the Draft Substantial Amendment to the FY 2011 Consolidated Plan Annual Action Plan. The public input process will include notification through a notice published in the Texas Register, by holding a board hearing where public comment will be accepted, by posting the document on the Department's web-site, and by notifying parties signed up to receive e-mail notifications. The Department will also have the substantial amendment draft and final documents approved at a Department board meeting.

After public comments are received, the Department will summarize the public comments or views received, summarize the comments or views not accepted, and include the reasons for not accepting those comments or views.

4. Match

Describe:

- o types of cash and/or non-cash resources used as match
- o specific amounts of resources used as match
- o proposed uses of match resources

At this time, the Department has not obligated the second allocation FY 2011 ESG funds, and therefore does not have actual match figures by types of match. ESG subrecipients of 2011 second allocation will be required to provide 100% match to the funds awarded. Matching sources may include cash contributions expended for allowable costs, and non-cash contributions including, but not limited to, the value of any real property, equipment, goods, or services provided that the costs would have been allowable. Costs paid by program income during the contract period will count towards meeting the match requirement provided that the costs are eligible ESG costs that supplement the ESG program.

5. Proposed Activities and Overall Budget

a. Proposed Activities

All recipients must include the following details for each proposed activity:

1) corresponding priority needs from recipient's Annual Action Plan

The Department anticipates using ESG funds for Street Outreach, Emergency Shelters, Homelessness Prevention, Rapid Re-Housing, HMIS, and administrative activities. The program activities will be targeted to the State's Priority Housing/Special Needs Groups including small related households, large related households, elderly households, and all other households whose income is 0-30% of Area Median Family Income and to persons with priority special needs including elderly, frail elderly, severe mental illness, developmentally disabled, persons with alcohol and other addictions, persons with HIV/AIDS, victims of domestic violence, and Colonia residents and migrant farmworkers.

2) concise description of the activity, including the number and types of persons to be served

The Department anticipates using ESG funds for the eligible activities: Street Outreach, Emergency Shelters, Homelessness Prevention, Rapid Re-Housing, HMIS, and administrative costs. The Department anticipates serving both persons who meet the definition of homeless and at-risk of homelessness. The Department estimates serving a total of serving 19,020 persons.

The table below is an estimate on how 2011 second allocation ESG funds will be allocated to the eligible activities. The Department anticipates that the final amounts budgeted, once 2011 second allocation ESG contracts are executed, will be different than the proposed allocations indicated in the following table. The Department will share administrative funds with all subrecipients.

FY 2011 SECOND ALLOCATION ESG FUNDS ESTIMATED ALLOCATIONS BY SUB-ACTIVITY

Activity	Funding Amount
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Street Outreach – essential services	\$248,821
Emergency Shelter - essential services	\$331,597
Emergency Shelter - renovation	\$0
Emergency Shelter – shelter operations	\$643,688
Homelessness Prevention – housing relocation and stabilization services	\$174,000
Homelessness Prevention –rental assistance	\$320,521
Rapid Re-Housing – housing relocation and stabilization services	\$348,000
Rapid Re-Housing - rental assistance	\$347,794
HMIS	\$276,349
Administration (State and amount shared with subrecipients)	\$218,170
Total Funds Committed	\$2,908,940

Estimated allocations by activity. Allocations will change once 2011 second allocation budgets are negotiated.

3) *corresponding standard objective and outcome categories*

OBJECTIVES AND OUTCOMES
CPD Outcome Performance Measurement System Reporting
ESG Annual Action Plan Planned Project Results
ESG Performance Measures, PY 2011 second allocation

Outcomes and Objectives	Performance Indicators	Expected Number	Activity Description
<p style="text-align: center;">SL-1</p> <p style="text-align: center;">Availability/ Accessibility and Create a Suitable Living Environment</p>	<p>Provide funding to support the provision of emergency and/or transitional shelter to homeless persons.</p>	<p>18,175</p>	<ul style="list-style-type: none"> • Emergency Shelter. Shelter Operations
<p style="text-align: center;">DH-2</p> <p style="text-align: center;">Affordability and Provide Decent Housing</p>	<p style="text-align: center;">The provision of non-residential services including homelessness prevention assistance.</p>	<p>845</p>	<ul style="list-style-type: none"> • Street Outreach essential services. • Homelessness Prevention - housing relocation and stabilization services. • Homelessness Prevention rental assistance. • Rapid Re-Housing housing relocation and stabilization services. • Rapid Re-Housing rental assistance.

4) *start date and completion date*

ESG funds which will be received for FY 2011 second allocation will be awarded within 60 days of receipt of the HUD grant agreement. The State ESG contracts for FY 2011 second allocation funds are anticipated to begin on September 1, 2012 and will end August 31, 2013. However, the contract period will be dependent upon the date that the HUD grant agreement is executed. Any unexpended funds will be re-distributed in the following ESG program year in separate contracts.

5) *ESG and other funding amounts*

The Department will not provide additional funding. Subrecipients will utilize other fund sources to support ESG activities.

**FY 2011 second allocation ESG Funds Estimated Allocations by Activity
ESG Homeless and Special Needs Goals**

ANNUAL AFFORDABLE HOUSING GOALS	Expected Annual Number of Units To Be Completed
Homeless households	7,270*
Non-homeless households	338*
Special needs households	12*

*These numbers are estimates; ESG is planning to collect data on persons and not households, unless required by HUD reporting guidelines.

ESG only provides rental assistance, but cannot be utilized to purchase a home. Consequently, ESG does not impact the number of properties that are affordable. ESGP funds are utilized to assist all homeless persons and persons at-risk of homelessness.

6) – 8) *Performance Indicators and Projected Accomplishments*

*Local governments and territories are **required**, and States are encouraged, to include the following details for each proposed activity:*

1) one or more performance indicators

2) projected accomplishments, in accordance with each indicator, to be made within one year

3) projected accomplishments, in accordance with each performance indicator, to be made over the period for which the grant will be used for that activity

OBJECTIVES AND OUTCOMES
CPD Outcome Performance Measurement System Reporting
ESG Annual Action Plan Planned Project Results
ESG Performance Measures, PY 2011 second allocation

Outcomes and Objectives	Performance Indicators	Expected Number	Activity Description
<p style="text-align: center;">SL-1</p> <p style="text-align: center;">Availability/ Accessibility and Create a Suitable Living Environment</p>	<p>Provide funding to support the provision of emergency and/or transitional shelter to homeless persons.</p>	<p>18,175</p>	<ul style="list-style-type: none"> • Emergency Shelter. Shelter Operations
<p style="text-align: center;">DH-2</p> <p style="text-align: center;">Affordability and Provide Decent Housing</p>	<p>The provision of non-residential services including homelessness prevention assistance.</p>	<p>845</p>	<ul style="list-style-type: none"> • Street Outreach essential services. • Homelessness Prevention - housing relocation and stabilization services. • Homelessness Prevention rental assistance. • Rapid Re-Housing housing relocation and stabilization services. • Rapid Re-Housing rental assistance.

The Department will also incorporate performance standards related to, but not limited to, client’s exiting into temporary/transitional housing destination, exiting to permanent housing destination, receiving case management, maintaining permanent housing, persons with higher incomes at program exit, persons with more non-cash benefits at program exit, and persons placed in shelters or Safe Havens.

b. Discussion of Funding Priorities

□ Explain why the recipient chose to fund the proposed activities at the amounts specified (recommended: if available, use locally-relevant data to support the funding priorities, and explain how the funding priorities will support the national priorities established in Opening Doors: Federal Strategic Plan to Prevent and End Homelessness)

The Department selected the proposed activities by funding the applicants that ranked the highest according to the Department’s ESG NOFA application scoring criteria. The Department embedded the priorities established in *Opening Doors: Federal Strategic Plan to Prevent and End Homelessness* in the scoring criteria utilized to rate FY 2011 ESG applications. In following *Opening Doors* objectives, the Department emphasized the following objectives: increased collaboration, increased outcomes related to client’s accessing permanent housing, increased economic security, increased access to

mainstream services, improved health and stability, and changing funding priorities from emergency shelter to rapid re-housing and homelessness prevention.

The Department emphasized these objectives by awarding points to applicants whose projects proposed to achieve the following outcomes: increase in employment, increase in education, exiting into permanent or transitional housing, housing stability, an increase in income or benefits, and the stabilization of mental illness and substance abuse. After applications were rated, applicants whose proposed projects met these objectives ranked highest and were awarded funding.

The table below identifies the activities to be funded and the estimated amount budgeted for each activity with 2011 second allocation funds. The Department anticipates that the final amounts budgeted to the activities will be different than the proposed allocations indicated in the following table. The only activity which will remain as indicated is administration, street outreach, and emergency shelter due to ESG funding limits on these categories. The Department has budgeted \$1,224,106 of FY 2011 second allocation ESG funds to Street Outreach and Emergency Shelter since only \$3,624,127 of FY 2011’s first allocation funds were budgeted for these activities and up to 60% of the entire FY 2011 allocation totaling \$8,080,389 can be budgeted for same activities.

FY 2011 second allocation ESG Funds Estimated Allocations by Activity

Activity	Funding Amount	Percentage
Administration (State and amount shared with subrecipients)	\$218,170	7.5%
Street Outreach	\$248,821	8.5%
Emergency Shelter	\$975,285	33.5%
Homeless Prevention	\$494,521	17%
Rapid Re-Housing	\$695,794	24%
HMIS	\$276,349	9.5%
Total Funds Committed	\$2,908,940	100%

Estimated allocations by activity. Allocations will change once 2011 budgets are

negotiated.

□ Identify any obstacles to addressing underserved needs in the community.

Texas is a state with many rural areas which have limited service providers addressing the needs of homeless persons and those at-risk of homelessness. To address this need, the Department’s ESG NOFA scoring criteria for 2011 provided points for applicants serving persons in rural counties.

Balance of State (BoS) communities in Texas, which cover 202 predominantly rural counties, received only \$3.4 million in FY2010 CoC grant funds, compared to a total \$71.7 million for the state. Agencies

in BoS lack administrative capacity to successfully apply for and manage CoC funds. Lack of CoC funding leaves the Department few transitional and permanent supportive housing projects to coordinate with ESG funds allocated to rural counties. The Department is exploring options to increase funding for rural counties, possibly by applying for CoC funds through BoS to increase permanent supportive housing in these regions.

With local agencies dedicating an increasingly large percentage of CoC grant funds to leasing transitional and permanent supportive housing units, service providers struggle to fund supportive services, including case management and treatment for persons with substance abuse and mental health issues. The Department is working with state agencies through the Texas Interagency Council for the Homeless to increase individuals' access to mainstream programs and make supportive services more available to local agencies. One example involves partnering with the Department of Assistive and Rehabilitative Services to connect individuals experiencing homelessness at entry to the Vocational Rehabilitation Program, which provides job training services, with re-housing services through ESG.

c. Detailed Budget

☐ Include detailed budget of planned activities and funding levels accounting for entire second allocation and any reprogrammed funds from the first allocation (may use Table 3 in this Notice).

ESG funds which will be received for FY 2011 second allocation will be utilized to fund all eligible activities, except renovation. However, the Department notes that this is a preliminary budget on proposed use of funds and the allocations of funds by activity will likely change once final budgets are negotiated with awardees. At this time, the Department is not budgeting funds for renovation because historically requests for this category have been very limited.

FY 2011 second Allocation ESG Funds Estimated Allocations by Sub-Activity

Activity	Funding Amount
Street Outreach – essential services	\$248,821
Emergency Shelter - essential services	\$331,597
Emergency Shelter - renovation	\$0
Emergency Shelter – shelter operations	\$643,688
Homelessness Prevention – housing relocation and stabilization services	\$174,000
Homelessness Prevention –rental assistance	\$320,521
Rapid Re-Housing – housing relocation and stabilization services	\$348,000
Rapid Re-Housing - rental assistance	347,794
HMIS	276,349
Administration (State and amount shared with subrecipients)	218,170
Total Funds Committed	\$2,908,940

Note: The figures in the above table are budget estimates, allocations will change once budgets are negotiated with awardees.

6. Written Standards for Provision of ESG Assistance

If the recipient is a metropolitan city, urban county, or territory: include written standards for providing the proposed assistance.

*If the recipient is a state: include written standards for providing the proposed assistance **or** describe the requirements for subrecipients to establish and implement written standards.*

The Department will require FY 2011 ESG awardees to establish and implement written standards for the ESG program prior to executing contracts.

The Department will require awardees to establish written standards that include:

- a) Standard policies and procedures for evaluating individuals’ and families’ eligibility for ESG assistance;
- b) standards for targeting and providing essential services.
- c) policies and procedures for admission, diversion, referral and discharge by emergency shelters assisted under ESG, including standards regarding length of stay, if any, and safeguards to meet

the safety and shelter needs of special populations and persons with the highest barriers to housing.

- d) policies and procedures for assessing, prioritizing, and reassessing individuals' and families' needs for essential services related to emergency shelter.
- e) policies and procedures for coordination among emergency shelter providers, essential service providers, homelessness prevention, and rapid re-housing assistance providers; and mainstream service and housing providers in accordance for 24 C.F.R.476.400(e).
- f) policies and procedures for determining and prioritizing which eligible families and individuals will receive homelessness prevention assistance and which will receive rapid re-housing assistance;
- g) standards for determining what percentage or amount of rent and utilities costs each program participant must pay while receiving homelessness prevention assistance;
- h) standards for determining how long a particular program participant will be provided with rental assistance and how or whether that amount will be adjusted; and,
- i) standards for determining the type, amount, and duration of housing stabilization and/or relocation services as per 24 C.F.R.476.400(e)(3)(ix).

The Department's monitoring review will include a review of documentation to determine that subrecipients are adhering to the written monitoring standards.

The Department will conduct a risk assessment to determine which ESG subrecipients to monitor. The Department will utilize a standardized monitoring instrument to monitor subrecipients and the areas to monitor include those identified in Attachment 1, Monitoring Standards and Procedures. Refer to 10. Certifications, monitoring sub-header in this document for information on areas to be monitored. The Department will provide a written monitoring report to subrecipients of the results of the monitoring review and require a written response within 30 days from receipt of the report.

7. Describe Process for Making Sub-awards

The Department's process for making sub-awards was:

- Release of FY 2011 ESG Notice of Funding Availability (NOFA) on November 10, 2011. The NOFA adhered to the HEARTH ACT.
- The Department used the same application pool and selection process for the second allocation of 2011 ESG funds as it used for the first allocation of 2011 ESG Funds. The recommended awardees were those eligible applicants that stood next in line for 2011 ESGP funding based on the Department's 2011 ESGP scoring criteria.
- Funds were allocated by the State's 13 Service Regions according to 2009 Census poverty population from the Small Area Income and Poverty Estimates (SAIPE) program.
- Upon receipt of the FY 2011 second allocation grant agreement, the Department will obligate funds and negotiate budgets.

Funds were made available to eligible applicants, including private nonprofit organizations and units of general purpose local governments through the 2011 ESG NOFA.

8. Homeless Participation Requirement

□ For those recipients who cannot meet the participation requirement in § 576.405(a), the substantial amendment must include a plan that meets the requirements under §576.405(b).

The requirement is not applicable to States.

9. Performance Standards

□ The recipient must describe the performance standards for evaluating ESG activities, which must be developed in consultation with the Continuum(s) of Care.

In developing performance standards, the Department conducted extensive research on performance measures and standards described in the HEARTH Act and recommended by entities across the country, notably, the Community Shelter Board in Columbus, Ohio; the National Alliance to End Homelessness; and the Urban Institute. Staff members also considered which data elements were required to be collected in HMIS for ESG, and additional data elements included in the March 2010 HMIS Data Standards. Based on all the mentioned research, the Department developed draft performance standards for evaluating the outcome of projects and activities assisted with 2011 Second Allocation ESG funds.

On December 9, 2011, the Department consulted with CoCs through a survey on the proposed performance standards. The performance standards surveyed included short-term outputs and long-term outcomes related to client's accessing permanent housing, increased economic security, increased access to mainstream services, and improved health and stability.

The Department carefully reviewed all input received and revised the performance standards based on the feedback provided by CoCs. The following tables outlines the final standards subrecipients will be required to use to report to evaluate the outcome of projects and activities assisted with 2011 ESG Second Allocation funds. These measures are subject to change based on additional guidance from HUD and the release of the final ESG regulation (24 CFR Part 576).

Performance Standards for 2011 Second Allocation ESG Funds

Component	Activity	Persons to be Served	Outputs and Outcome Measures
Street Outreach	Engagement 24 CFR 576.101(a)(1)	Unduplicated number of persons living on the streets who are engaged through repeated contacts and delivery of basic services: _____	<p>1.1 Unduplicated number of persons placed in temporary or transitional housing destinations or permanent housing destinations* as a result of street outreach assistance: _____</p> <p>1.2 Unduplicated number of persons with more non-cash benefits at program exit than at program entry, as a result of street outreach assistance: _____</p> <p>1.3 Unduplicated number of persons receiving case management: _____</p>
	Case Management 24 CFR 576.101(a)(2)	Unduplicated number of persons served with case management: _____	
Emergency Shelter	Emergency Shelter 24 CFR 576.102	Unduplicated number of persons housed in emergency shelters or served in day shelters: _____	<p>1.4 Unduplicated number of persons exiting to temporary or transitional housing destinations as a result of receiving ESG emergency shelters and/or essential services: _____</p> <p>1.5 Unduplicated number of persons exiting to Permanent Housing destinations as a result of receiving ESG emergency shelters and/or essential services: _____</p> <p>1.6 Unduplicated number of persons receiving case management: _____</p>
	Essential Services 24 CFR 576.102 (a)(1)	Unduplicated number of persons served with essential services: _____	

Component	Activity	Population to be Served	Outputs and Outcome Measures
Homelessness Prevention	Housing Relocation and Stabilization Services-- <i>Financial Assistance</i> ²⁴ CFR 576.105 (a)	Unduplicated number of persons receiving financial assistance: _____	1.7 Unduplicated number of persons who maintained their housing for 3 months as a result of receiving ESG homelessness prevention assistance: _____
	Housing Relocation and Stabilization Services-- <i>Housing Search and Placement</i> 24 CFR 576.105 (b)(1)	Unduplicated number of persons receiving housing search and placement services: _____	1.8 Unduplicated number of persons exiting to Permanent Housing destinations* as a result of receiving ESG homelessness prevention assistance: _____
	Housing Relocation and Stabilization Services-- <i>Housing Stability Case Management</i> 24 CFR 576.105 (b)(2)	Unduplicated number of persons receiving housing stability case management services: _____	1.9 Unduplicated number of persons with higher income** at program exit than at program entry as a result of receiving ESG homelessness prevention assistance: _____
	Rental Assistance 24 CFR 576.106	<p>a. Unduplicated number of persons receiving rental assistance: _____</p> <p>b. Identify the number of persons expected to receive rental assistance for the listed time periods (the sum of the numbers in b, should equal the number in a).</p> <ul style="list-style-type: none"> - for less than 90 days: _____ - 90 to 180 days: _____ - 181 to 365 days: _____ 	<p>1.10 Unduplicated number of persons with more non-cash benefits*** at program exit than at program entry as a result of receiving ESG homelessness prevention assistance: _____</p> <p>1.11 Unduplicated number of persons receiving case management: _____</p>

Component	Activity	Population to be Served	Outputs and Outcome Measures
Rapid Re-Housing	Housing Relocation and Stabilization Services -- <i>Financial Assistance</i> 24 CFR 576.105 (a)	Unduplicated number of persons receiving financial assistance: _____	1.12 Unduplicated number of persons who maintained their housing for 3 months as a result of receiving ESG rapid re-housing assistance: _____
	Housing Relocation and Stabilization Services -- Housing Search and Placement 24 CFR 576.105 (b)(1)	Unduplicated number of persons receiving housing search and placement services: _____	1.13 Unduplicated number of persons exiting to Permanent Housing destinations* as a result of receiving ESG rapid re-housing assistance: _____
	Housing Relocation and Stabilization Services -- Housing Stability Case Management 24 CFR 576.105 (b)(2)	Unduplicated number of persons receiving housing stability and case management services: _____	1.14 Unduplicated number of persons with higher income** at program exit than at program entry as a result of receiving ESG Rapid Re-housing assistance: _____
	Rental Assistance 24 CFR 576.106	Unduplicated number of persons receiving rental assistance: _____ b. Identify the number of persons expected to receive rental assistance (the sum of the numbers in b, should equal the number in a). - for less than 90 days: _____ - 90 to 180 days: _____ - 181 to 365 days: _____	1.15 Unduplicated number of persons with more non-cash benefits*** at program exit than at program entry as a result of receiving ESG Rapid Re-housing assistance: _____ 1.16 Unduplicated number of persons receiving case management: _____

The Department, like HUD, recognizes that performance standards will evolve over the next few years as the ESG Interim Rule is implemented and as ESG subrecipients improve their program outcomes through the evaluation of HMIS data and through integration of ESG services into their local Continuum of Care. This first year of implementation of the Emergency *Solutions* Grant will allow the Department to gain baseline data about specific performance measures and performance standards. Baseline information from FY 2012 will be used to further refine measures and standards for the FY 2013 ESG funds.

Finally, the Department is researching and working with representatives from the sixteen CoCs in Texas to plan a data warehouse, where data from each CoC's HMIS would be collected and aggregated. The data warehouse would allow state government and local CoCs to see a more accurate and complete picture of homelessness statewide.

10. Certifications (to be submitted with amendment)

C. Written standards required for recipients who are eligible and decide to use part of the second allocation of FY 2011 funds for emergency shelter and street outreach activities.

- 1. If the recipient is a metropolitan city, urban county, or territory: include written standards for providing the proposed assistance, as follows.*
- 2. If the recipient is a state, either: (1) include written standards for providing the proposed assistance or (2) describe the requirements for subrecipients to establish and implement written standards.*

The Department will require FY 2011 ESG awardees to establish and implement written standards for providing emergency shelter and street outreach activities the ESG program prior to executing contracts.

The Department will require awardees to establish written standards that include:

- a) Standard policies and procedures for evaluating individuals' and families' eligibility for ESG assistance;
- b) standards for targeting and providing essential services.
- c) policies and procedures for admission, diversion, referral and discharge by emergency shelters assisted under ESG, including standards regarding length of stay, if any, and safeguards to meet the safety and shelter needs of special populations and persons with the highest barriers to housing.
- d) policies and procedures for assessing, prioritizing, and reassessing individuals' and families' needs for essential services related to emergency shelter.
- e) policies and procedures for coordination among emergency shelter providers, essential service providers, homelessness prevention, and rapid re-housing assistance providers; and mainstream service and housing providers in accordance for 24 C.F.R.476.400(e).
- f) policies and procedures for determining and prioritizing which eligible families and individuals will receive homelessness prevention assistance and which will receive rapid re-housing assistance;
- g) standards for determining what percentage or amount of rent and utilities costs each program participant must pay while receiving homelessness prevention assistance;
- h) standards for determining how long a particular program participant will be provided with rental assistance and how or whether that amount will be adjusted; and,

- i) standards for determining the type, amount, and duration of housing stabilization and/or relocation services as per 24 C.F.R.476.400(e)(3)(ix).

D. Requirements for recipients who plan to use the risk factor under paragraph (1)(iii)(G) of the “at risk of homelessness” definition.

□ If recipient plans to serve persons “at risk of homelessness,” based on the risk factor “otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness:” describe specific characteristics associated with instability and increased risk of homelessness.

The Department does not plan to use, nor allow its ESG subrecipients to use, the risk factor in 24 C.F.R. §576.2, under paragraph (1)(iii)(G) of the “at risk of homelessness” definition: “otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness.”

The Department believes that in the implementation of the FY 2011 ESG contracts, subrecipients will have ample opportunity to identify and serve persons deemed to be at risk of homelessness based on the six other conditions in the “at risk of homelessness” definition in 24 C.F.R. §576.2 Definitions.

The Department plans to coordinate with the sixteen CoCs in Texas over the coming year to analyze data and identify any additional “at risk of homelessness” housing characteristics whose inclusion in the list of at-risk conditions would enable subrecipients to prevent more persons from falling into homelessness.

E. Requirements for Optional Changes to the FY 2011 Annual Action Plan

1. Centralized or Coordinated Assessment System

□ If the recipient’s jurisdiction, or a portion of the recipient’s jurisdiction, currently has a centralized or coordinated assessment system and the recipient or subrecipients utilize the centralized or coordinated assessment system, the recipient should describe the assessment system in the substantial amendment.

Texas’s sixteen CoCs do not currently use centralized or coordinated assessment systems. Recipients in Harris and Fort Bend counties, along with the lead agency of the Continuum of Care, will develop a homelessness prevention eligibility tool to target those most at-risk of becoming literally homeless. The tool will be developed using HUD’s ESG eligibility criteria and local data regarding characteristics common among people who are literally homeless. Depending on the level of need of potential clients, the agency initially conducting intake will either admit the person to their program or will conduct a warm hand-off to another homelessness prevention provider in the ESG-funded homelessness prevention system that is skilled in meeting the person’s needs for housing.

Recipients in Harris and Fort Bend counties, along with the lead agency of the Continuum of Care, will develop formal agreements with providers serving people who are literally homeless (emergency shelters, day centers, and street outreach providers) to identify people who are eligible for rapid re-housing services. This system will be integrated into a more robust coordinated intake process for the homeless residential system that is currently under development.

FY 2011 second allocation subrecipients will not be required to participate in a centralized or coordinated assessment system until HUD provides additional standards to Continuums of Care through the publication of the Continuum of Care program rule. If the recipient's jurisdiction, or a portion of the recipient's jurisdiction, currently has a centralized or coordinated assessment system, the Department will encourage the recipient to participate in the CoC's centralized or coordinated assessment system.

2. Monitoring

□ If existing monitoring procedures are not sufficient to allow recipients to monitor compliance with the new requirements, HUD encourages recipients to update their monitoring standards and procedures in the process of submitting this substantial amendment. This should address appropriate levels of staffing.

Based on the new requirements in the ESG Interim Rule, the Department updated the monitoring standards and procedures for ESG and is including them in Attachment 1. Based on the new requirements in the ESG Interim Rule, the Department updated the monitoring standards and procedures for ESG and is including them in Attachment 1. Attachment 1 identifies the activities to be monitored including, but not limited to: area-wide systems of coordination, documenting eligibility, to determine that assistance is provided in accordance with housing stabilization services requirements, lead-based paint requirements for shelters and housing occupied by ESG participants, compliance with subrecipient written standards for provision of ESG assistance, review of client files for eligibility and support documentation and to determine if maximum amounts and period of assistance are met, review of financial support documentation related to expenditures, HMIS documentation, review of general program management and program oversight, review of documentation related to housing and shelter habitability standards, review of compliance with accessibility standards, review of compliance with Section 3 and other applicable federal requirements, compliance with uniform administrative requirements, use of program income, and review of procurement documentation.

Substantial Amendment to the FY 2011 FY 2012 Consolidated Annual Action Plans

Attachment 1: Monitoring Standards and Procedures

Activities	New Requirement/Activity	Reference	Texas Standard	Monitoring Activity
Agency Coordination with CoC	Area-wide systems coordination - Coordination with targeted services - Coordination with mainstream services - Centralized or coordinated assessment	24 C.F.R. §§ 576.400(b,c,d) 24 C.F.R. § 576.500 (g) 24 C.F.R. § 576.500 (m)	Emergency Solutions Grants Program (ESG) Notice of Funding Availability (NOFA)/Contract/Texas Administrative Code (TAC)	Verify documentation evidencing coordination with other targeted homelessness services, mainstream services, and participation in the applicable CoC's centralized or coordinated assessment system.
Street Outreach and Emergency Shelter	Initial evaluation including verifying and documenting eligibility	24 C.F.R. § 576.401(a) 24 C.F.R. § 576.500(b)(1) (Category 1 - literally homeless)	ESG NOFA/Contract/TAC	Review of client files including individualized housing and service plan. - Monitor intake documentation that shows "evidence relied upon to demonstrate homeless status."
Homelessness Prevention	Eligibility for at-risk of homelessness (determine if eligibility is correct for at-risk persons)	24 C.F.R. § 576.2 24 C.F.R. § 576.401 24 C.F.R. § 576.500(c)	ESG NOFA/Contract/TAC	Review of client files including individualized housing and service plan and local ESG SOPs. - verify that subrecipient correctly applies at-risk definition for assisted persons in the at-risk category. - review evidence that includes "intake and certification form that meets HUD specification" completed by the subrecipient.

Substantial Amendment to the FY 2011 FY 2012 Consolidated Annual Action Plans

Attachment 1: Monitoring Standards and Procedures

Activities	New Requirement/Activity	Reference	Texas Standard	Monitoring Activity
Homelessness Prevention	Eligibility for homelessness (determine if eligibility is correct for persons assisted in the homelessness prevention category [homeless categories 2, 3, or 4])	24 C.F.R. § 576.2 24 C.F.R. § 576.103 24 C.F.R. § 576.401 24 C.F.R. § 576.500(c)	ESG NOFA/Contract/T AC	Review of client files including individualized housing and service plan and local ESG SOPs. - verify that the subrecipient confirmed that category 2, 3, 4 clients' income did not exceed 30% of AMFI. - verify subrecipient collected relevant documents required under 24 C.F.R. § 576.500(i)(A-C)
Homelessness Prevention	HP assistance must be provided in accordance with housing relocation and stabilization services requirements, the short-term and medium-term rental assistance requirements and the written standards and procedures established under 24 C.F.R. § 576.400(e)	24 C.F.R. § 576.105 24 C.F.R. § 106 24 C.F.R. § 576.400	ESG NOFA/Contract/T AC	Review the written standards and procedures established for providing ESG. Verify subrecipient's compliance with § 576.105(a-d) and 576.106(a-j). For example: - Verify short-term rental assistance does not exceed 3 months and rent does not exceed HUD Fair Market Value under 24 C.F.R. 888. - Verify medium-term rental assistance is more that 3 three months but does exceed 24 months of rent and rent does not exceed HUD Fair Market Value under 24 C.F.R. 888.

Substantial Ammendment to the FY 2011 FY 2012 Consolidated Annual Action Plans

Attachment 1: Monitoring Standards and Procedures

Activities	New Requirement/Activity	Reference	Texas Standard	Monitoring Activity
Homelessness Prevention	Lead-based paint requirements for ESG-funded shelters and all housing occupied by ESG program participants	42 U.S.C. 4821-4846 42 U.S.C. 4851-4856 24 C.F.R. part 35 24 C.F.R. § 576.403(a)	Contract TAC	Review documentation for compliance with lead-based paint requirements. According to 42 U.S.C. 4821-4846 and associated EPA supporting documentation, this would include, for example, ensuring aquired property is inspected and tested for lead using "using an approved x-ray fluorescence analyzer, atomic absorption spectroscopy, or comparable approved sampling or testing technique." and if renovation is undertake that the EPA RRP (Renovation, Repair, and Painting) Rule is followed.
Rapid Re-housing	Lead-Based Paint requirements for ESG-funded shelters and all housing occupied by ESG program participants	42 U.S.C. 4821-4846, 24 C.F.R. § 576.403(a)		Review documentation for compliance with lead-based paint requirements. See comments above concerning statute requirments, EPA rules, and monitoring requirments.

Substantial Amendment to the FY 2011 FY 2012 Consolidated Annual Action Plans

Attachment 1: Monitoring Standards and Procedures

Activities	New Requirement/Activity	Reference	Texas Standard	Monitoring Activity
Rapid Re-housing	Eligibility for homelessness (determine if eligibility is correct for persons assisted in the rapid rehousing category [homeless categories 1 & 4])	24 C.F.R. § 576.2 24 C.F.R. § 576.104	ESG NOFA/Contract/T AC	Review of client files including individualized housing and service plan and local ESG SOPs - Verify subrecipient's documentation met criteria under paragraph (1) of the homeless definition and for persons who meet the criteria under paragraph (4) of the homeless definition that that client lives in "an emergency shelter or another place as described in paragraph (1)."
Rapid Re-housing	HP assistance must be provided in accordance with housing relocation and stabilization services requirements, the short-term and medium-term rental assistance requirements and the written standards and procedures established under 24 C.F.R. § 576.400(e)	24 C.F.R. § 576.105; 24 C.F.R. § 106 and 24 C.F.R. § 576.400(e)	ESG NOFA/Contract/T AC	Review of client files including individualized housing and service plan and the written standards and procedures established for providing ESG
Housing Relocation and Stabilization Services: Financial Assistance Costs	Last month's rent, rental application fees, security deposits, utility deposits, and moving costs (reference 2012 ESG ESG NOFA draft for more detail on costs)	24 C.F.R. § 576.103, 24 C.F.R. § 576.104 and 24 C.F.R. § 576.105(b); 24 C.F.R. § 576.400(e)	ESG NOFA/Contract/T AC	Review of client files including individualized housing and service plan and the written standards and procedures established for providing ESG

Substantial Amendment to the FY 2011 FY 2012 Consolidated Annual Action Plans

Attachment 1: Monitoring Standards and Procedures

Activities	New Requirement/Activity	Reference	Texas Standard	Monitoring Activity
Housing Relocation and Stabilization Services: Housing Services Costs	Housing search and placement, housing stability case management, mediation, legal Services, credit repair	24 C.F.R. § 576.103, 24 C.F.R. § 576.104; 24 C.F.R. § 576.400(d); 24 C.F.R. § 576.401 (a)-(b); 24 C.F.R. § 576.102 (a)(1)(vi);	ESG NOFA/Contract/T AC	Review of client files including individualized housing and service plan and the written standards and procedures established for providing ESG
Housing Relocation and Stabilization Services: Maximum Amounts and Periods of Assistance	Subrecipient may set maximum dollar amount and maximum period of time for financial assistance	24 C.F.R. § 576.105(a); 24 C.F.R. § 576.400(e)	ESG NOFA/Contract/T AC	Review of client files including individualized housing and service plan and the written standards and procedures established for providing ESG
Housing Relocation and Stabilization Services: Use with other Subsidies	Client cannot receive financial assistance listed under 24 C.F.R. § 576.105(a) if already receiving same type of assistance through other public sources	24 C.F.R. § 576.105(a); 24 C.F.R. § 576.400(e)	ESG NOFA/Contract/T AC	Review of client files including individualized housing and service plan; and Review financial support documentation
Short-Term and Medium-Term Rental Assistance: General Provisions	Short and medium-term rental assistance; payment of rental arrears and tenant-based and project based rental assistance	24 C.F.R. § 576.103, 24 C.F.R. § 576.104; 24 C.F.R. § 576.106; 24 C.F.R. § 576.400(e)	ESG NOFA/Contract/T AC	Review of client files including individualized housing and service plan and the written standards and procedures established for providing ESG; and review financial support documentation
Short-Term and Medium-Term Rental Assistance: Use with other Subsidies	Client cannot receive financial assistance listed under 24 C.F.R. § 576.105(a) if already receiving same type of assistance through other public sources	24 C.F.R. § 576.105(a); 24 C.F.R. § 576.400(e)	ESG NOFA/Contract/T AC	Review of client files including individualized housing and service plan; and Review financial support documentation

Substantial Amendment to the FY 2011 FY 2012 Consolidated Annual Action Plans

Attachment 1: Monitoring Standards and Procedures

Activities	New Requirement/Activity	Reference	Texas Standard	Monitoring Activity
Short-Term and Medium-Term Rental Assistance: Rent Restrictions	Rent cannot exceed Fair Market Rent established by HUD as provided under 24 C.F.R. § 888 and complies with HUD's standard of "rent reasonableness" as established under 24 C.F.R. § 982.507	24 C.F.R. § 888; 24 C.F.R. § 982.507; 24 C.F.R. § 576.106	ESG NOFA/Contract/T AC	Review of client files including individualized housing and service plan and the written standards and procedures established for providing ESG; and review financial support documentation
Short-Term and Medium-Term Rental Assistance: Rental Assistance (RA) Agreement	RA agreements need to exist between subrecipient and owner	24 C.F.R. § 576. 106; 24 C.F.R. § 576.400(e)	ESG NOFA/Contract/T AC	Review of client files including individualized housing and service plan and the written standards and procedures established for providing ESG
Short-Term and Medium-Term Rental Assistance: Late payments	RA agreement will state that Late payments will be paid with non-ESG funds	24 C.F.R. § 576. 106; 24 C.F.R. § 576.400(e)	ESG NOFA/Contract/T AC	Review of client files including individualized housing and service plan and the written standards and procedures established for providing ESG; and review financial support documentation
Short-Term and Medium-Term Rental Assistance: Lease	Must have written lease for RA	24 C.F.R. § 576.400(e); 24 C.F.R. § 576.106	ESG NOFA/Contract/T AC	Review of client files including individualized housing and service plan and the written standards and procedures established for providing ESG; and review financial support documentation
Short-Term and Medium-Term Rental Assistance: Tenant-Based Rental Assistance	RA agreement required	24 C.F.R. § 576. 106; 24 C.F.R. § 576.400(e)	ESG NOFA/Contract/T AC	Review of client files including individualized housing and service plan and the written standards and procedures established for providing ESG

Substantial Amendment to the FY 2011 FY 2012 Consolidated Annual Action Plans

Attachment 1: Monitoring Standards and Procedures

Activities	New Requirement/Activity	Reference	Texas Standard	Monitoring Activity
Project Based Rental Assistance	RA agreement required	24 C.F.R. § 576.106; 24 C.F.R. § 576.400(e); 24 C.F.R. § 576.105	ESG NOFA/Contract/T AC	Review of client files including individualized housing and service plan and the written standards and procedures established for providing ESG
HMIS Component: Cost of Contributing Data to HMIS	Participation is federally required and is an eligible ESG cost (salaries, equipment, etc.)	24 C.F.R. § 576.107; 24 C.F.R. § 576.400(e)-(f)	ESG NOFA/Contract/T AC	Review HMIS reports and reconcile to monthly performance reports (MPRs); and review financial support documentation
HMIS Component: HMIS Software and Data	CoC-designated HMIS lead agency can pay participation fees with ESG funds	24 C.F.R. § 576.107; 24 C.F.R. § 576.400(e)-(f)	ESG NOFA/Contract/T AC	Review the written standards and procedures established for providing ESG; and review financial support documentation
HMIS Component: Comparable database for Victim and Legal Service Providers	ESG funds can be used to develop and operate a comparable database that collects client-level data; activities must comply with HUD's standards on participation, data collection and reporting under local HMIS	24 C.F.R. § 576.107; 24 C.F.R. § 576.400(e)-(f)	ESG NOFA/Contract/T AC	Review the written standards and procedures established for providing ESG; Review monthly performance reports (MPRs) and reconcile to comparable client-level database ;
Administrative Activities: Eligible Administrative Costs	General program management, oversight and coordination cost eligible	24 C.F.R. § 576.108; 24 C.F.R. § 576.400(e); 24 C.F.R. § 576.108 (a)(1)(i)(A);	ESG NOFA/Contract/T AC	Review financial support documentation and travel policies and procedures of subrecipients.
Administrative Activities: Environmental Review	Costs of environmental review	24 C.F.R. § 576.108;	ESG NOFA/Contract/T AC	Review financial support documentation and environmental review

Substantial Amendment to the FY 2011 FY 2012 Consolidated Annual Action Plans

Attachment 1: Monitoring Standards and Procedures

Activities	New Requirement/Activity	Reference	Texas Standard	Monitoring Activity
Ineligible Activities: Family Separation Prohibited		24 C.F.R. § 102(b)	ESG NOFA/Contract/T AC	Review of client files including individualized housing and service plan and the written standards and procedures established for providing ESG
Ineligible Activities: Maintenance of Effort for Street Outreach and Emergency Shelter Components	if the subrecipient is a unit of general purpose local government, its ESG funds cannot be used to replace funds the local government provided for street outreach and emergency shelter services during the immediately preceding 12-month period, unless HUD determines that the unit of general purpose local government is in a severe financial deficit. HUD's criteria for determining a severe financial deficit is 24 C.F.R. § 576.101(c)	24 C.F.R. § 576.101(c); 24 C.F.R. § 102(d)	ESG NOFA/Contract/T AC	Review of client files including individualized housing and service plan and the written standards and procedures established for providing ESG; and review financial support documentation
Ineligible Activities: Certain Legal Services	Legal services for immigration and citizenship and issues relating to mortgage are ineligible costs	24 C.F.R. § 102(a)(1)(vi)(F)	ESG NOFA/Contract/T AC	Review of client files including individualized housing and service plan and the written standards and procedures established for providing ESG; and review financial support documentation
Ineligible Activities: Inpatient Detox		24 C.F.R. § 102(a)(1)(ix)(6)	ESG NOFA/Contract/T AC	Review of client files including individualized housing and service plan and the written standards and procedures established for providing ESG; and review financial support documentation

Substantial Amendment to the FY 2011 FY 2012 Consolidated Annual Action Plans

Attachment 1: Monitoring Standards and Procedures

Activities	New Requirement/Activity	Reference	Texas Standard	Monitoring Activity
Ineligible Activities: Payment of Temporary Storage Fees in Arrears		24 C.F.R. § 576.105(a)(6)	ESG NOFA/Contract/T AC	Review of client files including individualized housing and service plan and the written standards and procedures established for providing ESG; and review financial support documentation
Terminating Assistance	If ESG program participant violates program requirements	24 C.F.R. § 576.402	ESG NOFA/Contract/T AC	Review the written standards and procedures established for providing ESG and client files.
Shelter and Housing Standards	Lead-based paint requirements for ESG-funded shelters and all housing occupied by ESG program participants	24 C.F.R. § 576.403	ESG NOFA/Contract/T AC	Review client files for verification of on-site review of lead-based paint inspection of housing and Review shelter inspection documentation.
Shelter and Housing Standards	Housing and shelter habitability standards	24 C.F.R. § 576.403	ESG NOFA/Contract/T AC	Review local health and safety inspections and perform on-site inspection of sampled ESG-funded housing and emergency shelter
Shelter and Housing Standards	Accessibility standards	Section 504 of the Rehab Act (5 U.S.C. 790), Fair Housing Act (42 U.S.C. 3601) and Titles II and III of ADA (42 U.S.C. 12131-12189; 47 U.S.C. 155, 201, 218, 255)	ESG NOFA/Contract/T AC	Review local ADA inspections and perform on-site visual inspection of sampled ESG-funded housing and emergency shelter
General	Conflict of interest	24 C.F.R. § 576.404	ESG NOFA/Contract/T AC	Review the written standards and procedures established for providing ESG; and review financial support documentation

Substantial Amendment to the FY 2011 FY 2012 Consolidated Annual Action Plans

Attachment 1: Monitoring Standards and Procedures

Activities	New Requirement/Activity	Reference	Texas Standard	Monitoring Activity
General	Economic opportunities for low and very low income and homeless persons	24 C.F.R. § 576.407(a)	ESG NOFA/Contract/T AC	Review of Section 3 Plan, review of client files including individualized housing and service plan and the written standards and procedures established for providing ESG
General	Improving services for persons with limited English proficiency (LEP)	24 C.F.R. § 576.407(b)	ESG NOFA/Contract/T AC	Review of LEP plan, review of client files including individualized housing and service plan and the written standards and procedures established for providing ESG
General	Uniform administrative requirements	24 C.F.R. § 576.407(c)		Review financial support documentation
General	Environmental review responsibilities	24 C.F.R. § 576.407(d)		Review financial support documentation
General	Procurement of recovered materials	24 C.F.R. § 576.407(f)		Review financial support documentation and relevant contract(s); review financial policies and procedures including procurement procedures and standards
General	Displacement, relocation and acquisition	24 C.F.R. § 576.408; Uniform Relocation Act of 1970; 49 C.F.R. 24 Subpart B; HUD Handbook 1378		Review of client files including individualized housing and service plan and the written standards and procedures established for providing ESG
General	Recordkeeping and reporting requirements	24 C.F.R. § 576.500		Review of client files including individualized housing and service plan and the written standards and procedures established for providing ESG

Substantial Amendment to the FY 2011 FY 2012 Consolidated Annual Action Plans

Attachment 1: Monitoring Standards and Procedures

Activities	New Requirement/Activity	Reference	Texas Standard	Monitoring Activity
General	Procurement	2 C.F.R. Part 215.44 , OMB Circular A-102 Subpart C __.36, TAC		Review of subrecipient procurment documentation.
General	Program Income - deposits returned during (program income can be used as match) and after contract year (department reimbursed)	24 C.F.R. § 85.25		Review the written standards and procedures established for providing ESG; review financial support documentation and relevant rental agreements; review financial policies and procedures

**Draft Substantial Amendment to the 2011 and 2012
State of Texas Consolidated Plan, One Year Plan**

STATE CERTIFICATIONS

In accordance with the applicable statutes and the regulations governing the consolidated plan regulations, the State certifies that:

Affirmatively Further Fair Housing -- The State will affirmatively further fair housing, which means it will conduct an analysis of impediments to fair housing choice within the state, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting that analysis and actions in this regard.

Anti-displacement and Relocation Plan -- It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR 24; and it has in effect and is following a residential anti-displacement and relocation assistance plan required under section 104(d) of the Housing and Community Development Act of 1974, as amended, in connection with any activity assisted with funding under the CDBG or HOME programs.

Drug Free Workplace -- It will or will continue to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
2. Establishing an ongoing drug-free awareness program to inform employees about -
 - (a) The dangers of drug abuse in the workplace;
 - (b) The grantee's policy of maintaining a drug-free workplace;
 - (c) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph 1;
4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment under the grant, the employee will -
 - (a) Abide by the terms of the statement; and
 - (b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
5. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph 4(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
6. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph 4(b), with respect to any employee who is so convicted -
 - (a) Taking appropriate personnel action against such an employee, up to and including

termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1, 2, 3, 4, 5 and 6.

Anti-Lobbying -- To the best of the State's knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
3. It will require that the language of paragraphs 1 and 2 of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

Authority of State -- The submission of the consolidated plan is authorized under State law and the State possesses the legal authority to carry out the programs under the consolidated plan for which it is seeking funding, in accordance with applicable HUD regulations.

Consistency with plan -- The housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the strategic plan.

Section 3 -- It will comply with section 3 of the Housing and Urban Development Act of 1968, and implementing regulations at 24 CFR Part 135.

Signature/Authorized Official
Title

Date

APPENDIX TO CERTIFICATIONS

INSTRUCTIONS CONCERNING LOBBYING AND DRUG-FREE WORKPLACE REQUIREMENTS:

A. Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

B. Drug-Free Workplace Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification.
2. The certification is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HUD, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
3. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.
4. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio stations).
5. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph three).

6. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check ____ if there are workplaces on file that are not identified here;

This information with regard to the drug-free workplace required by 24 CFR part 21.

7. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C.812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

ESG Certifications

Each State that seeks funding under the Emergency Solutions Grants Program must provide the following certifications:

Matching Funds – The State will obtain any matching amounts required under 24 CFR 576.201 in a manner so that its subrecipients that are least capable of providing matching amounts receive the benefit of the exception under 24 CFR 576.201(a)(2).

Discharge Policy – The State will establish and implement, to the maximum extent practicable and where appropriate, policies and protocols for the discharge of persons from publicly funded institutions or systems of care (such as health care facilities, mental health facilities, foster care or other youth facilities, or correction programs and institutions) in order to prevent this discharge from immediately resulting in homelessness for these persons.

Confidentiality – The State will develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the ESG program, including protection against the release of the address or location of any family violence shelter project, except with the written authorization of the person responsible for the operation of that shelter.

The State will ensure that its subrecipients comply with the following criteria:

Major rehabilitation/conversion – If an emergency shelter's rehabilitation costs exceed 75 percent of the value of the building before rehabilitation, the building will be maintained as a shelter for homeless individuals and families for a minimum of 10 years after the date the building is first occupied by a homeless individual or family after the completed rehabilitation. If the cost to convert a building into an emergency shelter exceeds 75 percent of the value of the building after conversion, the building will be maintained as a shelter for homeless individuals and families for a minimum of 10 years after the date the building is first occupied by a homeless individual or family after the completed conversion. In all other cases where ESG funds are used for renovation, the building will be maintained as a shelter for homeless individuals and families for a minimum of 3 years after the date the building is first occupied by a homeless individual or family after the completed renovation.

Essential Services and Operating Costs – If ESG funds are used for shelter operations or essential services related to street outreach or emergency shelter, the subrecipient will provide services or shelter to homeless individuals and families for the period during which the ESG assistance is provided, without regard to a particular site or structure, so long the applicant serves the same type of persons (e.g., families with children, unaccompanied youth, veterans, disabled individuals, or victims of domestic violence) or persons in the same geographic area.

Renovation – Any renovation carried out with ESG assistance shall be sufficient to ensure that the building involved is safe and sanitary.

Supportive Services – The subrecipient will assist homeless individuals in obtaining permanent housing, appropriate supportive services (including medical and mental health treatment, counseling, supervision, and other services essential for achieving independent living), and other Federal State, local, and private assistance available for such individuals.

Homeless Persons Involvement – To the maximum extent practicable, the subrecipient will involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities, in providing services assisted under the ESG program, and in providing services for occupants of facilities assisted ESG.

Consolidated Plan – All activities the subrecipient undertakes with assistance under ESG are consistent with the State’s current HUD-approved consolidated plan.

Signature/Authorized Official Date

Title

Signature/Authorized Official Date

Title

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BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
April 12, 2012

Presentation, Discussion, and Possible Approval of the Award of a Comprehensive Energy Assistance Program contract to Community Council of South Central Texas to provide services in Maverick, Dimmitt, and La Salle Counties.

RECOMMENDED ACTION

Approve the award of a Comprehensive Energy Assistance Program (CEAP) contract to Community Council of South Central Texas to provide services in Maverick, Dimmitt, and La Salle Counties.

WHEREAS, due to unresolved program management issues at the Community Services Agency of South Texas, residents of Maverick, Dimmitt and La Salle Counties did not receive services under the Comprehensive Energy Assistance Program in Program Year 2011,

RESOLVED, that Community Council of South Central Texas, a Community Services Block Grant eligible entity, is temporarily awarded to administer the CEAP in Maverick, Dimmitt, and La Salle Counties from this date until December 31, 2012, and hereby approved in the form presented to this meeting.

BACKGROUND

The Community Services Agency of South Texas is currently under cost-reimbursement sanction for the Weatherization Assistance Program (WAP) and for the CEAP. Due to significant delays in the receipt of clear documentation from Community Services Agency of South Texas for their PY2010 programs, the Department did not release 2011 contracts to Community Services Agency of South Texas for the WAP and the CEAP, and the Department will not release 2012 contracts to Community Services Agency of South Texas until previous program year monitoring findings are resolved. It is notable that at this time, Community Services Agency of South Texas does not have sufficient staff to operate the CEAP.

If previous program year findings cannot be resolved, the Department will release a Request for Applications to identify alternative providers to operate the CEAP in Maverick, Dimmitt, and La Salle Counties. Until that time, the Department proposes a temporary contract to be administered by an existing CEAP provider from a bordering service area, Community Council of South Central Texas.

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BOARD ACTION REQUEST

HOME DIVISION

APRIL 12, 2012

Presentation, Discussion, and Possible Action regarding the 2011 Single Family Homeowner Rehabilitation, Homebuyer Assistance and Tenant Based Rental Assistance Programs contract award recommendations

RECOMMENDED ACTION

WHEREAS, the Department received and reviewed fourteen additional applications for funding under the 2011 HOME Single Family Notice of Funding Availability for Contract Award (NOFA), to determine that funding is available to award HOME Program funds to the fourteen applications.

RESOLVED, that the award of contracts to City of Anson, City of Madisonville, City of Rusk, City of Ore City, City of Sinton, Central Texas Opportunities, Inc., City of George West, City of Wolfe City, City of Skellytown, City of McCamey, City of Muleshoe, City of Seminole, City of Rockport, and, City of Roma, totaling \$8,023,500 in project funds and \$308,000 in administrative funds, resulting in assistance for 118 low-income households, are hereby approved as presented to this meeting; and,

FURTHER RESOLVED, that the Department has additional funds available from HOME program income, un-programmed and, de-obligated funds to satisfy the amount oversubscribed in order to award all fourteen applications.

BACKGROUND

Staff is recommending the award of applications received in response to the 2011 HOME Single Family NOFA for Contract Award. The award recommendations total \$8,023,500 in project funds and \$320,800 in administrative funds to assist 118 households for the applicants listed below:

City of Anson
Located in Jones County
Service Area: City of Anson

Applicant will receive \$542,000 in project funds and \$20,000 in administrative funds to provide rehabilitation or reconstruction assistance to 6 homes owned by low-income households that are in significant disrepair.

City of Madisonville
Located in Madison County
Service Area: City of Madisonville

Applicant will receive \$542,000 in project funds and \$20,000 in administrative funds to provide rehabilitation or reconstruction assistance to 6 homes owned by low-income households that are in significant disrepair.

City of Rusk
Located in Cherokee County
Service Area: City of Rusk

Applicant will receive \$542,000 in project funds and \$20,000 in administrative funds to provide rehabilitation or reconstruction assistance to 6 homes owned by low-income households that are in significant disrepair.

City of Ore City
Located in Upshur County
Service Area: City of Ore City

Applicant will receive \$542,000 in project funds and \$20,000 in administrative funds to provide rehabilitation or reconstruction assistance to 6 homes owned by low-income households that are in significant disrepair.

City of Sinton
Located in San Patricio County
Service Area: City of Sinton

Applicant will receive \$542,000 in project funds and \$20,000 in administrative funds to provide rehabilitation or reconstruction assistance to 6 homes owned by low-income households that are in significant disrepair.

Central Texas Opportunities, Inc.
Located in Coleman, Texas
Service Area: Cities of Brownwood, Bangs, Baird, Clyde, Cross Plains, Coleman, Comanche, DeLeon, Cisco, Eastland, Ranger, Brady, Ballinger, and Winters

Applicant will receive \$542,000 in project funds and \$20,000 in administrative funds to provide rehabilitation or reconstruction assistance to 6 homes owned by low-income households that are in significant disrepair.

Applicant will also receive \$300,000 in project funds and \$24,000 in administrative funds to assist at least 20 low-income households with Tenant Based Rental Assistance. The rental assistance will be in the form of a grant for vouchers that can be used for a safe, decent and affordable housing unit of their choice.

Applicant will also receive \$322,500 in project funds and \$12,000 in administrative funds to provide up to \$20,000 in downpayment and closing costs assistance to 15 eligible low-income homebuyers.

City of George West
Located in Live Oak County
Service Area: City of George West

Applicant will receive \$542,000 in project funds and \$20,000 in administrative funds to provide rehabilitation or reconstruction assistance to 6 homes owned by low-income households that are in significant disrepair.

City of Wolfe City
Located in Hunt County
Service Area: City of Wolfe City

Applicant will receive \$542,000 in project funds and \$20,000 in administrative funds to provide rehabilitation or reconstruction assistance to 6 homes owned by low-income households that are in significant disrepair.

City of Skellytown
Located in Carson County
Service Area: City of Skellytown

Applicant will receive \$522,000 in project funds and \$19,200 in administrative funds to provide rehabilitation or reconstruction assistance to 6 homes owned by low-income households that are in significant disrepair.

City of McCamey
Located in Upton County
Service Area: City of McCamey

Applicant will receive \$522,000 in project funds and \$19,200 in administrative funds to provide rehabilitation or reconstruction assistance to 6 homes owned by low-income households that are in significant disrepair.

City of Muleshoe
Located in Bailey County
Service Area: City of Muleshoe

Applicant will receive \$435,000 in project funds and \$16,000 in administrative funds to provide rehabilitation or reconstruction assistance to 5 homes owned by low-income households that are in significant disrepair.

City of Seminole
Located in Gaines County
Service Area: City of Seminole

Applicant will receive \$522,000 in project funds and \$19,200 in administrative funds to provide rehabilitation or reconstruction assistance to 6 homes owned by low-income households that are in significant disrepair.

City of Rockport
Located in Aransas County
Service Area: City of Rockport

Applicant will receive \$542,000 in project funds and \$20,000 in administrative funds to provide rehabilitation or reconstruction assistance to 6 homes owned by low-income households that are in significant disrepair.

City of Roma
Located in Starr County
Service Area: City of Roma

Applicant will receive \$522,000 in project funds and \$19,200 in administrative funds to provide rehabilitation or reconstruction assistance to 6 homes owned by low-income households that are in significant disrepair.

RECOMMEDATION

The Department executed its 2011 HOME Grant Agreement with HUD, allowing the availability of HOME funds to be programmed for various uses in accordance with the HUD- approved 2011 Consolidated Plan One-Year Action Plan (OYAP). Under the 2011 allocation for the HOME funds, \$9,000,000 is programmed for Single Family activities.

Under the \$9,000,000 Single Family Program NOFA the Board approved applications of \$6,872,000, leaving a \$2,128,000 balance. The balance available in the NOFA is not sufficient to fund the \$8,023,500 reflected in the fourteen recommended applications. The NOFA is over subscribed by \$5,895,500. Therefore, staff recommends using the Department's available balance of HOME funds of \$5,991,950 as reflected in the most recent Fund Balance Report, dated March 27, 2012 to fund the recommended awards. The Fund Balance less the application recommendation leaves a positive surplus of \$96,450 in HOME funds available for programming.

Staff recommends utilizing the NOFA balance plus the funds available for programming to fund the applications and allow the Department to continue to meet its HUD commitment and expenditure requirements.

The applications recommended are conditioned on a previous participation review conducted by the Compliance and Asset Oversight Division, and no issues of material non-compliance, unresolved audit findings or questioned or disallowed costs being identified.

HOME FUND BALANCE REPORT

As of March 27, 2012

		Total
Total Available Balance in IDIS on March 2, 2012 ¹		\$61,279,427.16
Committed since last report		(\$5,735,315.00)
Program Income received since last report		\$550,448.80
Deobligated since last report		\$32,521.00
Total Available Balance in IDIS on March 27, 2012 ¹		\$58,419,381.52
CHDO (Community Housing Development Organization) Funds		
	Uncommitted	Reserved Deobligated
Available Balance in IDIS	\$7,397,888.36	\$7,397,888.36
Programmatic Set-Asides:		
All funds are currently available in open NOFA's		
Open Notices of Funding Availability (NOFA's):		
Awards approved by the Board but not Committed in IDIS		
	\$0.00	\$0.00
Single Family Development NOFA		
(approved by the board September 15, 2011 and expired March 15, 2012)		
	(\$3,024,189.00)	(\$3,024,189.00)
Multi Family Development NOFA \$6.5 Million CHDO Set-Aside		
(approved by the board September 15, 2011 and expires April 30, 2012)		
	(\$10,000,000.20)	(\$10,000,000.20)
Total CHDO Funds Available for Programming:		
	(\$5,626,300.84)	(\$5,626,300.84)
Non-CHDO (Community Housing Development Organization) Funds		
	Uncommitted	Reserved Deobligated
Available Balance in IDIS	\$51,012,920.16	\$ 8,573.00
Programmatic Set-Asides:		
2010 CHDO Operating Funds ²		
	(\$50,000.00)	(\$50,000.00)
2011 CHDO Operating Funds ²		
	(\$293,856.00)	(\$293,856.00)
Persons with Disabilities Set-Aside		
	\$0.00	\$ (8,573.00)
Open Notices of Funding Availability (NOFA's)/Reservations & Approved Awards:		
Reserved or Approved but not Committed in IDIS		
	\$ (11,113,033.00)	(\$11,113,033.00)
Amendment Approved but not Committed in IDIS		
	\$0.00	\$0.00
TDHCA Direct Administration		
	(\$2,196,511.26)	(\$2,196,511.26)
2010 Single Family NOFA \$3.12 million		
(approved by board September 9, 2010 and expires April 29, 2011)		
Special Set-Asides		
Contract for Deed Conversion Set-Aside Funds		
	\$0.00	\$0.00
Single Family PWD Set-Aside Funds		
	(\$2,716,997.95)	(\$2,716,997.95)
Contract Award: PJ balance is (\$0.00).		
Reservation: PJ balance is \$1,723,256.00.		
Reservation: NON-PJ balance is \$993,741.95.		
General Single Family Activity Set-Asides		
	(\$19,529,371.76)	(\$19,529,371.76)
Contract Award: Total balance for HRA, HBA, & TBRA is \$2,128,000.00.		
Reservation: Collapse Fund balance is \$14,480,859.76.		
Reservation: HRA balance is \$0.00.		
Reservation: HBA balance is \$0.00.		
Reservation: TBRA balance is \$0.00.		
Reservation: HRA w/Refinance balance is \$0.00.		
Reservation: Disaster balance is \$2,920,512.00.		
Multi-Family Development NOFA		
(approved by the board September 15, 2011 and expires April 30, 2012)		
General Set-Aside		
	(\$1,956,833.17)	(\$1,956,833.17)
PWD Set-Aside		
	(\$1,538,066.18)	(\$1,538,066.18)
<i>(For CHDO Set-Aside see above)</i>		
Total Non-CHDO Funds Available for Programming:		
	\$11,618,250.84	\$11,618,250.84
Grand Total of HOME Funds Available for Programming:		
	\$5,991,950.00	\$5,991,950.00

¹ The cumulative program income to-date is \$36,854,487.04.

² CHDO Operating funds are non-CHDO funds used for CHDO projects.

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BOARD ACTION REQUEST
NEIGHBORHOOD STABILIZATION PROGRAM
April 12, 2012

Presentation, Discussion, and Possible Action regarding the recommendation to approve the Neighborhood Stabilization Program – Program Income (NSP-PI) Reservation System Participants.

Recommended Action

WHEREAS, the Department anticipates that it will receive funds from loan repayments and deobligated funds under the Neighborhood Stabilization Program and that it will need to redistribute such funds in accordance with NSP rules and regulations, and;

WHEREAS, program income received will be made available to Reservation System Participants, in order that it can be used efficiently; therefore be it

RESOLVED, that the NSP Reservation System Participants, Austin Housing Finance Corporation, Willacy County, and the Guadalupe Neighborhood Development Corporation, be and hereby are approved as presented to this meeting.

Background

The Neighborhood Stabilization Program (NSP) is a HUD-funded program authorized by HR3221, the “Housing and Economic Recovery Act of 2008” (HERA), 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 into affordable housing, or acquire and hold, abandoned and foreclosed properties in areas that are documented to have the greatest need for arresting declining property values as a result of excessive foreclosures.

As NSP subgrantees move forward with completion of their NSP projects, significant program income will be generated through the resale of properties to income-eligible households. A portion of funds will be received as mortgage loan payments from households at or below 50% AMFI that have accessed NSP permanent financing, along with loan payments from subrecipient organizations that are providing rental housing to low-income households. The balance of the program income available for redistribution will be generated by loan repayments as subrecipients sell non-set-aside homes to households over 50% AMFI.

On January 20, 2011, the Board approved the NSP1-Program Income NOFA, a revision to the NOFA was subsequently approved by the Board at the September 15, 2011 meeting. The application form was posted to the NSP webpage and applications are continuing to be accepted. Four entities submitted applications to participate in the NSP Reservation System, and three are recommended for conditional approval, pending clearance of administrative deficiencies. The fourth applicant is not recommended due to issues identified during the Previous Participation review.

Application Number	Applicant Name	Location	NSP Activity
2012-515	Austin Housing Finance Corp.	Austin	Use E – Redevelopment
2012-517	Willacy County	Raymondville, San Perlita, Lyford	Use D – Demolition Use B – Purchase and Rehabilitation
2012-600	Guadalupe Neighborhood Development Corporation	Austin	Use E – Redevelopment

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BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
April 12, 2012

Presentation, Discussion, and Possible Issuance of Determination Notices for Housing Tax Credits Associated with Multifamily Mortgage Revenue Bonds from Other Issuers and Award of HOME Multifamily Development Program Funds

RECOMMENDED ACTION

WHEREAS, a Housing Tax Credit and HOME Program application for Fox Run (#12402) was submitted to the Department on February 10, 2012; and

WHEREAS, the proposed issuer of the bonds for Fox Run is the Sabine-Neches Housing Finance Corporation; and

WHEREAS, the reservation of allocation expires on August 20, 2012; and

WHEREAS, HOME Multifamily Development Program (MFD) funding is available to award the subject application under the Persons with Disabilities Set-Aside; and

WHEREAS, the Executive Award and Review Advisory Committee recommends the issuance of the Determination Notice; therefore,

It is hereby,

RESOLVED, that the issuance of a Determination Notice of \$225,317 in Housing Tax Credits and award of a HOME contract for \$300,000 for Fox Run is hereby approved in the form presented to this meeting.

BACKGROUND

Background and General Information: The application was received on February 10, 2012. The Issuer for this transaction is the Sabine-Neches Housing Finance Corporation with a reservation that expires on August 20, 2012. The general population development is rehabilitation and will consist of 70 total units. This transaction is a Priority 3 and all of the units are proposed to be restricted at 60% Area Median Family Income (AMFI) for the tax credit program and will have additional restrictions under the HOME Program. The development is located in Orange, Orange County and the site is currently zoned for this type of development.

The transaction was originally awarded 4% housing tax credits (HTC) on December 15, 2011. However, the Applicant was unable to close on the bonds in the allotted 150 days

and the Certificate of Reservation expired on February 24, 2012. Per Section 49.11(e) of the 2011 Qualified Allocation Plan (QAP) under which the original allocation was awarded, any application that receives an affirmative Board Determination, but does not close on the bonds and subsequently receives a new reservation in a new program year must submit a new application and re-apply under the new program rules.

The current application was submitted and reviewed in accordance with the 2012-2013 QAP. This application included a request for a HOME loan to allow for additional rehabilitation not included in the original scope of work of the previously approved application. The Applicant requested these funds under the Persons with Disabilities Set-Aside and in accordance with the current HOME Program rules.

One other \$300,000 Multifamily HOME award under the Persons with Disabilities Set-Aside is on the agenda today. If both of the awards recommended today are approved, the total balance of remaining funding under the 2011 Multifamily Development Program Notice of Funding Availability is \$12,545,033, with remaining funding under the individual set-asides as follows: \$2,056,967 in the General Set-Aside, \$9,550,000 remaining in the CHDO Set-Aside, and \$938,066 remaining in the Persons with Disabilities Set-Aside. Complete and updated HOME Application and Award Recommendation Logs are posted on the Department website.

Organizational structure and Compliance: The Borrower is Orange Leased Housing Associates I, Limited Partnership and the General Partner is Orange Leased Housing Associates GP I, LLC. The Compliance Status Summary completed on March 7, 2012 reveals that the principals of the general partner have interests in 11 multifamily transactions that have been monitored with no material noncompliance.

Census Demographics: The development is located at 2600 Allie Payne Road in Orange. Demographics for the census tract (0213.00) include AMFI of \$78,036; the total population is 5,604; the percent of population that is minority is 15.47%; the percent of population that is below the poverty line is 8.36%; the number of owner occupied units is 1,514; the number of renter units is 673 and the number of vacant units is 146. (Census information from FFIEC Geocoding for 2011).

Public Comment: The Department received one letter of support from City of Orange Mayor Brown Claybar and no letters of opposition for this Development.



MULTIFAMILY FINANCE PRODUCTION DIVISION
April 12, 2012
Development Information, Public Input and Board Summary
Fox Run, TDHCA Number 12402

BASIC DEVELOPMENT INFORMATION

Site Address: 2600 Allie Payne Rd. Development #: 12402
 City: Orange Region: 5 Population Served: General
 County: Orange Zip Code: 77632 Allocation: Rural
 HOME Set Asides: At-Risk General PWD Purpose/Activity: ACQ/R
 Bond Issuer: Sabine-Neches HFC

HTC Purpose/Activity: NC=New Construction, ACQ=Acquisition, R=Rehabilitation, NC/ACQ=New Construction and Acquisition,
 NC/R=New Construction and Rehabilitation, ACQ/R=Acquisition and Rehabilitation

OWNER AND DEVELOPMENT TEAM

Owner: Orange Leased Housing Associates I, L.P.
 Owner Contact and Phone: Ron Mehl, (763) 354-5584
 Developer: Orange Leased Housing Development I, LLC
 Housing General Contractor: Orange Leased Housing Development I, LLC
 Architect: Blumentals Architecture, Inc
 Market Analyst: Integra Realty Resources
 Syndicator: Alliant Capital, Ltd.
 Supportive Services: N/A
 Consultant: N/A

UNIT/BUILDING INFORMATION

<u>30%</u>	<u>40%</u>	<u>50%</u>	<u>60%</u>	<u>Eff</u>	<u>1 BR</u>	<u>2 BR</u>	<u>3 BR</u>	<u>4 BR</u>	<u>5 BR</u>	Total Restricted Units:	70
0	0	0	70	0	22	28	16	4	0	Market Rate Units:	0
Type of Building:										Owner/Employee Units:	0
<input checked="" type="checkbox"/> Duplex	<input checked="" type="checkbox"/> 4 units or more per building									Total Development Units:	70
<input type="checkbox"/> Triplex	<input type="checkbox"/> Single Room Occupancy									Total Development Cost:	\$8,197,504
<input checked="" type="checkbox"/> Fourplex	<input type="checkbox"/> Transitional									Number of Residential Buildings:	6
	<input type="checkbox"/> Townhome									HOME HL/50% Units:	2
										HOME HH/80% Units:	0
										HOME 30% Units:	1
										HOME HH/60% Units:	0

Note: If Development Cost = \$0, an Underwriting Report has not been completed.

FUNDING INFORMATION

	<u>Applicant Request</u>	<u>Department Analysis</u>	<u>Amort</u>	<u>Term</u>	<u>Rate</u>
4% Housing Tax Credits with Bonds:	\$227,137	\$225,317	0	0	0%
TDHCA Bond Allocation Amount:	\$0	\$0	0	0	0%
HOME Activity Fund Amount:	\$300,000	\$300,000	40	40	0%
HOME At-Risk Operating Grant Amount		\$0			
HOME PWD Operating Grant Amount:	\$0				



MULTIFAMILY FINANCE PRODUCTION DIVISION
April 12, 2012
Development Information, Public Input and Board Summary
Fox Run, TDHCA Number 12402

PUBLIC COMMENT SUMMARY

Guide: "O" = Oppose, "S" = Support, "N" = Neutral, "NC" or Blank = No comment

State/Federal Officials with Jurisdiction:

TX Senator: Williams, District 4	NC	US Representative: Brady, District 8,
TX Representative: Hamilton, District 19	NC	US Senator: NC

Local Officials and Other Public Officials:

Mayor/Judge: William Brown Claybar, Mayor, City of Orange - S Resolution of Support from Local Government

Individuals/Businesses: In Support: 0 In Opposition: 0

Neighborhood Input:

General Summary of Comment:

CONDITIONS OF COMMITMENT

1. Receipt and acceptance by Cost Certification:
 - a. HUD approval of at least a 4% increase from the current Section 8 contract rents; otherwise, the operating pro forma must be re-evaluated.
 - b. Documentation from the taxing authority of qualification for a 50% property tax exemption.
 - c. Documentation clearing environmental issues contained in the ESA report, specifically:
Completion of a comprehensive survey to identify the presence of asbestos-containing-materials, and documentation that all ESA recommendations regarding asbestos-containing-materials were followed for the demolition and removal, or maintenance, of any such materials.
2. Receipt and acceptance prior to closing on the HOME loan of an agreement by HUD to subordinate the Mark-to-Market note behind the TDHCA HOME loan.
3. Should any terms of the proposed capital structure change, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds, if any, may be warranted.



MULTIFAMILY FINANCE PRODUCTION DIVISION
April 12, 2012
Development Information, Public Input and Board Summary
Fox Run, TDHCA Number 12402

RECOMMENDATION BY THE EXECUTIVE AWARD AND REVIEW ADVISORY COMMITTEE IS BASED ON:

4% Housing Tax Credits:	Credit Amount:	\$225,317
Recommendation:	Recommend approval of a Housing Tax Credit Allocation not to exceed \$225,137 annually for ten years, subject to conditions.	
TDHCA Bond Issuance:	Bond Amount:	\$0
Recommendation:		
HOME Activity Funds:	Loan Amount:	\$300,000
HOME At-Risk Operating Expense Grant:	Grant Amount:	\$0
HOME PWD Operating Expense Grant:	Grant Amount:	
Recommendation:		

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
April 12, 2012

Presentation, Discussion, and Possible Issuance of Determination Notices for Housing Tax Credits Associated with Multifamily Mortgage Revenue Bonds from Other Issuers and Award of HOME Multifamily Development Program Funds

RECOMMENDED ACTION

Approve the Issuance of a Determination Notice associated with Mortgage Revenue Bond Transactions with Other Issuers for Village of Kaufman, #12403.

WHEREAS, a Housing Tax Credit and HOME Program application for Village of Kaufman was submitted to the Department on February 10, 2012; and

WHEREAS, the proposed issuer of the bonds for Village of Kaufman is the North Central Texas Housing Finance Corporation; and

WHEREAS, the reservation of allocation expires on August 20, 2012; and

WHEREAS, HOME Multifamily Development Program (MFD) funding is available to award the subject application under the Persons with Disabilities Set-Aside; and

WHEREAS, the Executive Award and Review Advisory Committee recommends the issuance of the Determination Notice; therefore,

It is hereby,

RESOLVED, that the issuance of a Determination Notice of \$180,965 in Housing Tax Credits and award of a HOME contract for \$300,000 for the Village of Kaufman is hereby approved in the form presented to this meeting.

BACKGROUND

Background and General Information: The application was received on February 10, 2012. The Issuer for this transaction is the North Central Texas Housing Finance Corporation with a reservation that expires on August 20, 2012. The development is rehabilitation and will consist of 68 total units on two separate sites. This transaction is a Priority 3 and all of the units are proposed to be restricted at 60% Area Median Family Income (AMFI) under the tax credit program and will have additional restrictions under

the HOME Program. The development is located in Kaufman, Kaufman County and both sites are currently zoned for this type of development.

The transaction was originally awarded 4% housing tax credits (HTC) on December 15, 2011. However, the Applicant was unable to close on the bonds in the allotted 150 days and the Certificate of Reservation expired on February 24, 2012. Per Section 49.11(e) of the 2011 QAP under which the original allocation was awarded, any application that receives an affirmative Board Determination, but does not close on the bonds and subsequently receives a new reservation in a new program year must submit a new application and re-apply under the new program rules.

The current application was submitted and reviewed in accordance with the 2012-2013 QAP. This application included a request for a HOME loan to allow for additional rehabilitation not included in the original scope of work of the previously approved application. The Applicant requested these funds under the Persons with Disabilities Set-Aside and in accordance with the current HOME Program rules.

One other \$300,000 MFD HOME award under the Persons with Disabilities Set-Aside is also on the agenda today. If both of the awards recommended today are approved, the total balance of remaining funding under the 2011 Multifamily Development Program Notice of Funding Availability is \$12,545,033, with remaining funding under the individual set-asides as follows: \$2,056,967 in the General Set-Aside, \$9,550,000 remaining in the CHDO Set-Aside, and \$938,066 remaining in the Persons with Disabilities Set-Aside. Complete and updated HOME Application and Award Recommendation Logs are posted on the Department website.

The Applicant has indicated that the Section 8 HAP contract for the property requires a portion of the units be leased to Elderly households. However, the property includes only one community building from which the general population units and units for Elderly households only will be leased. It is noted that the Applicant received a legal opinion indicating that the structure does not violate the Fair Housing Act. Compliance with the Fair Housing Act remains the responsibility of the owner.

Organizational structure and Compliance: The Borrower is Kaufman Leased Housing Associates I, Limited Partnership and the General Partner is Kaufman Leased Housing Associates GP I, LLC. The Compliance Status Summary completed on March 7, 2012 reveals that the principals of the general partner have interests 11 multifamily transactions that have been monitored with no material noncompliance.

Census Demographics: The development serving the elderly population is located at 421 East 7th Street in Kaufman. Demographics for the census tract (0511.00) include AMFI of \$49,604; the total population is 4,528; the percent of population that is minority is 37.26%; the percent of population that is below the poverty line is 14.25%; the number of owner occupied units is 1,035; the number of renter units is 544 and the number of vacant units is 85. (Census information from FFIEC Geocoding for 2011).

Census Demographics: The development serving the general population is located at 100 Village Drive in Kaufman. Demographics for the census tract (0512.00) include AMFI of \$62,445; the total population is 7,331; the percent of population that is minority is 11.49%; the percent of population that is below the poverty line is 9.76%; the number of owner occupied units is 2,141; the number of renter units is 353 and the number of vacant units is 202. (Census information from FFIEC Geocoding for 2011).

Public Comment: The Department received one letter of support from City of Kaufman City Manager, Curtis Snow, and no letters of opposition for this Development.



MULTIFAMILY FINANCE PRODUCTION DIVISION
April 12, 2012
Development Information, Public Input and Board Summary
Village of Kaufman, TDHCA Number 12403

BASIC DEVELOPMENT INFORMATION

Site Address: 421 East 7th St. Development #: 12403
 City: Kaufman Region: 3 Population Served: General
 County: Kaufman Zip Code: 75142 Allocation: Rural
 HOME Set Asides: At-Risk General PWD Purpose/Activity: ACQ/R
 Bond Issuer: North Central Texas HFC

HTC Purpose/Activity: NC=New Construction, ACQ=Acquisition, R=Rehabilitation, NC/ACQ=New Construction and Acquisition,
 NC/R=New Construction and Rehabilitation, ACQ/R=Acquisition and Rehabilitation

OWNER AND DEVELOPMENT TEAM

Owner: Kaufman Leased Housing Associates I, L.P.
 Owner Contact and Phone: Ron Mehl, 7633545584
 Developer: Kaufman Leased Housing Development I, LLC
 Housing General Contractor: Kaufman Leased Housing Development I, LLC
 Architect: Blumentals Architecture, Inc
 Market Analyst: Integra Realty Resources
 Syndicator: Alliant Capital, Ltd.
 Supportive Services: N/A
 Consultant: N/A

UNIT/BUILDING INFORMATION

<u>30%</u>	<u>40%</u>	<u>50%</u>	<u>60%</u>	<u>Eff</u>	<u>1 BR</u>	<u>2 BR</u>	<u>3 BR</u>	<u>4 BR</u>	<u>5 BR</u>	Total Restricted Units:	68	
0	0	0	68	0	32	26	10	0	0	Market Rate Units:	0	
Type of Building:											Owner/Employee Units:	0
<input checked="" type="checkbox"/> Duplex	<input type="checkbox"/> 4 units or more per building										Total Development Units:	68
<input type="checkbox"/> Triplex	<input type="checkbox"/> Single Room Occupancy										Total Development Cost:	\$6,769,239
<input checked="" type="checkbox"/> Fourplex	<input type="checkbox"/> Transitional										Number of Residential Buildings:	26
	<input type="checkbox"/> Townhome										HOME HL/50% Units:	2
											HOME HH/80% Units:	0
											HOME 30% Units:	2
											HOME HH/60% Units:	0

Note: If Development Cost = \$0, an Underwriting Report has not been completed.

FUNDING INFORMATION

	<u>Applicant Request</u>	<u>Department Analysis</u>	<u>Amort</u>	<u>Term</u>	<u>Rate</u>
4% Housing Tax Credits with Bonds:	\$189,958	\$180,965	0	0	0%
TDHCA Bond Allocation Amount:	\$0	\$0	0	0	0%
HOME Activity Fund Amount:	\$300,000	\$300,000	40	40	0%
HOME At-Risk Operating Grant Amount		\$0			
HOME PWD Operating Grant Amount:	\$0				



MULTIFAMILY FINANCE PRODUCTION DIVISION
April 12, 2012
Development Information, Public Input and Board Summary
Village of Kaufman, TDHCA Number 12403

PUBLIC COMMENT SUMMARY

Guide: "O" = Oppose, "S" = Support, "N" = Neutral, "NC" or Blank = No comment

State/Federal Officials with Jurisdiction:

TX Senator: Deuell, District 2

US Representative: Hensarling, District 5,

TX Representative: Gooden, District 4

US Senator: NC

Local Officials and Other Public Officials:

Mayor/Judge: William Forther, Mayor, City of Kaufman - Resolution of Support from Local Government
NC

Curtis Snow, City Manager, City of Kaufman - S

Individuals/Businesses: In Support: 0 In Opposition: 0

Neighborhood Input:

General Summary of Comment:

CONDITIONS OF COMMITMENT

1. Receipt and acceptance by Cost Certification of:
 - a. The Development either receiving HUD approval to remove any age preferences from the leasing requirements or submission of a determination from the Secretary of HUD in accordance with the Fair Housing Act.
 - b. HUD approval of at least a 3% increase from the current Section 8 contract rents; otherwise, the operating pro forma must be re-evaluated.
 - c. Documentation from the taxing authority of qualification for a 50% property tax exemption.
 - d. Documentation clearing environmental issues contained in the ESA report, specifically:
 - i. Completion of a comprehensive survey to identify the presence of asbestos-containing-materials; documentation that an appropriate Operations and Maintenance Program has been implemented to manage any existing asbestos-containing materials; and that appropriate abatement procedures, consistent with all relevant regulations, were followed for the demolition and removal of any such materials.
 - ii. Evidence that the recommendations of the ESA provider with regard to radon gas have been implemented, and verification that radon levels within the finished development are acceptable.
2. Receipt and acceptance prior to closing on the HOME loan of an agreement by HUD to subordinate the Mark-to-Market note behind the TDHCA HOME loan.
3. Should any terms of the proposed capital structure change, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds, if any, may be warranted.



MULTIFAMILY FINANCE PRODUCTION DIVISION
April 12, 2012
Development Information, Public Input and Board Summary
Village of Kaufman, TDHCA Number 12403

RECOMMENDATION BY THE EXECUTIVE AWARD AND REVIEW ADVISORY COMMITTEE IS BASED ON:

4% Housing Tax Credits:	Credit Amount:	\$180,965
Recommendation:	Recommend approval of a Housing Tax Credit Allocation not to exceed \$180,965 annually for ten years, subject to conditions.	
TDHCA Bond Issuance:	Bond Amount:	\$0
Recommendation:		
HOME Activity Funds:	Loan Amount:	\$300,000
HOME At-Risk Operating Expense Grant:	Grant Amount:	\$0
HOME PWD Operating Expense Grant:	Grant Amount:	
Recommendation:		

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BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
April 12, 2012

Presentation, Discussion, and Possible Action on Housing Tax Credit Program Extensions

RECOMMENDED ACTION

Approve extensions as presented.

WHEREAS, the Board requires compliance with the deadlines it sets through its Qualified Allocation Plan (QAP) but allows for extensions for good cause in accordance with §50.13(c) of the QAP; and

WHEREAS, the Executive Director may approve such extensions provided the cumulative time extended does not exceed 6 months and those exceeding 6 months must be approved by the Board; and

WHEREAS, three (3) applicants have requested extensions of the cost certification documentation deadline in excess of 6 months, provided good cause for granting such extensions and paid the required extension request fees; therefore,

It is hereby:

RESOLVED, that the extensions presented in this meeting relating to Applications No. 060132 Vista Pines Apartment Homes, 060244 River Park Apartment Homes and 060421 Woodside Manor Senior Apartments are hereby approved as presented to this meeting.

BACKGROUND

Pertinent facts about the request for the extension are as follows:

HTC No. 060132, Vista Pines Apartment Homes
Cost Certification Extension

Pursuant to §50.15(b)(2) of the 2006 Qualified Allocation Plan, “Required cost certification documentation must be received by the Department no later than January 15 following the year the Credit Period begins. The Owner has indicated that the Credit Period began in 2008; therefore, the cost certification package was due on January 15, 2009. Pursuant to §50.20(1), “[Extension] requests must be submitted to the Department no later than the date for which an extension is being requested.” No penalty is prescribed by program rules for failing to meet the deadline.

Summary of Request: The owner is requesting to extend the deadline to submit the cost certification documentation to April 7, 2010, the date the cost certification package was submitted to the Department. Staff turnover in the owner’s office was the reason given for the late submission. The need for the extension was re-identified at the culmination of the cost certification review process and must be resolved prior to the completion and issuance of 8609s. An additional fee may be required, but is not anticipated, if the final allocation of credits evidenced in the 8609 is less than the allocation made originally.

Owner:	Nacogdoches Vista Pines Apartment Homes, LP
General Partner:	Nacogdoches Vista Pines Apartment Homes I, LLC
Developer:	Lankford Interests, LLC
Principals/Interested Parties:	Michael Lankford
City/County:	Nacogdoches/Nacogdoches
Set-Aside:	N/A
Type of Area:	Rural
Type of Development:	New Construction
Population Served:	Elderly
Units:	76 HTC units
2006 Allocation:	\$793,915
Allocation per HTC Unit:	\$10,446
Extension Request Fee Paid:	\$2,500
Current Deadline:	January 15, 2009
New Deadline Requested:	April 7, 2010
New Deadline Recommended:	April 7, 2010
Previous Extensions:	N/A

HTC No. 060244, River Park Apartment Homes
Cost Certification Extension

Pursuant to §50.15(b)(2) of the 2006 Qualified Allocation Plan, “Required cost certification documentation must be received by the Department no later than January 15 following the year the Credit Period begins. The Owner has indicated that the Credit Period began in 2008; therefore, the cost certification package was due on January 15, 2009. Pursuant to §50.20(1), “[Extension] requests must be submitted to the Department no later than the date for which an extension is being requested.” No penalty is prescribed by program rules for failing to meet the deadline.

Summary of Request: The owner is requesting to extend the deadline to submit the cost certification documentation to April 9, 2010, the date the cost certification package was submitted to the Department. Staff turnover in the owner’s office was the reason given for the late submission. The need for the extension was re-identified at the culmination of the cost certification review process and must be resolved prior to the completion and issuance of 8609s. An additional fee may be required, but is not anticipated, if the final allocation of credits evidenced in the 8609 is less than the allocation made originally.

Owner:	Waco River Park Apartment Homes, LP
General Partner:	Waco River Park Apartment Homes I, LLC
Developer:	Lankford Interests, LLC
Principals/Interested Parties:	Michael Lankford
City/County:	Waco/McLennan
Set-Aside:	N/A
Type of Area:	Urban
Type of Development:	New Construction
Population Served:	Elderly
Units:	118 HTC units
2006 Allocation:	\$1,181,993
Allocation per HTC Unit:	\$10,016
Extension Request Fee Paid:	\$2,500
Current Deadline:	January 15, 2009
New Deadline Requested:	April 9, 2010
New Deadline Recommended:	April 9, 2010
Previous Extensions:	N/A

HTC No. 060421, Woodside Manor Senior Apartments
Cost Certification Extension

Pursuant to §50.15(b)(2) of the 2006 Qualified Allocation Plan, “Required cost certification documentation must be received by the Department no later than January 15 following the year the Credit Period begins. The Owner has indicated that the Credit Period began in 2009; therefore, the cost certification package was due on January 15, 2010. Pursuant to §50.20(1), “[Extension] requests must be submitted to the Department no later than the date for which an extension is being requested.” No penalty is prescribed by program rules for failing to meet the deadline.

Summary of Request: The Owner is requesting to extend the deadline to submit the cost certification documentation to July 1, 2012. The reason given for the request was that construction was delayed because the original Developer ran out of funds and was, therefore, removed from the Ownership structure.

The Owner has confirmed that the Department has conducted a physical inspection of the Development and the architect of record completed the final inspection of the property to insure compliance with the terms of the HTC Application.

The Owner has indicated that the majority of the cost certification documentation has been transferred to their third party accountant for review; however, due to the tax “busy season”, the Ownership does not believe that the complete cost certification package will be ready until July 1, 2012. It should also be noted that this transaction was a tax exempt bond transaction with which the allocation of credits is not made until the 8609s are issued.

Owner:	OHC/Woodside Ltd.
General Partner:	Outreach Housing Corporation
Developer:	Outreach Housing Corporation
Principals/Interested Parties:	Richard Ruschman, Berri McBride, Frank Seelye, and Nicholas Scheidt
City/County:	Conroe/Montgomery
Set-Aside:	N/A
Type of Area:	Urban
Type of Development:	New Construction
Population Served:	Elderly
Units:	180 HTC units
2006 Determination:	\$721,538
Allocation per HTC Unit:	\$4,009
Extension Request Fee Paid:	\$2,500
Current Deadline:	January 15, 2010
New Deadline Requested:	July 1, 2012
New Deadline Recommended:	July 1, 2012
Previous Extensions:	N/A

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BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION

April 12, 2012

Presentation, Discussion, and Possible Action Regarding Housing Tax Credit Amendments

Requested Action

WHEREAS, Application 05441, Cobblestone Manor, is a tax-exempt bond development that received an award of tax credits to construct 220 units composed of 180 tax credit units and 40 market rate units;

WHEREAS, the Development Owner requested and received Board approval to amend their application at the May 5, 2011 meeting, which included, among other things, changing 4 units from market rate to low-income and a modification to the unit mix;

WHEREAS, subsequent to approval of the amendment it was recognized that the four additional tax credit units would cause a failure to meet the 40% minimum set-side, as required by the Internal Revenue Code (IRC);

WHEREAS, the development owner has also identified an error in the amended unit mix reported to the Department that must now be addressed;

WHEREAS, the Applicant has requested that the above mentioned components of the previously approved amendment be rescinded and corrected which will allow the development to remain in compliance with IRC Section 42;

It is hereby,

RESOLVED, that staff's recommendation to approve the current amendment to Application 05441, Cobblestone Manor, be and it hereby is approved as presented to this meeting.

Background

Cobblestone Manor is a new construction, tax exempt bond transaction approved in 2005 to construct 220 family units in Dallas, of which 180 units would be rent restricted. Subsequent to the award of tax credits, the development received Department approval for three ownership changes removing and replacing three General Partners. Construction of Cobblestone Manor has weathered challenges that arose under the prior owners, albeit with some variance to what was proposed by the original General Partner and Limited Partners twice removed.

The Department Board approved an amendment to the application at the May 5, 2011, meeting. This amendment by TDHCA's Governing Board will rescind two components of the May 5,

2011, amendment. Specifically, the development owner would like to revert to the original number of tax credit and market rate units. The development owner had previously volunteered to increase the number of affordable units based on the actual number of qualifying households occupying units at the development. However, increasing the number of tax credit units would have required the inclusion of buildings that were originally intended to be unrestricted/market rate buildings. This change would have increased the total units in tax credit buildings by one and would have prevented the development from achieving its first-year set aside requirement to lease 40% of the tax credit units in the development. The changes to the number of affordable units are displayed below.

Rent Limits	Original Application	5-5-11 Amendment	4-12-12 Amendment
60% Tax Credit Units	180	184	180
Market Rate	40	36	40
Units in Tax Credit Buildings	180	196	180

The development owner is also requesting approval to correct the unit mix approved in the May 5, 2011 amendment by decreasing the one-bedroom/one bath units by one, and increasing the number of two bedroom/two bath units by one, as reflected below.

Unit Types	Original Number of Units	5-5-11 Amendment	4-12-12 Amendment
1/1	48	49	48
2/1	124	126	126
2/2	48	45	46
Total	220	220	220

The Board's previous approvals of the following items remain unchanged from the May 5, 2011 amendment request. The development owner received approval to decrease the common area from 7,700 square feet approved at application to 5,858 square feet as built. The owner received approval to increase the number of residential buildings from 27 to 28 and decrease the parking from 280 uncovered spaces, 80 garages, and 80 carports (440 total spaces) to 182 uncovered spaces, 72 garages, and 82 carports (336 total spaces).

The errors in the bedroom/bathroom unit mix are attributable to members of the ownership organization that have departed and the reasons for these miscalculations are unknown. Dominion Apartments, the management company, has performed a 100% unit by unit walk-through and inspection and has confirmed the current unit mix is correct.

Owner: OHC/Cobblestone Ltd.
Current General Partner: Fort Worth Leased Housing Associates II, LLC (Dominium Apartments)
Principals/Interested Parties: Affiliates of the syndicator
Syndicator: WNC & Associates
Construction Lender: Merchant Capital
Permanent Lender: Merchant Capital
Other Funding: Tax Exempt Bond Financing from Local Lender
City/County: Fort Worth/Tarrant County
Set-Aside: NA
Type of Area: Urban
Region: 3
Type of Development: New Construction
Population Served: General Population
Units: 180 tax credit units and 40 market rate units as originally approved
2005 Allocation: \$444,656
Allocation per HTC Unit: \$2,470
Prior Board Actions: 11/2005 – Approved award of tax credits; 05/2011 Approved amendment

REA Findings: The changes in the unit mix and in the number of market rate units have an immaterial impact on the underwriting of the transaction. No change in the credits awarded is recommended prior to the finalization of the cost certification review process.



February 13th, 2012

Via: Email

Mr. Valentin DeLeon
Texas Department of Housing and Community Development
221 East 11th Street
Austin, TX 78701

Re: Cobblestone Manor Tax Credit Application Amendment Request

Dear Mr. DeLeon:

This letter is to serve as a formal request for a tax credit application amendment with respect to Cobblestone Manor in Ft. Worth, Texas. Before Dominium's involvement, the unit mix was revised on May 5, 2011 through an amendment. We believe the May 5th amended unit mix is incorrect.

Shortly after taking over management on this project we performed a 100% unit by unit walk-through and inspection. We found the unit mix to be as follows:

1 bed/1 bath – 48
2 bed/1 bath – 126
2 bed/2 bath – 46

We are requesting the number of market rate and tax credit units remain unchanged from the original application. There should be 180 tax credit units and 40 market units as outlined in the existing LURA. Please let us know if there is anything else you need from us to formally consider our request.

Sincerely,

Christopher P. Barnes
Vice President and Project Partner
(763) 354-5610

Nicholas C. Andersen
Development Associate
(763) 354-5638



Housing Tax Credit Program

U.S. Mailing Address: P.O. Box 13941, Austin, Texas 78711-3941

Private Carrier Delivery: 221 East 11th Street, Austin, Texas 78701

Telephone: (512) 475-3340 Telecopier: (512) 475-1895

To: Mr. Richard Shaw
05/05/11

NOTICE OF BOARD DECISION RE: AMENDMENT REQUEST HEARD

HTC No. 05441, Cobblestone Manor

Summary of Request: The owner is requesting approval of several changes to the development from what was approved at application. Most notably, the owner is seeking approval to alter the unit mix and rent schedule provided at application. The number of one bedroom units decreased by one, the two bedroom, one bath units increased by two, and the number of two bedroom, two bath units decreased by three. The income levels have also been modified from what was approved at application. The number of one bedroom market rate units has decreased by eight, and the two bedroom one bath market rate units have increased by three. The number of one bedroom tax credit units has increased by nine, while the two bedroom tax credit units have decreased by five. The development owner, did not originally plan to include a change in unit mix, and was only aware of such change when the cost certification specialist pointed out the discrepancy. The development owner has not offered any explanation as to the cause of the change in unit mix. The table below reflects the net gain of four tax credit units and a decrease of four market rate units.

At Application				As Built			
Income level	Number	Bedrooms	No. of Baths	Income level	Number	Bedrooms	No. of Baths
60%	40	1	1	60%	49	1	1
Mkt. Rate	8	1	1	Mkt. Rate	0		
60%	100	2	1	60%	99	2	1
Mkt. Rate	24	2	1	Mkt. Rate	27	2	1
60%	40	2	2	60%	36	2	2
Mkt. Rate	8	2	2	Mkt. Rate	9	2	2
Total	220			Total	220		

The applicant is also seeking approval of a decrease in common area. The community building was proposed to be 7,700 square feet, but as built is only 5,858 square feet. The common area was decreased by 24%, which is greater than the 3% allowable by program rules. The owner has stated that the building square footage has decreased, and the amenities within the clubhouse have increased. The owner has included a community theater in the clubhouse for tenant use.

The number of residential buildings has increased from 27 proposed at application to 28 as built residential buildings. The owner stated that the change was necessary in order to achieve the obligated number of units. Finally, the number of parking spaces has been reduced by the development owner. The application allocated 440 total spaces consisting of 280 uncovered spaces, 80 garages, and 80 carports. The owner has certified that the provided parking is compliant with Fort Worth City Code and consists of 336 total spaces, including 182 uncovered spaces, 72 Garages, and 82 carports.

Underwriting staff has reviewed the proposed changes and has confirmed that the change in market rate units has an immaterial impact on the rental revenue, but that the decrease in market rate units will increase the applicable fraction. The underwriter concluded that any change in tax credits will not be considered until the cost certification process is complete.

Pursuant to §49.15(b) of the Qualified Allocation Plan "If a proposed modification would materially alter a Development approved for an allocation of a Housing Tax Credit, or if the Applicant has altered any selection criteria item for which it received points, the Department shall require the Applicant to file a formal, written request for an amendment to the Application... The Board must vote on whether to approve an amendment. The Board by vote may reject an amendment and, if appropriate, rescind a Commitment Notice or terminate the allocation of Housing Tax Credits and reallocate the credits to other Applicants on the Waiting List if the Board determines that the modification proposed in the amendment...would materially alter the Development in a negative manner...Material alteration of a Development includes, but is not limited to...A modification of the number of units or bedroom mix of units...a reduction of 3%or more in the square footage of the units or common area..."

Therefore, an amendment to the application is necessary.

Owner: OHC/Cobblestone Ltd.
General Partner: Outreach Housing Corporation
Developers: Noel Project Development LLC
Principals/Interested Parties: Richard Shaw, David Turek, Bill Lee
Syndicator: WNC & Associates
Construction Lender: Merchant Capital
Permanent Lender: Merchant Capital
Other Funding: Tax-Exempt Bond Financing – Local issuer
City/County: Fort Worth/Tarrant County
Set-Aside: NA - Tax Exempt Bond Financing
Type of Area: Urban
Region: 3
Type of Development: New Construction
Population Served: General Population
Units: 220 1 & 2 bedroom units
2005 Allocation: \$444,656
Allocation per HTC Unit: \$2,417
Prior Board Actions: 2005 – Approved award of tax credits
REA Findings: No change to the credit recommendation is recommended prior to the finalization of the cost certification process.

Staff Recommendation: Staff recommends approving the request.

THE REQUEST ABOVE WAS APPROVED, WITHOUT PENALTIES, AT THE BOARD MEETING OF May 05, 2011. THE APPROVAL WILL BE CONFIRMED BY THE MINUTES AS APPROVED AND RECORDED IN A SUBSEQUENT BOARD MEETING. THIS NOTIFICATION MUST BE INCLUDED IN YOUR COST CERTIFICATION.



Valentin DeLeon, Multifamily Finance Production

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION

April 12, 2012

Presentation, Discussion, and Possible Action Regarding Housing Tax Credit Amendments

Requested Action

WHEREAS, Housing Tax Credit 11004 North Court Villas received a forward commitment in 2010 of 2011 tax credits to construct 150 family units on ten acres in Frisco;

WHEREAS, the development owner is requesting approval to reduce the size of the development site, the number of units, and forego the \$420,000 loan used for leveraging; and,

WHEREAS, the development owner has represented to the Department that the decrease in acreage and units are due to previously unknown requirements imposed by the City of Frisco and its parks department;

It is hereby,

RESOLVED, that staff's recommendation to approve the amendment to Application 11004, North Court Villas, be and it hereby is approved as presented to this meeting.

Background

The development owner was awarded a forward commitment of tax credits in 2010 to be allocated from the 2011 tax credit ceiling. The originally proposed development consisted of 150 units on 10 acres in Frisco, Texas. The owner is now requesting a reduction in the site from 10 acres to 9 acres and a reduction in the total number of units from 150 to 134. The owner has provided documentation that these necessary changes could not have been anticipated at the time the application was awarded and that the changes are requirements of the City of Frisco.

The development owner provided a timeline of negotiations with the city of Frisco and the various city departments in which the city, having committed \$1,030,000, insisted that one acre be dedicated to the city to construct parking and an access trail to an existing park and trail system located behind the development site. The timeline provided shows that the one acre reduction of the site is the end result of negotiations between the development owner and city officials, wherein the city originally requested that three acres be dedicated.

The resulting ten percent acreage decrease forced the development owner to reduce the number of buildings from seven to six, reconfigure the community building from one story to two, and

reduce the number of units from 150 to 134 in order to remain compliant with Frisco's site density requirements of 15 units/acre.

Underwriting staff has evaluated the proposed changes to the site plan and unit mix and determined that the changes will not reduce the recommended award of tax credits. Underwriting staff made their determination based on the excess eligible basis in the original plan, evidence of increased construction costs, and decrease in financing sources. The development owner provided a new term sheet for the primary loan and documented a reduction in achievable permanent financing from the original application. Originally, Wachovia Bank committed to \$5.1M while the current commitment is \$4.4M from Wells Fargo. The development owner's revised financing structure also no longer included the \$420,000 loan from Odyssey Residential Holdings, L.P., which was used for two points in the original application (§50.9(i)(28) & 50.9(i)(29)).

Staff recommends approval of the amendment request.

Owner:	Stewart Creek Villas, L.P.
General Partner:	Stewart Creek Villas GP, LLC
Developer:	Songhai Development Company, LLC
Principals/Interested Parties:	Cherno Njie
Syndicator:	Equity Partners, LLC
Construction Lender:	Wells Fargo
Permanent Lender:	Wells Fargo
Other Funding:	City of Frisco
City/County:	Frisco/Collin County
Set-Aside:	NA
Type of Area:	Urban
Region:	3
Type of Development:	New Construction
Population Served:	General Population
Units:	150 originally; 134 now proposed
2011 Forward Allocation:	\$2,000,000
Allocation per HTC Unit:	\$13,333 increased to \$14,925 if amended
Prior Board Actions:	09/2010 – Approved forward commitment of tax credits
REA Findings:	The requested changes do not change the ultimate financial feasibility of the deal. Even though the Applicant's Total Development Costs has increased along with the eligible basis, the Applicant is still limited to the \$2M tax credit ceiling as was previously recommended.

January 26, 2012

Mr. Tim Irvine (and via fax (800) 733-5120 & email tim.irvine@tdhca.state.tx.us)
Executive Director
Texas Department of Housing & Community Affairs
221 East 11th Street
Austin, TX 78701

RE: North Court Villas in Frisco, Texas (TDHCA #~~10045~~ **11004**)

Dear Mr. Irvine:

This firm represents Stewart Creek Villas, L.P. in connection with the North Court Villas development. We are writing this letter to you as background to the developer's request to revise the number of units in its tax credit application due to the City of Frisco's requirement that the developer dedicate land at its site for a City trailhead parking lot and hike/bike trail (the **Trailhead & Trail**).

This development will be located in Frisco, a booming north Dallas suburb that has seen very little affordable housing development. By way of background, which is important to what has transpired in the interim with the City, the City and the Inclusive Communities Project (ICP) entered into an agreement under which ICP agreed to provide certain funds to the City of Frisco, who in turn agreed to use those funds to provide local government financial support for North Court Villas. This agreement was entered into after discussions between ICP and the City over the City's failure to have its fair share of affordable housing and the Fair Housing implications of the aggregation of affordable housing in the lower income, minority centric southern sector of Dallas, versus the wealthier and less integrated north Dallas communities.

The Board approved this development for a forward commitment of housing tax credits in 2010, in large part based on its location in a High Opportunity Area with access to an Exemplary schools and very little affordable housing in the City of Frisco. After Stewart Creek received the forward allocation, it began the site planning and development process. One of the first steps in that process is plat approval. After the developer submitted its preliminary site plan/plat, the City required that the developer dedicate approximately 3 acres for the Trailhead & Trail – despite the fact that this site does not align with the existing hike/bike trail system in the City and was not shown on any of the City's master trail plans, and

Mr. Tim Irvine
January 26, 2012
Page 2

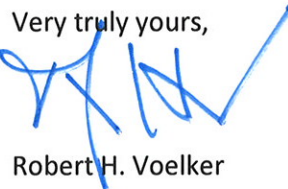
despite the terms of the City's park land dedication ordinance, which seem to grant the developer the option to either dedicate land or pay a fee in lieu of dedication.

After extensive discussions with the City staff, City attorney, Parks Board, Planning & Zoning Commission and City Council, we have determined that the Trailhead & Trail issue will not be resolved except by the developer dedicating to the City the land for the Trail & Trailhead, although we have agreed to dedicate a smaller amount of land than originally requested by the City. As the end result of this process, the developer and the City are entering into the enclosed Development Agreement (Exhibit A) which was approved by City Council on January 17, 2012, whereby approximately 1 acre is being dedicated for the Trailhead & Trail. This dedication reduces the apartment development site from approximately 10 acres to approximately 9 acres, and given the City's maximum density for multifamily developments of 15 units per acre (which the City will not increase), the maximum number of units that can now be developed on the remaining site is 134 units versus the 150 units initially proposed in the tax credit application.

Given that the reduction in the size of the site was driven by the City and was beyond the control of the developer, and the background on this forward allocation and the positive benefits of this development for affordable housing in North Texas, we would respectfully request that the request for revision to the tax credit application be placed on the next TDHCA Board agenda and be supported by staff.

We have enclosed as Exhibit B revised pages to the North Court Villas tax credit application that reflect this requested reduction in the size of the site and in the number of units.

If you have any questions regarding the process by which the North Court Villas site was reduced by the City's action, resulting in the need for this request, please feel free to contact me.

Very truly yours,

Robert H. Voelker

c: Chernon Njie (via email)

ENCLOSURES:

Exhibit A – Development Agreement
Exhibit B– Revised pages to tax credit application

February 8, 2012

Mr. Ben Sheppard (via overnight delivery & email ben.sheppard@tdhca.state.tx.us)
Texas Department of Housing & Community Affairs
221 East 11th Street
Austin, TX 78701

RE: North Court Villas in Frisco, Texas (TDHCA #~~10045~~) **11004**

Dear Ben:

This firm represents Stewart Creek Villas, L.P. in connection with the North Court Villas development. We are writing this letter to you as background to the developer's request to revise the number of units in its tax credit application due to the City of Frisco's requirement that the developer dedicate land at its site for a City trailhead parking lot and hike/bike trail (the **Trailhead & Trail**) and in response to your email to Chernon Njie on February 3, 2012 requesting additional information.

As discussed in our prior letter to Tim Irvine, this development will be located in Frisco, a booming north Dallas suburb that has seen very little affordable housing development. By way of background, which is important to what has transpired in the interim with the City, the City and the Inclusive Communities Project (ICP) entered into an agreement under which ICP agreed to provide certain funds to the City of Frisco, who in turn agreed to use those funds to provide local government financial support for North Court Villas. This agreement was entered into after discussions between ICP and the City over the City's failure to have its fair share of affordable housing and the Fair Housing implications of the aggregation of affordable housing in the lower income, minority centric southern sector of Dallas, versus the wealthier and less integrated north Dallas communities. The Board approved this development for a forward commitment of housing tax credits in September of 2010 and issued the Commitment Letter on March 21, 2011, in large part based on its location in a High Opportunity Area with access to an Exemplary schools and very little affordable housing in the City of Frisco.

The following numbered items outline the timeline/actions taken by the developer and its civil engineer and legal counsel to address the City's requirements for the Trailhead & Trail.

1. Prior to submitting its tax credit application, the developer and its civil engineer attended a pre-development meeting with the City in February of 2010, in which a Frisco Parks and Recreation Department member was present. At no time during the meeting was the need for a dedication of land for a Trailhead or Trail discussed. In fact, at that meeting the City confirmed that the site could develop with 150 units. In April, 2010, the City Council provided a letter of

support for tax credits for North Court Villas without mentioning any dedication of a Trailhead or Trail.

2. At the time that Songhai submitted its tax credit application, the developer's architectural firm laid out the site plan for the site, based on the density allowed by the City of Frisco, and determined that the site would hold 150 units.

3. On March 9, 2011 a second pre-development meeting was held on the project with the City, and a Parks staff member was present. At that meeting, the Developer presented a site plan comprised of 150 units. The first mention of park land dedication occurred at this meeting, where the Parks staff member requested a 15 foot easement (not a dedication of land) on the plat so a six foot wide connection rail could be constructed from Stonebrook Parkway (northern site boundary) to Caddo Trail (south of the site). When it was explained by the civil engineer to the staff that the development is a gated multifamily community, the request for the connecting trail was immediately withdrawn and the Parks staff member agreed that cash in lieu of dedication would be acceptable to the Parks staff. However, when the meeting minutes were distributed, the Parks Department revised their comments to require a 15' wide easement and a trail head sufficient to park 6 to 8 cars. The meeting minutes are enclosed as Exhibit A.

4. The City's park land dedication/fee ordinance (the "**Ordinance**") states "The required dedication may be met by payment of money in lieu of land or a covenant running with the land providing for property to be used for public park and/or recreational purposes wherein permitted or required by the other provisions of this ordinance." The developer and their legal counsel interpret this ordinance to allow the developer, and not the City, the choice of paying the fee or dedicating land.

5. On March 30, 2011, I drafted an appeal of the Parks Board's letter to the City attorney, outlining the provisions of the Ordinance as set forth above, and forwarded same to Mike Daniel, attorney for ICP, who drafted a companion letter to the City outlining Fair Housing concerns with the City's position on park land dedication.

6. The City attorney responded on April 5, 2011 that the City took a differing view of their Ordinance, and would continue to require park land dedication.

7. Between March and July of 2011, the developer and the civil engineer met and corresponded with the Parks Department and other City staff members numerous times to discuss this requirement. In spite of the numerous discussions with staff, not only was a compromise not reached, but rather the Parks staff decided that a 25' wide trail swath be dedicated to the City, along with a parking lot sufficient for 10-20 cars, such that the total dedication to the City would have amounted to approximately 3 acres. If this 3 acres had been required to be dedicated, the site would have only allowed 105 multifamily units under the existing zoning.

8. At these meetings, the developer and the civil engineer pointed out that the City's requirement for park land dedication was made despite the fact that the City's existing and proposed trail map (Exhibit B) shows no logical connection between the trails to the northeast and northwest of the site across Stonebrook Parkway, and in fact shows a proposed north-trail along a single family street directly to the east of the site.

9. When this was pointed out to the Parks Board at one of the 3 Parks Board meetings where the North Court Villas site plan was up for approval, a discussion ensued between the Board members on how the homeowners on this dead-end street have adamantly opposed extending the trail down their street (despite the fact that this connection was shown on City trail maps), which left the North Court Villas multifamily site as the default location to place the trail and trailhead parking lot. It was clear in this discussion that the City planning staff and Parks Board had not theretofore considered this site for this City amenity, but wanted to address this connection to their trail system within the context of the North Court Villas site planning/platting process. The developer and their consultants had no way of knowing from the City's trailhead master plan that a trail or trailhead parking lot would be required for this site. The City staff could not show the developer any precedent for a similar land dedication being required of any residential development in Frisco.

10. Alternatively, the City's trail map also shows what looks like the start of a connection to the west of the site from Oakbrook Park (north side of Stonebrook Parkway) and the subdivision in that area, down Woodstream Drive, across Stonebrook Parkway and terminating at the end of Woodstream Drive on the south side of Stonebrook Parkway. The apparent thought process here was to connect the trail system in and around Oakbrook Park to the Caddo Trail – there would have been a minimum amount of effort to connect at this point given the dead end of Woodstream Drive.

11. The North Court Villas proposed Trail and Trailhead does not connect to any existing City trails north, east or west of the North Court Villas site. The existing access points to Caddo Trail south of Stonebrook Parkway all connect to existing City trails. The Trailhead at the North Court Villas site would be accessible only by car or by pedestrians or bicycles that would be required to travel down Stonebrook Parkway (a six-lane divided road) away from existing City trails.

12. The North Court Villas site plan was first before the Parks Board for approval on May 11, 2011. At that meeting, the Parks Board gave a negative recommendation due to no land being dedicated for the Trailhead and Trail. At the May 24, 2011 Planning & Zoning Commission meeting, the Commission continued the City's insistence on the park land dedication, and instead of facing a vote of denial, the developer withdrew its application and elected to work with the Park Department staff to resolve the issue.

13. Given that the City's insistence on the park land dedication was unwavering, the developer spent a number of months, from June – August of 2011, working back and forth with the City to determine how to structure a site plan that would limit the amount of land for the trail and trailhead parking lot. The developer offered to grant same to the City in the form of an easement versus dedication, as this would reduce certain set backs and allow more multifamily units to be developed on the site. At the July 14, 2011 Parks Board meeting this revised site plan was presented to the Parks Board which would have allowed for 140 units, but was also rejected, as the City required that the land be actually dedicated to the City. The City further required that the trail width be widened (beyond that which is technically required by the Ordinance).

14. The developer and their civil engineer returned to the drawing board, and drafted a plan that could meet the City's demands. After extensive discussions with the City staff, a revised

Mr. Ben Sheppard
February 8, 2012
Page 4

plan was agreed to, which results in slightly less than an acre of park land dedication to the City. The civil engineer discussed with the City planning & zoning staff the possibility of raising the height limit for buildings adjacent to the mosque to the east of the site (which is zoned single family, thereby allowing for only 2 story buildings), but was informed that staff would not recommend a variance to the Board of Adjustments. Given the City's prior interactions on the park land dedication, the developer determined that asking for a variance could potentially impact on the agreed upon park land resolution (1 acre versus 3 acres) and determined that seeking the variance would be fruitless and potentially counterproductive to resolving the park land dedication dispute and maximizing the number of multifamily units on the site. In addition, even if the City were interested in granting a variance in the number of permitted units (which it clearly was not), an increased number of units on the site would have necessitated more parking, which would be impossible to accommodate on this site.

15. The revised site plan was recommended for approval by the Parks Board at its September 29, 2011 hearing subject to approval by Planning and Zoning. The City attorney then drafted a Development Agreement (previously provided) outlining the terms of the agreed park land dedication, and the Planning & Zoning Commission approved the Development Agreement at its December 13, 2011 meeting (subject to City Council approval). The City Council approved the Development Agreement at its January 17, 2012 meeting.

16. With 1 acre of the site lost to park land dedication, the zoning for the site now only allows 134 multifamily units.

If you have any questions regarding the process by which the North Court Villas site was reduced by the City's action, resulting in the need for this request, please feel free to contact me.

Very truly yours,



Robert H. Voelker

c: Cherno Njie (via email)

PRE-SUBMITTAL MEETING NOTES

Date: 3/9/2011 1:00 PM 11004

PROJECT NAME: North Court Villas

MEETING ATTENDEES:**APPLICANT/DEVELOPER/CONSULTANTS**

Dru Childre	Songhai Development	214-850-2842	dru@songhaidev.com
Doug Hayes	CMB Construction	512-563-2717	dhayes@songhaidev.com
Joe Grubbs	Grubbs Design Group	972-548-5020	joe@grubbsdesigngroup.net
Bob Manaois	RKM & Associates	469-361-1416	rmanaois@rkmengineers.com
Clint Richardson	RKM & Associates	(not provided)	crichardson@rkmengineers.com
Cherno Njie	Songhai Development	512-458-5577	cherno@songhaiven.com
Cesar Corrales	TTA & Associates LTD	713-266-7887	ecorrales@tedtratarch.com

CITY STAFF

John Webb	Development Services, Planning	972-292-5350	JWebb@friscotexas.gov
Suzanne Morgan	Development Services, Planning	972-292-5356	smorgan@friscotexas.gov
Toyin Fawehinmi	Engineering Services, Civil	972-292-5349	tfawehinmi@friscotexas.gov
Joel Fitts	Engineering Services, Traffic	972-292-5456	JFitts@friscotexas.gov
Robert Caskey	Engineering Services, Traffic	972-292-5453	RCaskey@friscotexas.gov
Paul Siebert	Fire Department	972-292-6300	PSiebert@friscofire.com
John Gillette	Fire Department	972-292-6300	JGillette@friscofire.com
John (JED) Doshier	Parks Department	972-292-6514	jdoshier@friscotexas.gov

NEIGHBORHOOD: 23**PLATTING & REVIEW PROCESS: Preliminary Site Plan (optional), Site Plan (includes Construction Set, Landscape Plans, Open Space Plan, Façade Plan, etc.), and Final Plat at end of project.****LOCATION: South of Stonebrook Pkwy & East of Enclave Apts.****PROPOSED USE: Apartments****ZONING: Multi-Family-1 (MF-1)****DEVELOPMENT SERVICES COMMENTS:*****Handed out list of common notes to applicant/developer/consultants.***

- The applicant had a pre-submittal meeting with staff on February 10, 2010. The applicant acknowledged having received the notes from that meeting and that they had revised the plan since this previous meeting to address those comments.
- The plan submitted for staff review prior to the meeting was not the current plan. They applicant brought a new plan to the meeting for discussion.
- A variable width drainage easement was established along the creek that runs through this property. The creeks on the property are defined as Major Creeks by the Subdivision Ordinance. Establish appropriate buffers around the creeks and comply with Ordinance regulations regarding adjacency to a creek.
- Sheets from the construction set of the property to the east showing how the channel was modeled and the drainage easement created were submitted to the applicant's engineers in the meeting and the pdfs were forwarded via email on March 10, 2011.
- Building setbacks were discussed. The applicant varied the roof heights on some structures to accommodate the setback for both a two-story and three-story building.
- Specify type of screening adjacent to Single Family. A six-foot masonry wall is allowed by right, or with Planning & Zoning Commission approval, a combination of tubular steel and masonry with landscaping may be installed.
- Discussed installing an open fence (such as tubular steel) along the creek and trail to the south.
- Discussed that four architectural elements from the list in MF-1 zoning district requirements are needed. Juliet balconies that do not extend from the wall of the building do not count as a balcony.
- The dumpsters on the applicant's proposed plan do not meet the MF-1 requirements for distance from a residential zoning district. Modify the dumpsters to comply and verify with James Emory in Environmental Services (972-292-5915) regarding the location and number of dumpsters and capacity needs.
- The new Zoning Ordinance will soon be adopted and enforced. Compliance with the new ordinance is required should the application for this project be submitted after the ordinance is adopted.

CIVIL ENGINEERING COMMENTS:

- Roof drains to connect to storm water systems.
- Provide two independent sources of water.

TRAFFIC ENGINEERING COMMENTS:

11004

- Your deceleration lane on Stonebrook can be a little shorter than our requirements in order to fit it in.
- The hammerhead drive aisle near the club house will satisfy the requirement for a turnaround in advance of the gate for regular traffic.
- You are acquiring the appropriate easement from the mosque to build the curb return of your driveway on Stonebrook.
- You are providing the required 150' of stacking on your driveway.
- Provide BFRs across your driveway and show the existing segments of sidewalk on either side of your property that you are connecting to.

FIRE DEPARTMENT COMMENTS:

- Fire lanes must be provided within 150 feet of all exterior walls of the buildings. Pedestrian walkways used for access must be approved by the Fire Marshal's office.
- Fire lanes shall have a minimum turning radius of 20 feet.
- A written, signed agreement with the adjacent property owner to the north stipulating cross access through the gate on the northeast side of the property must be created. The gate on the south side of the northern property owner must be maintained and operable at all times.
- All buildings and structures must have fire sprinkler systems installed because the aggregate square footage on the lot exceeds 5,000 square feet.
- Access gates must be installed to comply with the Fire Code.

BUILDING INSPECTIONS:

- Occupancy Permits: 2 types issued, however Site Development must be completed before 1st permit. Will be updating to 2009 IBC, still under 2006. Comply with National ADA standards.

PARKS DEPARTMENT:

- Provide a 15' Trail Easement from sidewalk off Stonebrook Parkway to the Hike & Bike Trail along the creek which follows the southern property line.
- An 8-foot sidewalk is required along Stonebrook Parkway.
- The Parks and Recreation Department request that a trail head be placed within this project. Based on the Park Dedication Ordinance, we will require 3 acres be set aside for this trail head and connection to Stonebrook Parkway. If the unit counts change, this amount of acres may change. The applicant needs to adjust their layout and submit it back to the City for review to make sure it meets our needs.
- We need the trailhead to accommodate a parking lot with public access for 6-8 cars.

OTHER COMMENTS: View Link for additional information pertaining to Comprehensive Zoning Ordinance, Subdivision Ordinance, and Pre-Development Meeting Schedules:

<http://friscotexas.gov/departments/planningDevelopment/zoningSubdivision/Pages/default.aspx>

CURRENT BUILDING CODES:

2006	International Fire Code with local amendments
2006	International Energy Conservation Code (IECC) with local amendments
2006	International Fuel Gas Code (IFGC) with local amendments
2006	International Plumbing Code (IPC) with local amendments
2005	National Electrical Code (NEC) with local amendments
2006	International Mechanical Code (IMC) with local amendments
2006	International Property Maintenance Code (IPMC) with local amendments
2006	International Residential Code (IRC) with local amendments
2006	International Building Code (IBC) with local amendments
2002	ACI Manual of Concrete Practice, ACI318
2002	Annual Book of ASTM Standards, Volume 04.02 Concrete and Aggregates

Sign - In Sheet

North Court Villas 11004 1pm
3-9-11

Name	Company	Date	Phone Number	Email Address
Dru Childre	Songhai Dev.		214-850-2842	dru@songhaidev.com
Doug Hayes	CMB Construction		512-563-2717	dhayes@songhaidev.com
Joe Grubbs	Grubbs Design Group		972-548-5020	Joe Grubbs Design Group .net
Bob Manaois	RKM & Associates		469-361-1416	rmanaois@rkmengineers.com
Clint Richardson	" "			crichardson@rkmengineers.com
CHERNO NJIE	SONGHAID DEV		512-458-5577	Cherno@songhaiven.com
CEGAR CORRALES	ITA & ASSOC. LTD		713 266-7887	ccorralles@techartarch.com

<input type="checkbox"/>	John Lettelleir	COF - Planning	972-292-5310	jlettelleir@friscotexas.gov
<input checked="" type="checkbox"/>	John Webb	COF - Planning	972-292-5350	jwebb@friscotexas.gov
<input type="checkbox"/>	Michael Walker	COF - Planning	972-292-5362	mwalker@friscotexas.gov
<input type="checkbox"/>	Judy Equez	COF - Planning	972-292-5354	jeguez@friscotexas.gov
<input checked="" type="checkbox"/>	Suzanne Morgan	COF - Planning	972-292-5356	smorgan@friscotexas.gov
<input checked="" type="checkbox"/>	Ross Culbertson	COF - Planning	972-292-5353	rculbertson@friscotexas.gov
<input checked="" type="checkbox"/>	Toyin Fawehinmi	COF - Engineering	972-292-5439	tfawehinmi@friscotexas.gov
<input type="checkbox"/>	Alyssa Sanders	COF - Engineering	972-292-5438	asanders@friscotexas.gov
<input type="checkbox"/>	Tin Nguyen	COF - Engineering	972-292-5436	tnguyen@friscotexas.gov
<input checked="" type="checkbox"/>	Joel Fitts	COF - Traffic	972-292-5456	jfitts@friscotexas.gov
<input checked="" type="checkbox"/>	Robert Caskey	COF - Traffic	972-292-5453	rcaskey@friscotexas.gov
<input checked="" type="checkbox"/>	Paul Siebert	COF - Fire	972-292-6300	psiebert@friscofire.com
<input checked="" type="checkbox"/>	John Gillette	COF - Fire	972-292-6300	jjillette@friscofire.com
<input checked="" type="checkbox"/>	Jed Doshier	COF - Parks	972-292-6514	jdoshier@friscotexas.gov
<input type="checkbox"/>	James Emory	COF-Environmental Services	972-292-5915	jemory@friscotexas.gov

Housing Tax Credit Program
Board Action Request
April 12, 2012

DEVELOPMENT NO.	NAME	LOCATION	ISSUER	TOTAL UNITS	LI UNITS	TOTAL DEVELOPMENT	APPLICANT PROPOSED TAX EXEMPT BOND AMOUNT	REQUESTED CREDIT ALLOCATION	RECOMMENDED CREDIT ALLOCATION
12402	Fox Run	Orange	Sabine-Neches HFC	70	70	\$8,197,504	\$3,480,000	\$227,137	\$225,317
12403	Village of Kaufman	Kaufman	North Central Texas HFC	68	68	\$6,831,0950	\$2,800,000	\$189,958	\$180,965

R1

BOARD REPORT ITEM

OFFICE OF RECOVERY ACT ACCOUNTABILITY AND OVERSIGHT

April 12, 2012

Report Item

Presentation and Discussion on a Status Report on the Implementation of the American Recovery and Reinvestment Act of 2009 (Recovery Act). This item provides an update on the status of the activity relating to each of the Recovery Act programs as well as a summary of the quarterly Section 1512 jobs reporting submitted for October 1, 2011 through December 31, 2011.

Recovery Act Program Summary

Program	Activities	Program Status	Total Funding Expended to Date* Percent Expended	Served to Date**	1512 Reported Data Reported Program Expenditures^^ Jobs Created or Retained^	Timeline / Contract Period
Weatherization Assistance Program	Minor home repair to increase energy efficiency, maximum \$6,500 per household. Households at or below 200% of poverty.	<ul style="list-style-type: none"> Contracts executed for 100% of funds, subrecipients drawing funds. Fund movements among contracts are being executed and have been submitted to DOE consistent with production forecasting. 	\$326,975,732 \$312,233,269 95.49%	53,878 households	\$289,399,360 779.43 jobs	<ul style="list-style-type: none"> Obligation required by September 30, 2010. (Achieved) Recipients will be required to expend all funds within a two year contract period (August 31, 2011); subrecipients taking on additional funds have been granted extensions: 1 extended to November 2011, 28 to December 2011, and 7 to Feb 2012. Federal funding expiration date is June 30, 2012, with a 90 day close out period.
Homelessness Prevention and Rapid Re-Housing Program	Rental asst, housing search, credit repair, deposits, moving cost assistance, & case management. Persons at or below 50% AMI.	<ul style="list-style-type: none"> All contracts executed and subrecipients currently drawing funds. October 2010 letter from HUD indicating State on target for expending all funds. Fund movements among contracts are being executed. 	\$41,472,772 \$41,243,666 99.45%	46,818 persons	\$40,331,273 45.53 jobs	<ul style="list-style-type: none"> HUD requires 60% of funds expended in 2 years (Achieved Early); 100% in 3 years. All contracts ended March 31, 2012 and expenditures will be finalized as reports are submitted. Federal funding expiration date is July 16, 2012.

Program	Activities	Program Status	Total Funding Expended to Date* Percent Expended	Served to Date**	1512 Reported Data Reported Program Expenditures^^ Jobs Created or Retained^	Timeline / Contract Period
Community Services Block Grant Program	Assists existing network of Community Action Agencies with services including child care, job training, and poverty-related programs. Persons at or below 200% of poverty.	<ul style="list-style-type: none"> • COMPLETE • CSBG ARRA funds expired Sept 30, 2010 	\$48,109,133 \$48,108,280 99.92%	99,325 persons	\$48,119,270	<ul style="list-style-type: none"> • Recipients were required to expend 100% of funds by Sept 30, 2010. 99.92% of funds were expended. • Due to disallowed costs and one subrecipient's inability to fully expend, 0.08% of funds were unspent.
Tax Credit Assistance Program	Provides assistance for 2007, 2008 or 2009 Housing Tax Credit awarded developments. Households at or below 60% AMI.	<ul style="list-style-type: none"> • COMPLETE • Amount Awarded: \$148,354,769 (100%) • Amount Drawn: \$148,354,769 (100%) 	\$148,354,769 \$148,354,769 100%	8,346 households	\$139,125,233 54.52 jobs	<ul style="list-style-type: none"> • Owners were required to expend 100% of funds by February 17, 2012, which was achieved. All earlier program deadlines were also met.
Housing Tax Credit Exchange Program^^^	Provides assistance to 2007, 2008 or 2009 Housing Tax Credit awarded developments. Households at or below 60% AMI.	<ul style="list-style-type: none"> • COMPLETE • Amount Awarded: \$594,091,929 (100%) • Amount Closed: \$594,091,929 (100%) 	\$594,091,929 \$592,728,482 99.77%	8,015 households	9,351 jobs	<ul style="list-style-type: none"> • Owners were required to expend 100% of funds by December 31, 2011. 99.75% of funds were expended. • Due to overcommitment and time expiring for two contracts, 0.25% of funds were unspent. All earlier program deadlines were met.
Total			\$1,159,043,273 \$1,142,556,621 98.58%	146,143 persons 70,239 households	\$1,109,692,627 1512: 1,234.07 jobs this quarter Exchange: 9,351 jobs cumulatively	

*This table includes updated expenditure data as of 3/30/2012.

**Total served data through 9/30/2011 for HPRP and 12/31/2010 for CSBG; 3/19/2012 for WAP, 2/2/2011 for TCAP; and 12/10/2010 for HTC Ex. For TCAP and HTC Ex, households represent closed transactions.

^Jobs created or retained between 10/1/2011 and 12/31/2011. Note that Section 1512 reporting is not required for HTC Exchange and the figure includes total estimated jobs to be created or retained as reported to the U.S. Department of Treasury for 12/31/2010.

^^ Program expenditures reported for each program includes subrecipient and TDHCA administrative expenses. Information is updated quarterly. Data was submitted to Recovery.gov for quarter ending 12/31/2011.

^^^ The Housing Tax Credit Exchange Program is not subject to 1512 reporting requirements.

R2

REPORT ITEM

TEXAS HOMEOWNERHSIP DIVISION

APRIL 12, 2012

Report on the award of a Master Servicer Contract to U.S. Bank Administrator for “To Be Announced” Mortgage Purchase Program

Background

A Request for Proposal was posted for Master Servicer for the Single Family Mortgage Revenue Bond (MRB) Program on January 4, 2012 with a due date of January 25, 2012.

One proposal was received from U.S. Bank Home Mortgage (U.S. Bank) by the due date, a well known Master Servicer headquartered in Bedford, Ohio. U.S. Bank has 23 years experience and is currently Master Servicer for 21 state Housing Finance Agencies (HFAs) and numerous local HFAs. They have served as our Master Servicer since our prior Servicer, Bank of America, exited the correspondent lending business and the Master Servicer business in 2011. U.S. Bank was procured through an emergency procurement process as a result of this business decision. They have successfully helped to transition our program and were instrumental in getting it re-launched on November 21, 2011.

Based on a team review comprised of Department staff, it was recommended the Master Servicer contract be awarded to U.S. Bank. The term of the contract will be one-year with the ability to renew and extend at the end of the one year term under three annual options.

R3

REPORT ITEM

TEXAS HOMEOWNERSHIP DIVISION

APRIL 12, 2012

Report on selection of First Southwest to administer a taxable mortgage backed securities program

Background

A Request for Proposals (RFP) was posted for a Market Rate Ginnie Mae (GNMA) Program Administrator on January 13, 2012 with a due date of February 14, 2012.

Two proposals were received by the due date from the following organizations – First Southwest and Morgan Keegan & Company, Inc. Both organizations are well known in the banking industry and have prior experience working with the Department. Although evenly matched, First Southwest had slightly more experience administering such programs and with two recent employee hires, added additional mortgage trading and affordable housing expertise to their team. They merged several years ago with Plains Capital Bank and through their affiliated firm and one of our approved participating lenders “PrimeLending”, expect to help originate in the range of \$15-\$30 million in mortgages annually through our market rate GNMA Program.

Based on a team review comprised of Department staff, the market rate GNMA Administrator contract was awarded to FirstSouthwest. The term of the contract will be one-year with the ability to renew and extend at the end of the one year term under two annual options.

R4

Summary Report for February 2012 and Year-to-Date

Activity_Type	<u>Funded/Awarded for</u> <u>March</u>		<u>Funded/Awarded for Year</u>		<u>Draws for March</u>		<u>Draws for Year</u>		<u>Setups for March</u>		<u>Setups for Year</u>	
	RSP	Contracts	RSP	Contracts	RSP	Contracts	RSP	Contracts	RSP	Contracts	RSP	Contracts
CFD	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	0	0	0	0
CHDO Operating	\$0	\$50,000	\$0	\$50,000	\$0	\$0	\$0	\$0	0	0	0	0
Development Single Family New Co	\$0	\$300,000	\$0	\$300,000	\$0	\$0	\$0	\$0	0	1	0	4
HBA	\$0	\$0	\$0	\$0	\$0	\$187,828	\$0	\$246,628	0	4	0	5
HBA/Rehab	\$134,144	\$0	\$286,244	\$0	\$126,819	\$74,999	\$226,819	\$104,999	7	3	15	6
HRA	\$1,111,855	\$562,000	\$1,278,450	\$2,248,000	\$28,314	\$912,970	\$34,112	\$1,849,625	11	3	14	5
MFD/New Construction	\$0	\$0	\$0	\$0	\$0	\$452,626	\$0	\$452,626	0	0	0	0
MFD/Rehab	\$0	\$0	\$0	\$0	\$0	\$955,062	\$0	\$1,008,727	0	1	0	1
TBRA	\$320,273	\$0	\$562,704	\$0	\$165,530	\$122,347	\$329,793	\$226,020	33	22	60	29
Sub Totals:	\$1,566,272	\$912,000	\$2,127,398	\$2,598,000	\$320,664	\$2,705,831	\$590,724	\$3,888,625	51	34	89	50
Totals:		\$2,478,272		\$4,725,398		\$3,026,495		\$4,479,349		85		139

CFD - Contract For Deed

CHDO - Community Housing Development Organization

HRA - Homeowner Rehabilitation

HBA - Homebuyer Assistance

RHD - Rental Housing Development

RSP - Reservation System Participant

TBRA - Tenant Based Rental Assistance

R5

<p style="text-align:center">REPORT ITEM HOUSING RESOURCE CENTER APRIL 12, 2012</p>
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REPORT ITEM

Status Report on the Comprehensive Analysis of Farmworker Housing in Texas.

BACKGROUND

On June 28, 2010, the Texas Department of Housing and Community Affairs (TDHCA) Governing Board authorized the release of a Request for Proposal to conduct a Comprehensive Analysis of Rural and Farmworker Housing in Texas. On May 23, 2011, TDHCA entered into a contract with Bowen National Research to conduct this analysis.

The Department recognizes the importance and need for affordable housing in rural Texas. In addition, the Department recognizes the unique challenges of affordable housing for farmworkers in Texas. The Department will use this report to assist with program planning and it will be shared with the community to demonstrate need and provide recommendations for the creation of affordable housing in rural Texas and for farmworkers in Texas.

Bowen National Research has completed part of this analysis, the Comprehensive Analysis of Farmworker Housing in Texas. The Comprehensive Analysis of Rural Housing is expected to be finalized in May 2012.

Elements of the analysis include:

- Outreach to a wide spectrum of rural and farmworker stakeholders,
- Rural Texas socioeconomic and demographic analysis,
- Rural Texas housing supply and demand analysis to include farmworker housing,
- Analysis of affordable housing developer capacity,
- Identification of regulatory and statutory barriers,
- Identification of best practices, and
- Recommendations to increase the development and availability of affordable housing in rural Texas and for farmworkers.

The analysis was limited to counties that contain more than 1,000 Migrant/Seasonal Farmworkers as determined by the *Migrant and Seasonal Farmworker Profile* from September 2000. Urban counties were not included in this analysis. In Texas, 49 counties met that definition of a rural farmworker county. Those counties were aggregated and then analyzed by TDHCA service regions 1, 11, 12, and the Balance of the State.

Bowen estimated that in the rural counties analyzed that there were 34,520 farmworkers, 90 percent of who make less than \$30,000 annually. The economic analysis shows that in the farmworker counties studies, there were 14,504 harvested farms in 2007, a decrease of 209 farms since 2002. In those same counties, there is a current supply of 552 housing units that house a total of 2,537 people. Bowen also estimates a gap of 28,531 housing units for those farmworkers that make less than \$30,000 annually.

Recommendations by Bowen National Research based on their research include the following:

- Modify/Clarify Licensed Migrant Farmworker Housing Compliance Requirements.
- Consider Raising Development Standards to Enable Farmworker Projects to be Eligible for Low-Income Housing Tax Credits.
- Consider Providing Assistance and/or Creating Incentives to Encourage Developers to Actively Market Non-Farmworker Housing to Farmworkers.
- Consider Establishing a Pre-Development Loan Program for Potential Rural Farmworker Housing Projects.
- Explore Funding Mechanisms for the Maintenance of Seasonally Occupied Licensed Migrant Farmworker Housing.
- Explore Developing Rental/Operating Subsidies to Sustain Rural Farmworker Project.
- Expand Education and Outreach Efforts to Public that Emphasizes Rural Farmworker Housing Development.
- Continue to Monitor Farmworker Mobility Patterns, Demographics, Agricultural Trends, and Housing Market Conditions.
- Consolidate Housing Program Requirements and Coordinate Funding Timelines.

The Executive Summary of the draft Comprehensive Analysis of the Farmworker Housing in Texas is included as Attachment A.

A report item to the TDHCA Governing Board on the completed Comprehensive Analysis of Rural and Farmworker Housing in Texas is planned for the May 10, 2012 Board Meeting. Patrick Bowen of Bowen National Research is expected to attend this May meeting to deliver this full status report which will include the rural portion. He will then be able to answer any outstanding questions the Board may have about the farmworker study at that time.

ATTACHMENT A

Draft Executive Summary of the Comprehensive Analysis of Farmworker Housing in Texas

II. EXECUTIVE SUMMARY (DRAFT 4.2.12)

This report provides a migrant/seasonal farmworker housing needs assessment of the rural areas of Texas. The report concludes by providing a variety of recommendations that support the development required to best meet the affordable housing needs of farmworkers in rural Texas. *It is important to note that this study excludes counties that did not have a sufficient number of farmworkers or urban markets that did not meet the study's criteria, though urban markets have a significant number of farmworkers.*

A. Scope of Work

The scope of work included in this report included:

- A housing survey and/or inventory of 28 farmworker-designated housing projects with a combined 2,537 occupant capacity, 310 affordable rental housing properties (USDA, Tax Credit, Public Housing and HUD financed projects) with 3,170 units, for-sale housing data on 2,480 currently available units, and data on over 1,300 manufactured homes were analyzed.
- An evaluation of nearly 30 different demographic and economic metrics related to the trends and characteristics of each region and corresponding rural counties was provided. Several of these metrics are specifically related to agricultural and farmworker data.
- Stakeholder interviews were conducted with over 50 representatives across all four rural regions in Texas as well as stakeholders who addressed housing issues at the state level. A summary of stakeholder perceptions and insights as to development experiences and barriers to developing farmworker housing in rural Texas is provided.
- A farmworker housing gap analysis was completed that took into account the estimated number of farmworkers in 2010 making less than \$30,000 annually and the housing capacity of farmworker-designated housing in each region and county considered in this report.
- We provided recommendations for improving farmworker housing development opportunities in rural Texas, as they relate to programs, policies, and processes, and development of partnerships, as well education and outreach efforts.

This analysis was limited to rural counties that contain more than 1,000 “Migrant/Seasonal Farmworkers and Non-Farmworkers as determined from the September 2000 *Migrant and Seasonal Farmworker Enumeration Profile Study of Texas* (MSFW Enumeration Profile). Based on the MSFW Enumeration Profile, 49 counties meet this initial criteria. A map of TDHCA’s 4 service regions and the corresponding counties (denoted by the red shading) that were included in this analysis are delineating in the map on the following page.

Texas Counties (Farmworker)



New Mexico

Oklahoma

Arkansas

Mississippi

Louisiana

Mexico

El Paso

Lubbock

Wichita Falls

Fort Worth
Dallas

Abilene

Arlington

Waco

Austin

Beaumont

Houston
Pasadena

San Antonio

South Texas Boarder

Corpus Christi

Laredo

McAllen

Brownsville

1

High Plains

Amarillo

12

West Texas

Balance of State

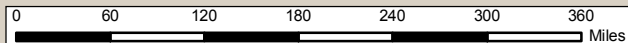
12

Balance of State

11

Legend

- Region
- County Border
- Farmworker Counties



1:7,750,000

B. Summary of Key Findings

The following is a summary of some of the key findings and conclusions from our overall report.

- Bowen National Research estimated that there were approximately 34,520 migrant or seasonal farmworkers within the 49 rural counties within the four study regions of Texas in 2010. While there is no historical farmworker data that incorporates the methodology (primarily uses the most current payroll data reported to the Department of Labor) used by Bowen National Research for estimating the number of farmworkers in Texas, the number of farmworkers within the study areas appears to be declining. This conclusion was corroborated through several stakeholder interviews and our economic data analysis that indicated a decline in agriculture-related jobs between 2000 and 2010. Reason attributed to the decline in the number of farmworkers included advances in and implementation of farming mechanization and the expanding non-agricultural job market that provides farmworkers alternative job choices.
- The Balance of State Region, which includes 20 counties and is the largest geographic area of this study, has the largest number of estimated farmworkers in the study area at 13,744, or 39.8% of the total estimated farmworkers for the four study areas. Region 1 (High Plains Region), located in the far north central portion of the state, has the second largest estimated number of farmworkers, with 11,074. Regions 11 (South Texas Border Region) and 12 (West Texas Region) have a notably lower estimated number of farmworkers at 4,861 and 4,841, respectively. The number of farmworkers by study region is not surprising given that the Balance of the State Region has the largest number of farms at 18,256 and the most acres of farmland, at 13,388,804 acres. Region 1 also has a notable number of farms, with 8,867 farms and 8,424,801 acres of land, which contributes to this region's relatively high number of farmworkers. Regions 11 and 12 have significantly fewer farms and farmland, which corresponds to the lower number of farmworkers within these regions.
- The total employment base of the four rural study regions has remained relatively stable with some modest job growth since the start of 2008, when the impact of the national recession began for much of the country. The four study regions had a combined increase in jobs of 0.9% since the start of 2008. While the employment growth within the four rural study regions is slower than the overall Texas 3.5% increase in jobs since 2008, the four rural study regions still outperformed the national average employment base decline of 4.6%. The combined unemployment rate of the four regions is 9.1%, which has gone virtually unchanged for the past two years is below the national unemployment rate of 9.6%. It is typically for rural markets to not experience large fluctuations in their employment bases unless there is a large employer

expanding or contracting in the area. As such, the economies of the four rural study regions are considered stable.

- Cotton farming activity (based on crops harvested by acres) is prevalent in each of the study regions. Cotton is the top harvested crop in Region 1 (High Plains Region) and Region 12 (West Texas Region), and the second largest harvested crop in Region 11 (South Texas Border) and Balance of State Region. Farming activity is also heavily influenced in each study region by the harvesting of Sorghum for Grain, Forage (Hay, Grass, etc.), Wheat, and Peanuts. Of the most common crops, Cotton is considered the most labor intensive, requiring a large base of farmworkers. While the overall number of farms has declined in the four rural study regions between 2002 and 2007 (the latest Census of Agriculture Data available), the acreage of farm land increased during this time by nearly 9.0%. More importantly, however, according to the U.S. Census and national demographic provider ESRI, the Agriculture, Forestry, Fishing and Hunting job sector (considered as a single job sector) experienced a decline in each of the four rural study regions between 2000 and 2010. The decline in agriculture-related jobs ranged from 1,204 job in Region 12 (West Texas Region) to 6,945 jobs in Region 1 (High Plains Region). While these job losses are not all among migrant and seasonal farmworkers, these declines further support our conclusion that the number of farmworkers in Texas has been declining over the past decade.
- Generally, farmworkers have relatively low incomes as evidenced by the fact that 90% of the farmworkers make less than \$30,000 annually from farm work, with the largest share (47.0%) of farmworkers making between \$10,000 and \$19,999 annually. When comparing income levels for all households (regardless if farmworkers are within the households) in the entire study area, only 45.0% make less than \$30,000. Compared with statewide numbers (also not exclusive to farmworkers), only 31.0% of households make less than \$30,000. As such, farmworkers have a disproportionately high share of low-incomes, thereby limiting most farmworkers to affordable housing alternatives. While farmworkers may supplement their income with other non-farm work and/or have other family members contributing to the household income, national studies indicate that these other non-farm related incomes are minimal.
- Bowen National Research identified and surveyed a variety of affordable housing alternatives within the four rural study areas. Based on this research, it is evident that demand for affordable rental housing throughout the study areas is very high. USDA 514 and 516 farmworker housing and licensed migrant labor housing is historically 90% to 100% occupied (though it may decline during off season or following a drought/flood). According to our rental housing survey, affordable apartments (those financed through non-farmworker federal programs of USDA and TDHCA) are 97.6% occupied. Also based on our survey, manufactured home communities are 90.2%

occupied (which is considered high for such communities). As such, there is limited availability of affordable rental alternatives for farmworkers and their families. Adding to farmworkers' problem of securing affordable housing is the fact that because of the short-term occupancy needs of migrant farmworkers (often staying in a particular area or community for just a few weeks), many of the conventional or traditional multifamily projects offered in most markets are not conducive to migrant farmworkers' needs. For example, many property owners of multifamily projects will not rent to anyone for just a few weeks, thereby further limiting the housing options available to farmworkers. As such, many markets are in need of housing to meet the specific needs of migrant farmworkers.

- Besides rental housing, for-sale housing represents a potential housing alternative that is available to farmworkers. Based on our for-sale housing analysis that included an inventory of available for-sale housing alternatives within the entire study area, 1,164 housing units were identified that were priced below \$100,000. These homes represent nearly half (46.9%) of the for-sale housing stock that is available to low-income households including farmworkers. Based on the estimated farmworker incomes for the four study regions, with approximately 90% of farmworkers making less than \$30,000 a year, most farmworkers likely can only afford a for-sale housing product under \$90,000, which yields a monthly mortgage payment close to \$600 per month (depending upon financing terms and down payment). As such, it appears that there is a fair base of lower priced for-sale housing alternatives within the four study regions that are viable choices for low-income farmworkers, assuming they have access to the credit and other resources required to purchase a home. It will be important that for-sale housing programs and efforts be supported to enable farmworkers access to this housing alternative.
- As detailed in our farmworker housing gap analysis (See *Section VII: Housing Demand Analysis*), there is an overall rental housing gap of 28,531 between the existing rental housing stock specifically designed and reserved for farmworkers and the estimated number of farmworkers within the four rural study regions. While farmworkers have other non-farmworker designated housing from which to choose, as shown in our survey of area rental housing alternatives, there is a limited number of vacancies among the affordable housing alternatives within each of the four study regions. As such, there are limited housing options available to low-income farmworkers. Further, many of these farmworkers are likely paying a higher share of their income towards rents than those living in USDA farmworker housing, which requires residents to only pay 30% of their income towards rent, or at licensed migrant labor housing facilities, where tenants often pay nothing towards rent. While each of the four study regions have relatively large housing gaps, it is of note that the Balance of State Region, which generally includes 20 scattered rural counties, has the largest number (12,369) of low-income farmworkers, yet has

no farmworker designated housing. A likely contributor to this lack of farmworker-designated housing is the fact that the counties with the highest concentrations of farmworkers in the Balance of State Region are spread out and are often not adjacent to or near other counties with a notable number of farmworkers. The remaining three regions have farmworker housing gaps of 8,611 in Region 1 (High Plains Region), 3,390 in Region 11 (South Texas Border Region) and 4,161 in Region 12 (West Texas Region) and could likely support additional farmworker housing.

- Bowen National Research conducted stakeholder interviews with over 50 local, county and regional representatives across the four rural farmworker regions, as well as stakeholders who address farmworker housing issues on a statewide basis. The primary purpose of these interviews was to identify barriers to development, whether perceived or real, that discourages or prevents the development of farmworker housing in rural Texas. While the responses we received varied greatly, there were several common themes that constituted barriers to farmworker housing development. The most commonly cited barriers include:
 - Lack of funding sources specifically designated for farmworker housing
 - Lack of local government or community support
 - Timing of various Federal and state housing finance programs do not coincide with leveraging the funds necessary to build affordable housing
 - Difficulties with maintaining migrant housing facilities in compliance with inspection regulations as they sit vacant for much of the year
 - Confusion over building and maintenance regulations of licensed migrant farm labor housing
 - Lack of available farmworker data that identifies the number of farmworkers in a given area and identifying the quantity of additional farmworker housing units needed
- Recommendations that address some of the cited barriers to development are included at the end of this Executive Summary.
- While the number of farmworkers appears to be declining, there remains a large base of farmworkers who are not housed in farmworker-designated housing and who have limited available affordable housing options (based on our survey of housing) from which to choose. Given the unique employment situation (short-term, transient, etc) often associated with farm work, many farmworkers are having difficulty securing affordable housing. As such, the affordable housing industry should continue to explore means to provide housing to meet the specific needs of farmworkers.

- It is important to consider that unknown variables that can impact the agricultural/farming market and the number of farmworkers within Texas include natural disasters such as floods and droughts, wildfires, changes in agriculture commodities pricing, and legislation affecting immigration processes and requirements. Therefore, the future housing needs of farmworkers may vary periodically and should be monitored on a regular basis.

C. DEMOGRAPHIC OVERVIEW

Overall Demographic Trends (Not Exclusive to Farmworkers)

Total Population - Region 11 has experienced positive population growth of 9.7% between 2000 and 2010 and is projected to increase by 2.9% over the next five years. Region 1 has experienced and is projected to experience a population decline. Region 12 and the Balance of State Region are projected to generally have stable populations between 2010 and 2015. Combined, the four study regions are projected to experience a minimal population increase of 0.2% between 2010 and 2015, while the state of Texas is projected to experience an 8.5% increase during this same time. It is not unusual to experience minimal changes in population.

Total Households - Over the past decade, all regions but Region 1 have had positive household growth trends. Region 11 experienced the greatest household growth between 2000 and 2010, increasing by 7,473 households, an increase of 12.0%. While Region 1 is projected to experience a household decline (2.0%) and Region 11 is projected to experience a household increase (3.1%), the remaining regions are projected to experience stagnant household bases through 2015. Overall, the four study regions are projected to experience an increase of 0.2% between 2010 and 2015. This is not unusual for rural areas, but is much slower than the overall projected household growth rate of 8.4% for the state of Texas.

Total Households by Age - All four study regions are projected to experience notable increases among older adult (age 55+) households, while most regions will experience growth among those between the ages of 25 to 34. These household growth trends by age are similar to state trends and indicate a likely growing need for housing for young families and seniors.

Hispanic Population - An evaluation of the Hispanic and non-Hispanic population within the four study regions indicate that over one-third (37.6%) of the population is considered Hispanic. Region 11 (South Texas Border Region) has a significantly higher share (88.2%) of its population considered Hispanic, which is not surprising given its proximity to the U.S.-Mexican border.

Farmworker Population and Household Trends

Due to the unique nature of the farmworker industry, with varying seasonal employment changes and a very mobile migrant workforce, for example, it is difficult to accurately quantify various demographic data points for farmworkers. Further, while there are a variety of published data sources pertaining to farmworkers, due to the various points in time the data was collected, the scope of the data collection process, the definitions and parameters used by the data providers, there are varying estimates regarding farmworkers. For the purposes of presenting demographic estimates for the farmworker industry, we have used data from three nationally recognized data sources that tabulated various demographic characteristics of the farm labor industry.

Because the three primary farmworker data sources cited in this report vary in time (2000, 2001 – 2002, and 2007) and differ in methodologies and definitions, we have provided more current farmworker data estimates using an approach that was developed by the Shimberg Center for Housing Studies at the University of Florida for a report entitled *The Need for Farmworker Housing in Florida*, dated July 16, 2010.

Incorporating the Shimberg Center for Housing Study's methodology, we have estimated the total number of farmworkers in each county and region studied in Texas by using two primary data sources: The Bureau of Labor Statistics' Quarterly Census of Employment and Wages (QCEW) and the Department of Labor's National Agricultural Workers Survey (NAWS). The specific steps and methodology used in our demographic estimates of Texas farmworkers is outlined beginning on page III-9 of this report.

Based on the methodology outlined in Section III, Bowen National Research was able to project various farmworker demographic characteristics for each study region, as well as for each selected rural county in the corresponding regions. These estimates are limited to 2010 and include the distribution of farmworker incomes, reported and unreported farmworkers, seasonal and migrant farmworkers, and accompanied and unaccompanied farmworkers.

The following table summarizes Bowen National Research's estimates for the four regions included in our analysis (Note: Some totals may slightly differ from within and between tables in this report due to rounding):

	2010 Estimated Farmworkers	
	Number	Percent
Region 1 (High Plains)	11,074	32.1%
Region 11 (South Texas Border)	4,861	14.1%
Region 12 (West Texas)	4,841	14.0%
Balance of State Region	13,744	39.8%
Total	34,520	100.0%

Source: Bowen National Research

Note: Data is limited to only the counties that met the farmworker county designation

Bowen National Research estimates that there were 34,520 farmworkers within the 49 counties within the four study regions. Bowen National Research estimates of farmworkers within the study areas are very comparable to the Census of Agriculture, and take into account the most current payroll data reported to the Department of Labor. This total includes estimates of both reported and unreported farmworkers, which are discussed in greater detail later in this section. The Balance of State Region, which includes 20 counties, has the largest number of estimated farmworkers in the study area at 13,744, or 39.8% of the total estimated farmworkers for the four study areas. Region 1 has the second largest estimated number of farmworkers, with 11,074. Regions 11 and 12 have a notably lower estimated number of farmworkers at 4,861 and 4,841, respectively.

Due to the nature of the agriculture job sector and the labor needs for the industry, as well as Texas' proximity to Mexico, there are a notable number of unreported (and possibly illegal immigrant) farmworkers in Texas. As discussed earlier in this section, Bowen National Research used data from Enumeration Profile to estimate the number of reported and unreported farmworkers within each study area.

The following summarizes Bowen National Research's estimated number of reported and unreported farmworkers for each study region for 2010.

	Estimated Reported & Unreported Farmworkers (2010)					
	Reported		Unreported		Total	
	Number	Percent	Number	Percent	Number	Percent
Region 1 (High Plains)	7,054	38.5%	4,020	24.8%	11,074	32.1%
Region 11 (South Texas Border)	2,445	13.4%	2,416	14.9%	4,860	14.1%
Region 12 (West Texas)	3,316	18.1%	1,525	9.4%	4,842	14.0%
Region Balance	5,484	30.0%	8,260	50.9%	13,744	39.8%
Total	18,299	100.0%	16,221	100.0%	34,520	100.0%

Source: Bowen National Research; Migrant and Seasonal Farmworker Enumeration Profile (2000)

Note: Data is limited to only the counties that met the farmworker county designation

Slightly more than one-half (53.0%) of all estimated farmworkers in the study areas are reported farmworkers, while the balance of farmworkers are considered unreported workers. It is of significance that Regions 1 and 12 have much larger shares of reported workers, 63.7% and 68.5% respectively, than Region 11, which has one-half of the estimated farmworkers as reported. The fact that Region 11 has half of the farmworkers as unreported is not surprising given this region, also known as (South Texas Border) service region, is located along the Texas-Mexico border and likely has more illegal immigrants than most other regions, which would lead to more unreported workers.

Using information from the National Agricultural Workers Survey (2005 to 2009), Bowen National Research's 2010 estimated for the number of migrant (as defined by Texas Statutes - Section 2306.921) and seasonal farmworkers by study region. These estimates are included in the following table.

	Estimated Migrant & Seasonal Farmworkers (2010)					
	Migrant		Seasonal		Total	
	Number	Percent	Number	Percent	Number	Percent
Region 1 (High Plains)	5,951 (53.7%)	29.8%	5,123 (46.3%)	35.3%	11,074	32.1%
Region 11 (South Texas Border)	3,577 (73.6%)	17.9%	1,283 (26.4%)	8.8%	4,860	14.1%
Region 12 (West Texas)	2,242 (46.3%)	11.2%	2,600 (53.7%)	17.9%	4,842	14.0%
Balance of State Regions	8,221 (59.8%)	41.1%	5,521 (40.2%)	38.0%	13,742	39.8%
Total	19,991	100.0%	14,527	100.0%	34,520	100.0%

Source: Bowen National Research; NAWS (2005 to 2009)

Note: Data is limited to only the counties that met the farmworker county designation

The share of migrant farmworkers is highest in Region 11, representing nearly three-fourths (73.6%) of all farmworkers in this region. This correlates to the fact that this region also has a greater share of unreported workers than most regions. Only Region 12 has a higher share (53.7%) of Seasonal Farmworkers than Migrant Farmworkers (46.3%). Among the four regions, the Balance of State Region has the largest number of Migrant Farmworkers, with over 8,221 such workers.

Bowen National Research estimated the distribution of farmworkers by income for each of the study regions for 2010. It is important to note that the data is provided on the individual farmworker level and does not take into consideration any additional income from non-farm work or government assistance that farmworkers may receive or other income from non-farmworkers living with farmworkers who may be contributing to the family household income. As such, these income estimates should be considered conservative.

	Farmworkers by Annual Income (2010)				Total
	Less than \$10,000	\$10,000 - \$19,999	\$20,000 - \$29,999	\$30,000 & Higher	
Region 1 (High Plains)	2,436	5,205	2,326	1,107	11,074
Region 11 (South Texas Border)	1,069	2,284	1,021	486	4,860
Region 12 (West Texas)	1,065	2,276	1,017	484	4,842
Region Balance	3,024	6,459	2,886	1,375	13,744
Total	7,594 (22.0%)	16,224 (47.0%)	7,250 (21.0%)	3,452 (10.0%)	34,520

Source: Bowen National Research; NAWS (2005 to 2009)

Note: Data is limited to only the counties that met the farmworker county designation

While it is possible that low-income households, depending upon household size, with incomes above \$30,000 could qualify for government-subsidized housing, for the purposes of this analysis we have assumed that any farmworker with an annual income of \$30,000 or higher would likely reside in Tax Credit or other non-subsidized housing in their area. Conversely, we assume farmworkers with annual incomes below \$30,000 would reside in government-subsidized housing designated specifically for farmworkers, such as Rural Development 514 and 516 and migrant labor housing facilities projects, or in other affordable housing alternatives.

The Migrant and Seasonal Farmworker Enumeration Profile of Texas (2000) provided the estimated shares of accompanied and unaccompanied farmworkers, both migrant and seasonal. Accompanied farmworkers are generally considered those who live with a relative. These shares were used to estimate the number of accompanied and unaccompanied migrant and seasonal farmworkers for 2010. The following table summarizes the distribution of migrant and seasonal farmworkers by whether or not they are accompanied or unaccompanied for each of the four study regions.

	Accompanied & Unaccompanied Farmworkers (2010)				Total
	Migrant Farmworkers		Seasonal Farmworkers		
	Accompanied	Unaccompanied	Accompanied	Unaccompanied	
Region 1 (High Plains)	3,204	3,266	1,469	3,136	11,074
Region 11 (South Texas Border)	1,406	1,433	645	1,376	4,860
Region 12 (West Texas)	1,401	1,428	642	1,371	4,842
Region Balance	3,976	4,053	1,823	3,891	13,744
Total	9,987 (28.9%)	10,180 (29.5%)	4,579 (13.3%)	9,774 (28.3%)	34,520

Source: 2000 MSFW Enumeration Profiles

Note: Data is limited to only the counties that met the farmworker county designation

The share of accompanied and unaccompanied migrant farmworkers is split relatively even. Meanwhile, unaccompanied seasonal farmworkers is more than double the number of accompanied seasonal farmworkers. Accompanied farmworkers are in greater need of housing that can accommodate families, such as apartments, manufactured homes, mobile homes and houses. Unaccompanied farmworkers are more likely to be open to housing alternatives such as dormitory housing or shared housing arrangements.

D. ECONOMIC OVERVIEW

Overall Economic Trends

- Since 2006, Region 11 (South Texas Border Region) has experienced the greatest job growth, adding 6,830 jobs, or an increase of 8.7% over the past five years. This region has also experienced positive job growth over the past two years, while the other regions' job bases have remained relatively stagnant. All four regions, however, have experienced positive growth between 2006 and 2011, despite the national recession which had an adverse impact on job growth in many regions of the nation. Compared with the state of Texas overall job growth rate of 3.5% since 2008, the four study regions have a combined job growth rate of 0.9%. While slower than the state average, this growth rate is not unusual for rural markets.
- The unemployment rate is highest in Region 11, at 13.8%, and lowest at 6.7% in Region 1. Overall, unemployment rates have risen in each region since 2006. While the unemployment rates within the four study regions are generally higher than the overall state average (7.9% - September 2011), they appear to have stabilized over the past two years, as the national economy has stabilized.
- Primary farming activity within the four study regions, based on crops harvested by acres, is concentrated among the Cotton, Sorghum for Grain, Forage (Hay, Grass, etc.), Wheat, and Peanuts. Cotton harvesting is the largest of the crops harvested and is generally considered a labor-intensive crops, requiring a large base of farmworkers. Many of the other top harvested crops more heavily involve mechanization, reducing the need for farmworkers. However, given the dominance of Cotton harvesting (it is the largest or second largest harvested crop in each of the four study regions), the need for farmworkers within each region exists.

- According to the U.S. Census and national demographic provider ESRI, the Agriculture-related jobs experienced an overall decline of 18,656 jobs within the four combined rural study regions between 2000 and 2010. This represented the largest decrease within any industry within the rural study regions, with Manufacturing being the second largest decline at 6,306. Within the individual study regions, Agriculture-related jobs declined during this time period as follows: Region 1 (High Plains Region) 6,945 jobs lost, Region 11 (South Texas Border Region) 2,774 jobs lost), Region 12 (West Texas Region) 1,204 jobs lost and Balance of State Region 7,732 jobs lost. While these job losses are not all among migrant and seasonal farmworkers, the Agriculture-related job losses likely correlate to migrant and seasonal farmworker job losses.

The following tables summarize the total employment base and unemployment rates for each of the study regions between 2006 and 2011. These numbers are compared with the overall state of Texas numbers, as well.

		Total Employment					
		2006	2007	2008	2009	2010	2011*
Region 1 (High Plains)	Number	78,193	79,119	81,711	82,099	81,301	80,712
	Change	-	1.2%	3.3%	0.5%	-1.0%	-0.7%
Region 11 (South Texas Border)	Number	79,325	79,959	81,853	84,120	85,838	86,155
	Change	-	0.8%	2.4%	2.8%	2.0%	0.4%
Region 12 (West Texas)	Number	29,929	30,762	31,332	31,714	31,707	31,662
	Change	-	2.8%	1.9%	1.2%	0.0%	-0.1%
Balance of State Region	Number	173,560	175,423	176,740	175,630	176,629	176,261
	Change	-	1.1%	0.8%	-0.6%	0.6%	-0.2%
Sum of Regions	Number	361,007	365,263	371,636	373,563	375,475	374,790
	Change		1.2%	1.7%	0.5%	0.5%	-0.2%
State of Texas	Number	10,757,510	10,914,098	11,079,931	11,071,106	11,264,748	11,464,525
	Change	-	1.5%	1.5%	-0.1%	1.7%	1.8%

Source: U.S. Department of Labor, Bureau of Labor Statistics

Note: Data is limited to only the counties that met the farmworker county designation

*Through September

		Unemployment Rate					
		2006	2007	2008	2009	2010	2011*
Region 1 (High Plains)	Number	4.7%	4.1%	4.1%	6.0%	6.5%	6.7%
	Change	-	-0.6	0.0	1.9	0.5	0.2
Region 11 (South Texas Border)	Number	9.5%	8.6%	9.0%	12.6%	13.4%	13.8%
	Change	-	-0.9	0.3	3.6	0.8	0.4
Region 12 (West Texas)	Number	5.2%	4.3%	4.7%	7.5%	7.5%	7.4%
	Change	-	-0.9	0.4	2.8	0.0	-0.1
Balance of State Region	Number	4.9%	4.3%	4.7%	7.5%	8.1%	8.1%
	Change	-	-0.6	0.4	2.8	0.6	0.0
Sum of Regions	Number	5.9%	5.2%	5.5%	8.4%	9.0%	9.1%
	Change	-	-0.7	0.3	2.9	0.6	0.2
State of Texas	Number	4.9%	4.4%	4.9%	7.5%	8.2%	7.9%
	Change	-	-0.5	0.5	2.6	0.7	-0.3

Source: U.S. Department of Labor, Bureau of Labor Statistics

Note: Data is limited to only the counties that met the farmworker county designation

*Through September

Generally, job growth within the four rural study regions has been positive and while unemployment rates within the individual study regions are higher than the state average (7.9%), they have remained stable over the past two years.

Agricultural and Farmworker Economics

Within the 49 study counties that fall within the four study regions, there are 33,451 farms, according to the 2007 Census of Agriculture. The Balance of the State Region, which contains 20 counties, has the largest number of farms at 18,256. This region also has the most acres of farmland, at 13,388,804 acres. Region 1 also has a notable number of farms, with 8,867 farms and 8,424,801 acres of land. The following table illustrates the distribution of farms and farmland acreage by region.

	Farms and Farmland Sizes by Region		
	Number of Farms	Land in Farms (Acres)	Average Size (Acres)
Region 1 (High Plains)	8,867	8,424,801	950.1
Region 11 (South Texas Border)	3,559	5,408,131	1,519.6
Region 12 (West Texas)	2,769	4,016,674	1,450.6
Balance of State Region	18,256	13,539,198	741.6
Total	33,451	31,388,804	938.3

Source: 2007 Census of Agriculture

Note: Data is limited to only the counties that met the farmworker county designation

While Regions 11 and 12 have the fewest number of farms and the lowest amount of farmland acreage, the regions contain the largest average sized farms. Region 11 farms are an average of 1,519.6 acres per farm, while Region 12 is comparable, with 1,450.6 acres per farm.

The number of farms and harvested farmland acreage in 2002 and 2007, as well as the change that has occurred during this five year span, for each of the four regions is summarized in the following table (Note: The table below shows *harvested* farmland acreage, while the table above is total acreage, regardless if it is harvested for crops or not).

	Change in Farms and Farmland Acreage (2002 to 2007) Of Harvested Cropland					
	2002		2007		Change	
	Farms	Acres	Farms	Acres	Farms	Acres
Region 1 High Plains	4,435	3,110,199	4,089	3,494,398	-346	384,199
Region 11 South Texas Border	910	272,696	933	335,378	23	62,682
Region 12 West Texas	1,282	883,244	1,271	1,092,588	-11	209,344
Balance of State Region	8,086	1,909,351	8,211	1,795,818	125	-113,533
Total	14,713	6,175,490	14,504	6,718,182	-209	542,692

Source: 2007 Census of Agriculture

Note: data is limited to only the counties that met the farmworker county designation

The total number of farms in Region 1 decreased significantly, losing 346 farms (7.8%) between 2002 and 2007, yet the region expanded its harvested farm acreage by 384,199, or 12.4%. Conversely, the Balance of the State Region added 125 farms, yet lost 113,533 (6.0%) acres during this same time. Overall, the study regions combined lost 209 farms but added over a half million acres of farmland.

The top three crops by acreage within each of the four study regions are summarized on the following table:

	Primary Crops by Acres by Region								
	Top Crop Type			Second Crop Type			Third Crop Type		
	Crop	Farms	Acres	Crop	Farms	Acres	Crop	Farms	Acres
Region 1 High Plain	Cotton	2,445	1,674,110	Wheat	1,771	717,471	Sorghum for Grain	1,344	425,876
Region 11 (South Texas Border)	Sorghum for Grain	232	151,661	Cotton	104	56,067	Forage (Hay Grass, Etc)	578	45,295
Region 12 (West Texas)	Cotton	1,013	880,248	Peanuts	224	62,887	Wheat	183	58,996
Balance of State Region	Forage (Hay, Grass, Etc)	6,665	484,098	Cotton	807	454,048	Wheat	916	376,199

Source: 2007 Census of Agriculture

Note: Data is limited to only the counties that met the farmworker county designation

Cotton is the primary harvested crop by acreage in Regions 1 and 12. Sorghum for Grain is the primary crop in Region 11 and Forage (hay, grass, etc.) is the primary crop in the Balance of State Region. All of these rural study regions are impacted by Cotton harvesting, which is labor intensive requiring a large number of farmworkers.

E. HOUSING SUPPLY

Farmworker housing in Texas is available in a variety of types, structures, locations and quality. Some housing is on-farm, provided by the grower/employer, while a variety of off-farm housing alternatives are offered in most markets. The most common housing alternatives available to farmworkers includes migrant labor housing facilities, USDA-financed housing specifically designated for farmworkers, conventional/affordable apartments, manufactured homes, single-family homes and a variety of non-conventional housing options such as hotels, RV's/campers, and, in some cases, tents.

Because of the temporary and seasonal nature of agricultural work, as well as the notable share of non-U.S. resident agriculture workers that migrate to and within the United States, the types of housing required to meet the needs of the farmworkers varies in location, duration, structure type, and specific accommodations. This has, naturally, resulted in a diverse housing stock designed to meet the broad needs of the farmworkers. This analysis evaluates the most common housing alternatives used by farmworkers in Texas.

A general description of the housing types considered in this analysis follows. For additional details, please see *Section V: Housing Supply Analysis*.

Licensed migrant labor housing

Any housing property that houses migrant farm workers is required to be licensed as migrant labor housing by the Texas Department of Housing and Community Affairs (TDHCA). These projects include apartments, dormitory and barracks style housing structures. As of August 2011, TDHCA had identified 31 licensed migrant labor housing facilities within Texas. A total of 19 migrant labor housing facilities are within the areas we studied in this analysis. Though some migrant labor housing units are within Federally-financed properties (see: USDA/Rural Development Sections 514 & 516 Housing below), most housing is privately financed.

USDA/Rural Development Sections 514 & 516 Housing

Rural Housing Services administers the Farm Labor Housing and Grant program under Sections 514 and 516 of the Housing Act of 1949. This program provides direct loans and grants annually for the development, purchase, improvement, and repair housing for laborers employed on farms or associated with the handling or processing of off-farm industries. Based on information provided by USDA, there are nine Rural Development 514 & 516 financed projects containing 384 units in the 4 regions included in this analysis.

Non-Farmworker-Specific Affordable Apartments

According to information from the National Center for Farmworker Health, Incorporated (NCFH) approximately 50% of farmworkers live in housing that they rent from someone other than their employer. While affordable apartments developed under the Rural Development 515 and Low-Income Housing Tax Credit (LIHTC) programs are not built specifically for farmworkers, farmworkers are not prohibited from occupying units developed under these affordable housing programs. Based on inventories maintained by USDA and TDHCA, there are 310 affordable rental housing projects within the counties studied within the four regions.

Manufactured Homes

Manufactured homes, for the purposes of this analysis, consist of homes that meet the definition of a HUD Code manufactured home or a mobile home. This housing alternative may range from a single, isolated unit to units located within manufactured home communities. While there are no state or federal programs that fund the development of manufactured housing or manufactured home communities, many of the manufactured homes are low-cost and provide an affordable housing alternative to farmworkers. According to American Community Survey, it is determined that there are approximately 31,743 manufactured/mobile home units within the study areas. Of these, 23,789 were owner-occupied and 7,954 were renter-occupied. Bowen National Research conducted a survey of manufactured home communities within each region to determine occupancy rates, rents/fees, and project features.

For-Sale Housing (Primary Single-Family Homes)

Single-family homes are located in each study area and range in a wide variety of product designs, ages and quality. Based on Census data, most single-family homes are owner-occupied. Bowen National Research conducted research to identify the available single-family rental alternatives offered in the study areas. A total of 2,480 housing units were identified as being for-sale within the study areas.

Non-Conventional Rentals and Living Arrangements

Non-conventional rentals are in a variety of forms, and can include units over storefronts, RVs/campers, hotels/motels, and in some cases, tents, garages, sheds or other temporary shelter. Because such housing varies greatly and is not subject to federal or state regulations, data for such housing is not readily available or consistent. While small motels are rented on a weekly basis during the migratory farmworker season, we were unable to obtain specific rental information from these small properties due to the sensitivity of the migrant farmworker situation and possible presence of illegal immigrants. As a result, it is difficult to draw specific conclusions as to occupancy rates, rent levels and features. As such, Bowen National Research did not survey or evaluate such housing for this study.

Unlicensed Farmworker Housing

TDHCA is responsible for the licensing of migrant farmworker housing facilities and makes attempts identify such housing. In instances where such housing is identified, TDHCA would contact the property owner to begin the licensing process. Currently, TDHCA has no record of unlicensed farmworker housing. During our research, Bowen National Research made inquiries with developers, housing authorities, planners and other stakeholders throughout the study regions as to whether or not they were aware of any possible unlicensed farmworker facilities within the studies. Based on these interviews, there were no known or disclosed unlicensed facilities.

Farmworker-designated Rental Housing

The chart below reflects the number of projects, units and capacity of TDHCA licensed migrant labor housing and USDA/Rural Development 514 & 516 housing. Note that the estimated capacity for the USDA/RD 514 & 516 projects was calculated using two people per bedroom. Also note that if a project is licensed as TDHCA migrant housing and also operates under the USDA/Rural Development program, these units and projects have only been included as USDA/RD 514 & 516 housing inventory count below (there are only three of these projects with 103 units and a capacity for 386 people, all of which are located in Region 1).

Region	Rural Texas Farmworker-Designated Rental Housing Inventory 2011								
	Licensed Migrant Farmworker Housing			USDA/RD 514 & 516 Farmworker Housing			Total Farmworker Housing		
	Projects	Units	Capacity	Projects	Units	Capacity*	Projects	Units	Capacity
Region 1 High Plains	12	122	542	5	207	814	17	329	1,356
Region 11 South Texas Border	0	0	0	4	177	984	4	177	984
Region 12 West Texas	7	46	197	0	0	0	7	46	197
Balance of State Region	0	0	0	0	0	0	0	0	0
Total	19	168	739	9	384	1,798	28	552	2,537

*Based on two-persons per bedroom

Note: Data is limited to only the counties that met the farmworker county designation

The 28 farmworker-designated projects identified in the study areas have a combined 552 units with an estimated housing capacity for 2,537 people. Region 1, located in the far northern portion of the state, has the largest number of farmworker housing projects at 17 and the largest estimated capacity of 1,356 persons (more than one-half of the capacity in the study areas). Region 11 has a notable capacity for 984 persons, or 38.8% of the capacity of all regions combined. It is significant to note that the Region 12 has a capacity to house only 197 persons and The Balance of State Region does not have any farmworker housing within the rural farmworker counties within the region. Demand for farmworker-designated housing is strong, as evidenced by the high occupancy levels of these projects, which historically range between 90% and 100%. It is critical to note that the combined 75.5% occupancy rate of these projects from our late summer/early fall 2011 survey was caused by the drought and wildfires that impacted several agricultural areas of the state and temporarily lowered occupancies.

Non-Farmworker Affordable Rental Housing

While affordable apartments developed under the USDA/Rural Development 515 and Low-Income Housing Tax Credit (LIHTC) programs are not built specifically for farmworkers, farmworkers are not prohibited from occupying units developed under these affordable housing programs. Based on inventories kept by USDA and TDHCA, there are 310 affordable rental housing projects within the four study regions. Between July and October of 2011, Bowen National Research was able to survey 290 of these projects. While many apartment managers and leasing agents would not disclose or did not know the specific number of farmworkers that reside at their properties, based on our surveys, it is evident that some farmworkers choose to inhabit affordable housing units developed under the RD 515 and LIHTC programs, as well as other affordable housing programs. Of the 11,948 combined units at these 290 affordable housing projects, 11,751 are occupied, yielding an overall 97.3% occupancy rate.

Projects identified, inventoried and surveyed operate under a number of affordable housing programs including the Low-Income Housing Tax Credit (LIHTC), HUD Sections 8, 202, and 236, Public Housing, and USDA/Rural Development 515 programs. A variety of data points were collected and tabulated for each project surveyed, including unit mixes, rental rates, vacancies, wait lists, amenities, units sizes (square footage), utility responsibilities, year built and specific program requirements (i.e. resident income limitations).

The following table summarizes the inventory of all affordable rental housing options by program type that were identified within the four study regions.

Region	Non-Farmworker-Designated Affordable Rental Housing Inventory 2011											
	Surveyed Units				Not Surveyed Units				Total Units			
	TAX	HUD	PH	USDA	TAX	HUD	PH	USDA	TAX	HUD	PH	USDA
Region 1 High Plains	214	383	510	648	0	0	0	0	214	383	510	648
Region 11 South Texas Border	633	425	1,053	686	0	0	391	0	633	425	1,444	686
Region 12 West Texas	183	363	338	130	0	0	0	32	183	363	338	162
Balance of State Region	1,029	1,251	2,539	1,637	245	204	403	37	1,274	1,455	2,938	1,674
Total	2,059	2,422	4,440	3,101	245	204	794	69	2,304	2,626	5,230	3,170

Tax – Tax Credit

HUD – Department of Housing and Urban Development (HUD Section 8, 202,236 and 811 Programs)

PH – Public Housing

USDA – United States Department of Agriculture.

Note: Data is limited to only the counties that met the farmworker county designation

As the preceding table illustrates, the Balance of the State region contains the largest number of affordable housing units, with a total of 7,341 units. These units represent 55.1% of all affordable housing units identified. Region 12 has the least number of farmworker housing units. Based on this inventory, most of the units in rural Texas operate and were funded under the Public Housing program.

The following summarizes the overall occupancy rates of the affordable projects surveyed.

Region	Occupancy Rate
Region 1 High Plains	97.6%
Region 11 South Texas Border	98.4%
Region 12 West Texas	98.1%
Balance of State Region	98.8%

Source: Bowen National Research

Note: Data is limited to only the counties that met the farmworker county designation

Demand for affordable housing is extremely high in each study region, with no region having less than 97.6% of it supply occupied. As such, there is limited available affordable housing product from which low income households, including farmworkers, can choose.

Based on data reported by the American Community Survey (2005-2009), there are approximately 31,743 manufactured housing home units within the 49 study counties. Of these units, 7,954 (25.0%) were renter-occupied and 23,789 (75.0%) were owner-occupied.

The following is a distribution of manufactured homes by study region:

Region	Manufactured Home Units by Type					
	Renter-Occupied		Owner-Occupied		Total Occupied	
	Number	Percent	Number	Percent	Number	Percent
Region 1 High Plains	1,691	31.2%	3,731	68.8%	5,422	100.0%
Region 11 South Texas Border	1,838	24.8%	5,570	75.2%	7,409	100.0%
Region 12 West Texas	803	29.0%	1,969	71.0%	2,772	100.0%
Balance of State Region	3,622	22.4%	12,519	77.6%	16,141	100.0%

Source: Bowen National Research

Note: Data is limited to only the counties that met the farmworker county designation

The largest number of renter-occupied manufactured homes is 3,622, in the Balance of State Region. Region 1 has the highest share of manufactured homes, at 31.2%.

Bowen National Research conducted a telephone survey of manufactured home communities that contained capacity for 1,350 homes. The following is a distribution of home lots and current occupancy/usage rates.

Region	Manufactured Home Communities Surveyed (Percent Occupied)		
	Total Lots	Occupied	Occupancy Rate
Region 1 High Plains	112	3	97.3%
Region 11 South Texas Border	797	94	88.2%
Region 12 West Texas	401	27	93.3%
Balance of State Region	40	8	80.0%

Source: Bowen National Research

Note: Data is limited to only the counties that met the farmworker county designation

Overall, of the 1,350 home lots included in our survey areas, 1,218 are occupied, yielding a combined occupancy rate of 90.2%. It is significant that only one of the four regions has occupancy rates below 88.2%. Region 1 has the highest occupancy rate of 97.3%.

For-Sale Housing Alternatives

A total of 2,480 available for-sale housing units were identified within the 49 subject rural farmworker counties falling within the four study areas. The largest share of for-sale housing is in Balance of State Region which contains 1,402 for-sale housing units, or 56.5% of all housing units identified in the study areas. The distribution of for-sale housing by region is summarized in the following table:

	Available For-Sale Housing by Region		
	Units	Percent	Avg. Price
Region 1 (High Plains)	387	15.6%	\$111,343
Region 11 (South Texas Border)	505	20.3%	\$143,380
Region 12 (West Texas)	185	7.5%	\$120,611
Balance of State Region	1,403	56.6%	\$116,317
Total	2,480	100.0%	\$121,372

Source: Bowen National Research

Note: Data is limited to only the counties that met the farmworker county designation

The overall average price of for-sale housing is \$121,372. Region 11 has the highest average price among the study areas at \$143,380, while the lowest average price of \$111,343 is in Region 1.

The available for-sale housing stock by price point for each of the four regions is summarized as follows:

	Available For-Sale Housing by Price Point							
	Less Than \$100k		\$100,000-\$139,999		\$139,999-\$199,999		\$200,000-\$300,000	
	Units	Avg. Price	Units	Avg. Price	Units	Avg. Price	Units	Avg. Price
Region 1 (High Plains)	208	\$66,510	70	\$122,247	79	\$169,251	30	\$244,253
Region 11 (South Texas Border)	160	\$70,576	107	\$119,880	133	\$167,358	105	\$247,896
Region 12 (West Texas)	91	\$61,675	27	\$123,048	40	\$167,622	27	\$247,166
Balance of State Region	705	\$63,714	264	\$122,541	273	\$169,737	161	\$245,871
Total	1,164	\$64,997	468	\$121,918	525	\$168,900	323	\$246,487

Source: Bowen National Research

Note: Data is limited to only the counties that met the farmworker county designation

Nearly one-half (46.9%) of the housing supply is priced below \$100,000. As such, there appears to be a good base of available for-sale product among low-end priced product that may represent a viable option for lower income households. It is likely that much of this product is lower-quality housing that in all likelihood would require some level of repairs. Region 11 appears to have the most balanced supply of product by price point, with 31.7% of product priced below \$100,000, 21.1% priced between \$100,000 and \$139,999, 26.3% priced between \$140,000 and \$199,999, and the remaining 20.8% priced over \$200,000. As such, Region 11 would appear to have the best ability to draw from a wide range of household income levels. Region 12 has the least amount (91 units) of available product priced below \$100,000, indicating a limited supply of affordable for-sale housing.

F. STAKEHOLDER INTERVIEWS & BARRIERS TO DEVELOPMENT

Stakeholder interviews were conducted with over 50 local, county and regional representatives across four rural farmworker regions, as well as stakeholders who address farmworker housing issues on a statewide basis. The regions identified consist of counties within regions 1, 11, and 12, that contain a large number of farmworkers as identified in the “Migrant and Seasonal Farmworker Enumeration Profile Study of Texas” from September of 2000 and that have also been identified as rural counties. The fourth region is the “balance of the state” which includes rural counties identified to have large numbers of farmworkers but that are scattered throughout the remainder of the state. Opinions on farmworker housing issues were sought from many disciplines throughout the housing industry including local, county, regional

and statewide government officials, developers, housing authorities, and farmworker housing experts. With the vast size and diverse nature of the farming industry throughout the state of Texas, these interviews provided valuable information allowing us to supplement statistical analysis with local insight and perspectives on those factors that influence and impact development of housing for farmworkers in rural Texas.

The following summarizes the barriers to development identified for each of the four study regions.

Region 1 Barriers

Lack of funding resources, lack of community support and strict compliance regulations for migrant labor housing facilities were all indicated by stakeholders as barriers to providing farmworker housing in Region 1. The state currently does not have a program geared directly toward addressing issues of affordable farmworker designated housing. The development of a farmworker specific program or a funding set-aside within an existing program would go a long way toward financing additional farmworker housing. Timing is also a tremendous problem since USDA requires leveraged funds, but the Tax Credit awards are not announced in time to demonstrate leverage on the USDA application. Local communities have a “make or break” role in the development of farmworker housing. Local support is required for funding, especially for Tax Credits where it is part of the scoring criteria. In various communities throughout Texas, lack of local support has derailed planned developments. Many of the migrant labor housing facility owners/operators mentioned the difficulties with maintaining on site housing facilities in compliance with inspection regulations as they sit vacant for much of the year.

Region 11 Barriers

Lack of infrastructure, lack of available credit sources for farmworkers seeking homeownership, and lack of financing options with set asides specifically for farmworkers are all barriers to housing development in the region according to representatives.

Many of the rural counties in the region do not have the infrastructure in place to support already existing housing development. In particular there is a need for water and sewage treatment.

With credit being extremely tight and acceptable credit scores for home financing being 620 and up, many farmworkers are unable to obtain financing. Credit issues may not necessarily be due to bad credit, but to the lack of credit in general as farmworkers are typically a “cash culture”, according to officials.

Developers indicated that there is little incentive to develop farmworker housing as there are no specific set aside funds or scoring incentives associated with this type of development.

Region 12 Barriers

Lack of funding resources, lack of available farmworker data and strict compliance regulations for migrant labor housing facilities were indicated by stakeholders as barriers to providing farmworker housing in Region 12. According to housing providers, little incentive is provided to build farmworker housing in general. An issue with identifying the number of farmworkers in a given area and identifying the quantity of additional farmworker housing units needed is also a major barrier to development. Many of those associated with the migrant labor housing facilities mentioned the difficulties with maintaining on-site housing facilities in compliance with statutory regulations. Some individuals indicated that state and federal regulations related to migrant labor housing facilities seem to conflict with each other or lack specific instructions for certain categories. The specific items are discussed in greater detail in Section VI of this report.

Balance of State Region Barriers

Lack of funding resources, lack of community support and lack of available farmworker data are all barriers to farmworker housing development in the balance of the state. According to developers, little incentive is provided to build farmworker housing in general. There is an issue with identifying the number of farmworkers in any given area, but with the balance of the state being such a diverse region representatives state that it is far more difficult to identify the areas of greatest need and to identify the most efficient means of addressing that demand. Community support is also an issue often faced by developers with regard to farmworker designated housing. In particular with regard to LIHTC projects, lack of support from the local community can sideline a project as community support is part of the scoring criteria.

G. HOUSING DEMAND ESTIMATES

We quantified farmworker housing needs that may exist in each study area by comparing the number of farmworkers with the number of housing units specifically designated for the farmworker population. A variety of data sources were used to estimate the number of farmworkers including the Census of Agriculture, the National Agricultural Worker Survey, the Migrant and Seasonal Farmworker Enumeration Profiles study, Department of Labor statistics, and estimates of Bowen National Research. The inventory of farmworker housing was determined through identification and telephone survey of farmworker-designated housing from TDHCA's list of licensed

migrant labor housing facilities and USDA’s farmworker housing projects funded through the 514 and 516 programs. The estimated farmworkers are then compared with the farmworker housing capacity in each market to determine the gap that might exist in each market for farmworker housing.

The following table summarizes the farmworker housing gap analysis that considers the housing capacity of migrant labor housing facilities and the number of low-income farmworkers by study region:

	Farmworker Housing Gap Estimates		
	Low-Income Farmworkers (\$30,000)	Farmworker Housing Capacity	Housing Gap
Region 1 High Plains	9,967	1,356	8,611
Region 11 South Texas Border	4,374	984	3,390
Region 12 West Texas	4,358	197	4,161
Balance of State	12,369	0	12,369
Total	31,068	2,537	28,531

Note: Data is limited to only the counties that met the farmworker county designation

As the preceding table illustrates, 28,531 farmworkers in the counties within the study regions are not housed in farmworker-designated housing. The Balance of State region has the largest farmworker housing gap, with 12,369 farmworkers not housed in farmworker-designated housing. While there are farmworker housing units in the region, none of them fall within any of the 20 counties studied within the region. Certainly, these farmworkers are being housed in other rental alternatives throughout the region; however, none of these farmworkers are living in farmworker-designated housing. As a result, many of these farmworkers are likely paying a higher share of their income towards rents than those living in farmworker-designated housing. Region 1, despite its offering the largest capacity (1,356) of farmworker-designated housing, has a housing gap deficit of 8,611. While the housing gaps are smaller in regions 11 and 12, these regions’ housing gaps of 3,390 (region 11) and 4,161 (region 12) are significant and indicate that 77.5% to 95.4% of all farmworkers are living in non-farmworker housing.

A regional summary that includes estimated housing gaps by each county evaluated in this report is included beginning on page VII-4.

The map on the following page illustrates the farmworker housing gap by study county. Counties shaded in darker red indicate the greater housing gaps.

Farmworker Counties: Housing Gap



New Mexico

Oklahoma

Arkansas

Mississippi

Louisiana

Mexico

El Paso

Balance of State

West Texas

12

Lubbock

High Plains

1

Amarillo

Wichita Falls

Plano

Fort Worth

Dallas

Arlington

Abilene

Waco

Austin

Beaumont

Houston

Pasadena

San Antonio

South Texas Boarder

11

Laredo

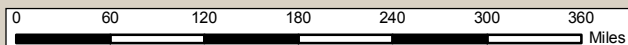
Corpus Christi

McAllen

Brownsville

Legend

- Region
- County Border
- Housing Gap**
- Non Farmworker
- 0 - 99
- 100 - 249
- 250 - 499
- 500 - 999
- 1,000 - 1,499
- 1,500+



1:7,750,000

H. RECOMMENDATIONS

The following is a summary of recommendations as they relate to policies, procedures and programs to implement or modify, in an effort to encourage and support the development of affordable housing for farmworkers in rural Texas. These recommendations should be considered as the bases for establishing a more developed set of programs and policies that ultimately work towards the possible establishment of a farmworker-specific housing program. It should be noted that many of the recommendations that are part of the Texas Rural Housing Analysis completed by Bowen National Research are applicable to the farmworker community, but are only cited in the recommendations below if there are farmworker-related components that require specific acknowledgement.

- 1.) **Modify and/or Clarify Farmworker Housing Facilities Compliance Requirements:** Some farmworker housing providers or potential providers of farmworker housing indicated that the lack of clarity of farmworker housing building and maintenance compliance requirements deterred them from development of such housing. While a limited number of USDA-financed farmworker housing projects in Texas are also licensed to house migrant farmworkers, those projects that operate under the USDA 514 or 516 programs and are licensed to house migrant farmworkers have dual compliance requirements that do not always coincide with each other. Compliance provisions and development regulations should be modified to add consistency between Federal and state regulations and/or clarifications and guidance should be given to the development community as to the regulations that must be followed for federally financed but state licensed farmworker housing. Consideration should also be given to better promote the resources for getting assistance and/or guidance on compliance issues. It should be noted that only three projects were identified in the entire state that operate Under the RD 514 & 516 program and are licensed as migrant labor housing by the Texas Department of Housing and Community Affairs (TDHCA). These projects have a total of 103 units and can house approximately 386 people.

- 2.) **Consider Raising Development Standards to Enable Farmworker Projects to be Eligible for Low-Income Housing Tax Credits:** Many typical farmworker housing projects/units do not meet the minimum design standards that would make them eligible for Low-Income Housing Tax Credits and, therefore, developers of farmworker housing cannot access financing through the Tax Credit program. It is recommended that developers of farmworker housing be encouraged to meet design standards for farmworker housing that would create housing units that meet the LIHTC program requirements.

- 3.) **Consider Providing Assistance and/or Creating Incentives to Encourage Developers to Actively Market Non-Farmworker Housing to Farmworkers:** Given that the existing housing stock in many rural counties has some capacity to accommodate additional renters, government entities should explore ways to assist and/or create incentives for developers of existing or planned non-farmworker housing to market their projects to farmworkers. This would help meet some farmworker housing needs without adding new units to markets.
- 4.) **Consider Establishing a Pre-Development Loan Program for Potential Rural Farmworker Housing Projects:** Consideration should be given to establishing a low interest loan program for providers of farmworker housing for predevelopment activity such as costs associated with rezoning, title searches, legal and audit fees, appraisals and market studies, insurance fees, and other various fees. Predevelopment loan programs that could serve as models are offered in California and Florida (see case studies).
- 5.) **Explore Funding Mechanisms for the Maintenance of Seasonally Occupied Migrant labor housing facilities:** Maintenance and code compliance for operators of Migrant labor housing facilities presents a challenge as many of these facilities are unoccupied for much of the year. Upkeep on these structures can be costly and along with the inherent uncertainties associated with the agriculture industry, these costs can become prohibitive. As noted in the best practices section of this report, other states and local communities have developed strategies to address this issue. For example, involvement of the community/region may assist in addressing this issue. As in the Napa Valley Model growers working in conjunction with the local housing authority, farmworker advocate groups as well as state and local government, partnered to provide a pool of funding administered by the housing authority to fund upkeep of seasonal farmworker housing. A program similar to this in Texas should be considered.
- 6.) **Explore Developing Rental/Operating Subsidies to Sustain Rural Farmworker Projects:** Operating farmworker housing projects in rural Texas is sometimes considered a risk in the development community due to the fluctuating occupancies due to the nature of the agricultural industry (seasonal work, migrant farmworkers, etc.) and the vulnerability this specific type of housing has to climatic changes, such as droughts. Consideration should be given to establishing rental and operating subsidies to help farmworker housing during periods of low occupancies.

- 7.) Expand Education and Outreach Efforts to Public that Emphasizes Rural Farmworker Housing Development:** Common development barriers cited by stakeholders included the lack of information as to the specific housing needs of farmworkers by geographic area, the processes for developing farmworker housing, and the lack of acceptance of local communities to farmworker housing. Public sector education and outreach efforts should work to assist the development community in understanding farmworker housing needs and rural development nuances, and to help reduce apprehension some communities have to farmworker housing. Establishment of an information clearinghouse that focuses on farmworkers and farmworker housing development, and provides technical assistance, could be very beneficial to housing providers, particularly smaller, non-profit entities with limited staffing resources. Establishing a forum which brings farmworker stakeholders and public sectors together, either through regular meetings or an annual conference that specifically includes public sector entities and agriculture industry leaders should be considered. Finally, development of a farmworker development and financing manual/handbook similar to that developed in Oregon (see Oregon case study) should be considered.
- 8.) Continue to Monitor Farmworker Mobility Patterns, Demographics, Agricultural Trends, and Housing Market Conditions:** Because of the unique nature of the farm labor workforce, it will be important to periodically monitor farm labor migration patterns and to survey the farmworker-designated housing stock for occupancy characteristics and trends. A re-evaluation of farmworker housing needs on a region and county level shortly after the completion of periodically released farmworker data (i.e. the 2012 Census of Agriculture that will be conducted in 2013) should be conducted on established intervals (every three years or five years are recommended).
- 9.) Consolidate Housing Program Requirements and Coordinate Funding Timelines:** One of the barriers to development that was often cited during our research and interviews was that many developers must rely upon a variety of financing resources (i.e. USDA, TDHCA and HUD) to make projects financially feasible, yet each funding source has its own set of regulations and funding cycles, which are not coordinated with other agencies for easy use. Public funding entities need to consolidate their program regulations and coordinate their funding cycles to facilitate housing development and reduce the cost and time of compliance activities. In order to assist farmworker housing providers with securing federal funding through the USDA 514/516 program, early funding commitments from the LIHTC program, for example, would help housing providers to leverage various funding sources.

R6

REPORT ITEM

PROGRAM SERVICES

April 12, 2012

Report Item

Update on the Status of the Preparation of the *State of Texas Plan for Fair Housing Choice: Analysis of Impediments*.

Background

BBC Research & Consulting, Inc. (BBC) is the vendor selected to complete the *State of Texas Plan for Fair Housing Choice: Analysis of Impediments (AI)*. Staff submits monthly Board updates on the progress of the AI based on BBC status reports and staff activities.

Highlights of activities since March include:

- Monitored the completion of the resident survey and began data analysis;
- Completed creation of stakeholder survey and made it available online;
- Continued development of stakeholder outreach list;
- Requested complaint data from HUD and Texas Workforce Commission (TWC) and began to pull legal cases;
- Continued “sundown town” research;
- Completed demographic analysis;
- Created maps to use in environmental issues analysis; and
- Participated in a conference call with Clarion Associates to discuss regulatory analysis.

During the last meeting, the Governing Board requested information regarding the resident survey conducted in February 2012, as well the definition of Minority Impacted Area that will be included in the AI:

- A “minority area” (also known as a racially/ethnically-impacted area) is any neighborhood or census tract in which:
 - 1) The percentage of households in a particular racial or ethnic minority group is at least 20 percentage points higher than the percentage of that minority group for the housing market areas;
 - 2) The total percentage of minority persons is at least 20 percentage points higher than the total percentage of all minorities in the housing market areas as a whole; or
 - 3) If a metropolitan area, the total percentage of minority persons exceeds 50 percent of its population.
- A “non-minority area” is a neighborhood or census tract with a greater than 90 percent non-minority population.
- A “mixed area” is a neighborhood or census tract that is not a non-minority or minority area.
- The “housing market area” is the region where it is likely that renters and purchasers would be drawn for a particular housing project. Generally the housing market area is the county.

Following is an excerpt from the Resident Survey Methodology to be posted on the TDHCA website and included in the final AI:

TDHCA staff approved the BBC-designed telephone survey instrument. Many of the questions had been validated in previous surveys conducted in fair housing studies across the country. Demographic questions align with the 2010 U.S. Census or the American Community Survey. New questions and attributes were specifically designed to address the barriers identified in the Phase I AI and to address HUD's most current focus on fair housing topics. Question types include binary choice, multiple choice, Likert scales, and open-ended responses. For the open-ended responses, interviewers recorded respondents' comments verbatim.

R7

REPORT ITEM
POLICY AND PUBLIC AFFAIRS
April 12, 2012

Update on the Department’s implementation of utilizing social media as a communications tool with external audiences.

STATUS REPORT

Below is a compilation of communication distribution activities designed to inform state and local officials, current and potential program administrators, interested parties, and the general public about TDHCA activities and opportunities including but not limited to:

- Board Meetings
- Public Hearings, Public Comments, Forums, Meetings
- NOFAs and Available Funding Updates
- Trainings, Workshops, Webinars, Roundtables, etc.
- Publications, Forms
- Rules, Regulations, Income Limits
- Other Items of Interest, i.e., New Info (e.g., HTC FAQs), Grand Opening Events, Office Holidays, etc.

TDHCA employs both push and pull marketing methods to its communication distribution strategies.

Push Marketing

One-way communication

- Listserv
- News releases

Pull Marketing

Two-way communications

- Twitter (*Launched 11/18/11*)
- Facebook (*Launched 12/05/11*)
- Online forums

Push Marketing

Listserv

TDHCA supports and uses a subscriber-based email distribution tool that provides direct communication from TDHCA program areas to those who select to receive related email notices.

List	Subscribers
HOME – [HP]	3,714
Housing Trust Fund – [HTF]	3,205

Housing Tax Credits – [HTC]	3,811
Consumer News & Information – [CNI]	3,559
Community Affairs – [CA]	3,368
First Time Homebuyer Program – [FTH]	3,373
Multifamily Bond – [MFB]	2,990
Multifamily Compliance – [MFC]	1,451
TDHCA Systems Notifications – [SYS]	3,482
Properties for Sale – [PFS]	133

Data as of 03/30/12

News Releases

- News releases are distributed to news media as news worthy activities occur
- News releases are posted to Twitter (and Facebook) by subject rather than as individual headlines, for example:
 - TDHCA approves \$2.8M in HOME funds on 2/16/12 to 7 communities to repair, develop single family homes. Read the news @ <http://www.tdhca.state.tx.us/ppa/press/index.htm>

Pull Marketing

Twitter

157 Tweets (*Total tweets to date since implementation*)

Percentage of Total Postings	Subject
60%	Board Meetings
9%	Public Hearings, Public Comments, Forums, Meetings
5%	NOFAs and Available Funding Updates
3%	Trainings, Workshops, Webinars, Roundtables, etc.
1%	Publications, Forms
1%	Rules, Regulations, Income Limits
21%	Other items of Interest, i.e., New Info, Grand Opening Events, Office Holidays, etc.

4 Following

TDHCA's policy is to follow only governmental entities thereby avoiding the appearance of showing favoritism or endorsement for other organizations. We currently follow:

- Texas Council for Developmental Disabilities
- Texas Legislature
- HUD News
- Energy Development

95 Followers

Data as of 03/30/12

Facebook

108 Like our page

8 Talking about our page

11 Visited our page

Data as of 03/30/12

- All TDHCA Tweets are automatically posted to Facebook

Online Forums

TDHCA employs forums to solicit input from internal and external audiences as appropriate.

Dates	Audience	Description
Aug 2011 – Oct 2011	External	Draft QAP
Oct 2011 – Nov 2011	External	Housing & Health Services Coordination Council (HHSCC) 2012-2013 Biennial Plan
Oct 2011 – Dec 2011	Internal	Reorganization
Nov 2011 - Dec 2011	External	Texas Interagency Council for the Homeless (TICH) Strategic Plan
Dec 2011	External	Comment on Board Comments
Early 2012	External	Public Comment Policy

R8

TDHCA Outreach Activities, March 2012

A compilation of activities designed to increase the awareness of TDHCA programs and services or increase the visibility of the Department among key stakeholder groups and the general public

Event	Location	Date	Division	Purpose
Fort Bend CORPS Meeting	Missouri City	March 1	Board, Executive	Participant
Houston Housing Authority Meeting	Sugar Land	March 1	Board, Executive	Participant
First Thursday Income Eligibility Training	Austin	March 1	Compliance & Asset Oversight	Training
Housing & Health Services Coordination Quarterly Council (HHSCC)/ Meeting	Austin	March 5	Housing Resource Center	Participant
Bipartisan Policy Center – Regional Housing Forum	San Antonio	March 5-6	Housing Resource Center	Participant
Texas Association of Community Development Corp. Conference	Houston	March 5-6	Board, Executive, Public Affairs	Remarks, Exhibitor
HOME HRA Technical Assistance Meeting/Combined Community Action	Austin	March 5-6	HOME	Technical Assistance
Amy Young Barrier Removal Program Admin Workshop	Houston	March 6	Housing Trust Fund	Training
2012 Emergency Solutions Grant Program NOFA Workshop	Austin	March 6	Community Affairs	Training
Substantial Amendments to 2011/2012 State of Texas Consolidated Plan-One Year Action Plan Public Hearing	Austin	March 6	Community Affairs	Public Hearing
HHCC/Service Committee	Austin	March 14	Housing Resource Center	Participant
Rule Amendments to CEAP/TAC	Austin	March 14	Community Affairs	Public Hearing
CMS Real Choice – 811 Team Meeting	Austin	March 20	Housing Resource Center	Participant
HOME HRA/City of McKinney Technical Assistance Visit	McKinney	March 20	HOME	Technical Assistance
HOME/HRA Implementation Workshop	McKinney	March 21	HOME	Training
First Thursday Income Eligibility Training	Houston	March 20	Compliance & Asset Oversight	Training
Housing Tax Credit Training Class	Houston	March 21	Compliance & Asset Oversight	Training
HOME HRA/City of Daingerfield Technical Assistance Visit	Daingerfield	March 22	HOME	Technical Assistance
MCC Training/AmeriPro Funding	Houston	March 21	Home Ownership	Training
Lender Visit/Cornerstone Mortgage	Houston	March 21	Home Ownership	Participant
HHSCC/Housing Committee	Austin	March 21	Housing Resource Center	Participant
Disability Advisory Committee	Austin	March 22	Housing Resource Center	Participant
MCC Webinar/Envoy Mortgage	Austin	March 22	Home Ownership	Training
TAR United Texas Course/San Antonio Board of Realtors	San Antonio	March 26	Home Ownership	Training
HOME CFD-HBA-HRA-TBRA Technical Assistance Visit/Community Resource Group	Rio Grande City	March 26-27	HOME	Technical Assistance
Region IV and VI HHS-HUD Housing Capacity Building Initiative for Community Living	Dallas	March 27-28	Housing Resource Center	Participant
HHSCC/Housing Committee	Austin	March 28	Housing Resource Center	Participant

Event	Location	Date	Division	Purpose
HOME CFD-HBA-HRA-TBRA Technical Assistance Visit/Starr County Self Help Center	Rio Grande City	March 28	HOME	Technical Assistance
HOME CFD-HBA-HRA-TBRA Technical Assistance Visit/Willacy County	Raymondville	March 29- 30	HOME	Technical Assistance

Internet Postings of Note, March 2012

A list of new or noteworthy documents posted to the Department's Web site

Underwriting Reports/Recent Postings — *listing REA reports in rolling three-month increments; separate file from 2011 9% Housing Tax Credit Underwriting Reports:*

www.tdhca.state.tx.us/rea/index.htm

2012 Emergency Solutions Grant Program NOFA and Application — *providing information to interested parties regarding application process and workshop information, date, and location:*

www.tdhca.state.tx.us/community-services/esgp/nofas.htm

Foreclosure Data Collection Public Hearing — *providing opportunity for interested parties to comment on proposed new rule relating to the collection of foreclosure data:*

www.tdhca.state.tx.us/housing-center/foreclosure-data.htm

9% HTC Submission Log — *detailing applications competing for Housing Tax Credits in the 2012 allocation cycle:*

www.tdhca.state.tx.us/multifamily/htc/index.htm

HOME MF Submission Log — *listing applications seeking funding for multifamily rental developments through the HOME Program, including those seeking to layer funds with Housing Tax Credits:*

www.tdhca.state.tx.us/home-division/mf-rental.htm

Updated Regional Allocation Formula — *detailing estimated regional and at-risk funding amounts for the 2012 Housing Tax Credit cycle:*

www.tdhca.state.tx.us/multifamily/applications.htm

Quantifiable Community Participation Letters for 2012 Competitive HTC Cycle — *reflecting letters of opposition or support from eligible neighborhood organizations regarding specific applications seeking Housing Tax Credits:*

www.tdhca.state.tx.us/multifamily/htc/index.htm

2012 Community Services Block Grant Program State Discretionary Funding NOFA — *detailing information to interested parties seeking funding for training/technical assistance or meeting needs of unique populations:*

www.tdhca.state.tx.us/community-services/csb/nofas.htm

2012 State of Texas Low Income Housing Plan and Annual Report — *providing an overview of statewide housing needs and reports on the administration, funding levels, performance measures and the distribution of TDHCA's resources from the previous fiscal year:*

www.tdhca.state.tx.us/housing-center/pubs.htm#slihpr

2012 9% HTC Applications - Individually Imaged — *allowing developers and general public to view full applications for tax credits in the 2012 Competitive Cycle:*

www.tdhca.state.tx.us/multifamily/htc/index.htm

Covered HUD-Community Planning & Development (CPD) Programs — *providing updated links to federal resources relating to Davis-Bacon requirements and the HOME, Neighborhood Stabilization, and Housing Tax Credit Assistance programs:*

www.tdhca.state.tx.us/program-services/davis-bacon/hud.htm

Proposed Department Rule 1.25 Right of First Refusal — *reflecting significant proposed changes to rules providing incentives for owners of properties financed with Housing Tax Credits to offer a right of first refusal to nonprofit organizations:*

www.tdhca.state.tx.us/pmcomp/manuals-rules-htc.htm

Draft 2012 State of Texas Consolidated Plan Annual Performance Report – Reporting on Program Year 2011 — *evaluating accomplishments achieved through HOME, ESGP, CDBG, and HOPWA over the past program year:*

www.tdhca.state.tx.us/housing-center/pubs.htm#consolidated

NSP1 Quarterly Performance Report – Second Quarter 2011 — *detailing program dollars obligated, drawn-down, received, and project summaries for the second quarter of PY 2011:*

www.tdhca.state.tx.us/nsp/index.htm

2012 Internal Audit Report – TDHCA Website Management — *detailing the evaluation of the Department's website maintenance and its processing and completion of web projects:*

www.tdhca.state.tx.us/internal-audit.htm

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BOARD ACTION REQUEST

EXECUTIVE

April 12, 2012

Presentation, Discussion, and Possible Action regarding approval of proposed organizational structure.

RECOMMENDED ACTION

Approve organizational changes as presented.

RESOLVED, that the organizational structure of the Department presented to this meeting is hereby approved.

BACKGROUND

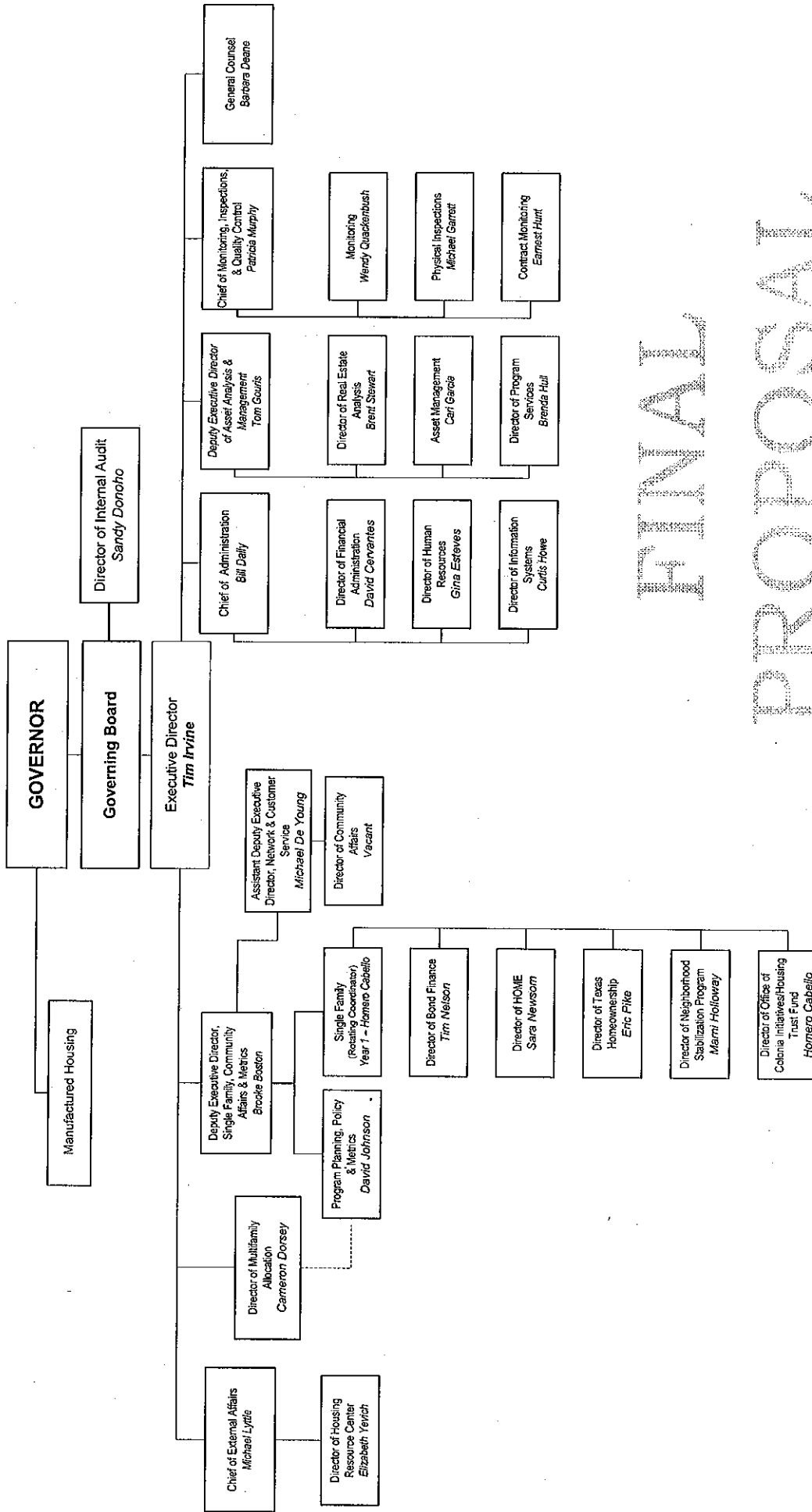
Staff has undertaken a focused review of its organizational structure and self-organized into key teams to assess and make recommendations. This process has been maximally transparent, including use of internal discussion boards to solicit ideas and comments from all employees. The principles guiding this effort and the structural improvements under consideration have been discussed in detail with key oversight offices including the Governor, the Lt. Governor, the Speaker, our Senate and House oversight committees, and a number of other members. The overarching principles include:

- The Department's three broad areas of programmatic activity are single family, multifamily, and community affairs programs. By organizing programmatic activity along those lines the Department can improve the coordination of different funding sources that can be used to address similar (or even identical) activities and thereby make its offering more effective.
- The Department should seek to work more closely with other state government entities such as the State Affordable Housing Corporation, the Veterans Commission, the General Land Office, and others.
- Until such time as its systems are fully capable of handling further consolidation the Divisional structure, especially for programmatic funding sources, should be preserved.
- Single family activity conducted under the Housing Trust Fund/OCI, HOME Single Family, NSP Single Family, Bond Finance, and First Time Homebuyer divisions should be closely coordinated. This is handled under the coordinating role of a rotating director of one of those divisions. This group of single family activity will also have task forces to accomplish:
 - A consolidation of single family rules, policies and processes to ensure to the fullest extent possible consistency and commonality among single family programs and the elimination of unneeded regulatory requirements;

- Development and implementation of common forms to avoid duplication and inconsistency; and
- Development and implementation of a single closing process for single family loans to ensure not only maximum uniformity and consistency but enhanced speed and accuracy of delivery.
- The responsibility for monitoring all programs, including community affairs programs, will now reside with a single motoring area. This area will also develop a quality control function for single family assets.
- A full array of the critical functions that support asset allocation and administration – Real Estate Analysis, Program, Services, and Asset Management – will be combined in a single area. This will promote more efficient management of matters like amendments and changes in control will continue the effort of making asset management more robust, including capacity to resolve troubled assets, and will maintain Program Services in an appropriately independent structure.

An entirely new function will be added to oversee the development and implementation of programmatic metrics. This will provide tools that will be valuable in determining programs' objectives and tracking measureable success in achieving those objectives. This information will be used in developing strategies for activity level planning.

TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS



FINAL PROPOSAL

2b

**REPORT ITEM
EXECUTIVE DIVISION
APRIL 12, 2012**

REPORT ITEM

Report on establishment of Board Committees

In accordance with TEX. GOV'T. CODE, §2306.056 the Chair has appointed three new committees and redesignated the chair for the Audit Committee. The letter taking these actions is attached.

Loan Policy Committee

Section 2306 of the Texas Government Code provides for the Texas Department of Housing and Community Affairs (“TDHCA” or “the Department”) to finance the acquisition, rehabilitation, development or redevelopment of affordable housing. Section 2306, also authorizes the Board to establish policy for the terms and conditions of Department loans and other funding mechanisms. A loan policy will provide the consistent structure under which the Department will harmonize a number of objectives including programmatic compliance, risk mitigation, and efficient use of limited resources.

The Board has previously adopted numerous rules for specific programs and activities that address a number of policy issues, but developing an overarching and comprehensive loan policy will guide the updating of rules and administration of loan programs, avoiding the lack of clarity and consistency that can occur when policy issues are embedded in a variety of places.

Principal repayment, for example, is a policy objective that is generally not consistent across programs. In some instances, principal repayment is scheduled and non-repayment is a default while in other cases repayment is contingent on available cash flow. Other times, repayment is deferred and forgiven over time based on non-monetary performance required under the terms of financing. If this were addressed as policy it could clearly delineate the considerations for different lending situations that might lead to an understandable reason why one loan might have one structure and another loan a different structure.

A loan policy should state the policy reasons which will drive critical decision factors in determining the structuring of Department funds. Providing financing in the form of truly repayable loans, for example, provides the Department with principal funds to redistribute to additional new developments and thereby expand the availability of affordable housing and interest or program income funds to pay for the Department’s cost of operations to meet its ongoing responsibilities. In addition, providing funds in the form of a loan is consistent with conventional private markets and allows the funding mechanism to capture some of the benefit that exists when natural market forces are in play. The rigors of a loan structure may motivate a development owner to maintain the property better to maximize rents and operate the property more efficiently.

On the other hand “cash flow” lending provides a type of financial support that may be appropriate in limited instances, and deferred forgivable debt may also have an appropriate role, providing for recapture options during affordability periods but, at the end of the term, effectively becoming a grant.

A comprehensive loan policy should also outline and provide guidance on basic terms and conditions such as amortization, maturity, construction lending provisions, interest rates, and other repayment provisions. Additionally, the loan policy should provide guidance on the typically required form and provisions for security and include lien position, subordination rights, guarantees and other recourse or collateral, escrows, reserves, fees and restrictive covenants. It should also include provisions for latitude on these requirements as well as clear guidance on where such latitude can and/or should be provided. A loan policy may also address the administrative management and servicing of loans including portfolio dispositions.

In order to develop a comprehensive loan policy a Loan Policy Committee of the Board has been established. The committee will work with staff over the next couple of months to hold public hearings and to evaluate and discuss the Department’s loan programs and create a loan policy for the full Board to consider.

Specific loan policy discussion topics would likely include, but not necessarily be limited to: Purpose of policy; Definitions including for Grant and Loan; Loan products (Construction loans, Permanent loans); Loan structure including Amortization term, Maturity term, Interest rates, Other conditions; Security requirements including Collateral, Guarantees and Other recourse; Lien position and subordination; Loan documentation including Documentation needed for approval and Documentation required to evidence the loan; Approval process and role of review committee; and Re-evaluation/ restructuring provisions.

Strategic Planning Committee

As the Department prepares to enter another strategic planning and legislative appropriations request cycle there will be significant policy issues that will require the detailed attention that merit formation of a committee. This committee will work closely with management to understand in detail the strategic plan that is developed, assessing how it fits with the state’s strategic objectives and the ways that it will position the Department to execute on its statutory charges in the face of the financial challenges of the ramping down of ARRA and moving into a period of likely reductions in other federal funding sources. It will also assess and make recommendations to the Board as a whole regarding such important matters as any exceptional items and the technology budget. These activities will also involve engagement on the Sunset process and any Sunset recommendations that may raise strategic or budgetary issues.

Strategic planning is a long-term, iterative, and future-oriented process of assessment, goal setting, and decision-making. It includes a multiyear view of objectives and strategies for the accomplishment of state agency goals. Clearly defined results provide feedback that leads to program performance that influences future planning, resource allocation, and operating decisions. The strategic planning process incorporates and sets direction for all agency operations.

In 1991, Texas initiated a comprehensive process of strategic planning for all state agencies within the executive branch of government. House Bill 2009, Seventy-second Legislature, Regular Session, 1991, authorized the process. This legislation established the requirements and time frame under which Texas completed its first planning cycle. Then in 1993, the Legislature amended Chapter 2056 of the Texas Government Code to consolidate certain planning requirements and to change the required planning horizon from six years to five years (i.e., the second year of the current biennium and the next two biennia). Agencies must complete and submit plans every two years; however, they may engage in planning on a continual basis and may adjust plans internally as changing conditions dictate.

Agencies must complete two key documents as part of the biennial strategic planning process: the five-year Strategic Plan and the two-year Legislative Appropriations Request (LAR). An agency's Strategic Plan is a formal document that communicates its goals, directions, and outcomes to various audiences, including the Governor and the Legislature, client and constituency groups, the public, and the agency's employees. A subcomponent of the Strategic Plan is the Customer Service Report, which inventories and analyzes the results of a customer satisfaction assessment. An agency's Legislative Appropriations Request is the bridge between the development of the agency's Strategic Plan and the General Appropriations Act (GAA) by providing a fiscal expression of the agency's priorities. This fiscal expression includes quantitative information such as projected performance, projected cost, and methods of financing proposed for state services. In addition, information is provided related to narrative language (riders) that is integral to preparation of the GAA.

Both the Strategic Plan and the LAR contain information technology (IT) planning components. In the Strategic Plan, TDHCA describes technological capital asset strengths and weaknesses, IT needs and prioritization, the impact of technology developments and projects on agency operations, and the alignment of IT initiatives with agency goals. Significant IT activities highlighted in the FY 2011-2015 Strategic Plan (submitted in August 2010) include 1) maintaining and enhancing programmatic and financial systems to help meet affordable housing, community assistance, and ARRA goals; 2) using the agency website to help meet the information and assistance goal; 3) maintaining and enhancing monitoring systems to help with the goal of ensuring compliance; 4) deploying a new Manufactured Housing System to assist with the goal of regulating the manufactured housing industry; and 5) improving information security in support of all agency goals.

Executive staff members have begun the initial stages of this planning process, pulling together staff from External Affairs, Housing Resource Center, Financial Administration and Information Systems divisions to discuss preparation of the State Fiscal Year (SFY) 2013-2017 Strategic Plan and the SFY 2014-2015 LAR. The following dates are the major tasks and targeted milestones for the strategic planning process:

Strategic Plan

- **March/April 2012:** Instructions for Preparing and Submitting Agency Strategic Plans for SFY 2013–17 are issued by the Governor’s Office of Budget, Planning and Policy and the Legislative Budget Board.
- **April – May 2012:** Department staff draft the agency’s Strategic Plan. This Strategic Plan is routed to all Division Directors for input and feedback and is eventually routed to Executive staff for recommended approval by the TDHCA Board.
- **June 1, 2012:** A component of the Strategic Plan, the Customer Service Report is submitted to the Governor’s Office of Budget, Planning and Policy and the Legislative Budget Board.
- **June 14, 2012:** The 2013-2017 Strategic Plan is submitted to the TDHCA Board for approval. The Customer Service Report is provided to the Board as a report item.
- **July 2, 2012:** Due date for submission of agency Strategic Plans for SFY 2013–2017 to the Governor’s Office of Budget, Planning and Policy and the Legislative Budget Board.

Legislative Appropriations Request

- **May 2012:** Instructions for preparing and submitting agency Legislative Appropriations Requests for the 2014–15 biennium are issued by the Governor’s Office of Budget, Planning and Policy and the Legislative Budget Board.
- **May – July 2012:** Department staff draft the agency’s LAR. This draft is routed to all Division Directors for input and feedback and is eventually routed to Executive staff for recommended approval by the TDHCA Board.
- **July 26, 2012:** 2014-2015 LAR, exceptional items, rider changes and mission statement is submitted to the TDHCA Board for approval.
- **Mid-August 2012:** Due date for submission of agency LAR for SFY 2014–2015 to the Governor’s Office of Budget, Planning and Policy and the Legislative Budget Board.



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Rick Perry
GOVERNOR

BOARD MEMBERS
J. Paul Oxer, *Chair*
Tom Gann, *Vice Chair*
Leslie Bingham Escareño
Lowell A. Keig
J. Mark. McWatters
Juan S. Muñoz, Ph.D

April 2, 2012

Writer's direct dial (832) 532-7852
Email: jpoxer@comcast.net

Dear fellow members of the Governing Board:

Several significant new challenges will require increased Governing Board involvement. These include (1) addressing the requirements of the *Inclusive Communities Project v. Texas Department of Housing and Community Affairs, et al.* litigation, (2) the development of the Department's new Strategic Plan and Legislative Appropriations Request, and (3) the review and updating of the Department's loan policies, both single family and multifamily. I have discussed these matters at length with Tim Irvine, and he and his team strongly endorse the greater involvement of the Governing Board in these important policy issues. In accordance with the provisions of Tex. Gov't. Code, §2306.056, the Chair is authorized to appoint committees composed of Board members to carry out the Board's duties. Accordingly I am hereby creating three new committees as set forth below and designating a new chair for the Audit Committee.

Committee to advise on the *Inclusive Communities Project v. Texas Department of Housing and Community Affairs, et al.* litigation

This committee will initially be chaired by Mark McWatters and will have Lowell Keig and me as members. It will serve as a resource to Department management in developing the court-ordered remedial plan and handling attendant matters. This process will involve substantive discussions, but any recommendations developed by staff regarding a remedial plan will be brought back to the full board for review and approval. The Department's General Counsel, Barbara Deane, will serve as Secretary of the Committee.

Strategic Planning and Budgeting Committee

This committee will be chaired by Tom Gann and will have Dr. Juan Muñoz and me as members. It will generally review, provide input, and make recommendations to the full Governing Board with respect to the development of Strategic Plans, legislative appropriations requests, and annual operating budgets. The Department's Deputy Executive Director for Single Family, Community Affairs, and Metrics, Brooke Boston, will serve as the Secretary of the Committee.

Loan Policy Committee

This committee will be chaired by Dr. Juan Muñoz and will have Leslie Bingham-Escareño and Mark McWatters as members. It will generally review, provide input, and make recommendations to the full Governing Board with respect to the development of policies for the awarding of single family loan funds and multifamily funds. The Department's Deputy Executive Director for Asset Management, Real Estate Analysis, and Program Services, Tom Gouris, will serve as the Secretary of the Committee.

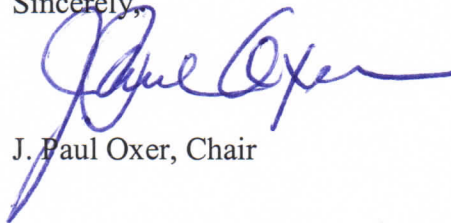
Audit Committee

This committee will now be chaired by Lowell Keig and will have as members Leslie Bingham Escareño and Tom Gann. Sandy Donoho, the Director of Internal Audit, will serve as Secretary of the Committee.

Although none of these committees constitute a quorum of the Governing Board or has any authority to take any action on behalf of the Board, all but the ICP pending litigation committee will voluntarily conduct their business as posted, public meetings, and are expected to meet at least quarterly.

These committee assignments take immediate effect. Please feel free to call me if you have any questions or comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Paul Oxe", written over the typed name.

J. Paul Oxe, Chair

cc: Brooke Boston
Barbara Deane
Sandy Donoho
Tom Gouris
Tim Irvine

3a

BOARD ACTION REQUEST

BOND FINANCE DIVISION

April 12, 2012

Presentation, Discussion and Possible Action on Resolution 12-022 authorizing the Department's Investment Policy.

RECOMMENDED ACTION

Adopt the Investment Policy.

WHEREAS, the Governing Board of the Department (the "Board") desires to review the Department's Investment Policy, and the Board has found the Investment Policy in the form presented to the Board to be satisfactory and in proper form and in compliance with the Public Funds Investment Act, Chapter 2256, Texas Government Code, as amended (the "Public Funds Investment Act");

WHEREAS, the Director of Bond Finance and the Director of Financial Administration review this Policy and the Board approves this Policy on an annual basis;

RESOLVED, that Resolution No. 12-022 and the Department's Investment Policy are hereby adopted in the form presented to this meeting.

BACKGROUND

The Public Funds Investment Act (PFIA) requires State Agency Boards, with investments, to develop and maintain an Investment Policy on an annual basis that outlines the purpose of investments, the types of permissible investments, designation of an Investment Officer, selection of a reporting format and frequency, and required training for both Investment Officers and Board Members. It also sets out ethics and conflict of interest rules to which the Department would have to adhere. It requires the investment professionals to acknowledge their receipt of the policy in order to do business with the Department. TDHCA Investment Officers are David Cervantes, Director of Financial Administration, and Tim Nelson, Director of Bond Finance. TDHCA staff has reviewed the current investment policy that was approved on March 3, 2011. Changes include:

- On-going monitoring of the rating on all investments
- Streamlining of the monitoring and approval of the broker/dealer and financial institutions
- Clarifications regarding the investment policy not covering bond trust indenture investments

RESOLUTION NO. 12-022

RESOLUTION OF THE GOVERNING BOARD APPROVING THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS INVESTMENT POLICY

WHEREAS, the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas (the "Department"), was created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended (together with other laws of the State applicable to the Department, collectively, the "Act"); and

WHEREAS, the Governing Board of the Department (the "Board") has been presented with a revised Investment Policy that (i) provides for ongoing monitoring of the rating on all investments subject to the Investment Policy, (ii) authorizes the use of the list of authorized broker/dealers and financial dealers maintained by the State Comptroller as the Department's list of approved broker/dealers and financial institutions authorized to provide services and (iii) clarifies that the Investment Policy does not apply to investments that are held under a trust indenture for the benefit of bondholders; and

WHEREAS, the Board desires to approve the Department's Investment Policy in the form presented to the Board;

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

Section -- 1 Approval of the Department's Investment Policy. The Investment Policy in the form presented to the Board is hereby authorized and approved.

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

[Execution page follows]

PASSED AND APPROVED this 12th day of April, 2012.

Chair, Governing Board

ATTEST:

Secretary to the Board

(SEAL)

**TEXAS DEPARTMENT OF HOUSING
AND COMMUNITY AFFAIRS**

INVESTMENT POLICY

As presented to the Board on ~~March 6~~April 12, 2012

2012~~2011~~

~~March 6~~April 12, 2012

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

INVESTMENT POLICY

I. POLICY

It is the policy of the Texas Department of Housing and Community Affairs (the "Department") to invest public funds in a manner which will provide by priority the following objectives:

1. safety of principal;
2. sufficient liquidity to meet Department cash flow needs;
3. a market rate of return for the risk assumed; and
4. conformance to all applicable state statutes governing the investment of public funds including the Department's enabling legislation, Texas Government Code, Section 2306, Texas Government Code, Section 2263, Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers, and specifically Texas Government Code, Section 2256, the Public Funds Investment Act (the "Act").

II. SCOPE

This investment policy applies to all investment assets, excluding funds invested under a trust indenture, of the Department. These funds are accounted for in the Department's Comprehensive Annual Financial Report and include the General Fund, Special Revenue Fund, Trust and Agency Fund, and Enterprise Fund.

This investment policy does not apply to investment assets that are held under any trust indenture for the benefit of bondholders. Each trust indenture sets-forth the authorized investments for that particular trust indenture.

This investment policy does not apply to hedges, which include but are not limited to, interest rate swaps, caps, floors, futures contracts, forward contracts, etc., that satisfy the eligibility requirements of a "qualified hedge" as defined by Section 1.148-4(h)(2) of the Internal Revenue Code.

The Department has created and adopted a separate Interest Rate Swap Policy for guidance regarding the use and management of interest rate swaps and similar derivative transactions.

III. PRUDENCE

Investments shall be made with judgment and care under prevailing circumstances ~~then prevailing~~ which persons of prudence, discretion and intelligence would exercise in the management of their own affairs; not for speculation, but for investment, considering the probable safety and liquidity of ~~their~~ capital as well as the probable income to be derived.

| The standard of prudence to be used by the investment officers named herein shall be the “prudent person” standard and shall be applied in the context of managing an overall portfolio. An investment officer acting in accordance with the investment policy and written procedures and exercising due diligence shall be relieved of personal responsibility for an individual security’s credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

|

IV. OBJECTIVES

The following are the primary objectives of investment activities in order of priority:

1. Safety. Preservation and safety of principal is the foremost objective of the investment program. Investments of the Department shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. In accordance with Section 2256.005(d) of the Act, the first priority is the suitability of the investment. The objective will be to mitigate credit risk and interest rate risk. To achieve this objective, diversification is required so that potential losses on individual securities do not exceed the income generated from the remainder of the portfolio.
 - A. Credit risk is the risk of loss due to the failure of the security issuer or backer, and may be mitigated by:
 - limiting investments to the safest types of securities;
 - pre-qualifying the financial institutions, broker/dealers, intermediaries, and advisors with whom the Department will do business; and
 - diversifying the investment portfolio so that potential losses on individual securities will be minimized.
 - B. Interest rate risk is the risk that the market value of securities in the portfolio will fall due to changes in general interest rates, and may be mitigated by:
 - structuring the investment portfolio so that securities mature to meet cash requirements for ongoing operations, thereby avoiding the need to sell securities on the open market prior to maturity, and
 - investing operating funds primarily in shorter-term securities.
2. Liquidity. The Department's investment portfolio shall remain sufficiently liquid to meet all reasonably anticipated cash flow needs. This is accomplished by structuring the portfolio so that securities mature concurrent with cash needs to meet anticipated demands. Since all possible cash demands cannot be anticipated, the portfolio should consist largely of securities with active secondary or resale markets.
3. Yield. The Department's investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into account the investment risk constraints and cash flow needs of the Department. Return on investment for short-term operating funds is of less importance compared to the safety and liquidity objectives described above. The core of investments is limited to relatively low-risk securities in anticipation of earning a fair return relative to the risk being assumed. Securities shall not be sold prior to maturity with the following exceptions:
 - A declining credit security could be sold early to minimize loss of principal;
 - A security swap would improve the quality, yield, or target duration in the portfolio; or
 - Liquidity needs of the portfolio require that the security be sold.

V. DELEGATION -OF -AUTHORITY

The Board establishes investment policy and objectives, obtains expert advice and assistance with respect to its actions as is necessary to exercise its responsibilities prudently, and monitors the actions of staff and advisors to ensure compliance with its policy. It is the Board’s intention that this policy be carried out by those persons who are qualified and competent in their area of expertise.

Authority to manage the Department’s investment program is granted under the provisions of Texas Government Code, Section 2306.052(b) (4) and (5) to the Director of the Department, (“Executive Director”). Responsibility for the operation of the investment program is hereby delegated by the Executive Director to the Director of Bond Finance and the Director of Financial Administration acting in those capacities (collectively the “Investment Officer”) who shall carry out established written procedures and internal controls for the operation of the investment program consistent with this investment policy. The Investment Officer shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities of subordinate officials. Procedures should include reference to safekeeping, delivery vs. payment, investment accounting, repurchase agreements, wire transfer agreements, collateral/depository agreements and banking service contracts. Such procedures may include explicit delegation of authority to persons responsible for investment transactions. No person may engage in an investment transaction except as provided under the terms of this policy and the procedures established by the Investment Officer.

VI. ETHICS-AND -CONFLICTS -OF -INTEREST

1. Department employees and Board members must comply with all applicable laws, and should specifically be aware of the following statutes:
 - Texas Government Code, Section 825.211, *Certain Interests in Loans, Investments or Contracts Prohibited*
 - Texas Government Code, Section 572.051, *Standards of Conduct for Public Servants*
 - Texas Government Code, Sections 553.001-003, *Disclosure by Public Servants of Interest in Property Being Acquired by Government*
 - Texas Government Code, Section 552.352, *Distribution of Confidential Information*
 - Texas Government Code, Section 572.054, *Representation by Former Officer or Employee of Regulatory Agency Restricted*
 - Texas Penal Code, Chapter 36, *Bribery, Corrupt Influence and Gifts to Public Servants*
 - Texas Penal Code, Chapter 39, *Abuse of Office, Official Misconduct.*

The omission of any applicable statute from this list does not excuse violation of its provisions.

2. Department employees and Board members must be honest in the exercise of their duties and must not take actions which will discredit the Department.
3. Department employees and Board members should be loyal to the interest of the Department to the extent that such loyalty is not in conflict with other duties which legally have priority, and should avoid personal, employment or business relationships that create conflicts of interest.
 - Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions.

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- Officers and employees shall disclose to the Executive Director any material interests in financial institutions with which they conduct business. They shall further disclose any personal financial/investment positions that could be related to the performance of the Department's investment portfolio.
- Officers and employees shall refrain from undertaking personal investment transactions with the same individuals with whom business is conducted on behalf of the Department. Specifically, no employee of the Department is to:

- * Accept or solicit any gift, favor, or service that might reasonably tend to influence the employee in the discharge of the employee's official duties or that the employee knows or should know is being offered him/her with the intent to influence the employee's official conduct;
- * Accept other employment or engage in any business or professional activity in which the employee might reasonably expect would require or induce him/her to disclose confidential information acquired by reason of his/her official position;
- * Accept other employment or compensation which could reasonably be expected to impair the officer's or employee's judgment in the performance of his/her official duties;

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(An employee whose employment is involved in a competitive program of the Department must immediately disclose the acceptance of another job in the same field. The disclosure must be made to either the employee's immediate supervisor or to the Executive Director. The Executive Director must be notified in all cases. Failure to make the required disclosure may result in the employee's immediate termination from the Department.)

- * Make personal investments which could reasonably be expected to create a substantial conflict between the officer's or employee's private interest and the public interest; and

(A Department employee may not purchase Department bonds in the open secondary market for municipal securities.)

- * Intentionally or knowingly solicit, accept or agree to accept any benefit for having exercised the employee's official powers or performed his/her official duties in favor of another.

4. Department employees and Board members may not use their relationship with the Department to seek or obtain personal gain beyond agreed compensation and/or any properly authorized expense reimbursement. This should not be interpreted to forbid the use of the Department as a reference or the communication to others of the fact that a relationship with the Department exists, provided that no misrepresentation is involved.
5. Department employees and Board members who have a personal business relationship with a business organization offering to engage in an investment transaction with the Department shall file a statement disclosing that personal business interest. An individual who is related within the second degree by affinity or consanguinity to an individual seeking to sell an investment to the Department

shall file a statement disclosing that relationship. A statement required under this section must be filed with the Texas Ethics Commission and the Department's Board. For purposes of this policy, an individual has a personal business relationship with a business organization if:

- the individual owns 10 percent or more of the voting stock or shares of the business organization or owns \$5,000 or more of the fair market value of the business organization;
- funds received by the Investment Officer from the business organization exceed 10 percent of the individual's gross income from the previous year; or
- the individual has acquired from the business organization during the previous year investments with a book value of \$2,500 or more for the personal account of the individual.

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VII. AUTHORIZED FINANCIAL DEALERS AND INSTITUTIONS

The Department (in conjunction with the State Comptroller) will maintain a list of financial institutions authorized to provide investment services. In addition, a list will also be maintained of approved security broker/dealers selected by credit worthiness ~~(\$10,000,000 minimum capital requirement and at least five years of operation).~~ These may include "primary" dealers or regional dealers that qualify under Securities and Exchange Commission Rule 15C3-1 (uniform net capital rule). No public deposit shall be made except in a qualified public depository as established by state law.

~~The Department will use as its authorized list of broker/dealers and financial institutions any broker/dealer or financial institution that is authorized to do business with the State Comptroller. All financial institutions and broker/dealers who desire to become qualified bidders for investment transactions must supply the following, as appropriate:~~

- ~~• audited financial statements;~~
- ~~• proof of National Association of Securities Dealers (NASD) certification;~~
- ~~• proof of state registration;~~
- ~~• completed broker/dealer questionnaire; and~~
- ~~• certification of having read the Department's investment policy and depository contracts.~~

~~An annual review of the financial condition and registration of qualified bidders will be conducted by the Investment Officer. A current audited financial statement is required to be on file for each financial institution and broker/dealer in which the Department invests.~~

With respect to investments provided in connection with the issuance of bonds, the above requirements will be deemed met if the investment provider is acceptable to minimum credit ratings by rating agencies and/or by the bond insurer/credit enhancer, if applicable, and if the investment meets the requirements of the applicable bond trust indenture. A broker, engaged solely to secure a qualified investment referred to in this paragraph on behalf of the Department, which will not be providing an investment instrument shall not be subject to the above requirements, and may only be engaged if approved by the Board.

VIII. ETHICS AND DISCLOSURE REQUIREMENTS FOR OUTSIDE FINANCIAL ADVISORS AND SERVICE PROVIDERS

During the 78th Legislature, Regular Session, the Texas Legislature passed *Chapter 2263., Ethics And Disclosure Requirements For Outside Financial Advisors And Service Providers* ("Chapter 2263"). Chapter 2263, under Senate Bill 1059, requires certain actions by governing boards of state entities

involved in the management and investment of state funds and adds disclosure requirements for outside financial advisors and service providers. Chapter 2263 became effective September 1, 2003. Each state governmental entity required to adopt rules under Chapter 2263, Government Code, as added by this Act, must have adopted its initial rules in time for the rules to take effect not later than January 1, 2004.

Applicability. Chapter 2263 applies in connection with the management or investment of any state funds managed or invested:

- (1) under the Texas Constitution or other law, including Chapter 404, State Treasury Operations of Comptroller, and Chapter 2256, Public Funds Investment; and
- (2) by or for:
 - (A) a public retirement system as defined by Section 802.001 that provides service retirement, disability retirement, or death benefits for officers or employees of the state;
 - (B) an institution of higher education as defined by Section 61.003, Education Code; or
 - (C) another entity that is part of state government and that manages or invests state funds or for which state funds are managed or invested.

Chapter 2263 applies in connection with the management or investment of state funds without regard to whether the funds are held in the state treasury.

Chapter 2263 does not apply to or in connection with a state governmental entity that does not manage or invest state funds and for which state funds are managed or invested only by the comptroller.

Definition. With respect to this Chapter 2263, "financial advisor or service provider" includes a person or business entity who acts as a financial advisor, financial consultant, money or investment manager, or broker.

Construction With Other Law. To the extent of a conflict between Chapter 2263 and another law, the law that imposes a stricter ethics or disclosure requirement controls.

Ethics Requirements For Outside Financial Advisors Or Service Providers. The governing body of a state governmental entity by rule shall adopt standards of conduct applicable to financial advisors or service providers who are not employees of the state governmental entity, who provide financial services to the state governmental entity or advise the state governmental entity or a member of the governing body of the state governmental entity in connection with the management or investment of state funds, and who:

- (1) may reasonably be expected to receive, directly or indirectly, more than \$10,000 in compensation from the entity during a fiscal year; or
- (2) render important investment or funds management advice to the entity or a member of the governing body of the entity, as determined by the governing body.

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A contract under which a financial advisor or service provider renders financial services or advice to a state governmental entity or other person as described immediately above, in regard to compensation or

duties, is voidable by the state governmental entity if the financial advisor or service provider violates a standard of conduct adopted under this section.

In addition to the disclosures required by Chapter 2263 and described below, the Department will rely upon financial advisors and service providers' submission of an Acknowledgement of Receipt of Investment Policy and Certificate of Compliance with the Public Funds Investment Act forms to evidence compliance with the Department's code of conduct and procedures as related to investments.

Disclosure Requirements For Outside Financial Advisor Or Service Provider. A financial advisor or service provider described by Section 2263.004 shall disclose in writing to the administrative head of the applicable state governmental entity and to the state auditor:

- (1) any relationship the financial advisor or service provider has with any party to a transaction with the state governmental entity, other than a relationship necessary to the investment or funds management services that the financial advisor or service provider performs for the state governmental entity, if a reasonable person could expect the relationship to diminish the financial advisor's or service provider's independence of judgment in the performance of the person's responsibilities to the state governmental entity; and
- (2) all direct or indirect pecuniary interests the financial advisor or service provider has in any party to a transaction with the state governmental entity, if the transaction is connected with any financial advice or service the financial advisor or service provider provides to the state governmental entity or to a member of the governing body in connection with the management or investment of state funds.

The financial advisor or service provider shall disclose a relationship described by the immediately preceding subsections (1) or (2) without regard to whether the relationship is a direct, indirect, personal, private, commercial, or business relationship.

A financial advisor or service provider described by Section 2263.004 shall file annually a statement with the administrative head of the applicable state governmental entity and with the state auditor. The statement must disclose each relationship and pecuniary interest described by Subsection (a) or, if no relationship or pecuniary interest described by that subsection existed during the disclosure period, the statement must affirmatively state that fact.

The annual statement must be filed not later than April 15 on a form prescribed by the governmental entity, other than the state auditor, receiving the form. The statement must cover the reporting period of the previous calendar year. The state auditor shall develop and recommend a uniform form that other governmental entities receiving the form may prescribe. The Department's disclosure form is provided as Attachment "E".

The financial advisor or service provider shall promptly file a new or amended statement with the administrative head of the applicable state governmental entity and with the state auditor whenever there is new information to report related to the immediately preceding subsections (1) or (2).

Public Information. Chapter 552, Government Code, controls the extent to which information contained in a statement filed under this chapter is subject to required public disclosure or is excepted from required public disclosure.

IX. AUTHORIZED ~~AND SUITABLE INVESTMENTS~~ SUITABLE INVESTMENTS

General, Special Revenue and Trust and Agency Funds, all of which are on deposit with the State Treasury (specifically excluding Enterprise Funds), are invested by the Treasury pursuant to Texas Government Code, Section 404.024 and Article 5221(f), Subsection 13A(d) as amended relating to Manufactured Housing.

Enterprise Fund

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1. Subject to a resolution authorizing issuance of its bonds, the Department is empowered by Texas Government Code, Section 2306.173 to invest its money in bonds, obligations or other securities: or place its money in demand or time deposits, whether or not evidenced by certificates of deposit. A guaranteed investment contract is an authorized investment for bond proceeds. All bond proceeds and revenues subject to the pledge of an Indenture shall be invested in accordance with the applicable law and the provisions of the applicable indenture including "Investment Securities" as listed in such Indenture and so defined.
2. All other enterprise funds (~~non-bond proceeds~~) shall be invested pursuant to state law. The following are permitted investments for those funds pursuant to the Act:
 - A. Obligations of, or guaranteed by governmental entities:
 - Obligations of the United States or its agencies and instrumentalities.
 - Direct obligations of this state or its agencies and instrumentalities.
 - Collateralized mortgage obligations directly issued by a federal agency or instrumentality of the United States, that have a market value of not less than the principal amount of the certificates and which has a maturity that does not exceed 10 years.
 - Other obligations the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of this state or the United States or their respective agencies and instrumentalities.
 - Obligations of states, agencies, counties, cities, and other political subdivisions of any state rated as to investment quality by a nationally recognized investment rating firm not less than A or its equivalent.
 - B. A Certificate of Deposit is an authorized investment under this policy if the certificate of deposit is issued by a depository institution that has its main office or a branch office in this state and is:
 - guaranteed or insured by the Federal Deposit Insurance Department (FDIC) or its successor;
 - secured by obligations that are described in subsection 2A above, including mortgage backed securities directly issued by a federal agency or instrumentality that have a market value of not less than the principal amount of the certificates and secured by collateral as described in Section XII of this policy; and
 - secured in any other manner and amount provided by law for deposits of the Department.

In addition to the authority to invest funds in certificates of deposit noted above, an investment in certificates of deposit made in accordance with the following conditions is an authorized investment under this policy:

- the funds are invested by an investing entity through a depository institution that has its main office or a branch office in this state and that is selected by the investing entity;
- the depository institution guaranteed or insured by the Federal Deposit Insurance Department (FDIC) or its successor as selected by the investing entity arranges for the deposit of the funds in certificates of deposit in one or more federally insured depository institutions, wherever located, for the account of the investing entity;
- the full amount of the principal and accrued interest of each of the certificates of deposit is insured by the United States or an instrumentality of the United States;
- the depository institution guaranteed or insured by the Federal Deposit Insurance Department (FDIC) or its successor as selected by the investing entity acts as custodian for the investing entity with respect to the certificates of deposit issued for the account of the investing entity; and
- at the same time that the funds are deposited and the certificates of deposit are issued for the account of the investing entity, the depository institution guaranteed or insured by the Federal Deposit Insurance Department (FDIC) or its successor as selected by the investing entity receives an amount of deposits from customers of other federally insured depository institutions, wherever located, that is equal to or greater than the amount of the funds invested by the investing entity through the depository institution guaranteed or insured by the Federal Deposit Insurance Department (FDIC) or its successor.

C. A “repurchase agreement” is a simultaneous agreement to buy, hold for a specified time, and sell back at a future date obligations of the United States or its agencies and instrumentalities at a market value at the time the funds are disbursed of not less than the principal amount of the funds disbursed. The term includes a direct security repurchase agreement and a reverse security repurchase agreement. A fully collateralized repurchase agreement is an authorized investment under this policy if the repurchase agreement:

- has a defined termination date;
- is secured by collateral described in Section XII of this policy;
- requires the securities being purchased by the Department to be pledged to the Department, held in the Department’s name, and deposited at the time the investment is made with the Department or with a third party selected and approved by the Department;
- is placed through a primary government securities dealer, as defined by the Federal Reserve, or a financial institution doing business in this state; and
- in the case of a reverse repurchase agreement, notwithstanding any other law other than the Act, the term of any such reverse security repurchase agreement may not exceed 90 days after the date the reverse security repurchase agreement is delivered. In addition, money received by the Department under the terms of a reverse security repurchase agreement may be used to acquire additional authorized investments, but the term of the authorized investments acquired must mature not later than the expiration date stated in the reverse security repurchase agreement.

D. Commercial Paper is an authorized investment under this policy if the commercial paper:

- has a stated maturity of 270 days or fewer from the date of its issuance; and
- is rated not less than A-1 or P-1 or an equivalent rating by at least two nationally-recognized credit rating agencies, or one nationally-recognized credit rating agency and is fully secured, and by an irrevocable letter of credit issued by a bank organized and existing under the laws of the United States or any state.

3. The following are not authorized investments pursuant to the Act:

- Obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal;
- Obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest;
- Collateralized mortgage obligations that have a stated final maturity date of greater than 10 years; and
- Collateralized mortgage obligations the interest rate of which is determined by an index that adjusts opposite to the changes in a market index.

X. DIVERSIFICATION

The Department will diversify its investments by security type and institution. The amount of required diversification will be determined based upon:

- The maturity date of the investment – longer maturity dates will require more diversification; and
- The rating of the underlying investment – lower rated investments will require a greater degree of diversification.

~~With the exception of U.S. Treasury securities, mortgage-backed certificates created as a result of the Department's bond programs, and authorized pools, no more than 50% of the Department's total investment portfolio will be invested in a single security type or with a single financial institution. For purposes of this section, a banking institution and its related investment broker-dealer shall be considered separate financial institutions.~~

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XI. PERFORMANCE STANDARDS

The investment portfolio shall be designed with the objective of obtaining a rate of return throughout budgetary and economic cycles commensurate with the investment risk constraints and the cash flow needs. The basis used to determine whether market yields are being achieved shall be the three-month U.S. Treasury bill ~~or other appropriate benchmark.~~

XII. EFFECT OF LOSS OF REQUIRED RATING

An investment that requires a minimum rating under this subchapter does not qualify as an authorized investment during the period the investment does not meet or exceed the minimum rating. The Department shall take all prudent measures that are consistent with its investment policy to liquidate an investment that does not meet or exceed the minimum rating. Still further, the Investment Officer is

required to review monthly all investments subject to this policy to ensure that there have been no rating changes which would render such investment in violation of this policy.

XIII. MAXIMUM -MATURITIES

~~The Department shall limit its maximum final stated maturities to, in the case of bond proceeds, the maturity of the bonds, or for non bond funds five (5) years unless specific authority is given to exceed that maturity by the Board.~~ To the extent possible, the Department will attempt to match its investments with anticipated cash flow requirements. Unless matched to a specific cash flow, the Department will not directly invest in securities maturing more than five years from the date of purchase. The Department will periodically determine what the appropriate average weighted maturity of the portfolio should be based on anticipated cash flow requirements.

Reserve Escrow funds may be invested in securities exceeding five years if the ~~maturity of such investments are~~maturities of such investments are made to coincide as nearly as practicable with the expected use of funds.

In addition, funds may be invested in any investments that are being sold from a bond indenture so long as:

1. such investment furthers the goals of that program;
2. The Investment Officer receives Board approval prior to undertaking such investment.

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XIV. COLLATERALIZATION

Collateralization will be required on certificates of deposit, repurchase and reverse repurchase agreements, and savings and demand deposits if not insured by FDIC. In order to anticipate market changes and provide a level of security for all funds, the collateralization level should be at least 101% of the market value of principal and accrued interest for repurchase and reverse repurchase agreements. Collateralization of 100% will be required for overnight repurchase agreements and bank deposits in excess of FDIC insurance.

The following obligations may be used as collateral under this policy:

1. obligations of the United States or its agencies and instrumentalities;
2. direct obligations of this state or its agencies and instrumentalities;
3. collateralized mortgage obligations directly issued by a federal agency or instrumentality of the United States, the underlying security for which is guaranteed by an agency or instrumentality of the United States;
4. other obligations, the principal and interest of which are unconditionally guaranteed or insured by or backed by the full faith and credit of this state or the United States or their respective agencies and instrumentalities; and
5. obligations of states, agencies, counties, cities, and other political subdivisions of any state rated as to investment quality by a nationally-recognized investment rating firm not less than A or its equivalent.

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Collateral will always be held by an independent third party with whom the Department has a current custodial agreement. A clearly marked evidence of ownership or a safekeeping receipt must be supplied

to the Department and retained. The right of collateral substitution is granted subject to prior approval by the Investment Officer.

XV. SAFEKEEPING -AND- CUSTODY

All security transactions, including collateral for repurchase agreements, entered into by the Department will be executed by Delivery vs. Payment (DVP). This ensures that securities are deposited in the eligible financial institution prior to the release of funds. Securities will be held by a third-party custodian as evidenced by safekeeping receipts.

XVI. INTERNAL -CONTROL

The Investment Officer is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the entity are protected from loss, theft or misuse. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that:

1. the cost of a control should not exceed the benefits likely to be derived; and
2. the valuation of costs and benefits requires estimates and judgments by management.

Once every two years, the Department, in conjunction with its annual financial audit, shall have external/internal auditors perform a compliance audit of management controls on investments and adherence to the Department's established investment policies. The internal controls shall address the following points:

1. *Control of collusion.* Collusion is a situation where two or more employees are working in conjunction to defraud their employer.
2. *Separation of transaction authority from accounting and record keeping.* By separating the person who authorizes or performs the transaction from the person who records or otherwise accounts for the transaction, a separation of duties is achieved.
3. *Custodial safekeeping.* Securities purchased from any bank or dealer including appropriate collateral as defined by state law shall be placed with an independent third party for custodial safekeeping.
4. *Avoidance of physical delivery securities.* Book entry securities are much easier to transfer and account for since actual delivery of a document never takes place. Delivered securities must be properly safeguarded against loss or destruction. The potential for fraud and loss increases with physically delivered securities.
5. *Clear delegation of authority to subordinate staff members.* Subordinate staff members must have a clear understanding of their authority and responsibilities to avoid improper actions. Clear delegation of authority also preserves the internal control structure that is contingent on the various staff positions and their respective responsibilities.
6. *Written confirmation or telephone transactions for investments and wire transfers.* Due to the potential for error and improprieties arising from telephone transactions, all telephone transactions must be supported by written communications and approved by the appropriate

person, as defined by investment internal control procedures. Written communications may be via fax if on letterhead and the safekeeping institution has a list of authorized signatures.

7. *Development of a wire transfer agreement with the lead bank or third party custodian.* This agreement should outline the various controls, security provisions, and delineate responsibilities of each party making and receiving wire transfers.

The Department's external/internal auditors shall report the results of the audit performed under this section to the Office of the State Auditor not later than January 1 of each even-numbered year. The Office of the State Auditor compiles the results of reports received under this subsection and reports those results to the legislative audit committee once every two years.

XVII. REPORTING

11. Methods

Not less than quarterly, the Investment Officer shall prepare and submit to the Director and the Board of the Department a written report of investment transactions for all funds covered by this policy for the preceding reporting period; including a summary that provides a clear picture of the status of the current investment portfolio and transactions made over the previous reporting period. This report will be prepared in a manner which will allow the Department and the Board to ascertain whether investment activities during the reporting period have conformed to the investment policy. While not required under the Act, this report will provide information regarding investments held under bond trust indentures as well as investments covered under the Act. The report must:

- A. describe in detail the investment position of the Department on the date of the report;
- B. be prepared jointly by each Investment Officer of the Department;
- C. be signed by each Investment Officer of the Department;
- D. contain a summary statement, prepared in compliance with generally accepted accounting principles for each fund that states the:
 - book value and market value of each separately invested asset at the beginning and end of the reporting period;
 - additions and changes to the market value during the period; and
 - fully accrued interest for the reporting period;
- E. state the maturity date of each separately invested asset that has a maturity date;
- F. state the fund in the Department for which each individual investment was acquired; and
- G. state the compliance of the investment portfolio of the Department as it relates to the investment strategy expressed in the Department's investment policy and relevant provisions of the policy.

The reports prepared by the Investment Officer under this policy shall be formally reviewed at least annually by an independent auditor, and the result of the review shall be reported to the Board by that auditor.

22. Performance Standards

The investment portfolio will be managed in accordance with the parameters specified within this policy. The portfolio should obtain a market average rate of return during a market/economic environment of stable interest rates. Portfolio performance will be compared to appropriate benchmarks on a regular basis.

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33. ~~M~~Marking to Market

A statement of the market value of the portfolio shall be issued at least quarterly. The Investment Officer will obtain market values from recognized published sources or from other qualified professionals as necessary. This will ensure that a review has been performed on the investment portfolio in terms of value and subsequent price volatility.

4. Authorized list of Broker/Dealers and financial institutions.

Not less than quarterly, the Investment Officer shall prepare and submit to the Director and the Board of the Department a written report outlining the list of authorized broker/dealers and financial institutions maintained by the State Comptroller.

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VIII. INVESTMENT ~~POLICY ADOPTION~~ POLICY ADOPTION

The Department’s investment policy shall be adopted by resolution of the Board.

1. Exemptions

Any investment currently held that does not meet the guidelines of this policy shall be exempted from the requirements of this policy. At maturity or liquidation, such monies shall be reinvested only as provided by this policy.

2. Amendment

The policy shall be reviewed at least annually by the Board and any amendments made thereto must be approved by the Board. The Board shall adopt by written resolution a statement that it has reviewed the investment policies and strategies.

XIX. ACKNOWLEDGMENT ~~OF RECEIPT~~ OF RECEIPT OF INVESTMENT POLICY

A written copy of the investment policy shall be presented to any person offering to engage in an investment transaction related to Department funds. The qualified representative of the business organization shall execute a written instrument in a form acceptable to the Department and the business organization, substantially to the effect that the offering business organization has:

1. received and reviewed the investment policy of the Department; and
2. acknowledged that the business organization has implemented reasonable procedures and controls in an effort to preclude investment transactions conducted between the Department and the business organization that are not authorized by the Department’s investment policy, except to the extent that this authorization is dependent on an analysis of the makeup of the Department’s entire portfolio or requires an interpretation of subjective investment standards.

The Investment Officer of the Department may not buy any securities from a person who has not delivered to the Department an instrument complying with this investment policy. (See sample documents at Attachments “C” and “D”.)

XX. TRAINING

Each member of the Department’s Board and the Investment Officer who are in office on September 1, 1996 or who assume such duties after September 1, 1996, shall attend at least one training session relating to the person’s responsibilities under this chapter within six months after taking office or assuming duties. Training under this section is provided by the Texas Higher Education Coordinating Board and must include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio, and compliance with this policy. The Investment Officer shall attend a training session not less than once in a two-year period and may receive training from any independent source approved by the Department’s Board. The Investment Officer shall prepare a report on the training and deliver the report to the Board not later than the 180th day after the last day of each regular session of the legislature.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Attachment A

STRATEGY

SECTION 1

All of the Department's funds as listed below are program / operational in nature, excluding the bond funds which are listed separately in Section 2 below. The following funds are held in the State Treasury and the Department earns interest on those balances at the then applicable rate.

- General Fund
- Trust Funds
- Agency Funds
- Proprietary Funds (excluding Revenue Bond Funds)

SECTION 2

The Department's Revenue Bond Funds, including proceeds, are invested in various investments as stipulated by the controlling bond indenture. Certain investments, controlled by indentures prior to the latest revised Public Funds Investment Act, are properly grandfathered from its provisions. Typical investments include: guaranteed investment contracts; agency mortgage-backed securities resulting from the program's loan origination; in some cases, long-term Treasury notes; and bonds used as reserves with maturities that coincide with certain long-term bond maturities.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Attachment B

POLICY STATEMENTS AND RECOMMENDED PRACTICE

Repurchase Agreements

1. Repurchase agreements (“repos”) are the sale by a bank or dealer of government securities with the simultaneous agreement to repurchase the securities on a later date. Repos are commonly used by public entities to secure money market rates of interest.
2. The Department affirms that repurchase agreements are an integral part of its investment program.
3. The Department and its designated Investment Officer should exercise special caution in selecting parties with whom they will conduct repurchase transactions, and be able to identify the parties acting as principals to the transaction.
4. Proper collateralization practices are necessary to protect the public funds invested in repurchase agreements. Risk is significantly reduced by delivery of underlying securities through physical delivery or safekeeping with the purchaser’s custodian. Over-collateralization, commonly called haircut, or marking-to-market practices should be mandatory procedures.
5. To protect public funds the Department should work with securities dealers, banks, and their respective associations to promote improved repurchase agreement procedures through master repurchase agreements that protect purchasers’ interests, universal standards for delivery procedures, and written risk disclosures.
6. Master repurchase agreements should generally be used subject to appropriate legal and technical review. If the prototype agreement developed by the Public Securities Association is used, appropriate supplemental provisions regarding delivery, substitution, margin maintenance, margin amounts, seller representations and governing law should be included.
7. Despite contractual agreements to the contrary, receivers, bankruptcy courts and federal agencies have interfered with the liquidation of repurchase agreement collateral. Therefore, the Department should encourage Congress to eliminate statutory and regulatory obstacles to perfected security interests and liquidation of repurchase collateral in the event of default.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Attachment “C”

ACKNOWLEDGMENT OF RECEIPT OF INVESTMENT POLICY

1. I am a qualified representative of _____ (the “Business Organization”).
2. The Business Organization proposes to engage in an investment transaction (the “Investments”) with the Texas Department of Housing and Community Affairs (the “Department”).
3. I acknowledge that I have received and reviewed the Department’s investment policy.
4. I acknowledge that the Business Organization has implemented reasonable procedures and controls in an effort to preclude investment transactions conducted between the business organization and the Department that are not authorized by the Department’s investment policy.
5. The Business Organization makes no representation regarding authorization of the Investments to the extent such authorization is dependent on an analysis of the Department’s entire portfolio and which requires an interpretation of subjective investment standards.

Dated this _____ day of _____, _____.

Name: _____

Title: _____

Business Organization: _____

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Attachment "D"

CERTIFICATE OF COMPLIANCE WITH PUBLIC FUNDS INVESTMENT ACT

I, _____, a qualified representative of

(the "Business Organization")

hereby execute and deliver this certificate in conjunction with the proposed sale of investments to the Texas Department of Housing and Community Affairs (the "Department"). I hereby certify that:

1. I have received and thoroughly reviewed the Investment Policy of the Department, as established by the Department pursuant to Texas Government Code, Chapter 2256;
2. The Business Organization has implemented reasonable procedures and controls in an effort to preclude imprudent investment activities arising out of or in any way relating to the sale of the investments to the Department by the Business Organization;
3. The Business Organization has reviewed the terms, conditions and characteristics of the investments and applicable law, and represents that the investments are authorized to be purchased with public funds under the terms of Texas Government Code, Chapter 2256; and
4. The investments comply, in all respects, with the investment policy of the Department.

Business Organization: _____

By: _____

Title: _____

Date: _____

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

| **Attachment 'E'**

Annual Disclosure Statement for Financial Advisors and Service Providers

2) Do you or does your business entity have any direct or indirect pecuniary interests in any party to a transaction with the state governmental entity if the transaction is connected with any financial advice or service that you or your business entity provides to the state governmental entity or to a member of the governing body in connection with the management or investment of state funds?

Yes _____ No _____

If yes, please explain in detail. (Attach additional sheets as needed.)

PART 3: SIGNATURE AND DATE

I hereby attest that all information provided above is complete and accurate. I acknowledge my or my firm's responsibility to submit promptly a new or amended disclosure statement to the parties listed in step 4 of the instructions if any of the above information changes.

Signature _____ Date _____

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Attachment "F"

RESOLUTION NO. 12-022

RESOLUTION OF THE GOVERNING BOARD APPROVING THE TEXAS
DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
INVESTMENT POLICY

WHEREAS, the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas (the "Department"), was created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended (together with other laws of the State applicable to the Department, collectively, the "Act"); and

WHEREAS, the Governing Board of the Department (the "Board") has been presented with a revised Investment Policy that (i) provides for ongoing monitoring of the rating on all investments subject to the Investment Policy, (ii) authorizes the use of the list of authorized broker/dealers and financial dealers maintained by the State Comptroller as the Department's list of approved broker/dealers and financial institutions authorized to provide services and (iii) clarifies that the Investment Policy does not apply to investments that are held under a trust indenture for the benefit of bondholders; and

WHEREAS, the Board desires to approve the Department's Investment Policy in the form presented to the Board;

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

Section -- 1 Approval of the Department's Investment Policy. The Investment Policy in the form presented to the Board is hereby authorized and approved.

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

[Execution page follows]

PASSED AND APPROVED this 12th day of April, 2012.

Chair, Governing Board

ATTEST:

Secretary to the Board

(SEAL)

Attachment "G"

Comptroller of Public Accounts Approved Broker Dealer List

TEXAS TRUST

TEXAS TREASURY SAFEKEEPING TRUST COMPANY
COMPTROLLER SUSAN COMBS, CHAIRMAN

CPA APPROVED BROKER DEALER LIST (November, 2011)

Amherst Securities Group, LP	Mizuho Securities USA Inc.
Barclay's Capital Inc.	Morgan Keegan & Co., Inc.
Blaylock Robert Van LLC	Morgan Stanley & Co., Inc.
Bley Investment Group Inc. (H)	MFR Securities
BNP Paribas Securities Corp.	M.R. Beal & Company
Cantor Fitzgerald & Co.	Piper Jaffray Companies
Capital Institutional Services, Inc.	Raymond James & Associates
Citigroup Global Markets Inc.	RBS Securities Inc.
Coastal Securities Inc.	Rice Securities, LLC
Comerica Securities Inc.	Robert W. Baird & Co., Inc
Credit Suisse (USA), LLC	SAMCO Capital Markets Inc.
Drexel Hamilton LLC	Signature Securities Group Corp.
First Southwest Company	Southwest Securities, Inc.
Frost Capital Markets	Sterne Agee & Leach, Inc.
FTN Financial Securities Corp.	Stiefel Nicholas & Company
Goldman Sachs & Co.	UBS Securities
HSBC Securities (USA), Inc.	Vining Sparks IGB, LP
Jefferies & Company, Inc.	Walton Johnson & Company (H)
JP Morgan Securities LLC	Weller, Anderson & Co., Ltd.
Knight Execution & Clearing Services, LLC	Wells Fargo Securities, LLC
Loop Capital Markets, Inc.	Williams Capital Group, LP
Merrill Lynch Pierce Fenner & Smith	Zions First National Bank Capital Markets
Mesirow Financial, Inc.	

(H) --Historically Underutilized Business

**TEXAS DEPARTMENT OF HOUSING
AND COMMUNITY AFFAIRS**

INVESTMENT POLICY

As presented to the Board on April 12, 2012

2012

April 12, 2012

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TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

INVESTMENT POLICY

I. POLICY

It is the policy of the Texas Department of Housing and Community Affairs (the “Department”) to invest public funds in a manner which will provide by priority the following objectives:

1. safety of principal;
2. sufficient liquidity to meet Department cash flow needs;
3. a market rate of return for the risk assumed; and
4. conformance to all applicable state statutes governing the investment of public funds including the Department’s enabling legislation, Texas Government Code, Section 2306, Texas Government Code, Section 2263, Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers, and specifically Texas Government Code, Section 2256, the Public Funds Investment Act (the “Act”).

II. SCOPE

This investment policy applies to all investment assets, excluding funds invested under a trust indenture, of the Department. These funds are accounted for in the Department’s Comprehensive Annual Financial Report and include the General Fund, Special Revenue Fund, Trust and Agency Fund, and Enterprise Fund.

This investment policy does not apply to investment assets that are held under any trust indenture for the benefit of bondholders. Each trust indenture sets-forth the authorized investments for that particular trust indenture.

This investment policy does not apply to hedges, which include but are not limited to, interest rate swaps, caps, floors, futures contracts, forward contracts, etc., that satisfy the eligibility requirements of a “qualified hedge” as defined by Section 1.148-4(h)(2) of the Internal Revenue Code.

The Department has created and adopted a separate Interest Rate Swap Policy for guidance regarding the use and management of interest rate swaps and similar derivative transactions.

III. PRUDENCE

Investments shall be made with judgment and care under prevailing circumstances which persons of prudence, discretion and intelligence would exercise in the management of their own affairs; not for speculation, but for investment, considering the probable safety and liquidity of capital as well as the probable income to be derived.

The standard of prudence to be used by the investment officers named herein shall be the “prudent person” standard and shall be applied in the context of managing an overall portfolio. An investment officer acting in accordance with the investment policy and written procedures and exercising due diligence shall be relieved of personal responsibility for an individual security’s credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

IV. OBJECTIVES

The following are the primary objectives of investment activities in order of priority:

1. **Safety.** Preservation and safety of principal is the foremost objective of the investment program. Investments of the Department shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. In accordance with Section 2256.005(d) of the Act, the first priority is the suitability of the investment. The objective will be to mitigate credit risk and interest rate risk. To achieve this objective, diversification is required so that potential losses on individual securities do not exceed the income generated from the remainder of the portfolio.
 - A. Credit risk is the risk of loss due to the failure of the security issuer or backer, and may be mitigated by:
 - limiting investments to the safest types of securities;
 - pre-qualifying the financial institutions, broker/dealers, intermediaries, and advisors with whom the Department will do business; and
 - diversifying the investment portfolio so that potential losses on individual securities will be minimized.
 - B. Interest rate risk is the risk that the market value of securities in the portfolio will fall due to changes in general interest rates, and may be mitigated by:
 - structuring the investment portfolio so that securities mature to meet cash requirements for ongoing operations, thereby avoiding the need to sell securities on the open market prior to maturity, and
 - investing operating funds primarily in shorter-term securities.
2. **Liquidity.** The Department’s investment portfolio shall remain sufficiently liquid to meet all reasonably anticipated cash flow needs. This is accomplished by structuring the portfolio so that securities mature concurrent with cash needs to meet anticipated demands. Since all possible cash demands cannot be anticipated, the portfolio should consist largely of securities with active secondary or resale markets.
3. **Yield.** The Department’s investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into account the investment risk constraints and cash flow needs of the Department. Return on investment for short-term operating funds is of less importance compared to the safety and liquidity objectives described above. The core of investments is limited to relatively low-risk securities in

anticipation of earning a fair return relative to the risk being assumed. Securities shall not be sold prior to maturity with the following exceptions:

- A declining credit security could be sold early to minimize loss of principal;
- A security swap would improve the quality, yield, or target duration in the portfolio; or
- Liquidity needs of the portfolio require that the security be sold.

V. DELEGATION OF AUTHORITY

The Board establishes investment policy and objectives, obtains expert advice and assistance with respect to its actions as is necessary to exercise its responsibilities prudently, and monitors the actions of staff and advisors to ensure compliance with its policy. It is the Board's intention that this policy be carried out by those persons who are qualified and competent in their area of expertise.

Authority to manage the Department's investment program is granted under the provisions of Texas Government Code, Section 2306.052(b) (4) and (5) to the Director of the Department, ("Executive Director"). Responsibility for the operation of the investment program is hereby delegated by the Executive Director to the Director of Bond Finance and the Director of Financial Administration acting in those capacities (collectively the "Investment Officer") who shall carry out established written procedures and internal controls for the operation of the investment program consistent with this investment policy. The Investment Officer shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities of subordinate officials. Procedures should include reference to safekeeping, delivery vs. payment, investment accounting, repurchase agreements, wire transfer agreements, collateral/depository agreements and banking service contracts. Such procedures may include explicit delegation of authority to persons responsible for investment transactions. No person may engage in an investment transaction except as provided under the terms of this policy and the procedures established by the Investment Officer.

VI. ETHICS AND CONFLICTS OF INTEREST

1. Department employees and Board members must comply with all applicable laws, and should specifically be aware of the following statutes:
 - Texas Government Code, Section 825.211, *Certain Interests in Loans, Investments or Contracts Prohibited*
 - Texas Government Code, Section 572.051, *Standards of Conduct for Public Servants*
 - Texas Government Code, Sections 553.001-003, *Disclosure by Public Servants of Interest in Property Being Acquired by Government*
 - Texas Government Code, Section 552.352, *Distribution of Confidential Information*
 - Texas Government Code, Section 572.054, *Representation by Former Officer or Employee of Regulatory Agency Restricted*
 - Texas Penal Code, Chapter 36, *Bribery, Corrupt Influence and Gifts to Public Servants*
 - Texas Penal Code, Chapter 39, *Abuse of Office, Official Misconduct.*

The omission of any applicable statute from this list does not excuse violation of its provisions.

2. Department employees and Board members must be honest in the exercise of their duties and must not take actions which will discredit the Department.
3. Department employees and Board members should be loyal to the interest of the Department to the extent that such loyalty is not in conflict with other duties which legally have priority, and should avoid personal, employment or business relationships that create conflicts of interest.
 - Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions.
 - Officers and employees shall disclose to the Executive Director any material interests in financial institutions with which they conduct business. They shall further disclose any personal financial/investment positions that could be related to the performance of the Department's investment portfolio.
 - Officers and employees shall refrain from undertaking personal investment transactions with the same individuals with whom business is conducted on behalf of the Department. Specifically, no employee of the Department is to:
 - * Accept or solicit any gift, favor, or service that might reasonably tend to influence the employee in the discharge of the employee's official duties or that the employee knows or should know is being offered him/her with the intent to influence the employee's official conduct;
 - * Accept other employment or engage in any business or professional activity in which the employee might reasonably expect would require or induce him/her to disclose confidential information acquired by reason of his/her official position;
 - * Accept other employment or compensation which could reasonably be expected to impair the officer's or employee's judgment in the performance of his/her official duties;

(An employee whose employment is involved in a competitive program of the Department must immediately disclose the acceptance of another job in the same field. The disclosure must be made to either the employee's immediate supervisor or to the Executive Director. The Executive Director must be notified in all cases. Failure to make the required disclosure may result in the employee's immediate termination from the Department.)

 - * Make personal investments which could reasonably be expected to create a substantial conflict between the officer's or employee's private interest and the public interest; and

(A Department employee may not purchase Department bonds in the open secondary market for municipal securities.)

- * Intentionally or knowingly solicit, accept or agree to accept any benefit for having exercised the employee's official powers or performed his/her official duties in favor of another.

4. Department employees and Board members may not use their relationship with the Department to seek or obtain personal gain beyond agreed compensation and/or any properly authorized expense reimbursement. This should not be interpreted to forbid the use of the Department as a reference or the communication to others of the fact that a relationship with the Department exists, provided that no misrepresentation is involved.
5. Department employees and Board members who have a personal business relationship with a business organization offering to engage in an investment transaction with the Department shall file a statement disclosing that personal business interest. An individual who is related within the second degree by affinity or consanguinity to an individual seeking to sell an investment to the Department shall file a statement disclosing that relationship. A statement required under this section must be filed with the Texas Ethics Commission and the Department's Board. For purposes of this policy, an individual has a personal business relationship with a business organization if:
 - the individual owns 10 percent or more of the voting stock or shares of the business organization or owns \$5,000 or more of the fair market value of the business organization;
 - funds received by the Investment Officer from the business organization exceed 10 percent of the individual's gross income from the previous year; or
 - the individual has acquired from the business organization during the previous year investments with a book value of \$2,500 or more for the personal account of the individual.

VII. AUTHORIZED FINANCIAL DEALERS AND INSTITUTIONS

The Department (in conjunction with the State Comptroller) will maintain a list of financial institutions authorized to provide investment services. In addition, a list will also be maintained of approved security broker/dealers selected by credit worthiness. These may include "primary" dealers or regional dealers that qualify under Securities and Exchange Commission Rule 15C3-1 (uniform net capital rule). No public deposit shall be made except in a qualified public depository as established by state law.

The Department will use as its authorized list of broker/dealers and financial institutions any broker/dealer or financial institution that is authorized to do business with the State Comptroller.

With respect to investments provided in connection with the issuance of bonds, the above requirements will be deemed met if the investment provider is acceptable to minimum credit ratings by rating agencies and/or by the bond insurer/credit enhancer, if applicable, and if the investment meets the requirements of the applicable bond trust indenture. A broker, engaged solely to secure a qualified investment referred to in this paragraph on behalf of the Department, which will not be providing an investment instrument shall not be subject to the above requirements, and may only be engaged if approved by the Board.

VIII. ETHICS AND DISCLOSURE REQUIREMENTS FOR OUTSIDE FINANCIAL ADVISORS AND SERVICE PROVIDERS

During the 78th Legislature, Regular Session, the Texas Legislature passed *Chapter 2263., Ethics And Disclosure Requirements For Outside Financial Advisors And Service Providers* ("Chapter 2263"). Chapter 2263, under Senate Bill 1059, requires certain actions by governing boards of state entities involved in the management and investment of state funds and adds disclosure requirements for outside

financial advisors and service providers. Chapter 2263 became effective September 1, 2003. Each state governmental entity required to adopt rules under Chapter 2263, Government Code, as added by this Act, must have adopted its initial rules in time for the rules to take effect not later than January 1, 2004.

Applicability. Chapter 2263 applies in connection with the management or investment of any state funds managed or invested:

- (1) under the Texas Constitution or other law, including Chapter 404, State Treasury Operations of Comptroller, and Chapter 2256, Public Funds Investment; and
- (2) by or for:
 - (A) a public retirement system as defined by Section 802.001 that provides service retirement, disability retirement, or death benefits for officers or employees of the state;
 - (B) an institution of higher education as defined by Section 61.003, Education Code; or
 - (C) another entity that is part of state government and that manages or invests state funds or for which state funds are managed or invested.

Chapter 2263 applies in connection with the management or investment of state funds without regard to whether the funds are held in the state treasury.

Chapter 2263 does not apply to or in connection with a state governmental entity that does not manage or invest state funds and for which state funds are managed or invested only by the comptroller.

Definition. With respect to this Chapter 2263, "financial advisor or service provider" includes a person or business entity who acts as a financial advisor, financial consultant, money or investment manager, or broker.

Construction With Other Law. To the extent of a conflict between Chapter 2263 and another law, the law that imposes a stricter ethics or disclosure requirement controls.

Ethics Requirements For Outside Financial Advisors Or Service Providers. The governing body of a state governmental entity by rule shall adopt standards of conduct applicable to financial advisors or service providers who are not employees of the state governmental entity, who provide financial services to the state governmental entity or advise the state governmental entity or a member of the governing body of the state governmental entity in connection with the management or investment of state funds, and who:

- (1) may reasonably be expected to receive, directly or indirectly, more than \$10,000 in compensation from the entity during a fiscal year; or
- (2) render important investment or funds management advice to the entity or a member of the governing body of the entity, as determined by the governing body.

A contract under which a financial advisor or service provider renders financial services or advice to a state governmental entity or other person as described immediately above, in regard to compensation or

duties, is voidable by the state governmental entity if the financial advisor or service provider violates a standard of conduct adopted under this section.

In addition to the disclosures required by Chapter 2263 and described below, the Department will rely upon financial advisors and service providers' submission of an Acknowledgement of Receipt of Investment Policy and Certificate of Compliance with the Public Funds Investment Act forms to evidence compliance with the Department's code of conduct and procedures as related to investments.

Disclosure Requirements For Outside Financial Advisor Or Service Provider. A financial advisor or service provider described by Section 2263.004 shall disclose in writing to the administrative head of the applicable state governmental entity and to the state auditor:

- (1) any relationship the financial advisor or service provider has with any party to a transaction with the state governmental entity, other than a relationship necessary to the investment or funds management services that the financial advisor or service provider performs for the state governmental entity, if a reasonable person could expect the relationship to diminish the financial advisor's or service provider's independence of judgment in the performance of the person's responsibilities to the state governmental entity; and
- (2) all direct or indirect pecuniary interests the financial advisor or service provider has in any party to a transaction with the state governmental entity, if the transaction is connected with any financial advice or service the financial advisor or service provider provides to the state governmental entity or to a member of the governing body in connection with the management or investment of state funds.

The financial advisor or service provider shall disclose a relationship described by the immediately preceding subsections (1) or (2) without regard to whether the relationship is a direct, indirect, personal, private, commercial, or business relationship.

A financial advisor or service provider described by Section 2263.004 shall file annually a statement with the administrative head of the applicable state governmental entity and with the state auditor. The statement must disclose each relationship and pecuniary interest described by Subsection (a) or, if no relationship or pecuniary interest described by that subsection existed during the disclosure period, the statement must affirmatively state that fact.

The annual statement must be filed not later than April 15 on a form prescribed by the governmental entity, other than the state auditor, receiving the form. The statement must cover the reporting period of the previous calendar year. The state auditor shall develop and recommend a uniform form that other governmental entities receiving the form may prescribe. The Department's disclosure form is provided as Attachment "E".

The financial advisor or service provider shall promptly file a new or amended statement with the administrative head of the applicable state governmental entity and with the state auditor whenever there is new information to report related to the immediately preceding subsections (1) or (2).

Public Information. Chapter 552, Government Code, controls the extent to which information contained in a statement filed under this chapter is subject to required public disclosure or is excepted from required public disclosure.

IX. AUTHORIZED AND SUITABLE INVESTMENTS

General, Special Revenue and Trust and Agency Funds, all of which are on deposit with the State Treasury (specifically excluding Enterprise Funds), are invested by the Treasury pursuant to Texas Government Code, Section 404.024 and Article 5221(f), Subsection 13A(d) as amended relating to Manufactured Housing.

Enterprise Fund

1. Subject to a resolution authorizing issuance of its bonds, the Department is empowered by Texas Government Code, Section 2306.173 to invest its money in bonds, obligations or other securities: or place its money in demand or time deposits, whether or not evidenced by certificates of deposit. A guaranteed investment contract is an authorized investment for bond proceeds. All bond proceeds and revenues subject to the pledge of an Indenture shall be invested in accordance with the applicable law and the provisions of the applicable indenture including "Investment Securities" as listed in such Indenture and so defined.
2. All other enterprise funds shall be invested pursuant to state law. The following are permitted investments for those funds pursuant to the Act:
 - A. Obligations of, or guaranteed by governmental entities:
 - Obligations of the United States or its agencies and instrumentalities.
 - Direct obligations of this state or its agencies and instrumentalities.
 - Collateralized mortgage obligations directly issued by a federal agency or instrumentality of the United States, that have a market value of not less than the principal amount of the certificates and which has a maturity that does not exceed 10 years.
 - Other obligations the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of this state or the United States or their respective agencies and instrumentalities.
 - Obligations of states, agencies, counties, cities, and other political subdivisions of any state rated as to investment quality by a nationally recognized investment rating firm not less than A or its equivalent.
 - B. A Certificate of Deposit is an authorized investment under this policy if the certificate of deposit is issued by a depository institution that has its main office or a branch office in this state and is:
 - guaranteed or insured by the Federal Deposit Insurance Department (FDIC) or its successor;
 - secured by obligations that are described in subsection 2A above, including mortgage backed securities directly issued by a federal agency or instrumentality that have a market value of not less than the principal amount of the certificates and secured by collateral as described in Section XII of this policy; and
 - secured in any other manner and amount provided by law for deposits of the Department.

In addition to the authority to invest funds in certificates of deposit noted above, an investment in certificates of deposit made in accordance with the following conditions is an authorized investment under this policy:

- the funds are invested by an investing entity through a depository institution that has its main office or a branch office in this state and that is selected by the investing entity;
- the depository institution guaranteed or insured by the Federal Deposit Insurance Department (FDIC) or its successor as selected by the investing entity arranges for the deposit of the funds in certificates of deposit in one or more federally insured depository institutions, wherever located, for the account of the investing entity;
- the full amount of the principal and accrued interest of each of the certificates of deposit is insured by the United States or an instrumentality of the United States;
- the depository institution guaranteed or insured by the Federal Deposit Insurance Department (FDIC) or its successor as selected by the investing entity acts as custodian for the investing entity with respect to the certificates of deposit issued for the account of the investing entity; and
- at the same time that the funds are deposited and the certificates of deposit are issued for the account of the investing entity, the depository institution guaranteed or insured by the Federal Deposit Insurance Department (FDIC) or its successor as selected by the investing entity receives an amount of deposits from customers of other federally insured depository institutions, wherever located, that is equal to or greater than the amount of the funds invested by the investing entity through the depository institution guaranteed or insured by the Federal Deposit Insurance Department (FDIC) or its successor.

C. A “repurchase agreement” is a simultaneous agreement to buy, hold for a specified time, and sell back at a future date obligations of the United States or its agencies and instrumentalities at a market value at the time the funds are disbursed of not less than the principal amount of the funds disbursed. The term includes a direct security repurchase agreement and a reverse security repurchase agreement. A fully collateralized repurchase agreement is an authorized investment under this policy if the repurchase agreement:

- has a defined termination date;
- is secured by collateral described in Section XII of this policy;
- requires the securities being purchased by the Department to be pledged to the Department, held in the Department’s name, and deposited at the time the investment is made with the Department or with a third party selected and approved by the Department;
- is placed through a primary government securities dealer, as defined by the Federal Reserve, or a financial institution doing business in this state; and
- in the case of a reverse repurchase agreement, notwithstanding any other law other than the Act, the term of any such reverse security repurchase agreement may not exceed 90 days after the date the reverse security repurchase agreement is delivered. In addition, money received by the Department under the terms of a reverse security repurchase agreement may be used to acquire additional authorized investments, but the term of the authorized investments acquired must mature not later than the expiration date stated in the reverse security repurchase agreement.

D. Commercial Paper is an authorized investment under this policy if the commercial paper:

- has a stated maturity of 270 days or fewer from the date of its issuance; and
- is rated not less than A-1 or P-1 or an equivalent rating by at least two nationally-recognized credit rating agencies, or one nationally-recognized credit rating agency and is fully secured, and by an irrevocable letter of credit issued by a bank organized and existing under the laws of the United States or any state.

3. The following are not authorized investments pursuant to the Act:

- Obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal;
- Obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest;
- Collateralized mortgage obligations that have a stated final maturity date of greater than 10 years; and
- Collateralized mortgage obligations the interest rate of which is determined by an index that adjusts opposite to the changes in a market index.

X. DIVERSIFICATION

The Department will diversify its investments by security type and institution. The amount of required diversification will be determined based upon:

- The maturity date of the investment – longer maturity dates will require more diversification; and
- The rating of the underlying investment – lower rated investments will require a greater degree of diversification.

XI. PERFORMANCE STANDARDS

The investment portfolio shall be designed with the objective of obtaining a rate of return throughout budgetary and economic cycles commensurate with the investment risk constraints and the cash flow needs. The basis used to determine whether market yields are being achieved shall be the three-month U.S. Treasury bill.

XII. EFFECT OF LOSS OF REQUIRED RATING

An investment that requires a minimum rating under this subchapter does not qualify as an authorized investment during the period the investment does not meet or exceed the minimum rating. The Department shall take all prudent measures that are consistent with its investment policy to liquidate an investment that does not meet or exceed the minimum rating. Still further, the Investment Officer is required to review monthly all investments subject to this policy to ensure that there have been no rating changes which would render such investment in violation of this policy.

XIII. MAXIMUM MATURITIES

To the extent possible, the Department will attempt to match its investments with anticipated cash flow requirements. Unless matched to a specific cash flow, the Department will not directly invest in securities maturing more than five years from the date of purchase. The Department will periodically determine what the appropriate average weighted maturity of the portfolio should be based on anticipated cash flow requirements.

Escrow funds may be invested in securities exceeding five years if the maturities of such investments are made to coincide as nearly as practicable with the expected use of funds.

In addition, funds may be invested in any investments that are being sold from a bond indenture so long as:

1. such investment furthers the goals of that program;
2. The Investment Officer receives Board approval prior to undertaking such investment.

XIV. COLLATERALIZATION

Collateralization will be required on certificates of deposit, repurchase and reverse repurchase agreements, and savings and demand deposits if not insured by FDIC. In order to anticipate market changes and provide a level of security for all funds, the collateralization level should be at least 101% of the market value of principal and accrued interest for repurchase and reverse repurchase agreements. Collateralization of 100% will be required for overnight repurchase agreements and bank deposits in excess of FDIC insurance.

The following obligations may be used as collateral under this policy:

1. obligations of the United States or its agencies and instrumentalities;
2. direct obligations of this state or its agencies and instrumentalities;
3. collateralized mortgage obligations directly issued by a federal agency or instrumentality of the United States, the underlying security for which is guaranteed by an agency or instrumentality of the United States;
4. other obligations, the principal and interest of which are unconditionally guaranteed or insured by or backed by the full faith and credit of this state or the United States or their respective agencies and instrumentalities; and
5. obligations of states, agencies, counties, cities, and other political subdivisions of any state rated as to investment quality by a nationally-recognized investment rating firm not less than A or its equivalent.

Collateral will always be held by an independent third party with whom the Department has a current custodial agreement. A clearly marked evidence of ownership or a safekeeping receipt must be supplied to the Department and retained. The right of collateral substitution is granted subject to prior approval by the Investment Officer.

XV. SAFEKEEPING AND CUSTODY

All security transactions, including collateral for repurchase agreements, entered into by the Department will be executed by Delivery vs. Payment (DVP). This ensures that securities are deposited in the eligible financial institution prior to the release of funds. Securities will be held by a third-party custodian as evidenced by safekeeping receipts.

XVI. INTERNAL CONTROL

The Investment Officer is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the entity are protected from loss, theft or misuse. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that:

1. the cost of a control should not exceed the benefits likely to be derived; and
2. the valuation of costs and benefits requires estimates and judgments by management.

Once every two years, the Department, in conjunction with its annual financial audit, shall have external/internal auditors perform a compliance audit of management controls on investments and adherence to the Department's established investment policies. The internal controls shall address the following points:

1. *Control of collusion.* Collusion is a situation where two or more employees are working in conjunction to defraud their employer.
2. *Separation of transaction authority from accounting and record keeping.* By separating the person who authorizes or performs the transaction from the person who records or otherwise accounts for the transaction, a separation of duties is achieved.
3. *Custodial safekeeping.* Securities purchased from any bank or dealer including appropriate collateral as defined by state law shall be placed with an independent third party for custodial safekeeping.
4. *Avoidance of physical delivery securities.* Book entry securities are much easier to transfer and account for since actual delivery of a document never takes place. Delivered securities must be properly safeguarded against loss or destruction. The potential for fraud and loss increases with physically delivered securities.
5. *Clear delegation of authority to subordinate staff members.* Subordinate staff members must have a clear understanding of their authority and responsibilities to avoid improper actions. Clear delegation of authority also preserves the internal control structure that is contingent on the various staff positions and their respective responsibilities.
6. *Written confirmation or telephone transactions for investments and wire transfers.* Due to the potential for error and improprieties arising from telephone transactions, all telephone transactions must be supported by written communications and approved by the appropriate person, as defined by investment internal control procedures. Written communications may be via fax if on letterhead and the safekeeping institution has a list of authorized signatures.
7. *Development of a wire transfer agreement with the lead bank or third party custodian.* This agreement should outline the various controls, security provisions, and delineate responsibilities of each party making and receiving wire transfers.

The Department's external/internal auditors shall report the results of the audit performed under this section to the Office of the State Auditor not later than January 1 of each even-numbered year. The

Office of the State Auditor compiles the results of reports received under this subsection and reports those results to the legislative audit committee once every two years.

XVII. REPORTING

1. Methods

Not less than quarterly, the Investment Officer shall prepare and submit to the Director and the Board of the Department a written report of investment transactions for all funds covered by this policy for the preceding reporting period; including a summary that provides a clear picture of the status of the current investment portfolio and transactions made over the previous reporting period. This report will be prepared in a manner which will allow the Department and the Board to ascertain whether investment activities during the reporting period have conformed to the investment policy. While not required under the Act, this report will provide information regarding investments held under bond trust indentures as well as investments covered under the Act. The report must:

- A. describe in detail the investment position of the Department on the date of the report;
- B. be prepared jointly by each Investment Officer of the Department;
- C. be signed by each Investment Officer of the Department;
- D. contain a summary statement, prepared in compliance with generally accepted accounting principles for each fund that states the:
 - book value and market value of each separately invested asset at the beginning and end of the reporting period;; and
 - fully accrued interest for the reporting period;
- E. state the maturity date of each separately invested asset that has a maturity date;
- F. state the fund in the Department for which each individual investment was acquired; and
- G. state the compliance of the investment portfolio of the Department as it relates to the investment strategy expressed in the Department's investment policy and relevant provisions of the policy.

The reports prepared by the Investment Officer under this policy shall be formally reviewed at least annually by an independent auditor, and the result of the review shall be reported to the Board by that auditor.

2.. Performance Standards

The investment portfolio will be managed in accordance with the parameters specified within this policy. The portfolio should obtain a market average rate of return during a market/economic environment of stable interest rates. Portfolio performance will be compared to appropriate benchmarks on a regular basis.

3. Marking to Market

A statement of the market value of the portfolio shall be issued at least quarterly. The Investment Officer will obtain market values from recognized published sources or from other qualified professionals as necessary. This will ensure that a review has been performed on the investment portfolio in terms of value and subsequent price volatility.

4. Authorized list of Broker/Dealers and financial institutions.

Not less than quarterly, the Investment Officer shall prepare and submit to the Director and the Board of the Department a written report outlining the list of authorized broker/dealers and financial institutions maintained by the State Comptroller.

VIII. INVESTMENT POLICY ADOPTION

The Department's investment policy shall be adopted by resolution of the Board.

1. Exemptions

Any investment currently held that does not meet the guidelines of this policy shall be exempted from the requirements of this policy. At maturity or liquidation, such monies shall be reinvested only as provided by this policy.

2. Amendment

The policy shall be reviewed at least annually by the Board and any amendments made thereto must be approved by the Board. The Board shall adopt by written resolution a statement that it has reviewed the investment policies and strategies.

XIX. ACKNOWLEDGMENT OF RECEIPT OF INVESTMENT POLICY

A written copy of the investment policy shall be presented to any person offering to engage in an investment transaction related to Department funds. The qualified representative of the business organization shall execute a written instrument in a form acceptable to the Department and the business organization, substantially to the effect that the offering business organization has:

1. received and reviewed the investment policy of the Department; and
2. acknowledged that the business organization has implemented reasonable procedures and controls in an effort to preclude investment transactions conducted between the Department and the business organization that are not authorized by the Department's investment policy, except to the extent that this authorization is dependent on an analysis of the makeup of the Department's entire portfolio or requires an interpretation of subjective investment standards.

The Investment Officer of the Department may not buy any securities from a person who has not delivered to the Department an instrument complying with this investment policy. (See sample documents at Attachments "C" and "D".)

XX. TRAINING

Each member of the Department's Board and the Investment Officer who are in office on September 1, 1996 or who assume such duties after September 1, 1996, shall attend at least one training session relating to the person's responsibilities under this chapter within six months after taking office or assuming duties. Training under this section is provided by the Texas Higher Education Coordinating Board and must include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio, and compliance with this policy. The Investment Officer shall attend a training session not less than once in a two-year period and may receive training from any independent source approved by the Department's Board. The Investment Officer shall prepare a report on the training and deliver the report to the Board not later than the 180th day after the last day of each regular session of the legislature.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Attachment A

STRATEGY

SECTION 1

All of the Department's funds as listed below are program / operational in nature, excluding the bond funds which are listed separately in Section 2 below. The following funds are held in the State Treasury and the Department earns interest on those balances at the then applicable rate.

- General Fund
- Trust Funds
- Agency Funds
- Proprietary Funds (excluding Revenue Bond Funds)

SECTION 2

The Department's Revenue Bond Funds, including proceeds, are invested in various investments as stipulated by the controlling bond indenture. Certain investments, controlled by indentures prior to the latest revised Public Funds Investment Act, are properly grandfathered from its provisions. Typical investments include: guaranteed investment contracts; agency mortgage-backed securities resulting from the program's loan origination; in some cases, long-term Treasury notes; and bonds used as reserves with maturities that coincide with certain long-term bond maturities.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Attachment B

POLICY STATEMENTS AND RECOMMENDED PRACTICE

Repurchase Agreements

1. Repurchase agreements (“repos”) are the sale by a bank or dealer of government securities with the simultaneous agreement to repurchase the securities on a later date. Repos are commonly used by public entities to secure money market rates of interest.
2. The Department affirms that repurchase agreements are an integral part of its investment program.
3. The Department and its designated Investment Officer should exercise special caution in selecting parties with whom they will conduct repurchase transactions, and be able to identify the parties acting as principals to the transaction.
4. Proper collateralization practices are necessary to protect the public funds invested in repurchase agreements. Risk is significantly reduced by delivery of underlying securities through physical delivery or safekeeping with the purchaser’s custodian. Over-collateralization, commonly called haircut, or marking-to-market practices should be mandatory procedures.
5. To protect public funds the Department should work with securities dealers, banks, and their respective associations to promote improved repurchase agreement procedures through master repurchase agreements that protect purchasers’ interests, universal standards for delivery procedures, and written risk disclosures.
6. Master repurchase agreements should generally be used subject to appropriate legal and technical review. If the prototype agreement developed by the Public Securities Association is used, appropriate supplemental provisions regarding delivery, substitution, margin maintenance, margin amounts, seller representations and governing law should be included.
7. Despite contractual agreements to the contrary, receivers, bankruptcy courts and federal agencies have interfered with the liquidation of repurchase agreement collateral. Therefore, the Department should encourage Congress to eliminate statutory and regulatory obstacles to perfected security interests and liquidation of repurchase collateral in the event of default.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Attachment “C”

ACKNOWLEDGMENT OF RECEIPT OF INVESTMENT POLICY

1. I am a qualified representative of _____ (the “Business Organization”).
2. The Business Organization proposes to engage in an investment transaction (the “Investments”) with the Texas Department of Housing and Community Affairs (the “Department”).
3. I acknowledge that I have received and reviewed the Department’s investment policy.
4. I acknowledge that the Business Organization has implemented reasonable procedures and controls in an effort to preclude investment transactions conducted between the business organization and the Department that are not authorized by the Department’s investment policy.
5. The Business Organization makes no representation regarding authorization of the Investments to the extent such authorization is dependent on an analysis of the Department’s entire portfolio and which requires an interpretation of subjective investment standards.

Dated this _____ day of _____, _____.

Name: _____

Title: _____

Business Organization: _____

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Attachment “D”

CERTIFICATE OF COMPLIANCE WITH PUBLIC FUNDS INVESTMENT ACT

I, _____, a qualified representative of

_____ (the “Business
Organization”)

hereby execute and deliver this certificate in conjunction with the proposed sale of investments to the Texas Department of Housing and Community Affairs (the “Department”). I hereby certify that:

1. I have received and thoroughly reviewed the Investment Policy of the Department, as established by the Department pursuant to Texas Government Code, Chapter 2256;
2. The Business Organization has implemented reasonable procedures and controls in an effort to preclude imprudent investment activities arising out of or in any way relating to the sale of the investments to the Department by the Business Organization;
3. The Business Organization has reviewed the terms, conditions and characteristics of the investments and applicable law, and represents that the investments are authorized to be purchased with public funds under the terms of Texas Government Code, Chapter 2256; and
4. The investments comply, in all respects, with the investment policy of the Department.

Business Organization: _____

By: _____

Title: _____

Date: _____

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Attachment “E”

Annual Disclosure Statement for Financial Advisors and Service Providers

2) Do you or does your business entity have any direct or indirect pecuniary interests in any party to a transaction with the state governmental entity if the transaction is connected with any financial advice or service that you or your business entity provides to the state governmental entity or to a member of the governing body in connection with the management or investment of state funds?

Yes_____ No_____

If yes, please explain in detail. (Attach additional sheets as needed.)

PART 3: SIGNATURE AND DATE

I hereby attest that all information provided above is complete and accurate. I acknowledge my or my firm's responsibility to submit promptly a new or amended disclosure statement to the parties listed in step 4 of the instructions if any of the above information changes.

Signature_____ Date_____

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Attachment "F"

RESOLUTION NO. 12-022

RESOLUTION OF THE GOVERNING BOARD APPROVING THE TEXAS
DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
INVESTMENT POLICY

WHEREAS, the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas (the "Department"), was created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended (together with other laws of the State applicable to the Department, collectively, the "Act"); and

WHEREAS, the Governing Board of the Department (the "Board") has been presented with a revised Investment Policy that (i) provides for ongoing monitoring of the rating on all investments subject to the Investment Policy, (ii) authorizes the use of the list of authorized broker/dealers and financial dealers maintained by the State Comptroller as the Department's list of approved broker/dealers and financial institutions authorized to provide services and (iii) clarifies that the Investment Policy does not apply to investments that are held under a trust indenture for the benefit of bondholders; and

WHEREAS, the Board desires to approve the Department's Investment Policy in the form presented to the Board;

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

Section -- 1 Approval of the Department's Investment Policy. The Investment Policy in the form presented to the Board is hereby authorized and approved.

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

[Execution page follows]

PASSED AND APPROVED this 12th day of April, 2012.

Chair, Governing Board

ATTEST:

Secretary to the Board

(SEAL)

Attachment “G”

Comptroller of Public Accounts Approved Broker Dealer List

TEXAS TRUST

TEXAS TREASURY SAFEKEEPING TRUST COMPANY
COMPTROLLER SUSAN COMBS, CHAIRMAN

CPA APPROVED BROKER DEALER LIST (November, 2011)

Amherst Securities Group, LP	Mizuho Securities USA Inc.
Barclay's Capital Inc.	Morgan Keegan & Co., Inc.
Blaylock Robert Van LLC	Morgan Stanley & Co., Inc.
Bley Investment Group Inc. (H)	MFR Securities
BNP Paribas Securities Corp.	M.R. Beal & Company
Cantor Fitzgerald & Co.	Piper Jaffray Companies
Capital Institutional Services, Inc.	Raymond James & Associates
Citigroup Global Markets Inc.	RBS Securities Inc.
Coastal Securities Inc.	Rice Securities, LLC
Comerica Securities Inc.	Robert W. Baird & Co., Inc
Credit Suisse (USA), LLC	SAMCO Capital Markets Inc.
Drexel Hamilton LLC	Signature Securities Group Corp.
First Southwest Company	Southwest Securities, Inc.
Frost Capital Markets	Sterne Agee & Leach, Inc.
FTN Financial Securities Corp.	Stiefel Nicholas & Company
Goldman Sachs & Co.	UBS Securities
HSBC Securities (USA), Inc.	Vining Sparks IGB, LP
Jefferies & Company, Inc.	Walton Johnson & Company (H)
JP Morgan Securities LLC	Weller, Anderson & Co., Ltd.
Knight Execution & Clearing Services, LLC	Wells Fargo Securities, LLC
Loop Capital Markets, Inc.	Williams Capital Group, LP
Merrill Lynch Pierce Fenner & Smith	Zions First National Bank Capital Markets
Mesirow Financial, Inc.	

(H) --Historically Underutilized Business

3b

Housing Bond Market Update
TDHCA Board Meeting
April 12, 2012



Key Market Trends

Interest Rates may have found their bottom

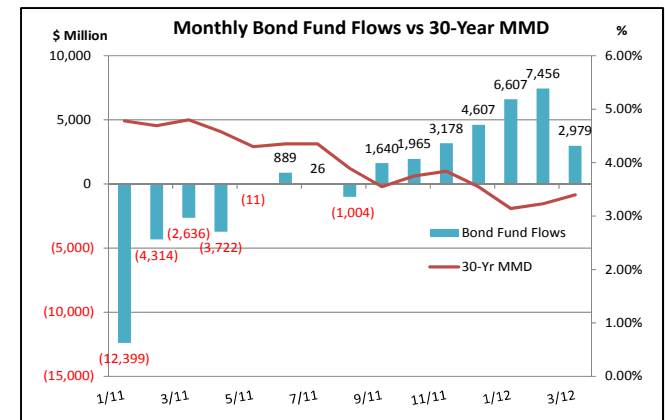
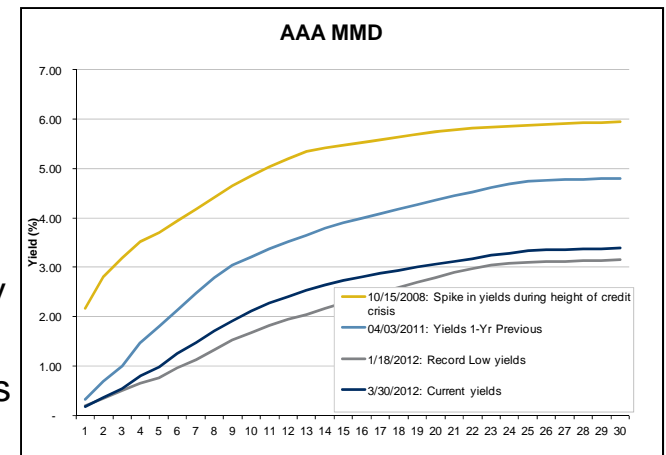
- Lows hit on January 18th (10-yr: Treas. 1.90%, MMD 1.67%)
- Rates have been volatile since then, but seem to have stabilized about 30- 50 bps above their lows
- Volume has increased as rates have adjusted to meet supply
- Long-term municipal new issue volume was down 31.5% in 2011 compared to 2010, and is up 63.5% year-to-date versus 2011.

Return to bond funds

- Bond funds have been net buyers again since 3Q 2011
- Large outflows during 4th quarter of 2010 and 1st quarter of 2011 were due to an asset reallocation by investors and increased headline risk
- Retail buyers are leaving the bond market to seek higher returns in the equity markets

Other factors to watch

- Headline risk – reports of sovereign, state & local defaults and downgrades
- Credit quality – remains an investor focus before and after bond sale
- Fed watch – 2012 elections plus FOMC statements indicate interest rates may remain low for the near term; higher rates expected after the election.



Market Outlook

- **Expect higher interest rates**

- Bond fund exodus into equities
- Credit concerns
- Strengthening economy

Note: higher interest rates can make TDHCA program mortgage rates more competitive

Bloomberg Survey - Economic Forecasts							
Interest Rates	Current Market*	Q1 2012	Q2 2012	Q3 2012	Q4 2012	Q1 2013	Q2 2013
Fed Funds Target	0.25%	0.25%	0.25%	0.25%	0.25%	0.25%	0.25%
3-M LIBOR	0.47%	0.49%	0.45%	0.43%	0.46%	0.47%	0.50%
Treasuries							
2-Year Notes	0.35%	0.30%	0.32%	0.35%	0.40%	0.50%	0.60%
10-Year Notes	2.25%	2.00%	2.20%	2.30%	2.50%	2.58%	2.71%
30-Year Bonds	3.34%	3.10%	3.25%	3.40%	3.50%	3.60%	3.70%
Economic Activity		2012	2013	2014			
Real GDP	3.00%	2.20%	2.40%	2.85%			
Unemployment	8.30%	8.20%	7.80%	7.30%			

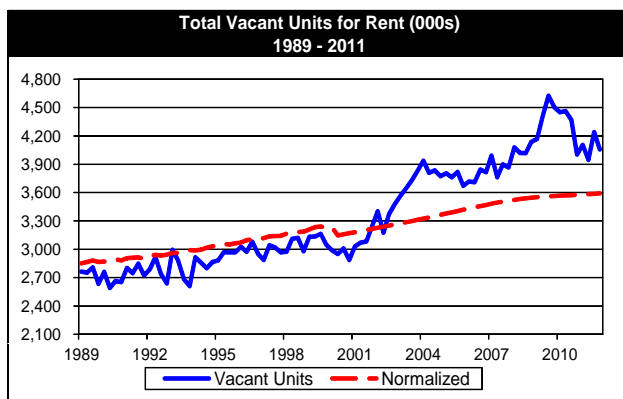
Source: Median forecasts for key economic indicators as surveyed by Bloomberg from 3/14/2012 to 3/26/2012

*Current market data as of March 26, 2012

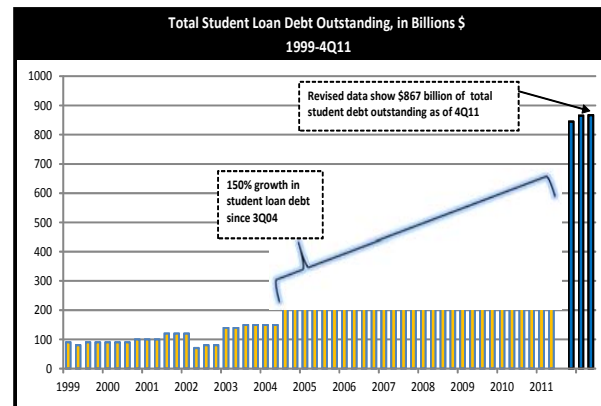
National Housing Market

Outlook 2012: Better, but far from Good

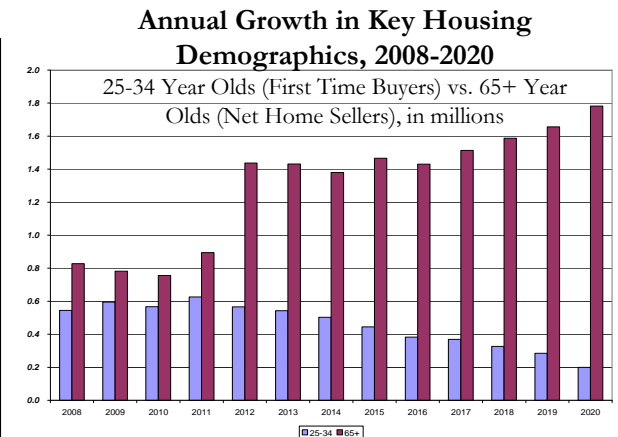
- First signs of improvement First time in 5 years
 - Lower distressed home supply, job growth, record low mortgage rates, stabilizing prices and rents
- But improvement is not recovery – recovery still years away
- Mortgage availability remains key headwind – Dodd-Frank, QRM's, Loan Limits, Credit Overlays
- 2.1 million excess vacant housing units still waiting to be absorbed (vs. 1983 low inventory)
- Negative equity situation remains in 2012 with 23% of households with a mortgage underwater
- No Pent-Up Demand? Negative demographic shift as the growth in 65+ households dramatically outstrips the growth in 25-34-year-olds (first time since 1800's when 26-64 year-olds actually declined in U.S.)
- Dramatically higher levels of student loan debt - up 50% since 2001 (now est. at 29% of typical monthly FHA mortgage payment)



Source: U.S. Census Bureau, Raymond James & Associates, Inc.



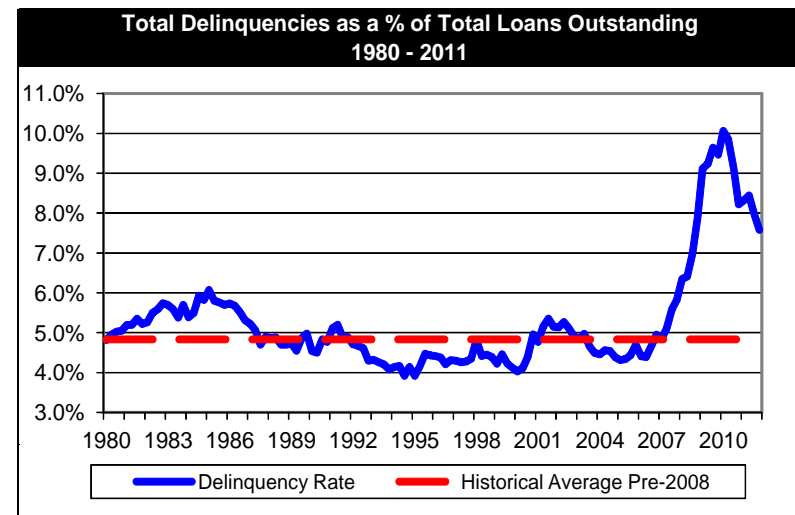
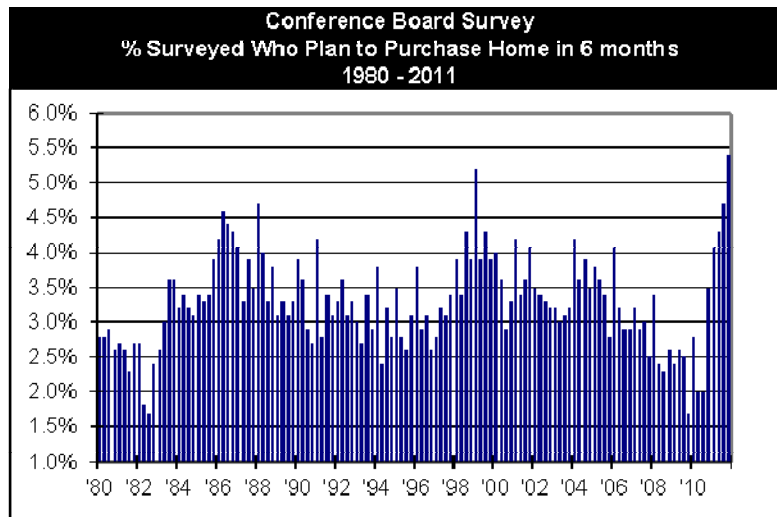
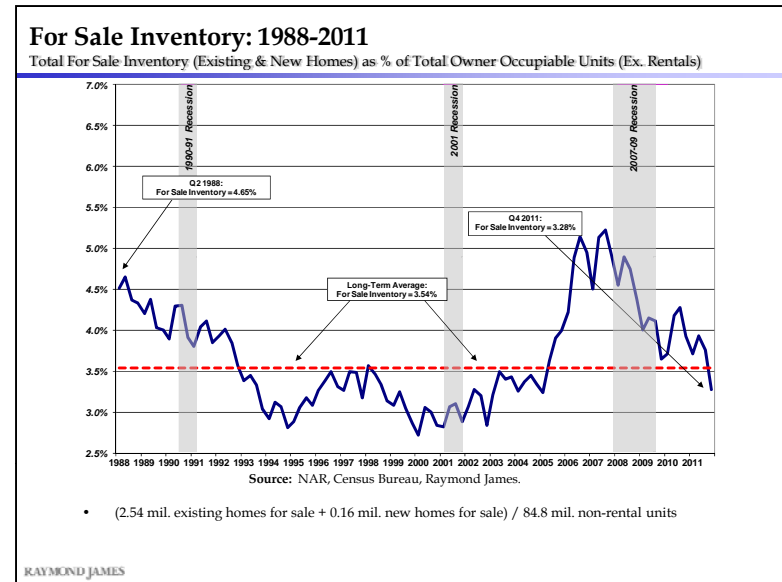
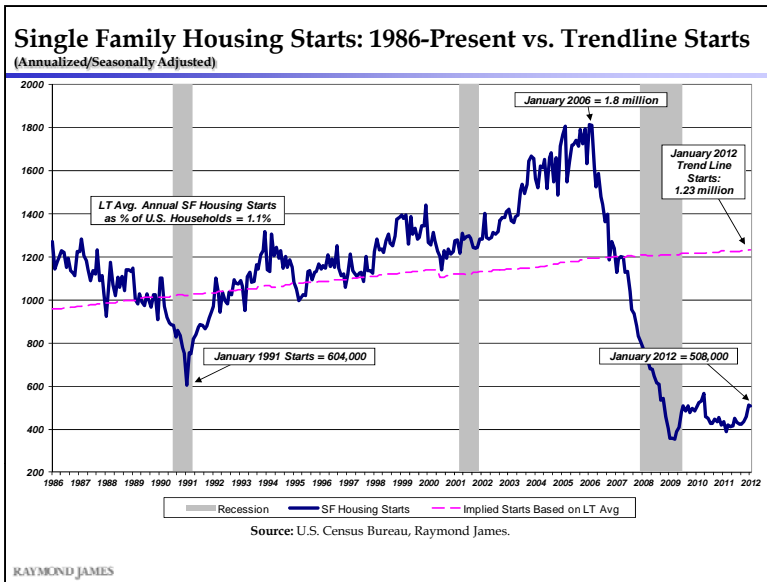
Source: New York Federal Reserve, Raymond James.



Source: U.S. Census Bureau,

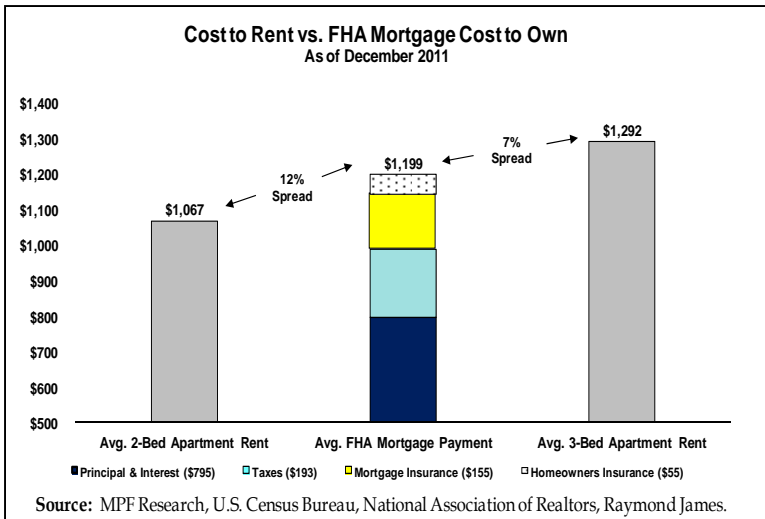
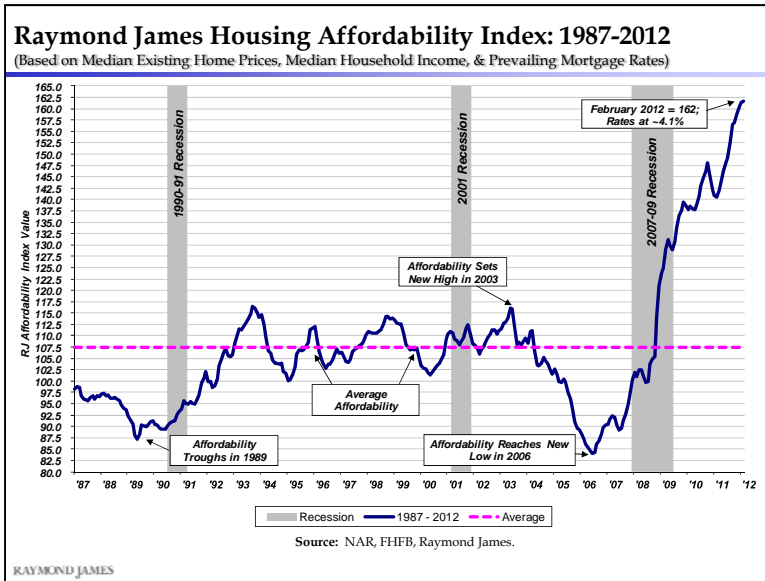
Dec 2011.

National Housing Market – more evidence of “Better, But Far From Good”



National Housing Market – Some Positive Signs

Homes are more affordable

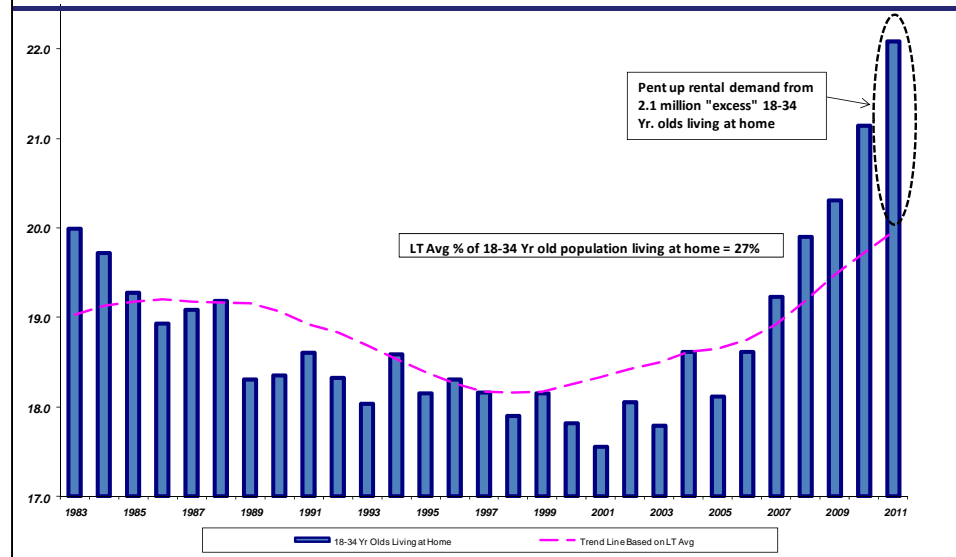


Multifamily fundamentals are strong

- Renter household formation is at strongest level in decades
- New supply well below historic trendlines, but supply is starting to build
- Demographic surge of “echo boomers” reaching their peak rental ages
- Rapid drop in home ownership rates
- Slow recovery in single family housing

Young Adults Living at Home: 1983-2011 vs. Trend Line

18-34 Year Olds, in millions



State HFAs and the National Housing Bond Market

- **All State Housing Finance Agencies are experiencing significant challenges** from recent Moody's State HFA Medians Report:

- Profitability stabilized (from prior low levels) at 8.7% (TDHCA = 9.8%)
- Single family program profitability improved substantially to 8.9% (TDHCA=11.7% -RMRB & 13.5%-SF)
- Continued low rate interest environment and expiration of federal programs (NIBP)
- The average HFA balance sheet remains stable

- **Primary causes of stabilized profitability: Federal NIBP Program**

- NIBP issuance alleviated some HFA issues in 2010 and 2011 when HFA's were not able to issue market rate bonds that were competitive with the conventional loan market.

- **Other facts and trends**

- Down payment assistance is #1 driver of success (funding DPA remains a challenge)
- New NIBP extension is not as attractive as prior program – most HFAs will not issue NIBP bonds in 2012
- State HFA's are considering "TBA" Programs to sustain their loan origination programs
- TDHCA has received proposals to provide a TBA program; staff will continue to evaluate the benefits vs. a bond offering

Texas Housing Market

- **Texas remains better than the national market**

- Home sales up 21% - Inventory down 17% – *February 2012 year over year comparison*
- Home prices flat
- Homes more affordable - *median price of \$146,700 is 7% below national median of \$156,600*
- Fewer foreclosures - *1.8% vs. 4.4% nationally*
- Delinquencies about the same - *9.7% vs. 9.4% nationally*

- **Few negatives to report**

- **Texas faces fewer headwinds to recovery than most markets**

- Limited foreclosure overhangs
- Highly affordable housing markets
- Business friendly growth policies
- Relatively small percent of borrowers in negative equity situation - *10.2% vs. 22.8% nationally*

Disclaimer

The information contained herein is solely intended to suggest/discuss potentially applicable financing applications and is not intended to be a specific buy/sell recommendation, nor is it an official confirmation of terms. Any terms discussed herein are preliminary until confirmed in a definitive written agreement.

The analysis or information presented herein is based upon hypothetical projections and/or past performance that have certain limitations. No representation is made that it is accurate or complete or that any results indicated will be achieved. In no way is past performance indicative of future results. Changes to any prices, levels, or assumptions contained herein may have a material impact on results. Any estimates or assumptions contained herein represent our best judgment as of the date indicated and are subject to change without notice. Examples are merely representative and are not meant to be all-inclusive.

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Appendix

Item 1 Additional TDHCA Facts and Figures

Item 2 Housing Comparables 2010 – HFA Bond Issuance

Raymond James Research Publications

Item 3 Texas Housing Update

Item 4 2010 Year End Municipal Chart Book

Item 5 Municipal Bond Weekly

Item 1:

Additional TDHCA Facts and Figures

Top Holders of TDHCA Debt

Top 20 Holders of TDHCA Debt

Account Name	Aggregate Par Held	Aggregate Par Change
Charles Schwab Investment Management, Inc.	53,650,000	(100,000)
Northern Trust Investments, Inc.	30,000,000	0
Progressive Capital Management Corporation	26,335,000	0
Chubb Corporation (Asset Management)	22,585,000	(925,000)
Federated Investment Management Company	19,135,000	(60,000)
J.P. Morgan Investment Management, Inc.	16,520,000	(100,000)
Liberty Mutual Group Asset Management, Inc.	14,355,000	0
City National Asset Management, Inc.	13,935,000	0
Wells Capital Management, Inc.	13,550,000	0
Mason Street Advisors, LLC	12,785,000	0
MetLife Investment Advisors Company, LLC	11,690,000	0
Independence Holding Company (Asset Management)	11,305,000	0
AIG Asset Management (U.S.), LLC	10,800,000	0
Capital Research & Management Company (U.S.)	9,265,000	(105,000)
Nuveen Asset Management, LLC	9,265,000	0
Community Capital Management, Inc.	8,690,000	3,505,000
Chubb Corp Fountain Capital Mgmt. MacKay Shields, LLC	7,530,000	(675,000)
American Money Management Corporation	7,300,000	0
Columbia Management Investment Advisers, LLC	7,095,000	(5,000)
Deutsche Investment Management Americas, Inc.	6,685,000	(180,000)
Total	312,475,000	1,355,000

Source: IPREQ. as of 4/2/2012

Recent Trading Activity of TDHCA Bonds

CUSIP	TRADE DATE	PAR	ISSUER NAME	CPN	MTY	YTW	MMD SPD YTW	PRICE
882750JD5	3/27/2012	20	TEXAS ST DEPT HSG & CMNTY AMT-REF-S	5	7/1/2034	2.432	225	101.9
882750JD5	3/27/2012	20	TEXAS ST DEPT HSG & CMNTY AMT-REF-S	5	7/1/2034	5.007	182	99.9
882750JD5	3/27/2012	30	TEXAS ST DEPT HSG & CMNTY AMT-REF-S	5	7/1/2034	2.432	225	101.9
882750JD5	3/27/2012	30	TEXAS ST DEPT HSG & CMNTY AMT-REF-S	5	7/1/2034	5.007	182	99.9
882750JD5	3/27/2012	50	TEXAS ST DEPT HSG & CMNTY AMT-REF-S	5	7/1/2034	5.007	182	99.9
882750JD5	3/27/2012	50	TEXAS ST DEPT HSG & CMNTY AMT-REF-S	5	7/1/2034	5.05	186	99.33
882750JD5	3/27/2012	50	TEXAS ST DEPT HSG & CMNTY AMT-REF-S	5	7/1/2034	5.05	186	99.33
882750MZ2	3/27/2012	10	TEXAS ST DEPT HSG & CMNTY SER B	4.45	1/1/2030	4.173	225	102.008
882750MZ2	3/27/2012	10	TEXAS ST DEPT HSG & CMNTY SER B	4.45	1/1/2030	4.2	228	101.809
882750JD5	3/26/2012	10	TEXAS ST DEPT HSG & CMNTY AMT-REF-S	5	7/1/2034	4.989	481	100
882750JD5	3/26/2012	10	TEXAS ST DEPT HSG & CMNTY AMT-REF-S	5	7/1/2034	5.151	196	98
882750MZ2	3/26/2012	10	TEXAS ST DEPT HSG & CMNTY SER B	4.45	1/1/2030	4.458	151	99.9
882750MZ2	3/26/2012	10	TEXAS ST DEPT HSG & CMNTY SER B	4.45	1/1/2030	4.449	250	100
882750JD5	3/22/2012	10	TEXAS ST DEPT HSG & CMNTY AMT-REF-S	5	7/1/2034	4.99	481	100
882750JD5	3/22/2012	15	TEXAS ST DEPT HSG & CMNTY AMT-REF-S	5	7/1/2034	5.151	192	98
882750ME9	3/21/2012	750	TEXAS ST DEPT HSG & CMNTY SER B	1	1/1/2014	0.156	-18	99.725
882750ME9	3/21/2012	750	TEXAS ST DEPT HSG & CMNTY SER B	1	1/1/2014	0.099	-24	99.825
882750ME9	3/21/2012	750	TEXAS ST DEPT HSG & CMNTY SER B	1	1/1/2014	0.057	-28	99.9

Source: MuniRecap/Emma; data as of 4/2/2012.

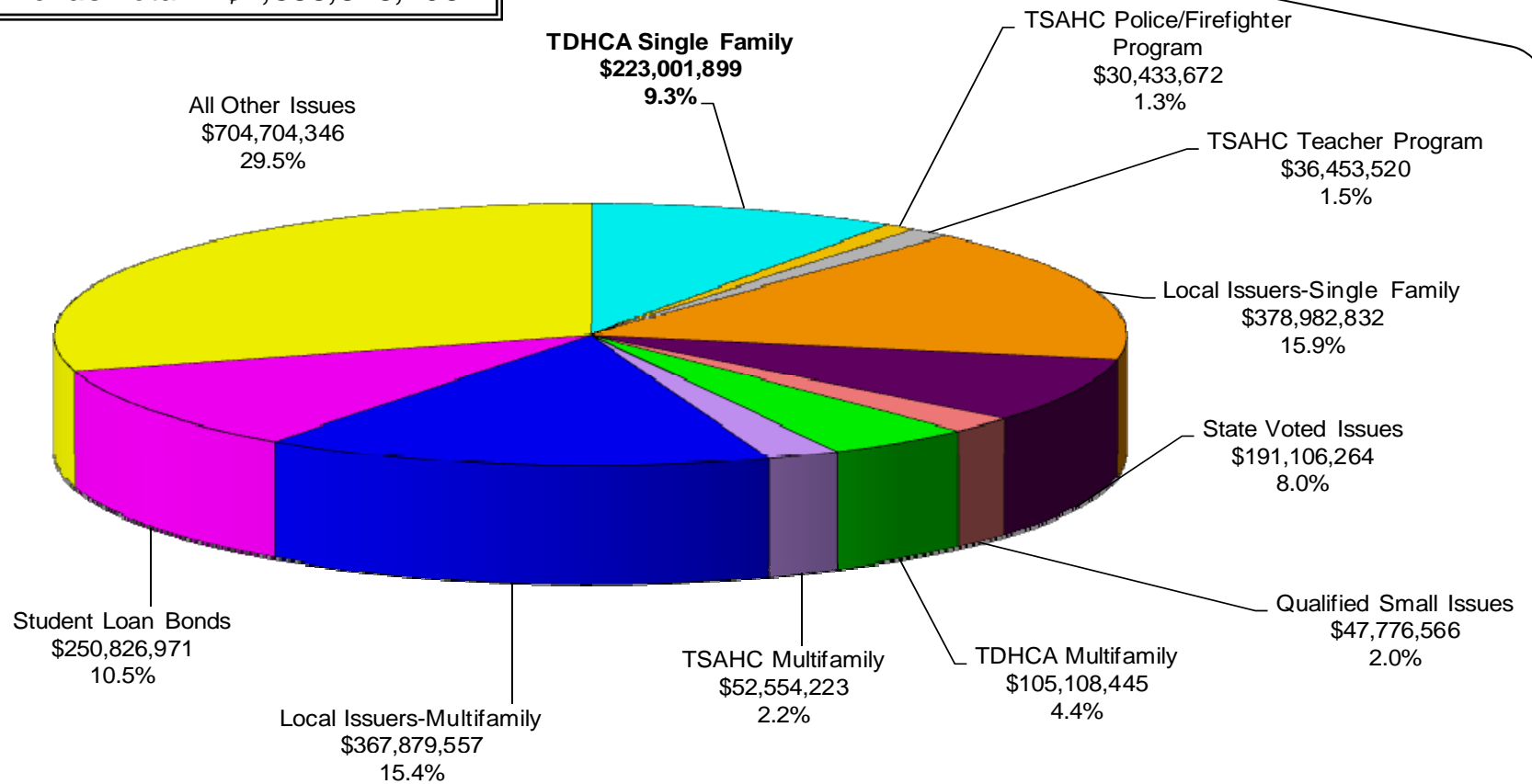
Texas Private Activity Bond Allocation

Actual 2011 YTD Volume Cap

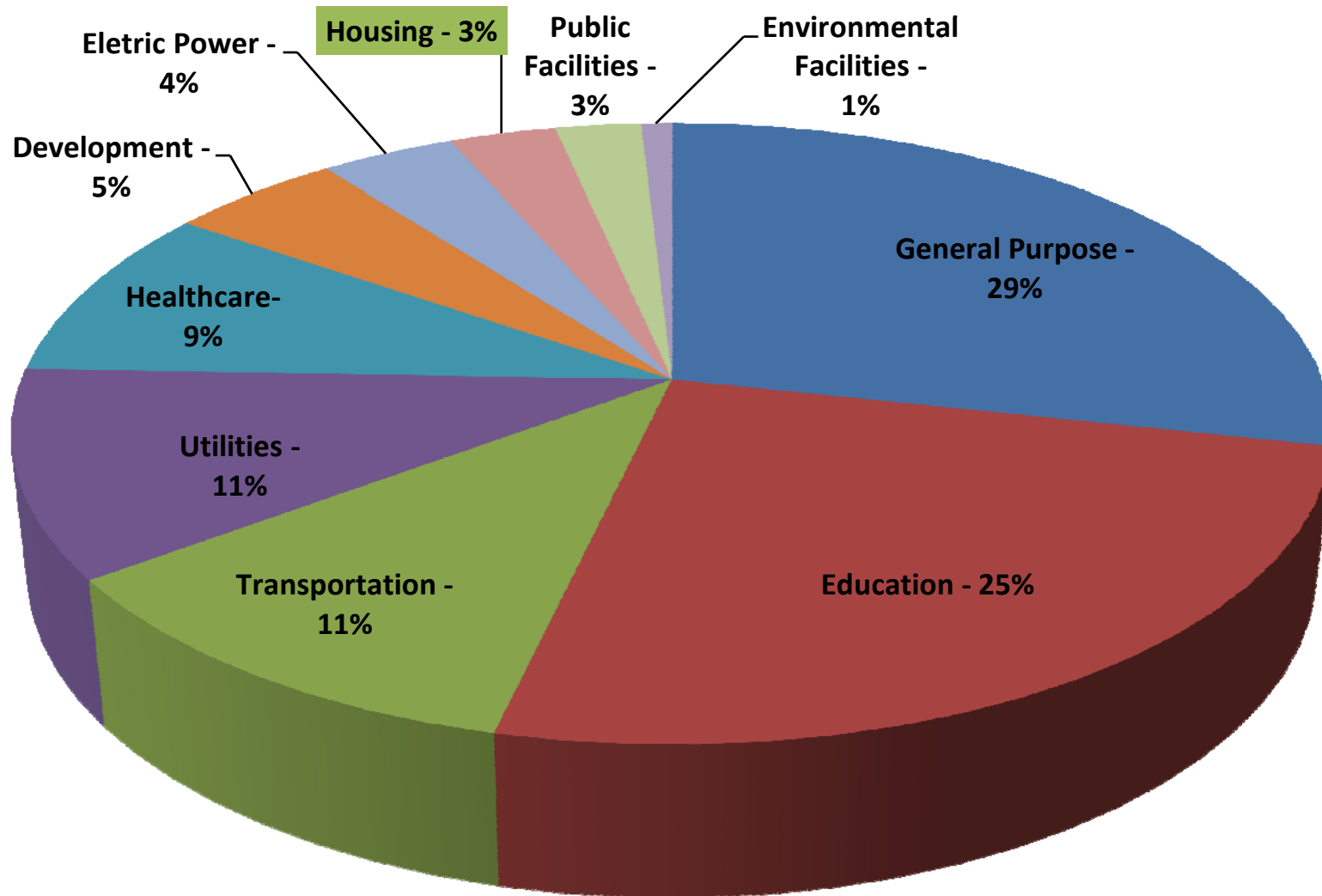
Single Family = 28%

Data as of June 6, 2011

State of Texas Total = \$2,388,828,295

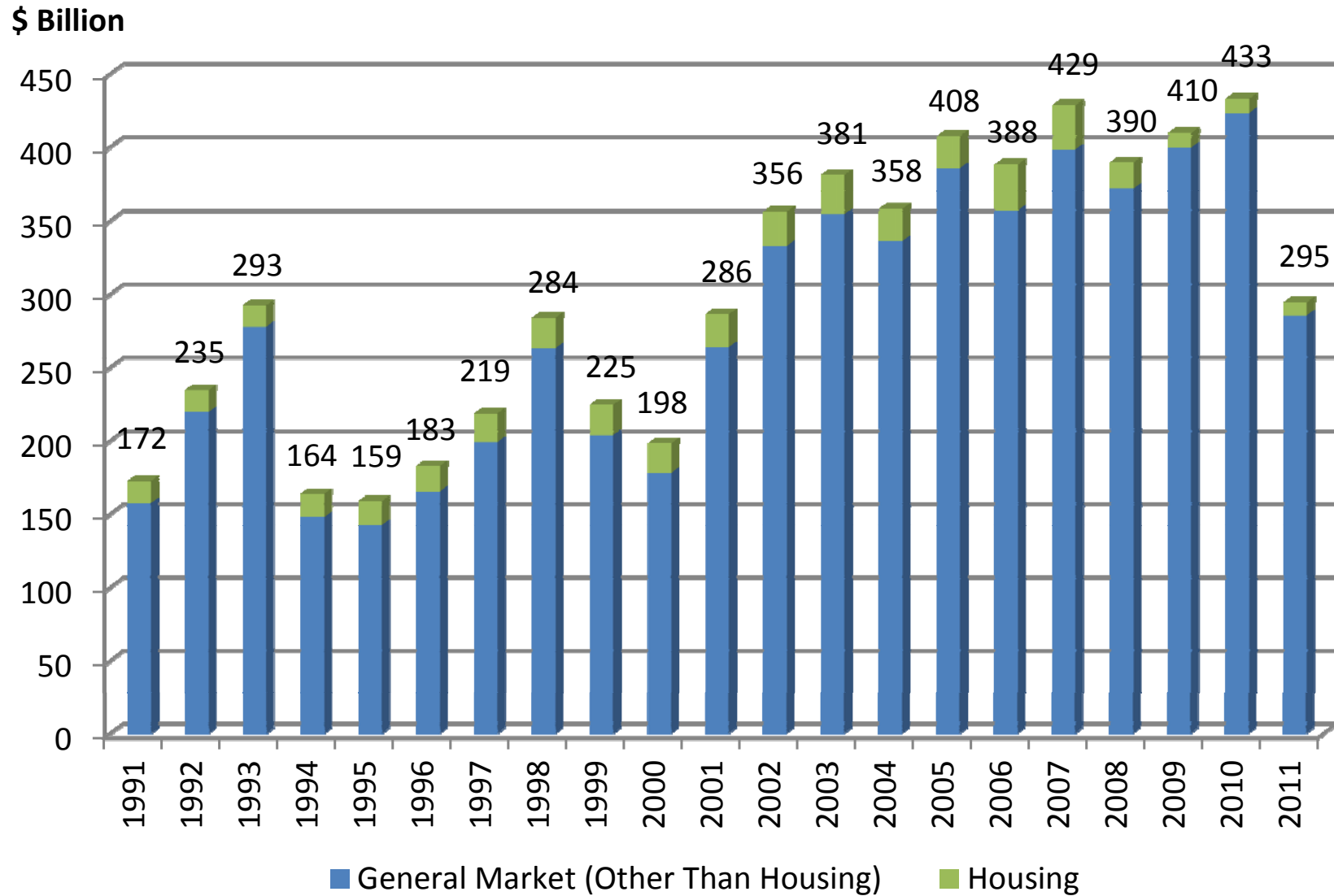


Purpose of Municipal Financings – 2011 Bonds



Source: The Bond Buyer

Long-Term Municipal Issuance: 1991-2010



Source: The Bond Buyer

Item 2:

Housing Comparables 2011 –
HFA Bond Issuance

2011 Housing Issuance

Sales Date	Amount	Issuer	Ratings
December*			
12/20/11	\$ 7,770,000	California Statewide Communities Development Authority	Aaa
12/20/11	\$ 19,900,000	Housing Authority of the City of Charlotte (North Carolina)	NR/AA-/NR
12/19/11	\$ 4,550,000	New Jersey Housing and Mortgage Finance Agency	Aaa
12/15/11	\$ 36,720,000	Connecticut Housing Finance Authority	Aaa/AAA/NR
12/15/11	\$ 20,000,000	Kentucky Housing Corporation	Aaa/AAA/NR
12/15/11	\$ 35,510,000	New York State Housing Finance Agency	Aa2
12/15/11	\$ 156,115,000	Virginia Housing Development Authority	Aa1/AA+/NR
12/14/11	\$ 154,650,000	New York City Housing Development Corporation	Aa2/AA/NR
12/14/11	\$ 3,180,000	Ohio Housing Finance Agency	MIG-1
12/13/11	\$ 14,610,000	District of Columbia Housing Finance Agency	Aaa
12/13/11	\$ 18,270,000	Capital Trust Agency	NR/A-/NR
12/13/11	\$ 6,700,000	Health, Educational & Housing Facility Board of City of Memphis	NR/AA+/NR
12/13/11	\$ 10,800,000	Minneapolis Paul Housing Finance Board	NR/AA+/NR
12/13/11	\$ 16,000,000	New Hampshire Housing Finance Authority	Aa3
12/08/11	\$ 40,800,000	Connecticut Housing Finance Authority	Aaa/AAA/NR
12/08/11	\$ 104,155,000	New Jersey Housing and Mortgage Finance Agency	Aa1
12/07/11	\$ 40,000,000	North Carolina Housing Finance Authority	Aa2/AA/NR
12/07/11	\$ 4,265,000	Vermont Housing Finance Agency	Aaa
12/06/11	\$ 16,000,000	Indiana Housing and Community Development Authority	NR/A-/NR
12/01/11	\$ 101,150,000	Department of Veterans Affairs of California	Aa3/AA/AA-
November*			
11/30/11	\$ 12,800,000	Texas State Affordable Housing Corporation	Aaa
11/30/11	\$ 8,370,000	California Housing Finance Agency	Aaa
11/29/11	\$ 16,500,000	District of Columbia Housing Finance Agency	Aaa
11/29/11	\$ 22,555,000	Maryland Department of Housing and Community Development	Aaa
11/28/11	\$ 4,970,000	Utah Housing Corporation (UHC)	Aaa
11/22/11	\$ 20,000,000	Hawaii Housing Finance and Development Corporation	Aaa/AA+/AAA
11/22/11	\$ 13,250,000	Maine State Housing Authority	Aa1/AA+/NR
11/22/11	\$ 42,685,000	Minnesota Housing Finance Agency	Aaa
11/17/11	\$ 16,685,000	Maryland Department of Housing and Community Development	Aaa
11/17/11	\$ 33,200,000	Georgia Housing and Finance Authority	NR/AAA/NR
11/16/11	\$ 20,000,000	Arkansas Development Finance Authority	Aaa
11/16/11	\$ 5,040,000	Rhode Island Housing & Mortgage Finance Corporation	Aaa
11/16/11	\$ 155,800,000	Virginia Housing Development Authority	Aa1/AA+/NR
11/15/11	\$ 52,000,000	Indiana Housing and Community Development Authority	Aaa
11/15/11	\$ 6,000,000	Housing Finance Authority of Pinellas County, Florida	Aaa
11/10/11	\$ 53,000,000	New York City Housing Development Corporation	Aa1
11/10/11	\$ 5,890,000	New York State Housing Finance Authority	Aa2
11/09/11	\$ 44,000,000	Nebraska Investment Finance Authority	NR/AA+/NR
11/09/11	\$ 11,000,000	Orange County Housing Finance Authority	Aaa
11/09/11	\$ 141,255,000	Tennessee Housing Development Agency	Aa1/AA+/NR
11/08/11	\$ 19,500,000	Virginia Housing Development Authority	Aa1/AA+/NR
11/03/11	\$ 100,305,000	Alaska Housing Finance Corporation	Aaa/AAA/AAA
11/03/11	\$ 35,495,000	Delaware State Housing Authority	Aaa
11/02/11	\$ 168,280,000	State of New York Mortgage Agency	Aa1
11/02/11	\$ 12,000,000	Vermont Housing Finance Agency	Aaa/NR/AAA
11/01/11	\$ 20,740,000	West Virginia Housing Development Fund	Aaa/AAA/NR
October*			
10/27/11	\$ 57,480,000	Massachusetts Housing Finance Agency	Aa3/AA-/AA-
10/27/11	\$ 37,960,000	Nevada Housing Division	NR/AA+/NR
10/26/11	\$ 20,000,000	Iowa Finance Authority	Aaa
10/25/11	\$ 28,000,000	Oklahoma Housing Finance Agency	Aaa
10/20/11	\$ 40,000,000	Ohio Housing Finance Agency	Aaa
10/19/11	\$ 54,820,000	Florida Housing Finance Corporation	Aaa
10/19/11	\$ 12,735,000	North Dakota Housing Finance Agency	Aa3
10/18/11	\$ 61,330,000	Connecticut Housing Finance Authority	NR/AAA/NR
10/13/11	\$ 30,000,000	Mississippi Home Corporation	Aaa
10/13/11	\$ 16,470,000	New York State Housing Finance Authority	Aa2
10/13/11	\$ 14,630,000	New York State Housing Finance Authority	Aa2
10/12/11	\$ 40,000,000	Maryland Department of Housing & Community Development	Aaa
10/12/11	\$ 34,000,000	South Carolina State Housing Finance	Aaa
10/12/11	\$ 32,000,000	Wyoming Community Development Authority	Aa2
10/07/11	\$ 8,000,000	Dakota County Community Development Agency, Minnesota	NR/AA+/NR
10/06/11	\$ 6,300,000	City of San Jose, California	NR/AA+/NR

2011 Housing Issuance

Sales Date	Amount	Issuer	Ratings
10/05/11	\$ 12,425,000	Montgomery County Maryland Housing Opportunities Commission	Aa3
10/05/11	\$ 65,290,000	Tennessee Housing Development Agency	Aa2
September*			
09/29/11	\$ 6,980,000	California Municipal Finance Authority	NR/A-/NR
09/29/11	\$ 36,809,000	Delaware State Housing Authority	Aa1
09/29/11	\$ 56,900,000	South Dakota Housing Development Authority	Aa3
09/28/11	\$ 18,000,000	Maine State Housing Authority	Aa1/AA+/NR
09/22/11	\$ 18,200,000	New Mexico Mortgage Finance Authority	NR/AA+/NR
09/16/11	\$ 15,000,000	Nevada Housing Division	NR/AA+/NR
09/15/11	\$ 14,000,000	Rhode Island Housing and Mortgage Finance Corporation	Aa2
09/15/11	\$ 17,480,000	Virginia Housing Development Authority	Aa1/AA+/NR
09/14/11	\$ 24,000,000	Indiana Housing and Community Development Authority	Aaa
09/09/11	\$ 151,190,000	State of New York Mortgage Agency	Aa1
09/09/11	\$ 81,705,000	Pennsylvania Housing Finance Agency	Aa2/AA/NR
09/08/11	\$ 20,000,000	New Hampshire Housing Finance Authority	Aa3
09/08/11	\$ 31,120,000	Massachusetts Housing Finance Agency	Aaa
09/08/11	\$ 74,650,000	Virginia Housing Development Authority	Aa1/AA+/NR
09/01/11	\$ 28,000,000	Georgia Housing Finance Authority	NR/AAA/NR
August*			
08/31/11	\$ 50,000,000	West Virginia Housing Development Fund	Aaa/AAA/NR
08/25/11	\$ 65,000,000	Minnesota Housing Finance Agency	Aaa
08/25/11	\$ 87,955,000	Texas Department of Housing & Community Affairs	Aaa/AA+/NR
08/25/11	\$ 4,100,000	Chattanooga Health, Educational and Housing Facility (TN)	SP-1+
08/24/11	\$ 66,430,000	Washington State Housing Finance Commission	Aaa
08/18/11	\$ 33,320,000	Maine State Housing Authority	Aa1/AA+/NR
08/17/11	\$ 70,000,000	Ohio Housing Finance Agency	Aaa
08/12/11	\$ 21,940,000	Massachusetts Housing Finance Agency	Aa2/AA/NR
08/10/11	\$ 17,800,000	Washington State Housing Finance Commission	NR/AA+/NR
08/10/11	\$ 9,600,000	Washington State Housing Finance Commission	NR/AA+/NR
08/09/11	\$ 40,310,000	Maryland Department of Housing & Community Development	Aaa/NR/NR
08/05/11	\$ 10,675,000	California Statewide Communities Development Authority	NR/A-/NR
08/04/11	\$ 40,000,000	Tennessee Housing Development Agency	Aa2
08/03/11	\$ 34,000,000	North Carolina Housing Finance Authority	Aa2/AA/NR
July*			
07/28/11	\$ 23,055,000	Louisiana Housing Finance Agency	Aaa
07/27/11	\$ 18,000,000	Oregon Housing & Community Services	Aa3
07/21/11	\$ 26,345,000	New York State Housing Finance Authority	Aa2
07/21/11	\$ 63,675,000	Connecticut Housing Finance Authority	Aaa/AAA/NR
07/20/11	\$ 34,800,000	Wyoming Community Development Authority	Aa2
07/20/11	\$ 8,000,000	Pinellas County Housing Finance Authority	Aaa
07/14/11	\$ 36,000,000	North Dakota Housing Finance Agency	Aa3
07/14/11	\$ 35,640,000	Michigan State Housing Development Authority	NR/AAA/NR
07/13/11	\$ 16,000,000	New Mexico Mortgage Finance Authority	NR/AAA/NR
June*			
06/30/11	\$ 10,000,000	Orange County Housing Finance Authority	Aaa
06/29/11	\$ 7,200,000	Minneapolis/Saint Paul Housing Finance Board	NR/AAA/NR
06/29/11	\$ 24,000,000	Iowa Finance Authority	Aaa
06/24/11	\$ 101,570,000	New Jersey Housing Finance Agency	Aa1
06/24/11	\$ 29,000,000	NYS Housing Finance Mortgage Agency	Aa2
06/23/11	\$ 30,000,000	South Dakota Housing Development Authority	Aa3
06/21/11	\$ 17,775,000	Massachusetts Housing Finance Authority	Aaa/AAA/NR
06/16/11	\$ 11,750,000	Dakota County Community Development Agency	NR/AAA/NR
06/15/11	\$ 24,000,000	Indiana Housing and Community Development Authority	Aaa
06/14/11	\$ 60,000,000	Florida Housing Finance Corporation	Aaa
06/14/11	\$ 16,425,000	Memphis Health Education & Housing Facilities Board	A-/A (S&P)
06/09/11	\$ 10,705,000	Indianapolis City-Indiana	A-/BBB-/BB- (S&P)
06/08/11	\$ 5,115,000	California Affordable Housing Agency	NR/NR/NR
06/08/11	\$ 39,840,000	Delaware State Housing Authority	Aaa
06/08/11	\$ 29,325,000	Maine State Housing Authority	Aa1/AA+/NR
06/08/11	\$ 42,000,000	Minnesota Housing Finance Agency	Aaa
06/08/11	\$ 13,600,000	Nevada Housing Division	NR/AAA/NR
May*			
05/25/11	\$ 3,360,000	Saint Cloud Housing and Redevelopment Authority	NR/AA+/NR
05/24/11	\$ 13,085,000	City of Moorpark - California	NR/BBB/NR

2011 Housing Issuance

Sales Date	Amount	Issuer	Ratings
05/19/11	\$ 14,875,000	Florida Capital Trust Agency	NR/A-/NR
05/18/11	\$ 70,000,000	Virginia Housing Development Authority	Aa1/AA+/NR
05/12/11	\$ 16,000,000	Maine State Housing Authority	Aa1/AA+/NR
05/12/11	\$ 24,000,000	Massachusetts Housing Finance Auth	Aa2/AA/NR
05/12/11	\$ 50,000,000	Ohio Housing Finance Agency	Aaa
05/11/11	\$ 8,680,000	Maryland Community Development Administration	Aaa
05/11/11	\$ 11,035,000	Alameda Community Improvement Commission	NR/A-/NR
05/10/11	\$ 15,730,000	Wilmington City-Delaware	NR/NR/NR
05/06/11	\$ 5,430,000	Florida Housing Finance Corporation	Aaa
05/06/11	\$ 5,640,000	Florida Housing Finance Corporation	Aaa
05/06/11	\$ 72,000,000	California Housing Finance Agency	Aaa
05/05/11	\$ 49,450,000	Texas State Affordable Housing Corporation	A-/BBB-/NR (S&P)
05/05/11	\$ 20,000,000	New Hampshire Housing Finance Authority	Aa3/NR/NR
05/03/11	\$ 66,000,000	Hawaii Housing Finance & Development Corporation	NR/AAA/NR
05/03/11	\$ 11,700,000	Virginia Housing Development Authority	Aa1/AA+/NR
April*			
04/28/11	\$ 20,000,000	Kentucky Housing Corporation	Aaa/AAA/NR
04/27/11	\$ 12,445,000	New Hampshire Housing Finance Authority	Aa2/NR/NR
04/27/11	\$ 16,400,000	Montana Board of Housing	Aa3/NR/NR
04/26/11	\$ 24,000,000	Oklahoma Housing Finance Agency	Aaa
04/26/11	\$ 14,500,000	San Diego City Housing Authority	NR/AAA/NR
04/25/11	\$ 26,400,000	Georgia Housing Finance Authority	NR/AAA/NR
04/20/11	\$ 70,825,000	Maryland Department of Housing & Community Development	Aa1/NR/NR
04/18/11	\$ 5,825,000	Anoka City Housing & Redevelopment Authority	Aaa
04/14/11	\$ 16,000,000	Arkansas Development Finance Authority	Aaa
04/14/11	\$ 28,320,000	NYC Housing Development Corporation	Aa2/AA/NR
04/13/11	\$ 39,200,000	Colorado Housing & Finance Authority (CHFA)	Aaa
04/13/11	\$ 31,500,000	New Mexico Finance Authority (NMFA)	NR/AAA/NR
04/11/11	\$ 40,000,000	Missouri Housing Development Commission	NR/AAA/NR
04/07/11	\$ 57,170,000	Michigan State Housing Development Authority	NR/AA/NR
04/05/11	\$ 1,550,000	California Statewide Communities Development Authority	NR/AAA/NR
March*			
03/30/11	\$ 3,630,000	Hawaii Housing Finance & Development Corporation	NR/AAA/NR
03/24/11	\$ 40,000,000	Tennessee Housing Development Agency	Aa2/NR/NR
03/23/11	\$ 13,615,000	Indianapolis City-Indiana	A-/BBB- (S&P)
03/23/11	\$ 67,500,000	Minnesota Housing Finance Agency	Aaa
03/22/11	\$ 115,410,000	State of New York Mortgage Agency	Aaa
03/16/11	\$ 85,210,000	Florida Housing Finance Corporation	Aa1/AA+/AA+
03/16/11	\$ 8,890,000	Minnesota Housing Finance Agency	Aa1/AA+/NR
03/16/11	\$ 24,000,000	Oregon Housing & Community Services	Aa3/NR/NR
03/16/11	\$ 25,480,000	Vancouver Housing Authority	NR/AA-/NR
03/07/11	\$ 5,660,000	Lynwood Redevelopment Agency	NR/A-/NR
03/03/11	\$ 46,980,000	Oakland City Redevelopment Agency	A2/A/NR
03/03/11	\$ 158,840,000	Pennsylvania Housing Finance Agency	Aa2/AA+/NR
03/02/11	\$ 28,188,028	Riverside Redevelopment Agency	A3/A-/NR
February*			
02/24/11	\$ 25,000,000	Illinois Housing Development Authority	Aa3/AA/NR
02/17/11	\$ 60,000,000	Florida Housing Finance Corporation	Aaa
02/14/11	\$ 3,441,300	Ohio Housing Finance Agency	Aaa
02/10/11	\$ 22,000,000	Texas State Affordable Housing Corporation	Aaa
02/09/11	\$ 2,190,000	Maryland Department of Housing & Community Development	Aaa
02/07/11	\$ 60,000,000	Texas Department of Housing & Community Affairs	Aaa/AAA/NA
02/02/11	\$ 40,000,000	Washington State Housing Finance Commission	Aaa
02/01/11	\$ 21,750,000	Minnesota Housing Finance Agency	Aa2/AA+/NA
January*			
01/21/11	\$ 29,630,000	Utah Housing Corporation (UHC)	Aaa/AAA/AAA
01/21/11	\$ 11,375,000	Anderson City-Indiana	Aa3/AA-/AA-
01/20/11	\$ 52,805,000	San Marcos Redevelopment Agency	A-/BBB-/BB- (S&P)
01/14/11	\$ 11,655,000	New Haven Public Housing Authority	NR/AA-/NR

*Months of Sales Date

Item 3:

Texas Housing Update

Raymond James Research

Real Estate

March 29, 2012

Industry Brief

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Housing: Industry Tidbit

Texas Housing Update: February Sales Jump 21% Y/Y; Inventory Down 17% Y/Y

- ◆ **February sales jump 21% y/y.** Existing home sales in Texas jumped 21% y/y in February (a nice acceleration from January's +8% y/y comparison), keeping y/y sales trends in positive territory for an eighth straight month. We believe Texas' strong job growth, low foreclosure rates, and high affordability continue to drive many of its housing markets to outperform. We also acknowledge that some of the improvement in the y/y trend likely stems from an easy year-ago comparison (sales were down 8% y/y last February versus up 5% last January). Evidencing the steady demand in Texas, KB Home highlighted last week (amid a rather weak earnings report) that it continues to be encouraged by buyer activity in Texas and saw sales jump 35% y/y in Texas with strength across all four major cities. Looking out, we think many of Texas' submarkets will remain areas of strength this spring and are pleased to find North Texas pending home sales (Dallas area) up 35% y/y in February (accelerating from January's 16% y/y increase). Meanwhile, pending sales in Houston climbed 14% y/y in February (accelerating relative to last month's subdued +6% y/y result). Nevertheless, we suspect many prospective buyers are still facing financing-related roadblocks, leaving Texas exposed to the mortgage availability issues that we think will constrain buyer demand nationally (especially at the entry level) in 2012.
- ◆ **Inventory declines 17% y/y.** Listings in Texas plunged 17% y/y in February (in line with January's down 17% y/y result) to 104,518 units, but rose 2% month-over-month as more sellers emerged to capture heightened spring demand. For context, since 2004, listed inventory has climbed 2% (on average) between January and February. We would not be surprised to see listings continue to increase on a sequential basis over the next few months due to normal seasonality, but believe inventory levels will be down considerably y/y and remain manageable. Texas' total listings represent only 6.0 months of supply, which is down from 7.4 months y/y and below the 6.4 months of existing home supply reported nationally as of February. Drilling down, existing home inventory declined in all four of the major markets. The least substantial decrease among the major markets continues to be reported in San Antonio, where listings declined 13% y/y. Elsewhere, Houston listings dropped 20% y/y and Austin listings declined 21% y/y. The most substantial y/y decline was registered in Dallas where listings plunged 25% y/y.
- ◆ **Median home price flat y/y.** Texas' median home price remained virtually unchanged y/y in February. Over the last 35 months, y/y median price comparisons have oscillated in a narrow range between down 3% and up 4%. Over the past 12 months, pricing trends have been even more stable, ranging between down 1% y/y to up 1% y/y. In our view, pricing in Texas will remain relatively steady, but could slowly edge higher in 2012 if inventory levels remain low. On a local level, only one of the four major markets reported a y/y median price increase, with the breakdown as follows: Austin (up 2% y/y), Dallas (flat y/y), Houston (down 1% y/y), and San Antonio (down 1% y/y).
- ◆ **Apartment market continues to tighten.** The rental apartment market in Texas' major markets continues to tighten, driven by the state's strong job growth. Effective rents in Texas climbed across the board according to 4Q data from MPF Research. Austin led all markets with a 7.2% y/y average rent increase, followed by Dallas (+4.8% y/y), San Antonio (+4.6% y/y), Fort Worth (+4.4% y/y), and Houston (+4.0% y/y). Occupancy rates also improved in all markets, ranging from a 90 bp improvement in San Antonio (to 93.3%) to a 240 bp improvement in Houston (to 91.8%). Looking ahead, the rising tide is attracting new development activity as evidenced by a reacceleration of new multifamily permit activity. We think these new starts may begin to quell the recent outsized rent growth by 2H12, but overall we consider the recent level of permitting activity within longer-term norms for the Texas markets. Specifically, trailing 12-month multifamily permit activity (through December) as a percentage of existing multifamily stock ranges from 1.5% in Houston to 2.2% in Dallas, before factoring in any normal housing stock losses.
- ◆ **Fewer foreclosures in Texas.** Fourth quarter mortgage delinquency data from the Mortgage Bankers Association revealed only 1.8% of Texas loans (63,800 mortgages by our estimate) were in foreclosure versus 4.4% nationally. With distressed units entering the market at a manageable pace [real estate owned (REO) filings in Texas were down 7% y/y in February compared to the 1% y/y decline nationally], we do not expect foreclosure inventory levels to pressure the market in the near term. Specifically, there were 4,099 REO filings in Texas during February. That said, we are cognizant that lenders may ramp up stalled foreclosure liquidations early this year following the recent "robo-signing" settlement.
- ◆ **Texas faces fewer headwinds than most markets.** Job growth continues to help spur demand throughout Texas as the state's non-farm payrolls rose by 258,200 jobs, or 2.5% y/y, in January (accelerating from the 2.0% y/y increase posted in December). Houston and Austin led the way with 3.5% y/y job growth, followed by Dallas (+2.0%) and San Antonio (+1.2%). Looking further ahead, we believe homebuilders with a strong presence in Texas will benefit from the state's: 1) limited foreclosure overhang; 2) highly affordable housing markets; 3) business-friendly growth policies; and 4) relatively small percentage of borrowers in a negative equity situation. Specifically, based on data from First American Core Logic, only 10.2% of properties with a mortgage were "underwater" in Texas as of December (versus 22.8% nationally).

Please read domestic and foreign disclosure/risk information beginning on page 5 and Analyst Certification on page 5.

- ◆ **Builder exposure.** For reference, as a percentage of their total 2009 unit closing volumes, Meritage Homes, The Ryland Group, and Lennar Corp. have the largest respective exposures to Texas.

Texas - Closings By Builder		
Company	% of Total Closings	2009 Texas Closings (Est.)
Meritage Homes	61%	2,482
The Ryland Group	28%	1,461
Lennar Corp.	28%	3,259
D.R. Horton	28%	5,078
Hovnanian Enterprises	27%	1,518
KB Home	25%	2,129
PulteGroup	17%	3,683
Taylor Morrison	9%	295
Standard Pacific Corp.	6%	220

Source: *Builder Magazine*, Raymond James research.

Texas Home Sales													
% Change YoY	2011											2012	
	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.
State-wide	-8%	-12%	-17%	-16%	-3%	15%	22%	12%	7%	6%	3%	8%	21%
Abilene	-9%	-2%	-8%	-29%	2%	-10%	12%	-5%	10%	-11%	-3%	15%	49%
Amarillo	-14%	9%	-23%	-28%	1%	47%	58%	-1%	2%	45%	4%	17%	6%
Arlington	-37%	-22%	-28%	-31%	2%	16%	32%	18%	3%	3%	0%	13%	36%
Austin	-32%	-13%	-18%	-11%	5%	30%	28%	27%	17%	10%	9%	10%	16%
Bay Area	5%	-11%	-8%	-16%	-8%	10%	38%	13%	3%	19%	11%	6%	14%
Beaumont	0%	-20%	-17%	-29%	-6%	-1%	-8%	2%	3%	-17%	2%	2%	25%
Brazoria County	-17%	-18%	-6%	3%	-1%	-23%	30%	-9%	-14%	20%	-9%	-16%	41%
Brownsville	NA	-28%	NA	NA	52%	-11%	32%	-1%	20%	18%	-33%	-10%	13%
Bryan-College Station	-6%	-8%	-20%	-16%	-1%	29%	0%	7%	14%	23%	4%	22%	23%
Collin County	-3%	-14%	-17%	-19%	6%	17%	29%	19%	10%	5%	2%	13%	18%
Corpus Christi	-22%	-6%	-19%	-15%	-4%	19%	21%	14%	12%	-22%	10%	17%	44%
Dallas	-10%	-15%	-20%	-19%	-5%	18%	26%	10%	7%	12%	2%	13%	23%
Denton County	-15%	-19%	-28%	-24%	0%	40%	34%	18%	2%	20%	5%	6%	46%
El Paso	-21%	-20%	-19%	-38%	-37%	12%	24%	-6%	4%	-4%	-9%	-9%	28%
Fort Bend	8%	-8%	-14%	-11%	12%	10%	22%	16%	17%	24%	5%	7%	16%
Fort Worth	-15%	-26%	-13%	-17%	-4%	16%	10%	11%	1%	-2%	4%	6%	24%
Galveston	-12%	1%	9%	-12%	10%	9%	20%	-3%	-9%	0%	3%	-9%	34%
Garland	-19%	-20%	-39%	-12%	-7%	23%	41%	-13%	2%	24%	-2%	9%	29%
Harlingen	NA	-6%	-55%	6%	35%	-6%	20%	-21%	12%	3%	-23%	13%	NA
Houston	-2%	-6%	-13%	-14%	0%	16%	28%	15%	8%	8%	4%	6%	16%
Irving	-15%	-14%	-28%	-25%	8%	21%	33%	6%	-7%	26%	0%	40%	15%
Killeen-Fort Hood	-14%	-19%	-23%	-29%	-35%	-36%	2%	-15%	-15%	13%	25%	8%	18%
Longview-Marshall	-3%	-18%	-16%	-23%	-14%	NA	5%	14%	3%	-9%	14%	-7%	21%
Lubbock	-9%	-34%	-27%	-21%	1%	38%	5%	39%	12%	5%	2%	10%	42%
Lufkin	7%	-20%	-20%	0%	5%	10%	40%	67%	0%	-34%	-33%	20%	10%
McAllen	-25%	-28%	-11%	-28%	-13%	-20%	35%	22%	-14%	-9%	-21%	-20%	6%
Montgomery County	1%	-4%	-13%	-8%	0%	14%	26%	13%	-3%	-7%	7%	0%	14%
Nacogdoches	-18%	-16%	-60%	-29%	-5%	29%	-28%	6%	-26%	-34%	-20%	-27%	11%
Northeast Tarrant County	-20%	-18%	-26%	-11%	4%	14%	25%	15%	9%	7%	11%	13%	38%
Paris	40%	-27%	3%	-6%	-6%	-8%	15%	-7%	9%	36%	-17%	57%	62%
Port Arthur	-20%	-4%	-34%	-25%	-18%	6%	-5%	0%	-2%	13%	-27%	-14%	31%
San Angelo	13%	-33%	-26%	0%	5%	1%	10%	32%	-18%	1%	3%	5%	6%
San Antonio	-10%	-11%	-18%	-10%	-1%	10%	7%	8%	5%	-3%	3%	2%	13%
Sherman-Denison	-17%	7%	-20%	-6%	26%	0%	-7%	13%	5%	-6%	17%	8%	31%
Temple-Belton	-11%	-21%	-14%	-18%	16%	12%	8%	4%	9%	-1%	4%	38%	32%
Texarkana	-18%	-24%	-14%	-40%	14%	NA	1%	-9%	33%	36%	-10%	-4%	53%
Tyler	0%	-4%	-20%	-4%	19%	9%	24%	17%	12%	34%	-5%	18%	24%
Victoria	-31%	2%	-11%	-11%	33%	28%	71%	8%	15%	21%	37%	-10%	71%
Waco	-11%	-17%	-17%	-9%	2%	4%	26%	21%	-12%	-7%	2%	2%	17%
Wichita Falls	-13%	-19%	-34%	-22%	-14%	74%	4%	-14%	-13%	-4%	-31%	31%	14%

Source: Real Estate Center at Texas A&M University, Raymond James research.

Texas Median Price													
% Change YoY	2011											2012	
	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.
State-wide	4%	0%	-1%	1%	1%	-1%	0%	1%	1%	0%	-1%	-1%	0%
Abilene	13%	-3%	7%	20%	-10%	-4%	-10%	1%	7%	47%	4%	-7%	4%
Amarillo	-1%	9%	3%	4%	-2%	-1%	5%	2%	1%	-2%	7%	2%	8%
Arlington	-4%	-5%	-6%	-6%	-5%	-4%	-3%	1%	-1%	3%	-8%	1%	-2%
Austin	3%	2%	4%	4%	0%	-9%	-1%	-2%	-2%	2%	-2%	-5%	2%
Bay Area	2%	-1%	3%	1%	-3%	-6%	-1%	4%	-1%	9%	0%	3%	4%
Beaumont	-16%	-2%	6%	-2%	7%	7%	6%	2%	-5%	-26%	-14%	-16%	1%
Brazoria County	-6%	-5%	9%	-3%	9%	-2%	2%	-7%	-19%	2%	16%	-16%	1%
Brownsville	NA	30%	NA	NA	-5%	-15%	3%	-22%	-10%	0%	-22%	2%	-7%
Bryan-College Station	-10%	3%	0%	-1%	-2%	-2%	-1%	5%	-3%	-2%	0%	-5%	2%
Collin County	5%	2%	10%	5%	-4%	-3%	-1%	2%	-1%	-11%	-1%	4%	-2%
Corpus Christi	20%	-4%	-3%	-2%	-2%	8%	-9%	-2%	-4%	2%	0%	-1%	-7%
Dallas	5%	-2%	-1%	2%	0%	-2%	-1%	2%	-1%	-3%	0%	1%	0%
Denton County	2%	-4%	-1%	-1%	-4%	-6%	-4%	-1%	1%	-6%	-1%	0%	1%
El Paso	6%	4%	1%	-29%	1%	-4%	2%	-4%	2%	3%	-27%	2%	1%
Fort Bend	0%	3%	-4%	3%	2%	0%	-2%	1%	-3%	-3%	0%	-1%	4%
Fort Worth	-2%	-10%	-11%	-5%	-2%	-4%	2%	4%	-6%	0%	-7%	1%	6%
Galveston	4%	31%	21%	9%	-15%	-9%	-11%	29%	0%	-23%	-9%	-28%	5%
Garland	-6%	-22%	-18%	-6%	-6%	7%	-9%	2%	-4%	-7%	22%	-11%	3%
Harlingen	NA	20%	78%	-12%	24%	12%	-5%	-5%	10%	22%	-20%	13%	NA
Houston	3%	-2%	-2%	2%	2%	1%	1%	1%	2%	2%	2%	1%	-1%
Irving	23%	-10%	-16%	-11%	-6%	-11%	-5%	-21%	1%	14%	14%	27%	-10%
Killeen-Fort Hood	0%	2%	-5%	-3%	-1%	-1%	-1%	7%	6%	2%	-6%	12%	17%
Longview-Marshall	4%	13%	8%	-2%	0%	NA	-2%	-2%	12%	14%	18%	8%	-1%
Lubbock	-7%	6%	-7%	0%	4%	5%	12%	-5%	0%	4%	5%	2%	13%
Lufkin	6%	-4%	14%	-16%	-19%	-14%	-13%	-12%	-13%	-38%	36%	48%	-9%
McAllen	12%	5%	-8%	10%	-6%	-11%	-6%	-5%	7%	9%	1%	4%	-14%
Montgomery County	5%	4%	4%	4%	7%	4%	5%	-9%	-2%	-2%	7%	-6%	-2%
Nacogdoches	-13%	27%	-23%	-8%	17%	12%	-10%	3%	-14%	12%	-33%	13%	33%
Northeast Tarrant County	3%	-2%	3%	-2%	4%	-10%	-7%	-4%	4%	4%	-1%	4%	1%
Paris	-8%	17%	-32%	4%	-3%	-27%	-11%	12%	-21%	45%	-22%	25%	-16%
Port Arthur	35%	-5%	7%	15%	3%	28%	-6%	-2%	-19%	12%	6%	3%	-13%
San Angelo	-15%	36%	-3%	9%	-7%	5%	-1%	15%	1%	-6%	-2%	-9%	1%
San Antonio	5%	3%	4%	4%	2%	-3%	-4%	-1%	0%	-4%	-5%	-4%	-1%
Sherman-Denison	-20%	8%	3%	-15%	-8%	11%	6%	29%	-12%	18%	1%	15%	23%
Temple-Belton	21%	-3%	0%	-6%	-2%	8%	7%	11%	25%	9%	-13%	-1%	-5%
Texarkana	-16%	32%	3%	-12%	-25%	NA	2%	-8%	-36%	-10%	6%	-19%	-26%
Tyler	-2%	3%	1%	-4%	5%	3%	1%	0%	-2%	17%	1%	3%	4%
Victoria	7%	-16%	7%	-1%	1%	2%	1%	10%	2%	0%	-2%	-10%	16%
Waco	4%	17%	4%	8%	2%	10%	-11%	24%	-6%	-10%	-1%	-9%	-8%
Wichita Falls	2%	14%	7%	4%	-20%	-37%	10%	3%	-27%	6%	-9%	-9%	16%

Source: Real Estate Center at Texas A&M University, Raymond James research.

Texas Months Supply													
	2011											2012	
	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.
State-wide	7.4	7.8	7.8	8.2	8.2	7.9	7.4	7.1	6.9	6.5	6.0	6.0	6.0
Abilene	6.3	6.5	6.6	6.9	6.7	6.8	6.3	6.1	5.9	5.7	5.5	5.6	5.6
Amarillo	6.6	6.7	7.1	7.5	7.5	7.3	7.0	6.8	5.2	5.9	5.1	5.7	5.6
Arlington	5.8	6.3	6.6	6.8	6.7	6.3	5.9	5.4	5.1	4.8	4.3	4.2	4.0
Austin	5.9	6.4	6.9	7.0	6.9	6.5	5.8	5.5	5.1	4.6	4.2	4.2	4.3
Bay Area	9.8	10.3	10.6	10.9	11.2	10.6	9.8	9.2	9.1	8.6	7.8	7.6	7.6
Beaumont	10.7	11.3	11.6	12.4	12.6	12.4	12.3	12.3	11.8	11.7	11.1	11.4	11.4
Brazoria County	9.7	10.1	10.2	10.1	10.1	10.2	10.3	10.0	9.8	9.1	8.4	8.8	8.4
Brownsville	12.7	13.5	NA	NA	14.0	13.1	13.5	13.0	12.9	12.8	12.4	13.6	13.2
Bryan-College Station	9.3	10.4	11.3	11.6	11.1	10.2	9.7	9.4	9.0	8.7	8.1	8.8	9.6
Collin County	5.1	5.4	5.8	5.9	5.9	5.6	4.9	4.5	4.3	4.0	3.5	3.5	3.7
Corpus Christi	9.9	10.0	NA	10.8	10.7	10.0	8.9	9.3	9.1	8.2	8.3	7.7	7.6
Dallas	6.5	6.9	7.2	7.4	7.3	7.0	6.4	6.0	5.7	5.3	4.7	4.7	4.7
Denton County	6.0	6.6	7.0	7.2	7.0	6.7	6.0	5.5	5.3	4.9	4.4	4.3	4.4
El Paso	6.5	6.6	7.1	7.4	8.1	7.8	7.5	7.9	7.6	7.3	7.0	7.3	7.3
Fort Bend	5.9	6.3	6.5	6.6	6.6	6.5	6.0	5.8	5.4	5.0	4.7	4.8	4.7
Fort Worth	6.9	7.2	7.3	7.3	7.2	6.9	6.6	6.2	6.0	5.7	5.2	5.1	5.1
Galveston	14.5	16.0	15.4	13.7	15.2	14.3	12.9	NA	NA	NA	NA	NA	13.2
Garland	6.2	6.3	6.7	6.4	6.4	6.0	5.4	5.2	4.7	4.5	4.0	4.0	3.8
Harlingen	27.1	27.9	6.2	26.1	23.3	23.6	24.3	24.4	24.1	24.6	24.0	24.7	NA
Houston	7.5	7.8	8.0	8.1	8.1	7.7	7.2	7.0	6.7	6.4	5.9	5.8	5.8
Irving	7.3	7.4	7.7	7.9	7.8	7.3	6.5	6.2	5.8	5.3	4.5	4.4	4.6
Killeen-Fort Hood	6.5	6.8	7.2	7.5	5.5	8.4	8.5	8.7	8.9	8.3	7.1	7.4	7.4
Longview-Marshall	9.4	9.8	10.3	10.9	11.3	NA	10.3	10.1	10.0	9.8	9.4	9.5	9.6
Lubbock	6.9	7.6	8.1	8.2	8.3	8.0	8.0	7.5	7.5	7.2	6.6	6.8	6.6
Lufkin	9.3	9.5	10.3	10.4	10.5	10.1	9.4	9.2	9.0	9.2	8.9	9.1	9.7
McAllen	13.8	14.3	14.5	14.4	15.3	15.5	15.1	14.9	15.3	15.3	14.4	15.2	15.6
Montgomery County	7.3	7.9	8.1	8.2	8.0	7.8	7.1	6.9	6.6	6.4	6.0	6.1	6.1
Nacogdoches	7.2	8.3	9.2	9.0	9.5	9.8	10.6	10.0	9.3	9.7	8.8	8.6	8.6
Northeast Tarrant County	6.1	6.4	6.6	6.9	6.8	6.6	5.8	5.4	5.0	4.6	4.2	4.1	4.3
Paris	11.7	12.6	13.1	14.1	14.4	13.9	14.1	14.3	14.5	14.3	14.5	12.0	12.7
Port Arthur	11.6	12.2	12.3	13.2	13.4	13.0	13.3	12.5	12.6	12.2	11.9	11.9	11.8
San Angelo	6.2	6.5	7.1	7.2	7.0	6.9	NA	6.0	5.8	5.6	5.2	4.9	5.1
San Antonio	7.9	8.2	8.5	8.6	8.6	8.4	7.9	7.6	7.4	7.1	6.6	6.8	6.8
Sherman-Denison	11.0	11.1	11.8	11.6	11.5	11.3	11.0	10.6	10.1	9.5	8.8	8.8	8.9
Temple-Belton	8.4	9.0	9.3	10.0	9.7	9.5	9.3	8.9	8.7	8.6	7.9	8.5	8.5
Texarkana	9.2	9.9	9.8	10.7	10.8	NA	9.9	10.0	10.1	9.4	8.7	9.0	8.2
Tyler	13.0	13.8	14.5	14.9	14.6	14.5	14.0	13.3	13.0	12.0	11.4	11.7	11.7
Victoria	6.5	6.3	6.0	5.9	5.5	5.1	4.5	4.6	4.3	4.0	3.8	3.5	3.4
Waco	9.3	9.5	9.6	9.8	10.4	10.2	9.9	9.6	9.7	9.5	9.0	9.2	9.0
Wichita Falls	7.8	8.1	8.7	9.4	9.4	8.8	8.6	8.7	8.4	7.9	7.6	7.6	7.6

Source: Real Estate Center at Texas A&M University, Raymond James research.

Company Citations

Company Name	Ticker	Exchange	Currency	Closing Price	RJ Rating	RJ Entity
D.R. Horton, Inc.	DHI	NYSE	\$	15.39	3	RJ & Associates
KB Home	KBH	NYSE	\$	9.04	4	RJ & Associates
Lennar Corporation	LEN	NYSE	\$	27.21	3	RJ & Associates
PulteGroup Inc.	PHM	NYSE	\$	9.26	3	RJ & Associates
Standard Pacific Corporation	SPF	NYSE	\$	4.62	4	RJ & Associates
The Ryland Group, Inc.	RYL	NYSE	\$	20.07	4	RJ & Associates

Notes: Prices are as of the most recent close on the indicated exchange and may not be in US\$. See Disclosure section for rating definitions. Stocks that do not trade on a U.S. national exchange may not be approved for sale in all U.S. states. NC=not covered.

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Raymond James & Associates (U.S.) definitions

Strong Buy (SB1) Expected to appreciate, produce a total return of at least 15%, and outperform the S&P 500 over the next six to 12 months. For higher yielding and more conservative equities, such as REITs and certain MLPs, a total return of at least 15% is expected to be realized over the next 12 months.

Outperform (MO2) Expected to appreciate and outperform the S&P 500 over the next 12-18 months. For higher yielding and more conservative equities, such as REITs and certain MLPs, an Outperform rating is used for securities where we are comfortable with the relative safety of the dividend and expect a total return modestly exceeding the dividend yield over the next 12-18 months.

Market Perform (MP3) Expected to perform generally in line with the S&P 500 over the next 12 months.

Underperform (MU4) Expected to underperform the S&P 500 or its sector over the next six to 12 months and should be sold.

Suspended (S) The rating and price target have been suspended temporarily. This action may be due to market events that made coverage impracticable, or to comply with applicable regulations or firm policies in certain circumstances, including when Raymond James may be providing investment banking services to the company. The previous rating and price target are no longer in effect for this security and should not be relied upon.

Raymond James Ltd. (Canada) definitions

Strong Buy (SB1) The stock is expected to appreciate and produce a total return of at least 15% and outperform the S&P/TSX Composite Index over the next six months.

Outperform (MO2) The stock is expected to appreciate and outperform the S&P/TSX Composite Index over the next twelve months.

Market Perform (MP3) The stock is expected to perform generally in line with the S&P/TSX Composite Index over the next twelve months and is potentially a source of funds for more highly rated securities.

Underperform (MU4) The stock is expected to underperform the S&P/TSX Composite Index or its sector over the next six to twelve months and should be sold.

Raymond James Latin American rating definitions

Strong Buy (SB1) Expected to appreciate and produce a total return of at least 25.0% over the next twelve months.

Outperform (MO2) Expected to appreciate and produce a total return of between 15.0% and 25.0% over the next twelve months.

Market Perform (MP3) Expected to perform in line with the underlying country index.

Underperform (MU4) Expected to underperform the underlying country index.

Suspended (S) The rating and price target have been suspended temporarily. This action may be due to market events that made coverage impracticable, or to comply with applicable regulations or firm policies in certain circumstances, including when Raymond James may be providing investment banking services to the company. The previous rating and price target are no longer in effect for this security and should not be relied upon.

Raymond James Euro Equities, SAS rating definitions

Strong Buy (1) Expected to appreciate, produce a total return of at least 15%, and outperform the Stoxx 600 over the next 6 to 12 months.

Outperform (2) Expected to appreciate and outperform the Stoxx 600 over the next 12 months.

Market Perform (3) Expected to perform generally in line with the Stoxx 600 over the next 12 months.

Underperform (4) Expected to underperform the Stoxx 600 or its sector over the next 6 to 12 months.

Suspended (S) The rating and target price have been suspended temporarily. This action may be due to market events that made coverage impracticable, or to comply with applicable regulations or firm policies in certain circumstances, including when Raymond James may be providing investment banking services to the company. The previous rating and target price are no longer in effect for this security and should not be relied upon.

In transacting in any security, investors should be aware that other securities in the Raymond James research coverage universe might carry a higher or lower rating. Investors should feel free to contact their Financial Advisor to discuss the merits of other available investments.

Rating Distributions

	Coverage Universe Rating Distribution			Investment Banking Distribution		
	RJA	RJL	RJ LatAm	RJA	RJL	RJ LatAm
Strong Buy and Outperform (Buy)	56%	68%	37%	16%	41%	14%
Market Perform (Hold)	37%	31%	53%	6%	27%	2%
Underperform (Sell)	7%	1%	10%	3%	0%	0%

Suitability Categories (SR)

For stocks rated by Raymond James & Associates only, the following Suitability Categories provide an assessment of potential risk factors for investors. Suitability ratings are not assigned to stocks rated Underperform (Sell). Projected 12-month price targets are assigned only to stocks rated Strong Buy or Outperform.

Total Return (TR) Lower risk equities possessing dividend yields above that of the S&P 500 and greater stability of principal.

Growth (G) Low to average risk equities with sound financials, more consistent earnings growth, possibly a small dividend, and the potential for long-term price appreciation.

Aggressive Growth (AG) Medium or higher risk equities of companies in fast growing and competitive industries, with less predictable earnings and acceptable, but possibly more leveraged balance sheets.

High Risk (HR) Companies with less predictable earnings (or losses), rapidly changing market dynamics, financial and competitive issues, higher price volatility (beta), and risk of principal.

Venture Risk (VR) Companies with a short or unprofitable operating history, limited or less predictable revenues, very high risk associated with success, and a substantial risk of principal.

Raymond James Relationship Disclosures

Raymond James expects to receive or intends to seek compensation for investment banking services from the subject companies in the next three months.

Stock Charts, Target Prices, and Valuation Methodologies

Valuation Methodology: The Raymond James methodology for assigning ratings and target prices includes a number of qualitative and quantitative factors including an assessment of industry size, structure, business trends and overall attractiveness; management effectiveness; competition; visibility; financial condition, and expected total return, among other factors. These factors are subject to change depending on overall economic conditions or industry- or company-specific occurrences. Only stocks rated Strong Buy (SB1) or Outperform (MO2) have target prices and thus valuation methodologies.

Risk Factors

General Risk Factors: Following are some general risk factors that pertain to the projected target prices included on Raymond James research: (1) Industry fundamentals with respect to customer demand or product / service pricing could change and adversely impact expected revenues and earnings; (2) Issues relating to major competitors or market shares or new product expectations could change investor attitudes toward the sector or this stock; (3) Unforeseen developments with respect to the management, financial condition or accounting policies or practices could alter the prospective valuation; or (4) External factors that affect the U.S. economy, interest rates, the U.S. dollar or major segments of the economy could alter investor confidence and investment prospects. International investments involve additional risks such as currency fluctuations, differing financial accounting standards, and possible political and economic instability.

Specific Investment Risks Related to the Industry or Issuer

Housing Industry Risks

An investment in a homebuilder involves certain risks particular to the company and to the homebuilding industry in general. Prospective investors should carefully consider the appropriateness of the stock and carefully consider the following risk factors and other critical variables prior to making an investment.

General Risks

The homebuilding industry is cyclical and is significantly affected by changes in industry conditions, as well as in general and local economic conditions. Such changes include employment, availability of financing for homebuyers, interest rates, consumer confidence, levels of new and existing home for sales, demographic trends, rental rates, and housing demand. The homebuilding industry has historically been positively correlated with household formation, employment growth, wage growth, and housing affordability, while being negatively correlated with interest rates. These relationships infer a great deal of economic sensitivity. The industry is also susceptible to weather-related construction delays, seasonality of sales patterns, volatility in raw material and labor prices, and increasing governmental regulatory barriers to land development, all of which could impact the timing and profitability of home deliveries.

Government Subsidies

The housing market benefits from several government measures including, but not limited to, various tax incentives and credits, efforts on behalf of the Federal Reserve to keep mortgage rates low, the GSE's commitment to purchase conforming mortgages, and FHA financing. The sudden absence of any one of these subsidies, or other form of government support of the housing market, would likely be detrimental to the housing market.

Mortgage Delinquencies and Foreclosures

An increased number of mortgage delinquencies or foreclosures may result in elevated levels of "distressed" sales (sales of homes in a negative equity situation, seriously delinquent, in foreclosure, or bank-owned), which could pressure pricing and negatively impact the housing market.

Negative Equity

High levels of households "underwater" on their mortgage could prevent many homeowners from "moving-up" or relocating by selling their existing home through traditional channels. Moreover, appraisals utilizing distressed sales as comparables are leading to lower housing valuations, therefore creating a negative feedback effect.

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Item 4:

2011 Year End Municipal Chart Book

Raymond James Research

2011 Year End Municipal Chartbook

Christina Ashmore, Christina.Ashmore@RaymondJames.com

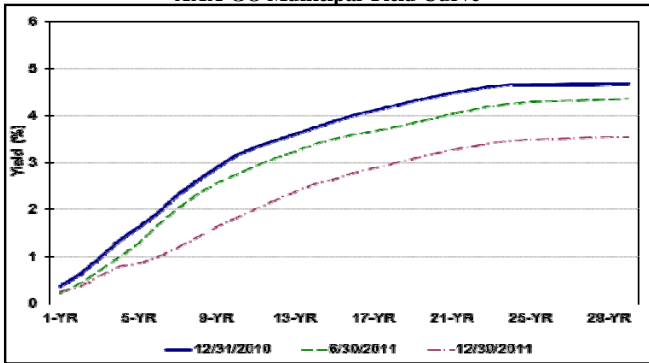
Chris Crosby, Chris.Crosby@RaymondJames.com

This information has been obtained from third-party sources we consider reliable, but we do not guarantee the accuracy or completeness of this information. High Yield bonds (below investment grade) are not suitable for all investors. When appropriate, these bonds should only comprise a modest portion of your portfolio. A credit rating of a security is not a recommendation to buy, sell or hold securities and may be subject to review, revisions, suspension, reduction or withdrawal at any time by the assigning rating agency. "GO" is an abbreviation for General Obligation, "P&C" refers to the Property & Casualty insurance industry and "AMT" refers to the Alternative Minimum Tax. Past performance does not guarantee future results. The returns mentioned do not include transaction costs and tax considerations. If included these costs would reduce an investor's return. The Consumer Price Index (CPI) is determined monthly by the U.S. Bureau of Labor Statistics and is a measure of the average change in consumer prices over time of goods and services purchased by households. Bond insurance relates only to the timely payment of principal and interest by the issuer. The insurance does not remove market risks. No representation is made as to an insurer's ability to meet its financial commitments. The Barclay Municipal Index is computed twice monthly from prices on approximately 1,100 bonds in the US market. The index is composed of approximately 60% revenue bonds and 40% state government obligations. An investment cannot be made directly in this index.

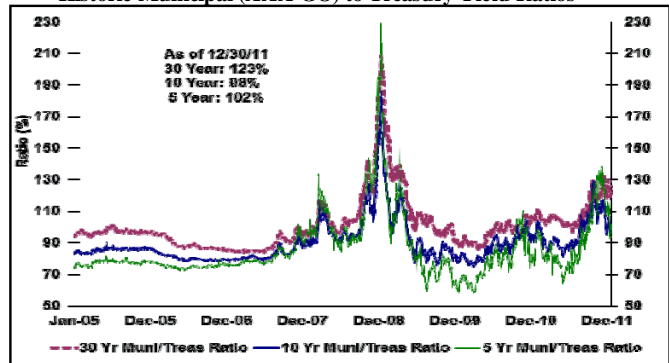
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2011 Year End Municipal Chartbook

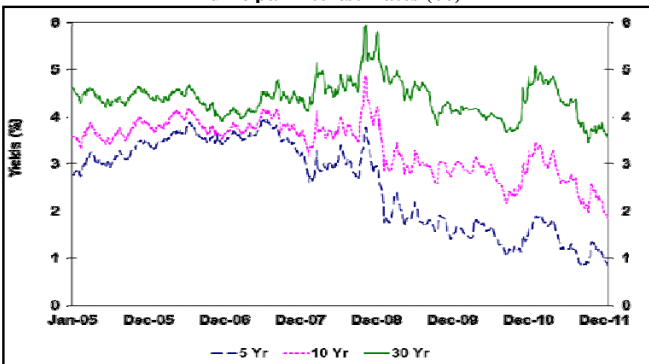
AAA GO Municipal Yield Curve¹



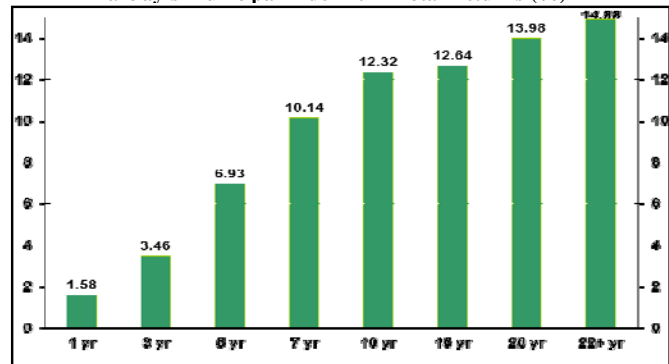
Historic Municipal (AAA GO) to Treasury Yield Ratios^{1,2}



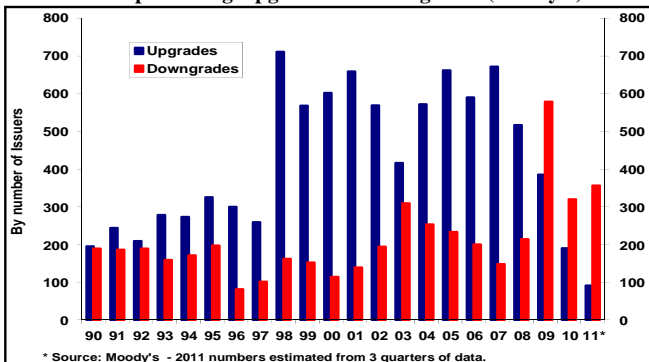
Municipal Interest Rates (%)¹



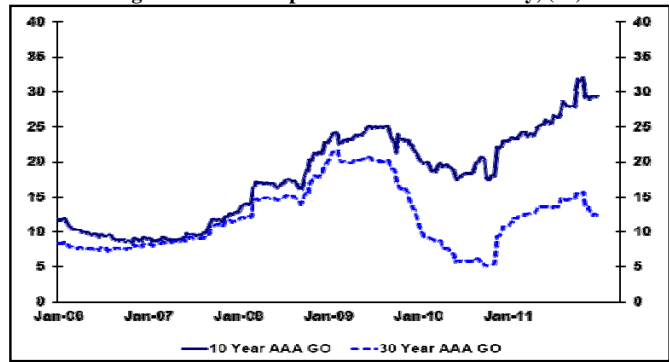
Barclay's Municipal Index 2011 Total Returns (%)⁶



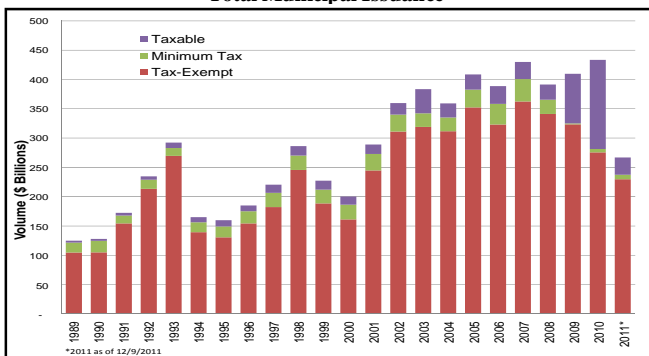
Municipal Rating Upgrades vs. Downgrades (Moody's)⁷



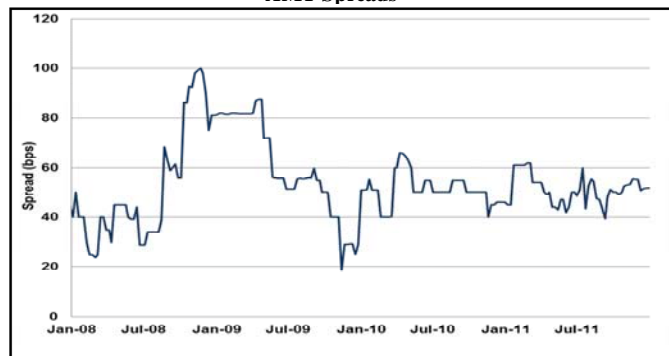
Rolling Annual Municipal Interest Rate Volatility, (%)²



Total Municipal Issuance⁵



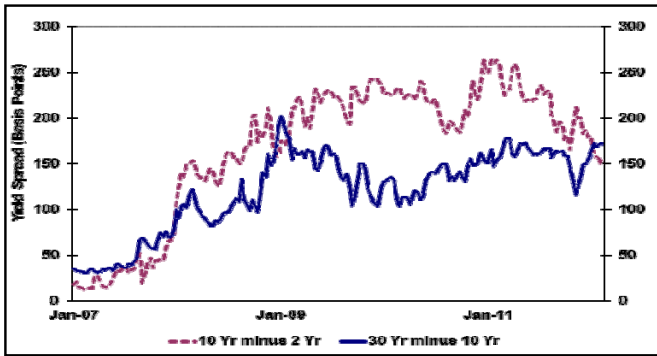
AMT Spreads⁴



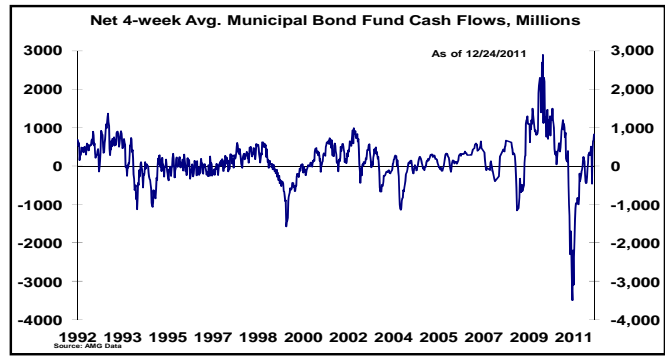
Sources: [1] Municipal Market Data, [2] Bloomberg, [3] Investor Tools, [4] FTID, [5] Bond Buyer, [6] Barclay, [7] Moody's, [8] S&P, [9] AMG Data, [10] Federal Reserve Board. All charts are as of 12/31/2011 unless otherwise noted.

2011 Year End Municipal Chartbook

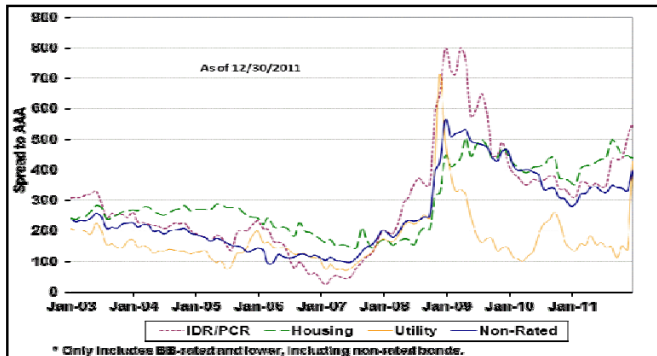
Maturity Spread—AAA GO Spreads ¹



Net Four Week Average Municipal Bond Fund Cash Flows ⁹



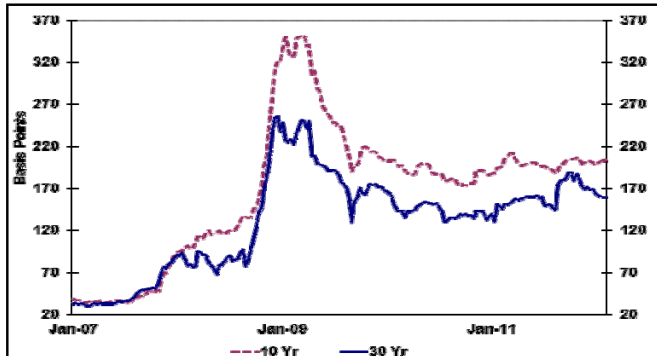
High Yield* Spread to AAA (20 YR) ^{1,3}



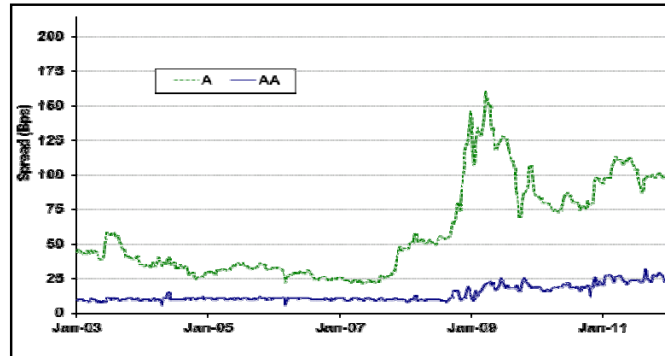
Long Tobacco Bonds vs. AAA GO Spread to Maturity ^{1,4}



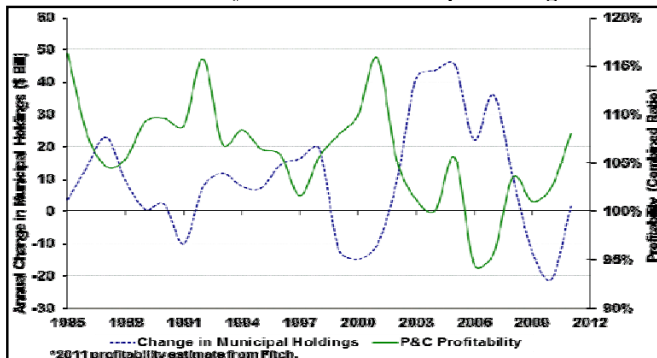
Spread of BBB Municipal Bonds vs. AAA GOs ¹



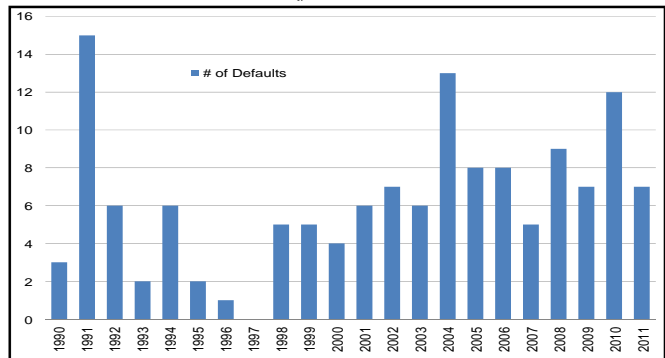
Spread of AA and A Municipal Bonds vs AAA GOs (10 YR) ¹



P&C Profitability Influences on Municipal Holdings ^{8,10}



Investment Grade Payment Defaults Per Year ^{7,8,11}



Sources: [1] Municipal Market Data, [2] Bloomberg, [3] Investor Tools, [4] FTID, [5] Bond Buyer, [6] Lehman Brothers, [7] Moody's, [8] S&P, [9] AMG Data, [10] Federal Reserve Board, [11] Fitch. All charts are as of 12/30/2011 unless otherwise noted.

Item 5:
Municipal Bond Weekly
Raymond James Research

Municipal Bond Investor Weekly

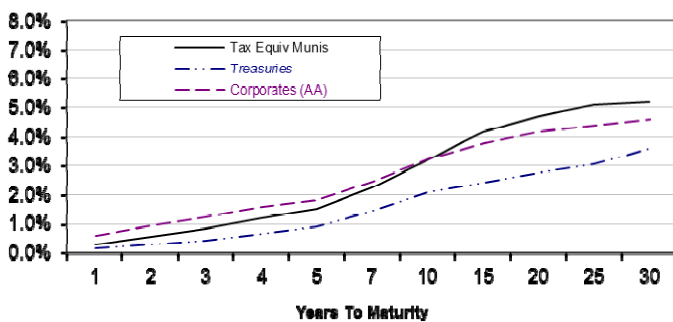
March 30, 2012

Carolyn Nees - (727) 567-2862, Carolyn.Nees@RaymondJames.com

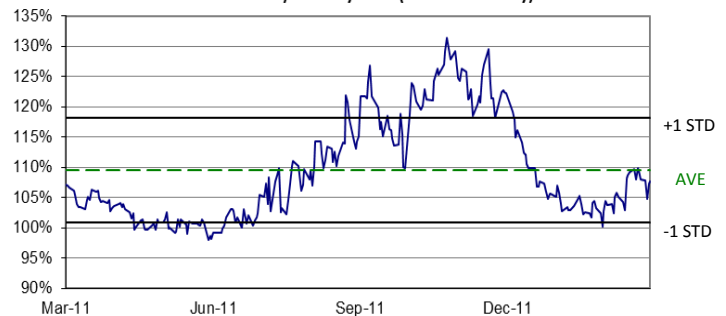
Week in Review

A strong rally since last Thursday has pushed yields lower. The recent price improvements have allowed for better liquidity, helping some investors execute portfolio changes to improve credit quality or reduce duration exposure. However, there has not been aggressive selling even with several troublesome credit headlines. For example, Jefferson County Alabama announced that it will not make the scheduled April 1 bond payment. Market reaction to this has been muted indicating that these types of one-off situations seem unlikely to induce the broad market weakness seen in 2010. As a counterpoint to this bad news, investors heard from the Census Bureau that state and local government tax revenues rose for a ninth-straight quarter. Still price volatility for credits like those in Puerto Rico is likely to continue as tough economic conditions weigh on the credit ratings. Puerto Rico GOs trade wider than any of the states, in the range of 225 basis points more than AAA yields. States currently rated AAA by all the rating agencies are: VA, NC, MD, DE, MO, GA, and UT. Next week is holiday shortened, but new issue supply jumps to \$7 billion. Raymond James involvement increases this week as well with the addition of Morgan Keegan to our business, providing broader new issue access for our clients.

Comparative Yield Curves as of 3/29/12



Historic AAA Muni/Treasury Ratio (30-Year Maturity)



Source: Bloomberg, MMD

Bond Yields (%) as of 03/29/2012 Close												
	1	2	3	4	5	7	10	15	20	25	30	
Muni AAA G.O.¹	0.18	0.36	0.54	0.79	0.98	1.47	2.09	2.71	3.04	3.32	3.37	
Weekly Change *	0	2	0	10	6	-7	-12	-1	1	-3	-3	
Tax Equiv Munis²	0.28	0.55	0.83	1.22	1.51	2.26	3.22	4.17	4.68	5.11	5.18	
Taxable AA Muni & BAB³	0.80	1.00	1.29	1.63	2.00	2.73	3.62	4.47	5.27	6.66	7.15	
Weekly Change *	3	3	3	3	3	5	7	3	-8	-11	-2	
Treasuries³	0.16	0.30	0.43	0.67	0.90	1.45	2.10	2.41	2.76	3.06	3.61	
Weekly Change *	0	0	2	2	2	1	2	2	1	-1	-1	
Corporates (AA)³	0.61	0.95	1.23	1.57	1.81	2.45	3.24	3.77	4.18	4.39	4.59	
Weekly Change *	0	0	1	1	1	-1	1	0	0	0	-1	

	This Week	Last Week	Last Year
Dow Jones Industrial	12985	12904	12106
NASDAQ Composite	2957	2959.9	2723
Crude Oil	107.83	102.31	98.1
U.S. Dollar/Euro	1.3373	1.313	1.3749
Gold	1784.9	1726.8	1413.4

	This Week	Last Week	Last Year
Prime Rate	3.25	3.25	3.25
1-Month LIBOR	0.24	0.25	0.26
Fed Funds	0.08	0.11	0.15
1-Month T-Bill	0.09	0.10	0.14
SIFMA Weekly Index	0.16	0.17	0.26

Sources: (1) Municipal Market Data (2) Tax Equiv Yield calculations on AAA-rated tax exempt yields assume a 35% tax rate (3) Treasury, Corporate yields from Bloomberg. Lipper Total Returns from Lipper and The Wall Street Journal (YTD = Year To Date). Short Term Yields are from Bloomberg, Federal Reserve and Securities Industry and Financial Markets Association. The SIFMA Weekly Index is a 7-day high-grade market index comprised of tax-exempt variable rate demand obligations (VRDO's) that are not subject to AMT, are greater than \$10 million issuance size and have an AA or better rating. * In Basis Points. ** Bloomberg as of close Thursday.

Buyer Participation

Retail: activity steady, interest in A rated debt increases.

Trading Accounts: actively trading 20-30 year range.

Bond Funds: strong inflows continue but selective on structure and credit.

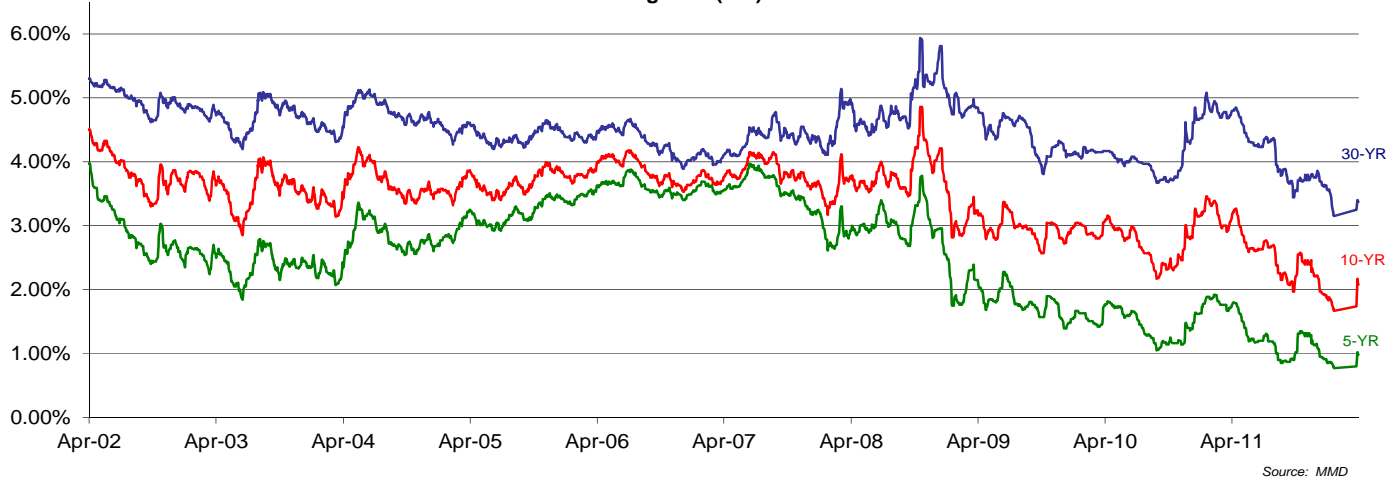
Insurance Companies: selectively buying out to 20 years.

Bank Trust/Investment Advisors: very active with discount prices preferred, driving some deal coupon structures.

Upcoming Economic Releases

4/02	ISM Manufacturer Survey (Mar)
	Auction 13- & 26-week bills
4/03	FOMC Minutes
	Auction 4- & 52-week bills
4/04	ISM Non-Manufacturer Survey (Mar)
4/05	Jobless Claims (3/31)
4/06	Employment Report (Mar)
	GOOD FRIDAY HOLIDAY

Historical Perspective on the Municipal Market
AAA General Obligation (GO) Yields

**Rating Changes of Note**

Detroit MI GO and pension bonds downgraded to B from BB by S&P.

Harris County TX Fresh Water Supply District No. 58 GO, lowered to A3 by Moody's from A1.

North Las Vegas NV Limited Tax GO dropped by Moody's to A3 from A2.

Rhode Island Health & Educational Building Corp. school bonds (City of Providence) downgraded by Moody's to Baa1 from A3. In addition, **Providence Redevelopment Authority** and **Providence Public Building Authority** lease rev bonds dropped to Baa2 from Baa1.

GO: general obligation, Source: S&P, Moody's, Fitch

Week of 4/2 - New Issue Calendar (\$ in billions)

Negotiated	\$5.40
Competitive	<u>\$1.60</u>
Total	\$7.00

Raymond James Participation (\$ in millions)

\$1,000 NJ EDA Cigarette Tax Rev Refunding, Co-Manager
 \$575 SC Public Service Auth, Santee Cooper, Selling Group
 \$269 Broward FL COP, Co-Manager
 \$115 WV Economic Development Auth, Co-Manager
 \$80 University of Tampa, Co-Manager
 \$65 Fort Bend TX, Co-Senior
 \$44 United ISD TX, Co-Manager
 \$29 Frisco TX GO Taxable, Senior Manager

For the full calendar, visit

www.raymondjames.com/fixed_income_municipal_bonds_calendar.htm

BAB: Taxable Build America Bond, BQ: Bank Qualified, SG: Selling Group

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4a

COMMUNITY AFFAIRS DIVISION
BOARD ACTION REQUEST
April 12, 2012

Presentation, Discussion, and Possible Action to publish in the *Texas Register* the proposed new 10 TAC Chapter 5, Subchapter J, §§5.101 – 5.105 regarding the Homeless Housing and Services Program (HHSP).

RECOMMENDED ACTION

Approve the proposed new rule for publication and public comment.

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 approve proposed new 10 TAC Chapter 5, Subchapter J, §§5.101 – 5.105 regarding the Homeless Housing and Services Program (HHSP), to be published in the *Texas Register* for review and comment, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The Texas Legislature established the HHSP program during the 81st Legislative Session to provide funding to provide local programs to prevent and eliminate homelessness in municipalities with a population of 285,500 or more. The Department has drafted proposed rules to govern the HHSP program. Comments regarding the proposed rules will be accepted in writing and by email for 30 days after the public is notified of the release of the proposed rules.

Attachment A: Preamble and Proposed new 10 TAC 5, §§5.101 – 5.105, the Homeless Housing and Services Program (HHSP).

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 5, Subchapter J, §§5.101 - 5.105, concerning the Homeless Housing and Services Program (HHSP). The purpose of the proposed new sections is to provide for the distribution and administration of HHSP funds.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the new sections, and there will be no effect on local employment or local economy as result of the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections will be in effect, the public benefit anticipated as a result of the new sections will be that assistance to eligible municipalities will enable them to provide facilities and/or services to address the issues presented by homelessness, thereby improving lives and strengthening communities. There will be no economic cost to any individuals as a result of the proposed new sections.

ECONOMIC IMPACT STATEMENT AND IMPACT ON SMALL AND MICRO BUSINESSES. The proposed new sections will have no negative effect on small businesses or persons; no anticipated economic cost to persons who are required to comply with the new section(s); will not negatively impact local employment; will not have an adverse economic affect on small businesses or micro-businesses; and will not negatively impact the local economy.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held April 27 to May 29, 2012 to receive input on the new sections. Written comments may be submitted to Texas Department of Housing and Community Affairs, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 475-3539. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. MAY 29, 2012.

STATUTORY AUTHORITY. The new sections are proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs, including specifically §2306.2585, which authorizes the Department to adopt rules to govern the administration of the Homeless Housing and Services Program.

CROSS REFERENCE TO STATUTE. These proposed new sections are to implement the HHSP as established by Texas Government Code §2306.2585. To the extent that funding sources other than unrestricted funds are utilized, such as housing trust fund balances, any HHSP activities conducted with such funds may be subject to additional restrictions. The proposed new section affects no other code, article, or statute.

§5.101. Purpose.

In accordance with §2306.2585 of the Texas Government Code, the purpose of the Homeless Housing and Services Program (HHSP) is to provide for the construction, development, or procurement of housing for homeless persons, and to provide local programs to prevent and eliminate homelessness.

§5.102. Distribution of Funds.

Pursuant to the authority of §2306.2585 of the Texas Government Code, the Homeless Housing and Services Program (HHSP) is available to any municipality in Texas with a population of 285,500 or more. Whenever HHSP funds are made available to any of those municipalities they shall, subject to the requirements of this rule, either be distributed in accordance with the formula set forth in §5.104 of this chapter (relating to Formula) or distributed under the provisions for innovative programs set forth in §5.105 of this chapter (relating to Innovative Programs to Reduce Homelessness).

§5.103. General Homeless Housing and Services Program (HHSP) Requirements.

(a) Each municipality or entity that had in effect as of January 1, 2012, a contract with the Department to administer HHSP funds will remain a designated entity to receive HHSP funds in its municipality, whether that entity is the municipality itself or another entity. The Department may add to or change those entities in its discretion based on consideration of the factors enumerated below. If the Department proposes to add or change any such entity(ies) it will publish notice thereof on its website at least twenty (20) days prior to such addition or change. If the proposal is to add an entity, the notice will include any proposed sharing of funding with other HHSP providers in the affected municipality:

- (1) Whether an entity to be removed and replaced was compliantly and efficiently administering its contract;
- (2) The specific plans of any new entity to build facilities to provide shelter or services to homeless populations, and/or to provide any specific programs to serve the homeless;
- (3) The capacity of any new entity to deliver its planned activities; and
- (4) Any public comment and comment by state or local elected officials.

(b) The final decision to add or change entities will be approved by the Texas Department of Housing and Community Affairs Governing Board (the “Board”).

(c) A municipality or entity receiving HHSP funds may not:

- (1) be in material noncompliance under the Department’s rules;
- (2) have failed to comply with any performance benchmarks with respect to any previous HHSP award(s); or
- (3) be in breach, after notice and a reasonable opportunity to cure, of any contract or agreement with the Department.

(d) A municipality or entity receiving HHSP funds must enter into an agreement with the Department governing the use of such funds. If the source of funds for HHSP is funding under another specific Department program, such as the Housing Trust Fund, as authorized by §2306.2585(c) of the Texas Government Code, the agreement will incorporate any requirements applicable to such funding source.

(e) Any agreement for HHSP funds will include the following benchmarks:

- (1) any funds used for general operations will be expended within twelve (12) months;

- (2) any funds used for operation of training, recovery, or other programs will be expended within eighteen (18) months;
- (3) any funds used for construction, development, or procurement of housing for homeless persons of facilities will be expended within twenty-four (24) months; and
- (4) funds for any other use will be expended within twenty-four (24) months.

(f) Benchmarks may be extended for good cause by the Board.

§5.104. Formula.

(a) Any funds made available for the Homeless Housing and Services Program (HHSP) that are distributed to eligible municipalities, other than funds released through a Notice of Funds Availability (NOFA) pursuant to §5.105 of this chapter (relating to Innovative Programs to Reduce Homelessness), shall be distributed in accordance with a formula that takes into account:

- (1) population of the municipality, as determined by the most recent available census data;
- (2) poverty, defined as the number of persons in the municipality's population with incomes at or below the federal poverty level;
- (3) veteran populations, defined as that percentage of the municipality's population comprised of veterans, based on the data most recently published by the Veterans Commission; and
- (4) population of persons with disabilities, defined as that percentage of the municipality's population comprised of persons with disabilities, based on the data most recently available from the U.S. Census Bureau.

(b) The factors enumerated in subsection (a)(1) – (4) of this section shall be used to calculate distribution percentages for each municipality based on the following formula:

- (1) 20% weight for the percentage of population;
- (2) 25% weight for poverty populations;
- (3) 25% weight for veteran populations;
- (4) 5% weight for population of persons with disabilities; and
- (5) 25% weight for the homeless population, based on the results of the most recently available Point-In-Time Counts prepared by the Continuums of Care in Texas.

§5.105. Innovative Programs to Reduce Homelessness.

Contingent upon Board approval, up to 50% of the Homeless Housing and Services Program (HHSP) funds made available in a calendar year may be made available on a competitive basis in accordance with a published Notice of Funds Availability (NOFA). Any NOFA will:

- (1) be published for public comment not less than twenty (20) days prior to its becoming effective;
- (2) provide that all eligible municipalities shall, if they apply, receive at least a portion of the funds made available in the NOFA, to be not less than 5% or more than 40% of the total funds made available under the NOFA; and
- (3) assign priority based on the following factors, in descending order:
 - (A) number of persons served by the entity as a percentage of the municipality's homeless population;
 - (B) percentage of persons served by the entity who have obtained regular employment at or above 125% of federal poverty income guidelines;
 - (C) percentage of persons served by the entity who completed a job training program;

- (D) percentage of persons served by the entity who completed an alcohol or substance abuse program;
- (E) percentage of persons served by the entity who transitioned to permanent supportive housing or other permanent housing; and
- (F) other factors as determined by the Department.

4b

BOARD ACTION REQUEST

HOUSING RESOURCE CENTER

April 12, 2012

Presentation, Discussion, and Possible Approval of a final order adopting the repeal of existing 10 TAC §1.24, regarding Foreclosure Data Collection and new 10 TAC Chapter 1, Subchapter A, §1.24, concerning Foreclosure Data Collection, for publication in the *Texas Register*.

RECOMMENDED ACTION

Approve for publication in the *Texas Register* a final order adopting the repeal of existing 10 TAC §1.24, the rule governing reporting by counties of certain foreclosure data, and adopting a new 10 TAC §1.24 to establish new requirements for the reporting of such data.

WHEREAS, staff recommends that the Board approve the final order adopting the repeal and new rule governing the reporting of certain residential foreclosure data, enabling county clerks making required transmittals to accomplish this in several ways (original foreclosure forms, copies of foreclosure forms, scanned foreclosure forms, faxed foreclosure forms, or electronic or hard copy summary forms); and

WHEREAS, the proposed repeal and proposed adoption of new 10 TAC §1.24 were published in the March 2, 2012 issue of the *Texas Register* for public comment;

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 this Board, to cause to be published in the *Texas Register* the final order adopting the repeal of existing 10 TAC §1.24 and order adopting new 10 TAC §1.24 in the form presented to this meeting, and in connection therewith to make such grammatical or stylistic corrections of a non-substantive nature as they or any of them may deem necessary or advisable to effectuate the foregoing.

BACKGROUND

Senate Bill (SB) 1233 (82nd Legislature, regular session) created a mechanism for the collection and compilation of certain foreclosure data. It requires persons conducting certain residential foreclosures to file notices of proposed and completed foreclosures with the county clerk in the county in which the foreclosure is to occur or did occur. County clerks are required to transmit these forms to the Department each month, and the Department is required to compile high level data about foreclosure activity and report it quarterly to the legislature.

Due to the limitations on resources, staff had developed a system, articulated in the existing rule that was proposed for repeal, requiring county clerks to provide their data to the Department in summary form. Although the vast majority of county clerks complied, a few counties, especially those with much higher foreclosure activity, objected, contending that the rule improperly shifted the administrative burden of compilation to their offices. Meetings with the offices of the bill author and with representatives of the counties interests failed to resolve those points of disagreement, and on January 26, 2012, a formal request for opinion was filed with the Attorney General. Rather than continue with a potentially lengthy and protracted process of attempting to resolve these issues, staff recommends replacing the existing rule with a new rule that is more conducive to obtaining, in a timely manner, the information sought by the legislature concerning foreclosures.

If adopted, the new rule provides county clerks with a choice as to how they will transmit the required forms: by sending the foreclosure forms or by transmitting the summary forms. It is believed that this choice will facilitate the compilation of data required by SB 1233, and the Department will absorb the administrative cost of performing that activity, estimated to cost \$155,000 in direct and indirect staffing costs over five (5) years.

The Department published the proposed repeal and proposed adoption of the new rule for a 24-day public comment period from March 2, 2012 to March 26, 2012. During this period, the Department received comments concerning the proposed new 10 TAC §1.24 from 10 county clerk offices: (1) Tammy Biggar, Fannin County, (2) Jannett Pieper, Kerr County, (3) Larry Beville, Taylor County, (4) Joy Streater, Comal County, (5) Kelly Pinen, Lubbock County, (6) Cynthia Mitchel, Denton County, (7) Nancy Rister, Williamson County, (8) Diane Gonzales, Atascosa County, (9) Diane Wilson, Fort Bend County and (10) Anna Schielack, Burleson County. Summary of comments and staff responses are found in Attachment B.

Attachment A: Preamble and Repeal of 10 TAC Chapter 1, §1.24, Foreclosure Data Collection.

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 1, §1.24, concerning Foreclosure Data Collection, without changes to the proposed text as published in the March 2, 2012 issue of the *Texas Register* (37 TexReg 1451) and will not be republished.

REASONED JUSTIFICATION. This repeal is adopted in order to adopt a new section to simplify the existing rules to be more conducive to obtaining, in a timely manner, the information sought by the legislature concerning foreclosures.

No comments were received concerning the proposed repeal.

The Board approved the final order adopting this repeal on April 12, 2012.

The repeal is adopted pursuant to the authority of Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs, and pursuant to §51.0022 of the Texas Property Code, which requires that the Department promulgate forms, by rule, for collecting certain data regarding residential foreclosure notices and sales and to establish, by rule, the format for reporting the information to the Legislature.

§1.24.Foreclosure Data Collection.

Attachment B: Preamble and Proposed New 10 TAC Chapter 1, §1.24, Foreclosure Data Collection.

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 1, §1.24, concerning Foreclosure Data Collection with changes to the proposed text as published in the March 2, 2012 issue of the *Texas Register* (37 TexReg 1451).

The new section is adopted in order to simplify the existing rules to be more conducive to obtaining, in a timely manner, the information sought by the legislature concerning foreclosures.

REASONED JUSTIFICATION. The purpose of this rule is to implement the requirements of SB 1233 which amended Chapter 51 of the Texas Property Code by adding §51.0022, requiring the collection of certain data regarding foreclosures of residential property across the state. The law requires the Department to promulgate forms to be used by lien holders across the state when filing foreclosure notices against residential properties and by sheriffs and trustees conducting foreclosure sales of residential properties. The statute provides that the only information to be collected is the nature of the property as residential and the ZIP code of the property. The forms are to be filed with the clerk's office in the county where the notice was filed or the foreclosure was conducted. This information is, in turn, transmitted to the Department, and the Department is required to report the information to the legislature on a quarterly basis. The purpose of this rule is to promulgate the forms to be used and to establish the format of the report to be submitted to the legislature. When adopted, the new rule will apply only to notices of sale filed on or after January 1, 2012.

Written comments were accepted through March 26, 2012, with comments received in writing by email from: (1) Tammy Biggar, Fannin County, (2) Jannett Pieper, Kerr County, (3) Larry Beville, Taylor County, (4) Joy Streater, Comal County, (5) Kelly Pinen, Lubbock County, (6) Cynthia Mitchel, Denton County, (7) Nancy Rister, Williamson County, (8) Diane Gonzales, Atascosa County, (9) Diane Wilson, Fort Bend County and (10) Anna Schielack, Burleson County.

SUMMARY OF PUBLIC COMMENT, REASONED RESPONSE, AND STAFF RECOMMENDATIONS.

General Comment: Cooperation.

COMMENT SUMMARY (4, 5): Commenters thanked the Department for revising the rule from the version published in the December 2011 issue of the *Texas Register*. The revised new rule is more acceptable than the previous rule and promoted cooperation.

STAFF RESPONSE: Staff appreciated this feedback. Part of the reason staff created the new rule was to bring more cooperation between the state and the county governments. No changes recommended based on this comment.

General Comment: Unfunded Mandate

COMMENT SUMMARY (3, 6, 7, 9, 10). Commenter's specifically called this rule an unfunded mandate that increases labor costs for reporting and possibly postage costs if sending in forms by mail.

STAFF RESPONSE: SB 1233 does not authorize the Department to empower counties to charge a fee; in fact, SB 1233 does not address fees at all. In addition, the Department did not receive authority to charge a fee to implement SB 1233 and is currently absorbing the cost of administration, estimated to cost \$155,000 in direct and indirect staffing costs over five (5) years. No changes recommended based on this comment.

§1.24(c) Reporting to County Clerks – Submission of foreclosure forms to county clerks.

COMMENT SUMMARY (4): Commenter suggested that the foreclosure forms be sent directly to the Department rather than submitted to the county clerks, who then send the foreclosure forms to the Department.

STAFF RESPONSE: Staff disagreed with this comment in that SB 1233 identifies the county clerks as the responsible party for submitting the information to the Department. No changes recommended based on this comment.

§1.24(c)(1) Reporting to County Clerks – Enforcement of submission of foreclosure forms.

COMMENT SUMMARY (10): Commenter stated that their county will not “police” the foreclosure forms; if a filer wants to file a notice of foreclosure or convey a title out of foreclosure, the county clerk will not require the filer to also submit the appropriate foreclosure form.

STAFF RESPONSE: Staff disagreed with this comment in that SB 1233 requires collection of this information. While §1.24 does not address enforcement of the data collection, Staff recommends that county clerks have Notice of Sale Foreclosure Forms and Completed Sale Foreclosure Forms on hand in the office for use by filers. In addition, SB 1233 identifies the county clerks as the responsible party for submitting the foreclosure information to the Department. No changes recommended based on this comment.

§1.24(d) Reporting to TDHCA – Scanned copies.

COMMENT SUMMARY (1, 2, 3, 6, 7, 8): Commenters requested that scanned copies of the foreclosure forms be sent to the Department instead of the original forms or copies of the originals. Commenters objected to the restriction of just submitting paper copies and cited high postage costs, including printed envelopes and cover sheets.

STAFF RESPONSE: Staff agreed with the commenters regarding scanned copies and made amendments to §1.24(d)(1) - (2). Due to standard email limits for state government, the Department cannot accept scanned copies by emails that are over 7 megabytes. Counties may either email the scanned foreclosure forms that are less than 7 megabytes or mail a compact disc (CD) of the scanned foreclosure forms to the Department. Staff agreed with the general sentiment that electronic submission is a more efficient reporting mechanism than hard-copy reporting, which is why the Department developed the electronic summary forms which are submitted directly into the Department’s internal database. When submitting the summary forms, counties incur no postage, printing or cover sheet costs. In addition, the Department estimates that the labor needed to scan the foreclosure forms would approximately equal the labor needed to complete the summary forms, imposing no extra burden on the counties and saving the Department time and effort.

§1.24(d) Reporting to TDHCA – Electronic submission.

COMMENT SUMMARY (3, 7): Commenter’s 3 and 7 would prefer electronic submission of the foreclosure forms. Commenter 3 suggested that electronic copies, such as scanned copies, would be easier for the Department to store and manipulate. Commenter 7 requested a form-fillable version of the foreclosure forms, so that the forms could be more easily converted to electronic format without the scanning process.

STAFF RESPONSE: Staff disagreed with the comment that scanned copies would be easier to manipulate. However, Staff agreed that scanned copies are easier to store and that the foreclosure forms be form-fillable. Scanned copies of foreclosure forms would not be easier to manipulate than paper copies because scanned copies are essentially pictures of the forms; the information on the forms is not easily electronically accessible. If the scanned copy has not been created using a scanner with Optical Character Recognition software, then the data will not be able to be manipulated accurately. The Department prefers to receive paper foreclosure forms because the paper forms are easier to track and key into the Department’s internal database. However, Staff agreed that scanned copies can be stored electronically which will save space. Regarding form-fillable foreclosure forms; the foreclosure forms are already form-fillable and have been posted on the Department’s website since December 2011. Again, the Department agreed that electronic submission is a more efficient reporting mechanism than hard copy reporting, which is why the Department encourages the use of the electronic summary forms.

§1.24(d)(2) Reporting to TDHCA – Legibility.

COMMENT SUMMARY (7): Commenter objected to the word “legible” in §1.24(d)(2) “If a county clerk transmits originals or copies of the Notice of Sale Foreclosure Forms and/or Completed Sale Foreclosure Forms, these forms must be in legible hard copy format...” Commenter does not want to “police” the forms to ensure they are legible.

STAFF RESPONSE: Staff disagreed with this comment as legibility is of the essence in order to compile accurate data. No changes recommended based on this comment.

§1.24(d)(1) Reporting to TDHCA – First business day reporting.

COMMENT SUMMARY (10): Commenter noted that many reports are due on the first business day of the month and counties may not be able to meet the Department’s deadline to report on the first day of the month.

STAFF RESPONSE: Staff disagreed with this comment. Pursuant to SB 1233, the Department will transmit reports to the legislature quarterly; these quarterly reports will consist of information that the Department receives monthly from the counties. In order to fulfill its statutory obligation, the Department must receive the data from the clerks in a timely manner. If forms are not received from the counties before the Department’s quarterly report is prepared, the Department’s quarterly report will note that no data was received from certain counties in time for the report. No changes recommended based on this comment.

§1.24(d)(3) Reporting to TDHCA – Summary forms.

COMMENT SUMMARY (5, 9, 10): Commenter 5 stated that their county would need another employee in order to utilize the summary form. Commenter 9 suggested that the summary forms be removed from the rule. Commenter 9 stated that mailing thousands of forms is costly and time-consuming, but not as time consuming as summarizing the data; their county has not had an

increase in staff and would need such to handle the volume of foreclosure forms if required to use the summary forms. Commenter 10 stated that will not use the summary form.

STAFF RESPONSE: Staff disagreed with the comment concerning the removal of the summary form. Approximately 50 counties are using the summary form to submit, saving postage and copying or scanning time. The Department recognizes that there is a cost in mailing which is why the Department created the summary form and electronic upload option. In addition, the Department estimates that the labor needed to scan the forms would approximately equal the labor needed to complete the summary forms. While forwarding the paper versions of the foreclosure forms may save counties staff time, if counties are scanning and sending the foreclosure forms electronically, the Department encourages the consideration of the use of the summary forms to save on labor and costs. No changes recommended based on this comment.

The Board approved the final order adopting the new section, as well as administrative changes as needed for consistency within this chapter, on April 12, 2012.

The new section is adopted pursuant to the authority of Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs, and pursuant to §51.0022 of the Texas Property Code which requires that the Department promulgate forms, by rule, for collecting certain data regarding residential foreclosure notices and sales and to establish, by rule, the format for reporting the information to the Legislature.

§1.24.Foreclosure Data Collection.

(a) Purpose. This section satisfies the requirement of amendments to Chapter 51 of the Texas Property Code, per SB 1233 of the 82nd Legislative Session. The amendment requires the Texas Department of Housing and Community Affairs (~~the "Department"~~)(TDHCA) to prescribe forms for the collection of foreclosure data from the county clerks and to establish the format for reporting the information to the legislature.

(b) Definitions.

(1) Completed Sale Foreclosure Form--A form submitted to the county clerk when residential real property has been sold through a foreclosure and the substitute trustee's deed, sheriff's deed or other valid conveyance out of foreclosure is filed with the county clerk.

(2) Notice of Sale Foreclosure Form--A form submitted to the county clerk when a notice of sale of residential real property is filed with the county clerk.

(3) Summary Form for Completed Sales--A form submitted by the county clerk with the Department TDHCA that lists the Completion of Sale Foreclosure Forms received during the previous month (approximately thirty (30) days) by the county clerk.

(4) Summary Form for Notices of Sale--A form submitted by the county clerk with the Department TDHCA that lists the Notice of Sale Foreclosure Forms received during the previous month (approximately thirty (30) days) by the county clerk.

(5) Residential property--A residential property is a one-to-four-unit dwelling.

(c) Reporting to County Clerks.

(1) When a person files a notice of sale of residential property under §51.0022(b) of the Texas Property Code, that person must also submit to the county clerk a Notice of Sale Foreclosure Form that includes at least the information described in subparagraphs (A) - (D) of this paragraph:

- (A) a yes or no question as to whether the property is residential;
- (B) a statement that a notice of sale is being filed on this property;
- (C) the ZIP code of the residential real property; and
- (D) the date of submission of the Notice of Sale Foreclosure Form.

(2) When a person files a substitute trustee's deed, sheriff's deed or other valid conveyance out of foreclosure, that person must also submit to the county clerk a Completed Sale Foreclosure Form that includes at least the information described in subparagraphs (A) - (D) of this paragraph:

- (A) a yes or no question as to whether the property is residential;
- (B) a statement that the property has been sold as a result of foreclosure;
- (C) the ZIP code of the residential real property; and
- (D) the date of submission of the Completed Sale Foreclosure Form.

(d) Reporting to ~~TDHCA~~the Department.

(1) On the first business day of each month, the county clerk shall transmit to ~~TDHCA~~the Department the Notice of Sale Foreclosure Forms and Completed Sale Foreclosure Forms described in this rule that have been submitted to the county clerk during the previous month. These forms may be transmitted by either sending ~~TDHCA~~the Department the original forms, ~~or~~ copies of the original forms, scanned copies of the forms by Compact Disc (CD) or scanned copies by email if under 7 megabytes, faxed copies of the forms, or by transmitting the substance of the forms to ~~TDHCA~~the Department in the form of a properly-completed Summary Form for Completed Sales and/or a properly-completed Summary Form of Notices of Sale. ~~Electronically transmitted (email and fax) copies of the individual Notice of Sale Foreclosure Forms and Completed Sale Foreclosure Forms will not be accepted by TDHCA.~~

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(2) If a county clerk transmits originals, ~~or~~ copies, scans or faxes of the Notice of Sale Foreclosure Forms and/or Completed Sale Foreclosure Forms, these forms must be sent in legible ~~hard copy~~ format send via U.S. Mail to: Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941, via email, if under 7 megabytes, to countyclerkdatacollection@tdhca.state.tx.us, or by fax to the Housing Resource Center.

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(3) The executed Summary Form for Notices of Sale and Summary Form for Completed Sales may be submitted by the county clerks' offices via an online Web interface. A username and password will be required to submit via the Web interface. As an alternative method of submittal, the completed Summary Form for Notices of Sale and Summary Form for Completed Sales may also be downloaded and submitted via email as an attachment to countyclerkdatacollection@tdhca.state.tx.us or mailed to ~~TDHCA~~the Department at the address

in paragraph (2) of this subsection. The Summary Form for Notices of Sale and Summary Form for Completed Sales shall include at least the information described in subparagraphs (A) and (B) of this paragraph:

(A) A list of dates on which the Notice of Sale Foreclosure Forms and/or Completed Sale Foreclosure Forms were submitted to the county clerk during the previous month;

(B) A list of ZIP codes of the properties that are listed on the Notice of Sale Foreclosure Forms and/or the Completed Sale Foreclosure Forms collected during the previous month.

(e) Location of forms.

(1) The Notice of Sale Foreclosure Forms and/or Completed Sale Foreclosure Forms may be obtained online on ~~TDHCA's~~ the Department's website. This will be a downloadable form that can be printed. If the county clerk is unable to download the form, he or she may call the Housing Resource Center at ~~TDHCA~~ the Department to request a form be mailed via United States Postal Service (USPS). Persons shall use these foreclosure forms to report only those notices of sale and completed sales submitted to the county clerk on or after January 1, 2012.

(2) The Summary Form for Notices of Sale and Summary Form for Completed Sales may be obtained or accessed online on ~~TDHCA's~~ the Department's website. This will include a Web interface for online submission to ~~TDHCA~~ the Department. As an alternative, a downloadable Summary Form for Notices of Sale and Summary Form that can be printed will also be available. If the county clerk is unable to download the forms, he or she may call the Housing Resource Center at ~~TDHCA~~ the Department to request a form be mailed via USPS. County clerks shall use these summary forms to report only those notices of sale and completed sales submitted to the county clerk on or after January 1, 2012.

(f) Format for quarterly reporting to the Legislature. The information obtained from the forms described in this section will be compiled and summarized by ~~TDHCA~~ the Department by ZIP code and by county, and submitted quarterly to the Texas Legislature.

5

NONE AT THE TIME OF THIS
POSTING

6

BOARD ACTION REQUEST
ASSET ANALYSIS & MANAGEMENT DIVISION
April 12, 2012

Presentation, Discussion, and Possible Action to approve Issuance of a Request For Proposals (RFP) for Representation in Real Estate Transactions.

RECOMMENDED ACTION

Approve Issuance of RFP.

WHEREAS, The Texas Department of Housing and Community Affairs (“TDHCA” or “the Department”) currently has loans secured by real property that may, through foreclosure or otherwise, require that the Department acquire or sell real property; and,

WHEREAS, Section 2306.251 of the Texas Government Code authorizes the Department to acquire and own property on a temporary basis for the purpose of developing, redeveloping or operating affordable housing; and,

WHEREAS, the Board has determined that employing independent professional representation to accomplish the acquisition or sale of real property or improve the negotiation of the purchase or sale of such property is most often in the best interest of the State;

Now therefore it is hereby

RESOLVED, that the Executive Director and his designees be and each them hereby are authorized, empowered, and directed, for and on behalf of the Department, to develop Request for Proposal for Representation in Real Estate Transactions and to cause the Request for Proposal for Representation in Real Estate Transactions to be published in the *Texas Marketplace*.

BACKGROUND

The Department has made loans to developments that have been foreclosed or are anticipated to be foreclosed by the Department or by superior lenders. When the Department becomes the owner of such properties, assistance in marketing and sale of the property can in some cases maximize the return. For many of these loans the Department has obligations to the original funding source such as HUD, which require the delivery or maintenance of the affordable units or repayment of the funds from non-federal sources regardless of who completes the foreclosure. Since the availability of nonfederal sources is limited but some alternative federal sources of funds are from time to time available and can be used to reacquire property foreclosed from superior lien holders or subsequent owners, such acquisition can be a less costly or more effective way to address the Department’s original liability. Negotiating for such acquisition directly where the Department is identified as the purchaser, however, can undermine the ability

of obtaining the property at a fair market purchase price. Similarly, real estate owned and sold directly by an owner, such as the Department, may affect the ultimate sales price as compared to a property marketed and sold by a real estate professional on behalf of the owner.

The proposal to hire Brokers or Attorneys to represent the Department in the acquisition or sale of property will assist in reducing the purchase or increasing the sale price of real estate being acquired or sold by the Department.

7a

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
April 12, 2012

Presentation, Discussion, and Possible Action to Approve the Parameters, subject to Bond Review Board Approval, for Modification to Terms of Previous TDHCA Issued Multifamily Mortgage Revenue Bonds

RECOMMENDED ACTION

Approve modification to terms of bonds as presented.

WHEREAS, the private activity bonds for Parkview Townhomes (fka Providence at Rush Creek) were originally issued by the Department in December 2003; and

WHEREAS, the property has encountered a series of operating and ownership issues and an application seeking modifications to the terms of the bonds was submitted to the Department on December 30, 2011; and

WHEREAS, the owner indicates that the partial redemption and modifications to the terms will facilitate a more viable financing structure and reduce the ongoing operating deficits; and

WHEREAS, additional state volume cap will not be used but the modifications necessitate a reissuance of bonds under state law and federal tax law; and

WHEREAS, the Executive Award and Review Advisory Committee recommends the approval of the reissuance of Multifamily Mortgage Revenue Bonds Series 2003 for the Parkview Townhomes; therefore,

It is hereby,

RESOLVED, that the modification to and reissuance of the Multifamily Housing Revenue Refunding Bonds Series 2003 for the Parkview Townhomes is hereby approved in the form presented to this meeting and

FURTHER RESOLVED, that staff is authorized, empowered, and directed, for and on behalf of the Department to execute and deliver such documents, instruments, and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

BACKGROUND

General Information: The bonds for the Parkview Townhomes (fka Providence at Rush Creek) were originally issued through TDHCA in December of 2003. The original Series 2003A Tax-Exempt bond amount was \$15,000,000 and the Series 2003B Taxable bond amount was \$1,600,000. The original financing structure included privately placed bonds with Charter Municipal Mortgage Acceptance

Company and as such were unrated with no credit enhancement. The initial interest rate on the tax exempt bonds was 6.6% and on the taxable bonds was 8.5%.

The property was completed and placed in service in 2004 and 2005. However, the development was unable to lease up and reach stabilized operations within 24 months in accordance with the original bond documents. The general partner has turned over twice since the development was completed with an affiliate of the investor limited partner replacing the prior general partner in December 2011. The investor limited partner has continuously funded deep operating deficits since the property placed in service and is now seeking modifications to the financing structure to significantly reduce future operating deficits and facilitate a viable long-term financing structure.

Through correspondence between the Department’s bond counsel and the Office of the Attorney General, the modifications sought were determined to be extensive enough to constitute a reissuance under state law. As a result, the Board’s approval of the modifications is necessary. However, the “reissuance” will not utilize any additional state volume cap. Moreover, the changes will effectively be implemented through a supplemental trust indenture and modification agreement rather than through a completely new indenture and bond documents. The following chart summarizes the modifications that are recommended.

	Original Indenture	Modification to Indenture
Redemption	The original bonds were subject to mandatory redemption at the bondholder’s direction in the amounts needed in order to achieve Stabilization, which is defined as 90% occupancy and a 1.15 debt coverage ratio (DCR) for three months by May 31, 2007.	The bondholder is directing that the taxable bonds be redeemed in their entirety and \$1,465,698 in principal of the tax exempt bonds be redeemed. The development will also be deemed to have met Stabilization as of the date of redemption based on a DCR of 1.02.
Interest Rate	6.60% (tax exempt)	The 6.60% rate will be split into two component rates: a base rate of 4.75% per annum plus a contingent interest rate equal to 1.85% per annum. Essentially, the contingent interest rate will be paid from the excess cash flow from the Development which will be escrowed with the Trustee until the Development generates enough cash flow from operations to pay debt service at the full coupon.
Maturity and Sinking Fund Redemption Schedule	Maturity Date: December 1, 2043 Basis of Amortization: Level debt service over the term	Maturity Date: April 1, 2041 Basis of Amortization: Level debt service over the shortened term

Other Information

Organizational Structure and Compliance: The Borrower is Chicory Court IV, L.P. and the General Partner is Sublet Road Arlington, LLC with Centerline Guaranteed Manager II, LLC as the manager, both of which are wholly owned subsidiaries of the investor limited partner. On December 14, 2011 the Department approved an ownership transfer request to replace the existing General Partner, 1300 W. Sublett Road LLC and its sole member Agape Rush Creek, Inc. with the aforementioned entities.

Public Hearing: The original bond maturity is being modified; however the weighted average maturity (“WAM”) will not be extended; therefore, a TEFRA public hearing is not required.

Census Demographics: The site is located at 1200 West Sublett Road, Arlington, Tarrant County. Demographics for the census tract (1115.43) include AMFI of \$82,338; the total population is 3,257; the percent of the population that is minority is 42.62%; the number of owner occupied units is 770; number of renter occupied units is 398; and the number of vacant units is 113. (Census Information from FFIEC Geocoding for 2011).



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MULTIFAMILY FINANCE PRODUCTION DIVISION

Multifamily Housing Revenue Refunding Bonds Series 2003

**Parkview Townhomes
1200 W Sublett Road
Arlington, Texas**

**Chicory Court IV, L.P.
248 Units
\$15,000,000 Tax Exempt – Series 2003A
\$1,600,000 Taxable – Series 2003B**

TABLE OF EXHIBITS

TAB 1	Bond Resolution
TAB 2	Sources & Uses of Funds Estimated Cost of Issuance
TAB 3	Department's Real Estate Analysis

RESOLUTION NO. 12-024

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A SUPPLEMENTAL TRUST INDENTURE AND MODIFICATION AGREEMENT IN CONNECTION WITH MULTIFAMILY HOUSING MORTGAGE REVENUE BONDS (PARKVIEW TOWNHOMES) SERIES 2003A AND TAXABLE MULTIFAMILY HOUSING MORTGAGE REVENUE BONDS (PARKVIEW TOWNHOMES) SERIES 2003B; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the "Issuer") 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 individuals and families of low, very low and extremely low income (as defined in the Act) and families of moderate income (as defined in the Act and determined by the Governing Board of the Issuer (the "Board") from time to time); and

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

WHEREAS, the Act and Chapter 1207, Texas Government Code, as amended, further authorize the Department to issue its revenue bonds for the purpose of refunding any bonds theretofore issued by the Department under such terms, conditions and details as shall be determined by the Board; and

WHEREAS, the Issuer previously issued its Multifamily Housing Mortgage Revenue Bonds (Parkview Townhomes) Series 2003A in the original principal amount of \$15,000,000 (the "Tax-Exempt Bonds") and its Taxable Multifamily Housing Mortgage Revenue Bonds (Parkview Townhomes) Series 2003B in the original principal amount of \$1,600,000 (the "Taxable Bonds" and together with the Tax-Exempt Bonds, collectively, the "2003 Bonds") pursuant to the terms and provisions of that certain Trust Indenture dated as of December 1, 2003 (the "Indenture"), between the Issuer and Wells Fargo Bank, National Association, as trustee (the "Trustee"); and

WHEREAS, the proceeds of the 2003 Bonds were loaned to Chicory Court IV, LP (the "Borrower") for the purpose of financing a portion of the costs of a 248-unit multifamily housing development known as Parkview Townhomes and located in Arlington, Texas (the "Project"), pursuant to that certain Loan Agreement dated as of December 1, 2003 (the "Loan Agreement") among the Issuer, the Borrower and the Trustee; and

WHEREAS, the Borrower and Centerline Mortgage Capital Inc. (the "Servicer") (on behalf of the holder of the 2003 Bonds) have requested that the Issuer enter into a supplemental trust indenture and modification agreement (the "Supplement") to make certain modifications to the terms of the 2003 Bonds and conforming changes to the Indenture and the Loan Agreement; and

WHEREAS, \$1,484,670 of the Tax-Exempt Bonds and \$1,027,005 of the Taxable Bonds will be redeemed on or about the date of execution and delivery of the Supplement and no Taxable Bonds will remain outstanding after such redemption; and

WHEREAS, the modifications to be implemented by the Supplement are expected to result in a reissuance under State law of the 2003 Bonds that remain outstanding after the redemption described above (the reissued 2003 Bonds are hereinafter referred to as the "Bonds"); and

WHEREAS, the Issuer's execution of the Supplement shall be subject to receipt of the consents, opinions, approvals or notices required by the Indenture; and

WHEREAS, the Issuer now desires to take certain actions with respect to the Supplement;

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

Section 1. The Supplement, in substantially the form presented at this meeting, is hereby approved and adopted by the Issuer, and the Chair of the Board, the Executive Director or Acting Director of the Department and the Director of Multifamily Finance Production of the Department are each hereby authorized and empowered to execute and deliver the Supplement on behalf of the Issuer, with such changes as may be approved by the Issuer's counsel and the officer executing the same, such approval to be evidenced by such officer's execution thereof.

Section 2. The Bonds shall (a) bear interest at a rate of interest equal to (i) the base rate of 4.75% per annum plus (ii) the contingent rate of 1.85% per annum, payable from and to the extent of cash flow as more fully described in the Supplement, payable from the date of reissuance until paid on the maturity date or earlier redemption or acceleration thereof (subject to adjustment as provided in the Indenture; provided, however, that the default interest rate on the Bonds shall not exceed the maximum rate permitted by applicable law); (b) be reissued in the principal amount of \$13,515,330, following redemption of Tax-Exempt Bonds on or about the date of execution and delivery of the Supplement in the amount of \$1,484,670, and (c) have a final maturity date of April 1, 2041.

Section 3. The officers of the Board and the employees and agents of the Issuer, and each of them, shall be and each is expressly authorized, empowered and directed from time to time and at any time to do and perform all acts and things and to execute, acknowledge and deliver in the name and under the corporate seal and on behalf of the Issuer all certificates, financing statements, instruments and other documents, whether or not herein mentioned, as they may determine to be necessary or desirable in order to carry out the terms and provisions of this resolution, as well as the terms and provisions of the Supplement, such determination to be conclusively evidenced by the performance of such acts and things and the execution of any such certificate, financing statement, instrument or other document.

Section 4. The Issuer's execution of the Supplement is expressly subject to receipt of the consents, opinions, approvals or notices required by the Indenture.

Section 5. The Board hereby authorizes and approves the submission of the application for approval of state bonds to the Texas Bond Review Board on behalf of the Department in connection with the Bonds in accordance with Chapter 1231, Texas Government Code.

Section 6. The Board hereby authorizes and approves the submission by the Department's Bond Counsel to the Attorney General of the State, for his approval, of a transcript of legal proceedings relating to the Bonds.

Section 7. The Secretary and Assistant Secretary to the Board hereby are authorized to certify and authenticate minutes and other records on behalf of the Department for the Bonds and all other Department activities.

Section 8. The Board has determined that the proposed reissuance of the 2003 Bonds is in the best interest of the Department and will provide a potential savings in debt payable by the Department. The manner in which the 2003 Bonds are being reissued does not make it practicable to make the determination required by Section 1207.008, Texas Government Code.

Section 9. 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 10. This resolution shall be in full force and effect from and upon its adoption.

(Execution page follows)

PASSED AND APPROVED this 12th day of April, 2012.

Chair, Governing Board

ATTEST:

Secretary to the Governing Board

(SEAL)

Providence at Rush Creek

Estimated Sources & Uses of Funds

Sources of Funds

Series 2003A Tax-Exempt Bond Proceeds	\$ 13,515,330
Total Bond Redemption	2,511,675
Centerline Contribution	192,523
June 1, 2012 Principal Payment (Mandatory Debt Service)	9,519
Total Sources	\$ 16,229,047

Uses of Funds

UPB on Tax Exempt Bonds (June 2012)	\$ 15,000,000
UPB on Taxable Bonds (June 2012)	1,036,524
Other Construction Costs (General Require, Overhead, Profit)	-
Developer Fees and Overhead	-
Direct Bond Related	192,523
Bond Purchase Costs	-
Other Transaction Costs	-
Real Estate Closing Costs	-
Total Uses	\$ 16,229,047

Estimated Costs of Issuance of the Bonds

Direct Bond Related

TDHCA Issuance Fee (.50% of Issuance)	\$ 67,577
TDHCA Application Fee	5,000
TDHCA Bond Administration Fee (2 years)	27,031
TDHCA Bond Compliance Fee (\$50 per unit)	12,400
TDHCA Bond Counsel and Direct Expenses (Note 1)	20,000
TDHCA Financial Advisor and Direct Expenses	35,000
Disclosure Counsel (\$5k Pub. Offered, \$2.5k Priv. Placed. See Note 1)	2,500
Trustee Fee (.10% of UPB)	13,515
Trustee's Counsel (Note 1)	-
Attorney General Transcript Fee	9,500
Texas Bond Review Board Application Fee	-
Texas Bond Review Board Issuance Fee (.025% of Reservation)	-
Bond Amortization Analysis	-
Total Direct Bond Related	\$ 192,523

Providence at Rush Creek

Bond Purchase Costs	
LOC Origination Fee & Expenses	-
LOC Ongoing Fees	-
Underwriter's Discount	-
Underwriter's Counsel	-
Rating Agency	-
OS Printing/Mailing	-
Total Bond Purchase Costs	<u><u>\$ -</u></u>
Other Transaction Costs	
Tax Credit Related Costs	-
Construction Contingency	-
Soft Construction Costs	-
Construction Period Interest	-
Lease-Up Reserves	-
Miscellaneous	-
Total Other Transaction Costs	<u><u>\$ -</u></u>
Real Estate Closing Costs	
Title and Recording	-
Total Real Estate Costs	<u><u>\$ -</u></u>
Estimated Total Costs of Issuance	<u><u>\$ 192,523</u></u>

Costs of issuance of up to two percent (2%) of the principal amount of the Bonds may be paid from Bond proceeds. Costs of issuance in excess of such two percent must be paid by an equity contribution of the Borrower.

Note 1: These estimates do not include direct, out-of-pocket expenses (i.e. travel). Actual Bond Counsel and Disclosure Counsel are based on an hourly rate and the above estimate does not include on-going administrative fees.



Memorandum

To: File

From: Diamond Unique Thompson, Real Estate Analysis
Brent Stewart, Director of Real Estate Analysis

cc: Shannon Roth, Multifamily Finance Production

Date: April 3, 2012

Re: Providence at Rush Creek (fka Parkview Townhomes), TDHCA #12600
\$15,000,000 Tax-Exempt Series 2003A
\$2,300,000 Taxable Series 2003B

Providence at Veteran's Memorial, TDHCA #12601
\$15,000,000 Tax-Exempt Series 2004A
\$1,300,000 Taxable Series 2004B

Timber Oaks Apartments, TDHCA #12602
\$10,900,000 Tax-Exempt Series 2003A
\$2,300,000 Taxable Series 2003B

General Background:

The above bond transactions were approved and issued as three separate transactions by TDHCA in 2003 and 2004. Determination Notices for a 4% tax credit allocation was also approved.

The bonds (both tax-exempt and taxable series for each deal) were issued without rating or credit enhancement and originally purchased by subsidiaries of Charter Municipal Mortgage Acceptance Corporation (which later became Centerline Capital Group). Subsidiaries of Related Capital Company, associated with Charter/Centerline, invested the tax credit equity for each deal.

While the properties were completed and the units placed-in-service timely, the bond documents required stabilization (meeting both occupancy and debt coverage requirements) within 24 months of completion. This did not occur. As a result, the deals entered into a state of financial "distress", although not in technical or payment default due to Centerline's funding of operating deficits and debt service under their guarantee obligations.

Centerline is requesting a restructure of the bond terms in an effort to stabilize the properties. Generally, the restructuring involves a pay-down of the outstanding debt for each property and modification of repayment terms for the debt that will remain outstanding.

The three deals are part of a 17 property portfolio of similarly financed deals across various states (\$234M of total bonds). The bonds are now owned by Freddie Mac. The subject restructurings are part

CENTERLINE BOND RE-FUNDING REQUEST ANALYSIS
MARCH 30, 2012

of an overall workout of the portfolio. Details of the overarching portfolio restructure are not addressed herein and this analysis is limited to the determination of each project's ability to service the restructured debt.

The original general partners have been removed from the ownership entities and Centerline entities are in control of the partnerships and the restructuring efforts. Thus far, Centerline has advanced \$5.5M in total to these three deals to keep the properties out of foreclosure which has left the LURA in place (preservation of the tax credits for the investor).

TDHCA has previously worked with Centerline on other aspects of these deals (8609 issuance, ownership changes and compliance issues). Centerline has corrected all non-compliance issues. TDHCA's interest in the restructure is stabilization of the properties to avoid foreclosure and loss of the tax credit units. As issuer of the bonds, however, the Department is not at financial risk.

Providence at Rush Creek, TDHCA #12600

Providence at Rush Creek, originally known as Parkview Townhomes is a 248-unit, is a +/- 262,080 square foot multifamily complex on 16.18 acres in the southern portion of Arlington, Tarrant County, Texas. 100% of the units are set aside for people earning 60% or less of the area median income.



The Development consists of twelve two- and three-story garden-style apartment buildings plus a one-story community building. The amenities at the Development include a swimming pool, playground, community building with kitchen facilities, vending area, and television, central laundry room, children's after school center, business center and fitness center.

The bonds were originally issued on December 17, 2003 for \$15,000,000 (Series A, tax-exempt) and \$1,600,000 (Series B, taxable). Total debt equalled \$16.6M. The required stabilization date was May 31, 2007 which did not occur.

At original underwriting in 2003, TDHCA's stabilized net operating income ("NOI") was \$1.3M and the DCR on the bonds as structured was 1.10 times (acceptable per REA rules in 2003). The owner's application projections were slightly higher indicating a DCR of 1.18 times. Actual NOI for YE 2011 of \$932K is consistent with both the owner's and REA's pro forma.

CENTERLINE BOND RE-FUNDING REQUEST ANALYSIS
MARCH 30, 2012

Although 10 years later, actual rents are roughly equal to rents at the original underwriting (indicative of minimal growth in maximum LIHTC rents but increases to utility allowances). The Applicant's projected rents are consistent with current 2012 max rents; however, per the rent roll as of March 22, 2012, the units are currently collecting rents are approximately \$21 to \$77 less than the maximums. The Underwriter has utilized the current rent roll rents, resulting in Potential Gross Income of \$2.5M, or \$170K less than the Applicant's projected income. However, the Applicant has estimated a 13.6% vacancy and collection loss. The rent roll shows a current physical occupancy of 96% and the vacancy & collection loss included in the un-audited 2011 actual operating expense statement is consistent with the Department's standard 7.5% rate. Despite the discrepancies in PGI and vacancy and collection, the Applicant's Effective Gross Income is within 5% of the Underwriter's estimate.

The Applicant's total annual operating expense projection at \$5,656 per unit is within 5% of the Underwriter's estimate of \$5,888, derived from actual operating history, the TDHCA database, and third-party data sources. Historical expenses, \$400K higher than underwritten expenses, show higher property taxes (\$1K/unit) than comparable LIHTC deals. G&A expenses are extremely high (also \$1K/unit) which if normalized (\$400 to \$500 per unit) would provide additional cash flow to cover the contingent interest payments.

As of 3Q11, Centerline has previously advanced over \$1.8 million to this property for operating deficits.

In the restructure, Centerline will reduce the total debt by \$2.5M (completely paying off the taxable bonds and reducing the tax-exempt bonds by \$1.4M). The overall interest rate on the remaining tax-exempt debt will remain at 6.6% but repayment will be split into a must-pay component at 4.75% and a contingent component at 1.85% (deferred and dependant upon cash flow). The maturity date will be accelerated to April 1, 2041 (originally December 1, 2043).

	<u>Current</u>	<u>Modified</u>	<u>Change</u>
Series A-Tax-Exempt Principal	15,000,000	13,534,302	(1,465,698)
Interest Rate (Must-Pay)	6.60%	4.75%	-1.85%
Interest Rate (Contingent)	0.00%	1.85%	1.85%
Series B-Taxable Principal (*)	1,045,977	-	(1,045,977)
Interest Rate	8.50%	0.00%	-8.50%
Total Debt	16,045,977	13,534,302	(2,511,675)
Total Debt Service (Must-Pay)	1,192,332	740,671	(451,661)
Total Debt Service (All-In)	1,192,332	911,950	(280,382)
Centerline Pro Forma NOI	911,486	911,486	
DCR - Must Pay	0.76	1.23	
DCR - All-In	0.76	1.00	
TDHCA Pro Forma NOI	897,231	897,231	
DCR - Must Pay	0.75	1.21	
DCR - All-In	0.75	0.98	

(*) Originally \$1.6M reduced through sinking fund payments

CENTERLINE BOND RE-FUNDING REQUEST ANALYSIS
MARCH 30, 2012

Providence at Veteran's Memorial, TDHCA #12601

Providence at Veterans Memorial is a 238-unit, +/- 282,000 square foot multifamily apartment complex on 33.6 acres in north Houston, Harris County, Texas. 100% of the units are set aside for people earning 60% or less of the area median income.



Providence at Veterans Memorial consists of two- and three-bedroom rental apartments. The amenities at the Development include a Community Room with a kitchen, picnic area, clubhouse, swimming pool, exercise room, all-sports court, playground, and central laundry room.

The bonds were originally issued on January 27, 2004 for \$15,000,000 (Series A, tax-exempt) and \$1,300,000 Series B, taxable). The required stabilization date was May 31, 2007 which did not occur.

At original underwriting in 2002, TDHCA's stabilized net operating income ("NOI") was \$1.3M and the DCR on the bonds as structured was 1.10 times (acceptable per REA rules in 2002). The owner's application projections were slightly higher indicating a DCR of 1.15 times.

The Applicant's projected rents are consistent with current 2012 max rents; however, per current CMTS information and the rent roll as of November 30, 2011, the units are currently collecting rents are ~\$37 to \$59 less than the maximums. The Underwriter has utilized the current CMTS and rent roll rent averages, resulting in Potential Gross Income of \$2.4M, or \$130K less than the Applicant's projected income. However, the Applicant has estimated a 10.2% vacancy and collection loss. The un-audited 2011 actual operating expense statement shows an elevated vacancy loss (~12%); however, the rent roll shows a current physical occupancy of 92%, therefore, the Underwriter has utilized the Department's standard 7.5% rate. Despite the discrepancies in PGI and vacancy and collection, the Applicant's Effective Gross Income is within 5% of the Underwriter's estimate.

The Applicant's total annual operating expense projection at \$6,260 per unit is within 5% of the Underwriter's estimate of \$6,042, derived from actual operating history, the TDHCA database, and third-party data sources. Historical expenses show higher property taxes (\$1K/unit) than comparable LIHTC deals. G&A expenses are extremely high (also \$1K/unit) which if normalized (\$400 to \$500 per unit) would provide additional cash flow to cover the contingent interest payments.

CENTERLINE BOND RE-FUNDING REQUEST ANALYSIS
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As of 3Q11, Centerline has previously advanced over \$2.3 million to this property for operating deficits.

In the restructure, Centerline will reduce the total debt by \$8.9M (completely paying off the taxable bonds and reducing the tax-exempt bonds by \$8.1M). The overall interest rate on the remaining tax-exempt debt will remain at 6.6% but repayment will be split into a must-pay component at 4.75% and a contingent component at 1.85% (deferred and dependant upon cash flow). The maturity date will be accelerated to January 1, 2041 (originally January 1, 2044).

	<u>Current</u>	<u>Modified</u>	<u>Change</u>
Series A-Tax-Exempt Principal	15,000,000	6,887,290	(8,112,710)
Interest Rate (Must-Pay)	6.60%	4.75%	-1.85%
Interest Rate (Contingent)	0.00%	1.85%	1.85%
Series B-Taxable Principal (*)	759,130	-	(759,130)
Interest Rate	8.50%	0.00%	-8.50%
Total Debt	15,759,130	6,887,290	(8,871,840)
Total Debt Service (Must-Pay)	990,000	378,206	(611,794)
Total Debt Service (All-In)	1,167,528	613,298	(554,230)
Centerline Pro Forma NOI	802,933	802,933	
DCR - Must Pay	0.81	2.12	
DCR - All-In	0.69	1.31	
TDHCA Pro Forma NOI	821,420	821,420	
DCR - Must Pay	0.83	2.17	
DCR - All-In	0.70	1.34	

(*) Originally \$1.3M reduced through sinking fund payments

CENTERLINE BOND RE-FUNDING REQUEST ANALYSIS
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Timber Oaks, TDHCA #12602

Timber Oaks Apartments is a 264-unit, +/- 249,800 square foot multifamily apartment community on 15.4 acres in Grand Prairie, Tarrant County, Texas. 100% of the units are set aside for people earning 60% or less of the area median income.



The development consists of 11 three-story garden-style apartment buildings in addition to a community building and offers an extensive in unit and common area amenity package. Timber Oaks consists of one bedroom, one bath; two bedroom, one bath; two bedroom, two bath; and three bedroom two, bath units.

The bonds were originally issued on July 29, 2003 for \$10,900,000 (Series A, tax-exempt) and \$2,300,000 Series B, taxable). The required stabilization date was September 30, 2006, which did not occur.

At original underwriting in 2003, TDHCA's stabilized net operating income ("NOI") was \$1M and the DCR on the bonds as structured was 1.10 times (acceptable per REA rules in 2003). The owner's application projections were slightly higher indicating a DCR of 1.14 times. Actual NOI for YE 2011 of \$936K is consistent with both the owner's and REA's pro forma.

Although 10 years later, actual rents are slightly lower than rents at the original underwriting (indicative of minimal growth in maximum LIHTC rents but increases to utility allowances). Timber Oaks is 100% at 60% Income and 50% rent restricted. With the exception of the 854 s.f. 2BR units, the Applicant's projected rents are higher (\$9-\$12) than current 2012 max 50% rents. Additionally, per the rent roll as of March 22, 2012, the units are currently collecting rents are ~\$2 to \$15 higher than the maximums. The Underwriter has utilized max 50% rents, resulting in Potential Gross Income of \$2M, or \$29K less than the Applicant's projected income. However, the Applicant has estimated a 9.8% vacancy and collection loss. The rent roll shows a current physical occupancy of 94% and the vacancy & collection loss included in the un-audited 2011 actual operating expense statement is consistent with the Department's standard 7.5% rate. Despite the discrepancies in PGI and vacancy and collection, the Applicant's Effective Gross Income is within 5% of the Underwriter's estimate.

The Applicant's total annual operating expense projection at \$3,165 per unit is not within 5% of the Underwriter's estimate of \$3,544, derived from actual operating history, the TDHCA database, and third-party data sources.

CENTERLINE BOND RE-FUNDING REQUEST ANALYSIS
MARCH 30, 2012

As of 3Q11, Centerline has previously advanced over \$1.41 million to this property for operating deficits.

In the restructure, Centerline will reduce the total debt by \$418K (no redemption on the taxable bonds and completely paying off the tax-exempt). The overall interest rate on the tax-exempt debt will remain at 6.75% but repayment will be split into a must-pay component at 4.75% and a contingent component at 2% (deferred and dependant upon cash flow). Similarly, the interest rate on the taxable bonds will be reduced to 4.75% from 8.75%, with the remaining 4.00% deferred as contingent interest payable out of operating cash flow. The maturity date will be accelerated to March 1, 2027 (originally January 1, 2025).

	<u>Current</u>	<u>Modified</u>	<u>Change</u>
Series A-Tax-Exempt Principal	10,900,000	10,900,000	-
Interest Rate (Must-Pay)	6.75%	4.75%	-2.00%
Interest Rate (Contingent)	0.00%	2.00%	2.00%
Series B-Taxable Principal (*)	418,636	-	(418,636)
Interest Rate	8.75%	0.00%	-8.75%
Total Debt	11,318,636	10,900,000	(418,636)
Total Debt Service (Must-Pay)	898,102	592,904	(305,198)
Total Debt Service (All-In)	960,958	695,241	(265,717)
Centerline Pro Forma NOI	996,447	996,447	
DCR - Must Pay	1.11	1.68	
DCR - All-In	1.04	1.43	
TDHCA Pro Forma NOI	938,543	938,543	
DCR - Must Pay	1.05	1.58	
DCR - All-In	0.98	1.35	

(*) Originally \$2.3M reduced through sinking fund payments

CENTERLINE BOND RE-FUNDING REQUEST ANALYSIS
MARCH 30, 2012

Conclusion/Recommendation:

The principal reduction and modification to the interest payment structure produces debt coverage ratios on the must-pay debt within current REA guidelines. As a result, the long-term viability of the deals is greatly improved and potential on-going deficit funding by Centerline is significantly reduced.

The Underwriter recommends approval of the requests.

STABILIZED PROFORMA

Providence at Rush Creek, Arlington, #12600

STABILIZED FIRST YEAR PROFORMA														
	COMPARABLES		APPLICANT				TDHCA				VARIANCE			
	Database	2,011	% EGI	Per SF	Per Unit	Amount	Amount	Per Unit	Per SF	% EGI	%	\$		
POTENTIAL GROSS RENT		\$0		\$0.84	\$883	\$2,628,912	\$2,489,202	\$836	\$0.79		-5.6%	(\$139,710)		
Fees		\$0			\$21.68	\$64,506					0.0%	(64,506)		
Misc. Other Income		\$0			\$6.52	\$19,410					0.0%	(19,410)		
Trash Revenue		\$0			\$1.84	\$5,475					0.0%	(5,475)		
Underwriter's Total Secondary Income		\$0					\$59,520	\$20.00			100.0%	59,520		
POTENTIAL GROSS INCOME		\$0				\$2,718,303	\$2,548,722				-6.7%	(\$169,582)		
Vacancy & Collection Loss		(\$128,374)			13.6% PGI	(369,072)	(191,154)	7.5% PGI			-93.1%	177,918		
Non-Rental Units/Concessions		\$0				(35,077)					0.0%	35,077		
EFFECTIVE GROSS INCOME		\$2,263,020				\$2,314,154	\$2,357,568				1.8%	\$43,413		
General & Administrative	\$95,651	\$386/Unit	196,477	9.97%	\$0.88	\$930	\$230,653	\$196,477	\$792	\$0.75	8.33%	17.4%	34,176	
Management	\$89,013	4.7% EGI	90,460	3.88%	\$0.34	\$362	\$89,815	\$94,239	\$380	\$0.36	4.00%	-4.7%	(4,424)	
Payroll & Payroll Tax	\$258,450	\$1,042/Unit	287,489	11.74%	\$1.04	\$1,095	\$271,576	\$287,489	\$1,159	\$1.10	12.19%	-5.5%	(15,913)	
Repairs & Maintenance	\$145,559	\$587/Unit	135,028	7.79%	\$0.69	\$727	\$180,186	\$145,559	\$587	\$0.56	6.17%	23.8%	34,627	
Utilities	\$96,741	\$390/Unit	50,186	3.30%	\$0.29	\$308	\$76,444	\$50,186	\$202	\$0.19	2.13%	52.3%	26,258	
Water, Sewer, & Trash	\$144,380	\$582/Unit	212,161	7.99%	\$0.71	\$745	\$184,797	\$212,161	\$855	\$0.81	9.00%	-12.9%	(27,364)	
Property Insurance	\$56,896	\$0.22 /sf	43,560	2.22%	\$0.20	\$207	\$51,269	\$79,519	\$321	\$0.30	3.37%	-35.5%	(28,250)	
Property Tax	2.7849	\$186,456	\$752/Unit	263,408	11.17%	\$0.99	\$1,043	\$258,550	\$263,408	\$1,062	\$1.01	11.17%	-1.8%	(4,858)
Reserve for Replacements	\$74,276	\$300/Unit	-	0.00%	\$0.00	\$0	\$0	\$62,000	\$250	\$0.24	2.63%	-100.0%	(62,000)	
TDHCA Compliance Fees			-	0.00%	\$0.00	\$0	\$0	\$9,920	\$40	\$0.04	0.42%	-100.0%	(9,920)	
Cable TV			1,090	0.03%	\$0.00	\$3	\$753	\$753	\$3	\$0.00	0.03%	0.0%	-	
Supportive service contract fees			-	0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-	
Security			51,062	2.53%	\$0.22	\$236	\$58,625	\$58,625	\$236	\$0.22	2.49%	0.0%	-	
TOTAL EXPENSES		\$1,330,921		60.61%	\$5.35	\$5,656	\$1,402,668	\$1,460,336	\$5,888	\$5.57	61.94%	-3.9%	\$ (57,668)	
NET OPERATING INCOME ("NOI")		\$932,099		39.39%	\$3.48	\$3,675	\$911,486	\$897,231	\$3,618	\$3.42	38.06%	1.6%	\$14,255	
CONTROLLABLE EXPENSES		\$2,987/Unit	\$3,554/Unit			\$3,805/Unit			\$3,596/Unit					

LONG TERM OPERATING PROFORMA													
	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	\$2,314,154	\$2,528,940	\$2,579,519	\$2,631,110	\$2,683,732	\$2,963,057	\$3,271,454	\$3,611,950	\$3,987,884	\$4,402,947	\$4,861,209	\$5,367,167	
LESS: TOTAL EXPENSES	1,402,668	1,450,390	1,492,920	1,536,707	1,581,787	1,827,975	2,112,777	2,442,280	2,823,535	3,264,708	3,775,260	4,366,147	
NET OPERATING INCOME	\$911,486	\$1,078,551	\$1,086,599	\$1,094,403	\$1,101,945	\$1,135,082	\$1,158,677	\$1,169,670	\$1,164,350	\$1,138,239	\$1,085,949	\$1,001,020	
LESS: DEBT SERVICE	740,671	740,671	740,671	740,671	740,671	740,671	740,671	740,671	740,671	740,671	740,671	740,671	
NET CASH FLOW	\$170,815	\$337,880	\$345,929	\$353,732	\$361,275	\$394,411	\$418,006	\$428,999	\$423,679	\$397,568	\$345,278	\$260,349	
CUMULATIVE NET CASH FLOW	\$170,815	\$508,695	\$854,624	\$1,208,356	\$1,569,631	\$3,478,689	\$5,525,915	\$7,654,656	\$9,791,051	\$11,840,434	\$13,683,084	\$15,169,189	
DEFERRED DEVELOPER FEE BALANCE	\$10,239,659	\$9,901,779	\$9,555,851	\$9,202,118	\$8,840,844	\$6,931,785	\$4,884,560	\$2,755,818	\$619,424	\$0	\$0	\$0	
DCR ON UNDERWRITTEN DEBT (Must-Pay)	1.23	1.46	1.47	1.48	1.49	1.53	1.56	1.58	1.57	1.54	1.47	1.35	
EXPENSE/EGI RATIO	60.61%	57.35%	57.88%	58.41%	58.94%	61.69%	64.58%	67.62%	70.80%	74.15%	77.66%	81.35%	

**TEXAS DEPARTMENT of HOUSING and COMMUNITY AFFAIRS
MULTIFAMILY UNDERWRITING ANALYSIS**

DATE: December 1, 2003 PROGRAM: 4% HTC FILE NUMBER: 03455
 MRB 2003-060

DEVELOPMENT NAME

Providence at Rush Creek aka Parkview Townhomes

APPLICANT

Name: Chicory Court IV, LP **Type:** For Profit
Address: 5400 LBJ Freeway, Suite 975 **City:** Dallas **State:** TX
Zip: 75240 **Contact:** Saleem Jafar/Bill Fisher **Phone:** (972) 239-8500 **Fax:** (972) 239-8373

PRINCIPALS of the APPLICANT/ KEY PARTICIPANTS

Name: Chicory Court GP-IV, Inc. **(%):** 0.01 **Title:** Managing General Partner
Name: Leon J. Backes **(%):** N/A **Title:** 100% owner of MGP
Name: Sphinx Development, Inc. **(%):** N/A **Title:** Co-Developer
Name: Provident Realty Advisors, Inc. **(%):** N/A **Title:** Co-Developer

PROPERTY LOCATION

Location: 1201 Mineral Springs Road QCT DDA
City: Arlington **County:** Tarrant **Zip:** 76001

REQUEST

<u>Amount</u>	<u>Interest Rate</u>	<u>Amortization</u>	<u>Term</u>
1) \$717,257	N/A	N/A	N/A
2) \$15,000,000	6.6%	40	40
3) \$900,000	8.5%	40	16
Other Requested Terms:	1) Annual ten-year allocation of low-income housing tax credits 2) Tax-exempt mortgage revenue bonds 3) Taxable mortgage revenue bonds (paid with priority)		
Proposed Use of Funds:	New construction	Property Type:	Multifamily

RECOMMENDATION

- RECOMMEND APPROVAL OF A LIHTC ALLOCATION NOT TO EXCEED \$714,733 ANNUALLY FOR TEN YEARS, SUBJECT TO CONDITIONS.
- RECOMMEND APPROVAL OF A MORTGAGE REVENUE BOND ALLOCATION NOT TO EXCEED \$16,600,000, COMPRISED OF \$15,000,000 IN TAX-EXEMPT BONDS AT AN INTEREST RATE OF 6.6% AND \$1,600,000 IN TAXABLE BONDS AT AN INTEREST RATE OF 8.5%, WITH A TERM OF 40 YEARS.

CONDITIONS

1. Receipt, review, and acceptance of final approval for change of zoning to allow at least 16 multifamily units per acre submitted with the TDHCA commitment fee.
2. Receipt, review and acceptance of documentation indicating an agreement to extend the closing date

**TEXAS DEPARTMENT of HOUSING and COMMUNITY AFFAIRS
MULTIFAMILY UNDERWRITING ANALYSIS**

- through the bond closing submitted with the TDHCA commitment fee.
3. Receipt, review and acceptance of a breakdown of the cost to remove the existing concrete slabs and an explanation of where this cost is included in the development budget by bond closing.
 4. TDHCA Board acceptance of the projected redemption or resizing of taxable bonds to not more than \$1,400,000.
 5. Should the terms and rates of the proposed debt or syndication change, the transaction should be re-evaluated and an adjustment to the credit amount may be warranted.

REVIEW of PREVIOUS UNDERWRITING REPORTS

No previous reports.

DEVELOPMENT SPECIFICATIONS

IMPROVEMENTS

Total Units:	<u>248</u>	# Rental Buildings	<u>12</u>	# Common Area Bldgs	<u>1</u>	# of Floors	<u>3</u>	Age:	<u>N/A</u> yrs	Vacant:	<u>N/A</u> at / /	
Net Rentable SF:	<u>262,080</u>	Av Un SF:	<u>1,057</u>	Common Area SF:	<u>4,951</u>	Gross Bldg SF:	<u>267,031</u>					

STRUCTURAL MATERIALS

Wood frame on a post-tensioned concrete slab, 10% stone veneer/30% cement composition siding/60% stucco exterior wall covering, drywall interior wall surfaces, composite shingle roofing

APPLIANCES AND INTERIOR FEATURES

Carpeting & vinyl flooring, range & oven, hood & fan, garbage disposal, dishwasher, refrigerator, fiberglass tub/shower, washer & dryer connections, cable, high speed internet connection, ceiling fans, laminated counter tops, 9' ceilings

ON-SITE AMENITIES

4,951-SF community building with activity room, management offices, fitness & laundry facilities, kitchen, restrooms, business center, children's center and classroom, central mailroom, and swimming pool are located at the main entrance to the property. In addition a fitness area, fully-equipped playground, second entrance and perimeter fencing with limited access gates are planned for the site.

Uncovered Parking:	<u>447</u>	spaces	Carports:	<u>0</u>	spaces	Garages:	<u>0</u>	spaces
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PROPOSAL and DEVELOPMENT PLAN DESCRIPTION

Description: Providence at Rush Creek was formerly known as Parkview Townhomes. The new construction development is relatively dense with 15 units per acre. All of the units will be restricted under the Housing Tax Credit program and housed in 12 residential buildings as follows:

- Ten Building Type A with 8 two-bedroom/ two-bath units and 12 three- bedroom/ two-bath units; and
- Two Building Type B with 9 two-bedroom/ two-bath units and 15 three- bedroom/ two-bath units.

Architectural Review: The units appear to be functional and the exterior of the buildings are comparable to new construction market rate developments.

Supportive Services: The Applicant provided a sample social service agreement which details the programs offered by New Horizons Ranch and Center, Inc. Because of the Development's participation in the mortgage revenue bond program, supportive services must be made available to tenants.

Schedule: The Applicant anticipates construction to begin in January of 2004 and to be completed in January of 2005. The development should be placed in service in March of 2005 and substantially leased-up in June of 2005.

SITE ISSUES

SITE DESCRIPTION

Size:	<u>16.2</u>	acres	<u>740,520</u>	square feet	Zoning/ Permitted Uses:	<u>MF-14/16 units per acre</u>
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**TEXAS DEPARTMENT of HOUSING and COMMUNITY AFFAIRS
MULTIFAMILY UNDERWRITING ANALYSIS**

Flood Zone Designation: Zone X **Status of Off-Sites:** Partially Improved

SITE and NEIGHBORHOOD CHARACTERISTICS

Location: The site is located in South Arlington, south of IH 20. Arlington is located between Dallas and Fort Worth in the southern section of the metroplex.

Adjacent Land Uses:

- **North:** West Sublett Road, retail, single family residential
- **South:** Mineral Springs Road, vacant land
- **East:** Mineral Springs Business Park, vacant land
- **West:** Retail, vacant land, Cooper Street

Site Access: The subject can be accessed from both Mineral Springs Road and Sublett Road. The main entrance will be located on Sublett Road. Highways and thoroughfares which connect the neighborhood to the Dallas/Fort Worth area are easily accessible.

Public Transportation: “Private vehicular transportation is the most common form utilized throughout the neighborhood. Public transportation is not provided in the City of Arlington. (p. 66, market study).”

Shopping & Services: Shopping, schools, public services, groceries and medical services are available locally in Arlington.

Special Adverse Site Characteristics:

- **Zoning:** The Applicant is in the process of applying for rezoning of the subject property to allow for multifamily construction with a density of 16 units per acre. The Applicant provided a letter from the city which indicates that as of November 18, 2003, the City Council of the City of Arlington approved the zoning/development plan request on Final Reading. It also indicates approved zoning will become effective on December 1, 2003 after a second publication. Receipt of final approval submitted with the TDHCA commitment fee is a condition of this report.
- **Site Control:** The site control document submitted indicates a contract closing date of November 30, 2003. Documentation indicating an agreement to extend the closing date through the bond closing was not provided and receipt of such is a condition of this report.

Site Inspection Findings: TDHCA staff performed a site inspection on October 29, 2003 and found the location to be acceptable.

HIGHLIGHTS of SOILS & HAZARDOUS MATERIALS REPORT(S)

A Phase I Environmental Site Assessment report dated October 9, 2003 was prepared by Butler Burgher Environmental (BBE) and contained the following findings and recommendations:

Findings: “Five slab foundations were observed [on the subject]; two of the foundation areas appear to be loading docks; two of the foundation areas appear to be shower/washing facilities; and one area appears to be an office area;...BBE observed abandoned airline cargo containers, and abandoned truck and trailer, as well as other metal equipment on the northeast adjacent property; and, the historical review revealed that a former mobile home manufacturing and assembly facility was located at the subject property.”

Recommendations: “Based on the above findings and conclusions, BBE conducted soil and groundwater sampling during this Phase I ESA...BBE makes no further recommendations pertaining to soil/groundwater sampling based on the best available data at the time of this Phase I ESA production.

In the professional opinion of BBE, an appropriate level of inquiry has been made into the previous ownership and uses of the property consistent with good commercial and customary practice in an effort to minimize liability, and no further evidence or indication of recognized environmental conditions has been revealed...”

POPULATIONS TARGETED

Income Set-Aside: The Applicant has elected the 40% at 60% or less of area median gross income (AMGI) set-aside. As a Priority 2 private activity bond lottery project 100% of the units must have rents restricted to be affordable to households at or below 60% of AMGI. All of the units (100%) will be reserved for low-

**TEXAS DEPARTMENT of HOUSING and COMMUNITY AFFAIRS
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income tenants and rents will be affordable at 50% or less of AMGI.

MAXIMUM ELIGIBLE INCOMES						
	1 Person	2 Persons	3 Persons	4 Persons	5 Persons	6 Persons
60% of AMI	\$25,740	\$29,400	\$33,120	\$36,780	\$39,720	\$42,660

MARKET HIGHLIGHTS

A market feasibility study dated October 15, 2003 was prepared by Butler Burgher and highlighted the following findings:

Definition of Primary Market Area: "...defined as East Loop 820 South and US 287 Business to the west, SH 303 to the north, SH 360 to the east, and US 287 and Cannon Road to the south... (p. 7)." The area encompasses 94 square miles which is equivalent to a 5.5-mile radius.

Population: The estimated 2003 population of the primary market area is 230,899 and is expected to increase to approximately 261,454 by 2008. Within the primary market area there were estimated to be 79,767 households in 2003.

Total Primary Market Demand for Rental Units:

ANNUAL INCOME-ELIGIBLE SUBMARKET DEMAND SUMMARY				
Type of Demand	Market Analyst		Underwriter	
	Units of Demand	% of Total Demand	Units of Demand	% of Total Demand
Household Growth	125	4%	125	3%
Resident Turnover	3,411	96%	3,497	97%
TOTAL ANNUAL DEMAND	3,536	100%	3,621	100%

Ref: p. 75

Inclusive Capture Rate: The Market Analyst calculated an inclusive capture rate of 19.91% which includes the subject 248 units, Cedar Point (176 units), and Arlington Villas aka Hampton Villas (280 units) (p. 75). The Underwriter calculated an inclusive capture rate of 19% based upon a slightly larger demand figure.

Market Rent Comparables: The Market Analyst surveyed six comparable apartment projects totaling 1,674 units (p. 79).

RENT ANALYSIS (net tenant-paid rents)					
Unit Type (% AMI)	Proposed	Program Max	Differential	Market	Differential
2-Bedroom (60%)	\$750	\$771	-\$21	\$880	-\$130
3-Bedroom (60%)	\$862	\$886	-\$24	\$1,055	-\$193

(NOTE: Differentials are amount of difference between proposed rents and program limits and average market rents, e.g., proposed rent = \$500, program max = \$600, differential = -\$100)

Primary Market Occupancy Rates: "Occupancy levels are fairly consistent across all age groups in this submarket (average 90.7%). The 1990s product has a lower occupancy rate of 90.9%, however, the two newest properties, Falcon Lakes and Spyglass, have occupancy rates of 97% and 95%, respectively (p. 70)." The occupancy rate is shown as 89.9% for two-bedroom units and 89.7% for three-bedroom units (p. 78).

Absorption Projections: "An absorption rate of 15 units/month, after completion, is reasonable for the subject, as encumbered by LIHTC, resulting in just over a 16-month absorption period to obtain stabilized physical occupancy (p. 77)."

Known Planned Development: "...only one multifamily community is under construction, Rock Ridge Ranch (in Arlington on Bardin Road), while two market properties were recently completed in the PMA... Another community has recently been approved with a site plan for 268 units... (p. 55)."

The Underwriter found the market study provided sufficient information for purposes of underwriting.

**TEXAS DEPARTMENT of HOUSING and COMMUNITY AFFAIRS
MULTIFAMILY UNDERWRITING ANALYSIS**

OPERATING PROFORMA ANALYSIS

Income: The Applicant's rent projections are lower than the maximum net rents allowed under HTC guidelines due to a difference in utility allowance. In each case, the Applicant's utility allowance figure is \$10 higher than the Underwriter's estimate. This \$10 difference cannot be attributed to a specific utility. It may be the Applicant is trending upward for possible increases in utility cost. It should be noted the Applicant also plans to pay for all natural gas expenses including the cost to heat water. Estimates of secondary income and vacancy and collection losses are in line with TDHCA underwriting guidelines.

Expenses: The Applicant's per unit expense projection of \$3,802 is significantly lower than the Underwriter's estimate of \$4,290. This difference is due in large part to the Applicant's lower line-item expense figures, including the following: general and administrative (\$27K lower); payroll (\$55K lower); and repairs and maintenance (\$36K lower).

Conclusion: Because the Applicant's total annual operating expense is more than 5% lower than the Underwriter's estimate, the Underwriter's proforma is used to determine the Development's debt service capacity. The Underwriter's net operating income estimate indicates the Development can reach an initial debt coverage ratio of 1.10, the Department's minimum guideline, if the annual debt service is limited to \$1,173,646. The effect of the debt service limit on the recommended bond amount will be discussed in more detail in the conclusion to the Financing Structure Analysis section.

ACQUISITION VALUATION INFORMATION

ASSESSED VALUE

Land: 16.18 acres	\$1,057,283	Assessment for the Year of:	2003
Building:	\$0	Valuation by:	Tarrant County Appraisal District
Total Assessed Value:	\$1,057,283	Tax Rate:	\$2.977277

EVIDENCE of SITE or PROPERTY CONTROL

Type of Site Control:	Commercial Contract of Sale					
Contract Expiration Date:	11/	30/	2003	Anticipated Closing Date:	12/	15/ 2003
Acquisition Cost:	\$1,550,460			Other Terms/Conditions:		
Seller:	Lucky Pup Enterprises, LLC			Related to Development Team Member:	No	

CONSTRUCTION COST ESTIMATE EVALUATION

Acquisition Value: The site cost of \$6,251 per proposed unit or \$95K per acre is assumed to be reasonable since the acquisition is an arm's-length transaction.

Site Work Cost: Although several concrete slabs currently exist on the site, the Applicant did not include a specific line item for demolition cost in the Development budget. Receipt, review and acceptance of a breakdown of the cost to remove the concrete slabs and an explanation of where this cost is included in the development budget is a condition of this report.

Direct Construction Cost: The Applicant's direct construction cost estimate is within 5% of the Underwriter's Marshall & Swift *Residential Cost Handbook*-derived estimate, and is therefore regarded as reasonable as submitted. The Applicant's hard cost contingency assumption exceeds the Department's guideline of 5% of direct construction and site work costs.

Fees: The Applicant's general requirements, contractor's general and administrative fees, and contractor's profit exceed the 6%, 2%, and 6% maximums allowed by HTC guidelines based on their own construction costs. Consequently the Applicant's eligible fees in these areas have been reduced with the overage of \$26,039 effectively moved to ineligible costs. The Applicant's developer fees also exceed 15% of the Applicant's adjusted eligible basis and therefore the eligible portion of the Applicant's developer fee must be reduced by \$23,987.

**TEXAS DEPARTMENT of HOUSING and COMMUNITY AFFAIRS
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Conclusion: Overall, the Applicant's total Development cost budget is within 5% of the Underwriter's estimate. Therefore, the Applicant's figure will be used to determine the Development's need for permanent funding. The Applicant's eligible basis calculation, as adjusted by the Underwriter based on current guidelines, indicates the Development qualifies for \$714,733 annually in tax credits over a ten year period. This figure will be compared to the Applicant's request and the tax credits resulting from the gap in need for permanent funds with the lower of the three values used to size the recommended tax credit allocation.

FINANCING STRUCTURE									
BOND FINANCING									
Source:	Charter Municipal Mortgage Acceptance Company				Contact:	Marnie Miller			
Tax-Exempt Amount:	\$15,000,000			Interest Rate:	6.6%, fixed				
Taxable Amount:	Up to \$1,600,000			Interest Rate:	8.5%, fixed				
Additional Information:	Letter of Credit during 24-month construction period, Leon J Backes as guarantor								
Amortization:	40	yrs	Term:	40	yrs	Commitment:	<input checked="" type="checkbox"/> LOI	<input type="checkbox"/> Firm	<input type="checkbox"/> Conditional
Annual Payment:	\$1,207,426		Lien Priority:	1st		Commitment Date	08/	06/	2003
LIHTC SYNDICATION									
Source:	Related Capital Company				Contact:	Justin Ginsberg			
Address:	625 Madison Avenue				City:	New York			
State:	NY	Zip:	10022	Phone:	(212) 421-5333	Fax:	(212) 751-3550		
Net Proceeds:	\$5,551,000			Net Syndication Rate (per \$1.00 of 10-yr LIHTC)	82¢				
Commitment	<input type="checkbox"/> LOI	<input type="checkbox"/> Firm	<input checked="" type="checkbox"/> Conditional	Date:	08/	07/	2003		
Additional Information:									
APPLICANT EQUITY									
Amount:	\$1,191,667			Source:	Deferred Developer Fee				
Amount:	\$155,245			Source:	GIC Income				

FINANCING STRUCTURE ANALYSIS

Permanent Financing: The submitted sources and uses lists taxable bond financing in the amount of \$900,000 and tax-exempt bonds of \$15,000,000. The Charter Mac letter of interest indicates they are willing to provide financing based on taxable bonds of up to \$1,600,000 and tax exempt bonds of \$15,000,000. This underwriting analysis assumes the terms indicated in the Charter Mac letter accurately reflects the amount of permanent financing available to the development, or a total of \$16,600,000. It is also assumed that the portion of the permanent mortgage funded with the higher rate taxable bonds will have priority repayment.

LIHTC Syndication: The syndication proceeds listed in the submitted sources and uses is higher than that indicated in the letter from Related Capital. However, the letter clearly lists the terms for purchase of tax credits, including an adjuster equal to the initial purchase rate of \$0.82 for delivery of more or less tax credits than anticipated. Therefore, a discrepancy in the amount of tax credits awarded and the amount anticipated by Related Capital does not negatively impact this underwriting analysis.

Deferred Developer's Fees: Based on bond financing of only \$15,900,000, the Developer planned to defer 53% of its fees to fill the gap in permanent financing. The deferred fees include \$155,245 income from a Guaranteed Investment Contract (GIC).

Financing Conclusions: As stated above, the Underwriter's proforma is used to determine the Development's debt service capacity. Based on the current terms proposed for permanent financing and an annual debt service limited to \$1,173,646, it appears that the Development can support \$15,000,000 in tax-exempt bonds, but only \$1,400,000 in taxable bonds, or a total of \$16,400,000. TDHCA acceptance of such a likely resizing or mandatory redemption is a condition of this report. The final anticipated bond

**TEXAS DEPARTMENT of HOUSING and COMMUNITY AFFAIRS
MULTIFAMILY UNDERWRITING ANALYSIS**

amount still exceeds the Applicant's initial request by \$500,000.

The tax credit allocation supported by the Development's current eligible basis estimate is less than both the Applicant's request for tax credits and the gap in need. Therefore, an annual tax credit allocation of \$714,733 over ten years is recommended. The remaining gap in permanent financing may be filled by deferred fees of \$867,608, or 34% of available developer fees. Deferred fees in this amount appear to be repayable from Development cashflow within six years of stabilized operation.

**DEVELOPMENT TEAM
IDENTITIES of INTEREST**

The Applicant, Developer, General Contractor, and Property Manager are related entities. These are common relationships for HTC-funded developments.

APPLICANT'S/PRINCIPALS' FINANCIAL HIGHLIGHTS, BACKGROUND, and EXPERIENCE

Financial Highlights:

- The Applicant and General Partner are single-purpose entities created for the purpose of receiving assistance from TDHCA and therefore have no material financial statements.
- Provident Realty Advisors, the Co-Developer, submitted an unaudited financial statement as of December 31, 2002 reporting total assets of \$419,957 and consisting of \$156,123 in cash, \$35,522 in receivables, \$28,411 in fixed assets, and \$199,900 in other assets. Liabilities totaled \$104,363, resulting in a net worth of \$419,957.
- Leon J Backes, owner of Provident Realty Advisors and guarantor of financing for the Development, also provided a personal financial statement.

Background & Experience:

- The Applicant is a new entity formed for the purpose of developing the project.
- Provident Realty Advisors has completed two (2) HTC, affordable housing developments totaling 544 units since 2002, and has developed and built other conventional housing developments.

SUMMARY OF SALIENT RISKS AND ISSUES

- The Applicant's operating expenses are more than 5% outside of the Underwriter's verifiable range.
- The significant financing structure changes being proposed have not been reviewed/accepted by the Applicant, lenders, and syndicators, and acceptable alternative structures may exist.

Underwriter:	_____	Date:	December 1, 2003
	<i>Stephen Apple</i>		
Underwriter:	_____	Date:	December 1, 2003
	<i>Lisa Vecchiatti</i>		
Director of Real Estate Analysis:	_____	Date:	December 1, 2003
	<i>Tom Gouris</i>		

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
April 12, 2012

Presentation, Discussion, and Possible Action to Approve the Parameters, subject to Bond Review Board Approval, for Modification to Terms of Previous TDHCA Issued Multifamily Mortgage Revenue Bonds

RECOMMENDED ACTION

Approve modification to terms of bonds as presented.

WHEREAS, the private activity bonds for Providence at Veterans Memorial Apartments were originally issued by the Department in January 2004; and

WHEREAS, the property has encountered a series of operating and ownership issues and an application seeking modifications to the terms of the bonds was submitted to the Department on January 5, 2012; and

WHEREAS, the owner indicates that the partial redemption and modifications to the terms will facilitate a more viable financing structure and reduce the ongoing operating deficits; and

WHEREAS, additional state volume cap will not be used but the modifications necessitate a reissuance of bonds under state law and federal tax law; and

WHEREAS, the Executive Award and Review Advisory Committee recommends the approval of the reissuance of Multifamily Mortgage Revenue Bonds Series 2004 for the Providence at Veterans Memorial Apartments; therefore,

It is hereby,

RESOLVED, that the modification to and reissuance of the Multifamily Mortgage Revenue Bonds Series 2003 for the Providence at Veterans Memorial Apartments is hereby approved in the form presented to this meeting; and

FURTHER RESOLVED, that staff is authorized, empowered, and directed, for and on behalf of the Department to execute and deliver such documents, instruments, and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

BACKGROUND

General Information: The bonds for the Providence at Veterans Memorial Apartments were originally issued through TDHCA in January of 2004. The original Series 2004A Tax-Exempt bond amount was \$15,000,000 and the Series 2004B Taxable bond amount was \$1,300,000. The original financing structure included privately placed bonds with Charter Municipal Mortgage Acceptance Company and as such were unrated with no credit enhancement. The initial interest rate on the tax exempt bonds was 6.6% and the taxable bonds were 8.5%.

The property was completed and placed in service in 2004 and 2005. However, the development was unable to lease up and reach stabilized operations within 24 months in accordance with the original bond documents. The general partner has turned since the development was completed with an affiliate of the investor limited partner replacing the prior general partner in 2008. The investor limited partner has continuously funded deep operating deficits since the property placed in service and is now seeking modifications to the financing structure to significantly reduce future operating deficits and facilitate a viable long-term financing structure.

Through correspondence between the Department’s bond counsel and the Office of the Attorney General, the modifications sought were determined to be extensive enough to constitute a reissuance under state law. As a result, the Board’s approval of the modifications is necessary. However, the “reissuance” will not utilize any additional state volume cap. Moreover, the changes will effectively be implemented through a supplemental trust indenture and modification agreement rather than through a completely new indenture and bond documents. The following chart summarizes the modifications that are recommended.

	Original Indenture	Modification to Indenture
Redemption	The original bonds were subject to mandatory redemption at the bondholder’s direction in the amounts needed in order to achieve Stabilization, which is defined as 90% occupancy and a 1.15 debt coverage ratio (DCR) for three months by May 31, 2007.	The bondholder is directing that the taxable bonds be redeemed in their entirety and \$8,112,710 in principal of the tax exempt bonds be redeemed. The development will also be deemed to have met Stabilization as of the date of redemption based on a DCR of 1.02.
Interest Rate	6.60% (tax exempt)	The 6.60% rate will be split into two component rates: a base rate of 4.75% per annum plus a contingent interest rate equal to 1.85% per annum. Essentially, the contingent interest rate will be paid from the excess cash flow from the Development which will be escrowed with the Trustee until the Development generates enough cash flow from operations to pay debt service at the full coupon.
Maturity and Sinking Fund Redemption Schedule	Maturity Date: January 1, 2044 Basis of Amortization: Level debt service over the term	Maturity Date: January 1, 2041 Basis of Amortization: Level debt service over the shortened term

Other Information

Organizational Structure and Compliance: The Borrower is Trails of Sycamore Townhomes, L.P. and the General Partner is 11201 V. Memorial, LLC with Centerline Manager, LLC as the manager, both of which are wholly owned subsidiaries of the investor limited partner. On December 17, 2009 the Department approved an ownership transfer request to replace the existing General Partner, Chicory GP – Southside, Inc. and its sole member Agape VM, Inc. with the aforementioned entities.

Public Hearing: The original bond maturity is being modified; however the weighted average maturity (“WAM”) will not be extended; therefore, a TEFRA public hearing is not required.

Census Demographics: The site is located at 11201 Veterans Memorial Drive, Houston, Harris County. Demographics for the census tract (5508.00) include AMFI of \$69,722; the total population is 2,625; the percent of the population that is minority is 91.96%; the number of owner occupied units is 591; number of renter occupied units is 154; and the number of vacant units is 17. (Census Information from FFIEC Geocoding for 2011).



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MULTIFAMILY FINANCE PRODUCTION DIVISION

Multifamily Housing Revenue Refunding Bonds Series 2004

**Providence at Veterans Memorial Apartments
11201 Veterans Memorial Drive
Houston, Texas**

**Trails of Sycamore Townhomes, L.P.
238 Units
\$15,000,000 Tax Exempt – Series 2004A
\$1,300,000 Taxable – Series 2004B**

TABLE OF EXHIBITS

TAB 1	Bond Resolution
TAB 2	Sources & Uses of Funds Estimated Cost of Issuance
TAB 3	Department's Real Estate Analysis

RESOLUTION NO. 12-025

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A SUPPLEMENTAL TRUST INDENTURE AND MODIFICATION AGREEMENT IN CONNECTION WITH MULTIFAMILY HOUSING MORTGAGE REVENUE BONDS (PROVIDENCE AT VETERAN'S MEMORIAL APARTMENTS) SERIES 2004A AND TAXABLE MULTIFAMILY HOUSING MORTGAGE REVENUE BONDS (PROVIDENCE AT VETERAN'S MEMORIAL APARTMENTS) SERIES 2004B; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the "Issuer") 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 individuals and families of low, very low and extremely low income (as defined in the Act) and families of moderate income (as defined in the Act and determined by the Governing Board of the Issuer (the "Board") from time to time); and

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

WHEREAS, the Act and Chapter 1207, Texas Government Code, as amended, further authorize the Department to issue its revenue bonds for the purpose of refunding any bonds theretofore issued by the Department under such terms, conditions and details as shall be determined by the Board; and

WHEREAS, the Issuer previously issued its Multifamily Housing Mortgage Revenue Bonds (Providence at Veteran's Memorial Apartments) Series 2004A in the original principal amount of \$15,000,000 (the "Tax-Exempt Bonds") and its Taxable Multifamily Housing Mortgage Revenue Bonds (Providence at Veteran's Memorial Apartments) Series 2004B in the original principal amount of \$1,300,000 (the "Taxable Bonds" and together with the Tax-Exempt Bonds, collectively, the "2004 Bonds") pursuant to the terms and provisions of that certain Trust Indenture dated as of January 1, 2004 (the "Indenture"), between the Issuer and Wells Fargo Bank, National Association, as trustee (the "Trustee"); and

WHEREAS, the proceeds of the 2004 Bonds were loaned to Trails of Sycamore Townhomes Limited Partnership (the "Borrower") for the purpose of financing a portion of the costs of a 238-unit multifamily housing development known as Providence at Veteran's Memorial Apartments and located in Houston, Texas (the "Project"), pursuant to that certain Loan Agreement dated as of January 1, 2004 (the "Loan Agreement") among the Issuer, the Borrower and the Trustee; and

WHEREAS, the Borrower and Centerline Mortgage Capital Inc. (the "Servicer") (on behalf of the holder of the 2004 Bonds) have requested that the Issuer enter into a supplemental trust indenture and modification agreement (the "Supplement") to make certain modifications to the terms of the 2004 Bonds and conforming changes to the Indenture and the Loan Agreement; and

WHEREAS, \$8,131,610 of the Tax-Exempt Bonds and \$740,230 of the Taxable Bonds will be redeemed on or about the date of execution and delivery of the Supplement and no Taxable Bonds will remain outstanding after such redemption; and

WHEREAS, the modifications to be implemented by the Supplement are expected to result in a reissuance under State law of the 2004 Bonds that remain outstanding after the redemption described above (the reissued 2004 Bonds are hereinafter referred to as the "Bonds"); and

WHEREAS, the Issuer's execution of the Supplement shall be subject to receipt of the consents, opinions, approvals or notices required by the Indenture; and

WHEREAS, the Issuer now desires to take certain actions with respect to the Supplement;

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

Section 1. The Supplement, in substantially the form presented at this meeting, is hereby approved and adopted by the Issuer, and the Chair of the Board, the Executive Director or Acting Director of the Department and the Director of Multifamily Finance Production of the Department are each hereby authorized and empowered to execute and deliver the Supplement on behalf of the Issuer, with such changes as may be approved by the Issuer's counsel and the officer executing the same, such approval to be evidenced by such officer's execution thereof.

Section 2. The Bonds shall (a) bear interest at a rate of interest equal to (i) the base rate of 4.75% per annum plus (ii) the contingent rate of 1.85% per annum, payable from and to the extent of cash flow as more fully described in the Supplement, payable from the date of reissuance until paid on the maturity date or earlier redemption or acceleration thereof (subject to adjustment as provided in the Indenture; provided, however, that the default interest rate on the Bonds shall not exceed the maximum rate permitted by applicable law); (b) be reissued in the principal amount of \$6,868,390 following redemption of Tax-Exempt Bonds on or about the date of execution and delivery of the Supplement, in the amount of \$8,131,610, and (c) have a final maturity date of January 1, 2041.

Section 3. The officers of the Board and the employees and agents of the Issuer, and each of them, shall be and each is expressly authorized, empowered and directed from time to time and at any time to do and perform all acts and things and to execute, acknowledge and deliver in the name and under the corporate seal and on behalf of the Issuer all certificates, financing statements, instruments and other documents, whether or not herein mentioned, as they may determine to be necessary or desirable in order to carry out the terms and provisions of this resolution, as well as the terms and provisions of the Supplement, such determination to be conclusively evidenced by the performance of such acts and things and the execution of any such certificate, financing statement, instrument or other document.

Section 4. The Issuer's execution of the Supplement is expressly subject to receipt of the consents, opinions, approvals or notices required by the Indenture.

Section 5. The Board hereby authorizes and approves the submission of the application for approval of state bonds to the Texas Bond Review Board on behalf of the Department in connection with the Bonds in accordance with Chapter 1231, Texas Government Code.

Section 6. The Board hereby authorizes and approves the submission by the Department's Bond Counsel to the Attorney General of the State, for his approval, of a transcript of legal proceedings relating to the Bonds.

Section 7. The Secretary and Assistant Secretary to the Board hereby are authorized to certify and authenticate minutes and other records on behalf of the Department for the Bonds and all other Department activities.

Section 8. The Board has determined that the proposed reissuance of the 2004 Bonds is in the best interest of the Department and will provide a potential savings in debt payable by the Department. The manner in which the 2004 Bonds are being reissued does not make it practicable to make the determination required by Section 1207.008, Texas Government Code.

Section 9. 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 10. This resolution shall be in full force and effect from and upon its adoption.

(Execution page follows)

PASSED AND APPROVED this 12th day of April, 2012.

Chair, Governing Board

ATTEST:

Secretary to the Governing Board

(SEAL)

Providence at Veteran's Memorial

Estimated Sources & Uses of Funds

Sources of Funds

Series 2004A Tax-Exempt Bond Proceeds	\$ 6,868,390
Total Bond Redemption	8,871,840
Centerline Contribution	132,897
June 1, 2012 Principal Payment (Mandatory Debt Service)	9,483
Total Sources	\$ 15,882,610

Uses of Funds

UPB on Tax Exempt Bonds (June 2012)	\$ 15,000,000
UPB on Taxable Bonds (June 2012)	749,713
Other Construction Costs (General Require, Overhead, Profit)	-
Developer Fees and Overhead	-
Direct Bond Related	132,897
Bond Purchase Costs	-
Other Transaction Costs	-
Real Estate Closing Costs	-
Total Uses	\$ 15,882,610

Estimated Costs of Issuance of the Bonds

Direct Bond Related

TDHCA Issuance Fee (.50% of Issuance)	\$ 34,342
TDHCA Application Fee	5,000
TDHCA Bond Administration Fee (2 years)	13,737
TDHCA Bond Compliance Fee (\$25 per unit)	5,950
TDHCA Bond Counsel and Direct Expenses (Note 1)	20,000
TDHCA Financial Advisor and Direct Expenses	35,000
Disclosure Counsel (\$5k Pub. Offered, \$2.5k Priv. Placed. See Note 1)	2,500
Trustee Fee (.10% of UPB)	6,868
Trustee's Counsel (Note 1)	-
Attorney General Transcript Fee	9,500
Texas Bond Review Board Application Fee	-
Texas Bond Review Board Issuance Fee (.025% of Reservation)	-
Bond Amortization Analysis	-
Total Direct Bond Related	\$ 132,897

Providence at Veteran's Memorial

Bond Purchase Costs	
LOC Origination Fee & Expenses	-
LOC Ongoing Fees	-
Underwriter's Discount	-
Underwriter's Counsel	-
Rating Agency	-
OS Printing/Mailing	-
Total Bond Purchase Costs	<u><u>\$ -</u></u>
Other Transaction Costs	
Tax Credit Related Costs	-
Construction Contingency	-
Soft Construction Costs	-
Construction Period Interest	-
Lease-Up Reserves	-
Miscellaneous	-
Total Other Transaction Costs	<u><u>\$ -</u></u>
Real Estate Closing Costs	
Title and Recording	-
Total Real Estate Costs	<u><u>\$ -</u></u>
Estimated Total Costs of Issuance	<u><u>\$ 132,897</u></u>

Costs of issuance of up to two percent (2%) of the principal amount of the Bonds may be paid from Bond proceeds. Costs of issuance in excess of such two percent must be paid by an equity contribution of the Borrower.

Note 1: These estimates do not include direct, out-of-pocket expenses (i.e. travel). Actual Bond Counsel and Disclosure Counsel are based on an hourly rate and the above estimate does not include on-going administrative fees.



Memorandum

To: File

From: Diamond Unique Thompson, Real Estate Analysis
Brent Stewart, Director of Real Estate Analysis

cc: Shannon Roth, Multifamily Finance Production

Date: April 3, 2012

Re: Providence at Rush Creek (fka Parkview Townhomes), TDHCA #12600
\$15,000,000 Tax-Exempt Series 2003A
\$2,300,000 Taxable Series 2003B

Providence at Veteran's Memorial, TDHCA #12601
\$15,000,000 Tax-Exempt Series 2004A
\$1,300,000 Taxable Series 2004B

Timber Oaks Apartments, TDHCA #12602
\$10,900,000 Tax-Exempt Series 2003A
\$2,300,000 Taxable Series 2003B

General Background:

The above bond transactions were approved and issued as three separate transactions by TDHCA in 2003 and 2004. Determination Notices for a 4% tax credit allocation was also approved.

The bonds (both tax-exempt and taxable series for each deal) were issued without rating or credit enhancement and originally purchased by subsidiaries of Charter Municipal Mortgage Acceptance Corporation (which later became Centerline Capital Group). Subsidiaries of Related Capital Company, associated with Charter/Centerline, invested the tax credit equity for each deal.

While the properties were completed and the units placed-in-service timely, the bond documents required stabilization (meeting both occupancy and debt coverage requirements) within 24 months of completion. This did not occur. As a result, the deals entered into a state of financial "distress", although not in technical or payment default due to Centerline's funding of operating deficits and debt service under their guarantee obligations.

Centerline is requesting a restructure of the bond terms in an effort to stabilize the properties. Generally, the restructuring involves a pay-down of the outstanding debt for each property and modification of repayment terms for the debt that will remain outstanding.

The three deals are part of a 17 property portfolio of similarly financed deals across various states (\$234M of total bonds). The bonds are now owned by Freddie Mac. The subject restructurings are part

CENTERLINE BOND RE-FUNDING REQUEST ANALYSIS
MARCH 30, 2012

of an overall workout of the portfolio. Details of the overarching portfolio restructure are not addressed herein and this analysis is limited to the determination of each project's ability to service the restructured debt.

The original general partners have been removed from the ownership entities and Centerline entities are in control of the partnerships and the restructuring efforts. Thus far, Centerline has advanced \$5.5M in total to these three deals to keep the properties out of foreclosure which has left the LURA in place (preservation of the tax credits for the investor).

TDHCA has previously worked with Centerline on other aspects of these deals (8609 issuance, ownership changes and compliance issues). Centerline has corrected all non-compliance issues. TDHCA's interest in the restructure is stabilization of the properties to avoid foreclosure and loss of the tax credit units. As issuer of the bonds, however, the Department is not at financial risk.

Providence at Rush Creek, TDHCA #12600

Providence at Rush Creek, originally known as Parkview Townhomes is a 248-unit, is a +/- 262,080 square foot multifamily complex on 16.18 acres in the southern portion of Arlington, Tarrant County, Texas. 100% of the units are set aside for people earning 60% or less of the area median income.



The Development consists of twelve two- and three-story garden-style apartment buildings plus a one-story community building. The amenities at the Development include a swimming pool, playground, community building with kitchen facilities, vending area, and television, central laundry room, children's after school center, business center and fitness center.

The bonds were originally issued on December 17, 2003 for \$15,000,000 (Series A, tax-exempt) and \$1,600,000 (Series B, taxable). Total debt equalled \$16.6M. The required stabilization date was May 31, 2007 which did not occur.

At original underwriting in 2003, TDHCA's stabilized net operating income ("NOI") was \$1.3M and the DCR on the bonds as structured was 1.10 times (acceptable per REA rules in 2003). The owner's application projections were slightly higher indicating a DCR of 1.18 times. Actual NOI for YE 2011 of \$932K is consistent with both the owner's and REA's pro forma.

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Although 10 years later, actual rents are roughly equal to rents at the original underwriting (indicative of minimal growth in maximum LIHTC rents but increases to utility allowances). The Applicant's projected rents are consistent with current 2012 max rents; however, per the rent roll as of March 22, 2012, the units are currently collecting rents are approximately \$21 to \$77 less than the maximums. The Underwriter has utilized the current rent roll rents, resulting in Potential Gross Income of \$2.5M, or \$170K less than the Applicant's projected income. However, the Applicant has estimated a 13.6% vacancy and collection loss. The rent roll shows a current physical occupancy of 96% and the vacancy & collection loss included in the un-audited 2011 actual operating expense statement is consistent with the Department's standard 7.5% rate. Despite the discrepancies in PGI and vacancy and collection, the Applicant's Effective Gross Income is within 5% of the Underwriter's estimate.

The Applicant's total annual operating expense projection at \$5,656 per unit is within 5% of the Underwriter's estimate of \$5,888, derived from actual operating history, the TDHCA database, and third-party data sources. Historical expenses, \$400K higher than underwritten expenses, show higher property taxes (\$1K/unit) than comparable LIHTC deals. G&A expenses are extremely high (also \$1K/unit) which if normalized (\$400 to \$500 per unit) would provide additional cash flow to cover the contingent interest payments.

As of 3Q11, Centerline has previously advanced over \$1.8 million to this property for operating deficits.

In the restructure, Centerline will reduce the total debt by \$2.5M (completely paying off the taxable bonds and reducing the tax-exempt bonds by \$1.4M). The overall interest rate on the remaining tax-exempt debt will remain at 6.6% but repayment will be split into a must-pay component at 4.75% and a contingent component at 1.85% (deferred and dependant upon cash flow). The maturity date will be accelerated to April 1, 2041 (originally December 1, 2043).

	<u>Current</u>	<u>Modified</u>	<u>Change</u>
Series A-Tax-Exempt Principal	15,000,000	13,534,302	(1,465,698)
Interest Rate (Must-Pay)	6.60%	4.75%	-1.85%
Interest Rate (Contingent)	0.00%	1.85%	1.85%
Series B-Taxable Principal (*)	1,045,977	-	(1,045,977)
Interest Rate	8.50%	0.00%	-8.50%
Total Debt	16,045,977	13,534,302	(2,511,675)
Total Debt Service (Must-Pay)	1,192,332	740,671	(451,661)
Total Debt Service (All-In)	1,192,332	911,950	(280,382)
Centerline Pro Forma NOI	911,486	911,486	
DCR - Must Pay	0.76	1.23	
DCR - All-In	0.76	1.00	
TDHCA Pro Forma NOI	897,231	897,231	
DCR - Must Pay	0.75	1.21	
DCR - All-In	0.75	0.98	

(*) Originally \$1.6M reduced through sinking fund payments

CENTERLINE BOND RE-FUNDING REQUEST ANALYSIS
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Providence at Veteran's Memorial, TDHCA #12601

Providence at Veterans Memorial is a 238-unit, +/- 282,000 square foot multifamily apartment complex on 33.6 acres in north Houston, Harris County, Texas. 100% of the units are set aside for people earning 60% or less of the area median income.



Providence at Veterans Memorial consists of two- and three-bedroom rental apartments. The amenities at the Development include a Community Room with a kitchen, picnic area, clubhouse, swimming pool, exercise room, all-sports court, playground, and central laundry room.

The bonds were originally issued on January 27, 2004 for \$15,000,000 (Series A, tax-exempt) and \$1,300,000 Series B, taxable). The required stabilization date was May 31, 2007 which did not occur.

At original underwriting in 2002, TDHCA's stabilized net operating income ("NOI") was \$1.3M and the DCR on the bonds as structured was 1.10 times (acceptable per REA rules in 2002). The owner's application projections were slightly higher indicating a DCR of 1.15 times.

The Applicant's projected rents are consistent with current 2012 max rents; however, per current CMTS information and the rent roll as of November 30, 2011, the units are currently collecting rents are ~\$37 to \$59 less than the maximums. The Underwriter has utilized the current CMTS and rent roll rent averages, resulting in Potential Gross Income of \$2.4M, or \$130K less than the Applicant's projected income. However, the Applicant has estimated a 10.2% vacancy and collection loss. The un-audited 2011 actual operating expense statement shows an elevated vacancy loss (~12%); however, the rent roll shows a current physical occupancy of 92%, therefore, the Underwriter has utilized the Department's standard 7.5% rate. Despite the discrepancies in PGI and vacancy and collection, the Applicant's Effective Gross Income is within 5% of the Underwriter's estimate.

The Applicant's total annual operating expense projection at \$6,260 per unit is within 5% of the Underwriter's estimate of \$6,042, derived from actual operating history, the TDHCA database, and third-party data sources. Historical expenses show higher property taxes (\$1K/unit) than comparable LIHTC deals. G&A expenses are extremely high (also \$1K/unit) which if normalized (\$400 to \$500 per unit) would provide additional cash flow to cover the contingent interest payments.

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As of 3Q11, Centerline has previously advanced over \$2.3 million to this property for operating deficits.

In the restructure, Centerline will reduce the total debt by \$8.9M (completely paying off the taxable bonds and reducing the tax-exempt bonds by \$8.1M). The overall interest rate on the remaining tax-exempt debt will remain at 6.6% but repayment will be split into a must-pay component at 4.75% and a contingent component at 1.85% (deferred and dependant upon cash flow). The maturity date will be accelerated to January 1, 2041 (originally January 1, 2044).

	<u>Current</u>	<u>Modified</u>	<u>Change</u>
Series A-Tax-Exempt Principal	15,000,000	6,887,290	(8,112,710)
Interest Rate (Must-Pay)	6.60%	4.75%	-1.85%
Interest Rate (Contingent)	0.00%	1.85%	1.85%
Series B-Taxable Principal (*)	759,130	-	(759,130)
Interest Rate	8.50%	0.00%	-8.50%
Total Debt	15,759,130	6,887,290	(8,871,840)
Total Debt Service (Must-Pay)	990,000	378,206	(611,794)
Total Debt Service (All-In)	1,167,528	613,298	(554,230)
Centerline Pro Forma NOI	802,933	802,933	
DCR - Must Pay	0.81	2.12	
DCR - All-In	0.69	1.31	
TDHCA Pro Forma NOI	821,420	821,420	
DCR - Must Pay	0.83	2.17	
DCR - All-In	0.70	1.34	

(*) Originally \$1.3M reduced through sinking fund payments

CENTERLINE BOND RE-FUNDING REQUEST ANALYSIS
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Timber Oaks, TDHCA #12602

Timber Oaks Apartments is a 264-unit, +/- 249,800 square foot multifamily apartment community on 15.4 acres in Grand Prairie, Tarrant County, Texas. 100% of the units are set aside for people earning 60% or less of the area median income.



The development consists of 11 three-story garden-style apartment buildings in addition to a community building and offers an extensive in unit and common area amenity package. Timber Oaks consists of one bedroom, one bath; two bedroom, one bath; two bedroom, two bath; and three bedroom two, bath units.

The bonds were originally issued on July 29, 2003 for \$10,900,000 (Series A, tax-exempt) and \$2,300,000 Series B, taxable). The required stabilization date was September 30, 2006, which did not occur.

At original underwriting in 2003, TDHCA's stabilized net operating income ("NOI") was \$1M and the DCR on the bonds as structured was 1.10 times (acceptable per REA rules in 2003). The owner's application projections were slightly higher indicating a DCR of 1.14 times. Actual NOI for YE 2011 of \$936K is consistent with both the owner's and REA's pro forma.

Although 10 years later, actual rents are slightly lower than rents at the original underwriting (indicative of minimal growth in maximum LIHTC rents but increases to utility allowances). Timber Oaks is 100% at 60% Income and 50% rent restricted. With the exception of the 854 s.f. 2BR units, the Applicant's projected rents are higher (\$9-\$12) than current 2012 max 50% rents. Additionally, per the rent roll as of March 22, 2012, the units are currently collecting rents are ~\$2 to \$15 higher than the maximums. The Underwriter has utilized max 50% rents, resulting in Potential Gross Income of \$2M, or \$29K less than the Applicant's projected income. However, the Applicant has estimated a 9.8% vacancy and collection loss. The rent roll shows a current physical occupancy of 94% and the vacancy & collection loss included in the un-audited 2011 actual operating expense statement is consistent with the Department's standard 7.5% rate. Despite the discrepancies in PGI and vacancy and collection, the Applicant's Effective Gross Income is within 5% of the Underwriter's estimate.

The Applicant's total annual operating expense projection at \$3,165 per unit is not within 5% of the Underwriter's estimate of \$3,544, derived from actual operating history, the TDHCA database, and third-party data sources.

CENTERLINE BOND RE-FUNDING REQUEST ANALYSIS
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As of 3Q11, Centerline has previously advanced over \$1.41 million to this property for operating deficits.

In the restructure, Centerline will reduce the total debt by \$418K (no redemption on the taxable bonds and completely paying off the tax-exempt). The overall interest rate on the tax-exempt debt will remain at 6.75% but repayment will be split into a must-pay component at 4.75% and a contingent component at 2% (deferred and dependant upon cash flow). Similarly, the interest rate on the taxable bonds will be reduced to 4.75% from 8.75%, with the remaining 4.00% deferred as contingent interest payable out of operating cash flow. The maturity date will be accelerated to March 1, 2027 (originally January 1, 2025).

	<u>Current</u>	<u>Modified</u>	<u>Change</u>
Series A-Tax-Exempt Principal	10,900,000	10,900,000	-
Interest Rate (Must-Pay)	6.75%	4.75%	-2.00%
Interest Rate (Contingent)	0.00%	2.00%	2.00%
Series B-Taxable Principal (*)	418,636	-	(418,636)
Interest Rate	8.75%	0.00%	-8.75%
Total Debt	11,318,636	10,900,000	(418,636)
Total Debt Service (Must-Pay)	898,102	592,904	(305,198)
Total Debt Service (All-In)	960,958	695,241	(265,717)
Centerline Pro Forma NOI	996,447	996,447	
DCR - Must Pay	1.11	1.68	
DCR - All-In	1.04	1.43	
TDHCA Pro Forma NOI	938,543	938,543	
DCR - Must Pay	1.05	1.58	
DCR - All-In	0.98	1.35	

(*) Originally \$2.3M reduced through sinking fund payments

CENTERLINE BOND RE-FUNDING REQUEST ANALYSIS
MARCH 30, 2012

Conclusion/Recommendation:

The principal reduction and modification to the interest payment structure produces debt coverage ratios on the must-pay debt within current REA guidelines. As a result, the long-term viability of the deals is greatly improved and potential on-going deficit funding by Centerline is significantly reduced.

The Underwriter recommends approval of the requests.

UNIT MIX/RENT SCHEDULE

Providence at Veteran's Memorial, Houston, MRB #12601

LOCATION DATA	
CITY:	Houston
COUNTY:	Harris
PROGRAM REGION:	6
RURAL RENT USED:	
IREM REGION:	Houston

UNIT DISTRIBUTION		
# Beds	# Units	% Total
Eff		
1		
2	97	40.8%
3	141	59.2%
4		
TOTAL	238	100.0%

Applicable Programs
MRB

PROFORMA ASSUMPTIONS	
REVENUE GROWTH:	2.00%
EXPENSE GROWTH:	3.00%
HIGH COST ADJUSTMENT:	
APPLICABLE FRACTION:	100.00%
APP % - ACQUISITION:	
APP % - CONSTRUCTION:	
AVERAGE SF	1186

UNIT MIX / MONTHLY RENT SCHEDULE																		
UNIT DESCRIPTION					PROGRAM RENT LIMITS			APPLICANT'S PROFORMA RENTS				TDHCA PROFORMA RENTS			MARKET RENTS			
Type	# 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%	26	2	2	1,110	\$879	\$69	\$810	(\$3)	\$0.73	\$807	\$20,982	\$19,890	\$765	\$0.69	(\$45)	\$765	0.69	\$0
TC60%	14	2	2	1,110	\$879	\$69	\$810	(\$3)	\$0.73	\$807	\$11,298	\$10,710	\$765	\$0.69	(\$45)	\$765	0.69	\$0
TC60%	2	2	2	1,117	\$879	\$69	\$810	(\$3)	\$0.72	\$807	\$1,614	\$1,546	\$773	\$0.69	(\$37)	\$773	0.69	\$0
TC60%	28	2	2	1,117	\$879	\$69	\$810	(\$3)	\$0.72	\$807	\$22,596	\$21,644	\$773	\$0.69	(\$37)	\$773	0.69	\$0
TC60%	27	2	2	1,158	\$879	\$69	\$810	(\$3)	\$0.70	\$807	\$21,789	\$20,844	\$772	\$0.67	(\$38)	\$772	0.67	\$0
TC60%	55	3	2	1,150	\$1,016	\$83	\$933	(\$2)	\$0.81	\$931	\$51,205	\$48,070	\$874	\$0.76	(\$59)	\$874	0.76	\$0
TC60%	1	3	2	1,150	\$1,016	\$83	\$933	(\$2)	\$0.81	\$931	\$931	\$874	\$874	\$0.76	(\$59)	\$874	0.76	\$0
TC60%	14	3	2	1,211	\$1,016	\$83	\$933	(\$2)	\$0.77	\$931	\$13,034	\$12,320	\$880	\$0.73	(\$53)	\$880	0.73	\$0
TC60%	15	3	2	1,251	\$1,016	\$83	\$933	(\$2)	\$0.74	\$931	\$13,965	\$13,200	\$880	\$0.70	(\$53)	\$880	0.70	\$0
TC60%	14	3	2	1,251	\$1,016	\$83	\$933	(\$2)	\$0.74	\$931	\$13,034	\$12,320	\$880	\$0.70	(\$53)	\$880	0.70	\$0
TC60%	13	3	2	1,289	\$1,016	\$83	\$933	(\$2)	\$0.72	\$931	\$12,103	\$11,453	\$881	\$0.68	(\$52)	\$881	0.68	\$0
TC60%	1	3	2	1,289	\$1,016	\$83	\$933	(\$2)	\$0.72	\$931	\$931	\$881	\$881	\$0.68	(\$52)	\$881	0.68	\$0
TC60%	28	3	2	1,339	\$1,016	\$83	\$933	(\$2)	\$0.70	\$931	\$26,068	\$25,032	\$894	\$0.67	(\$39)	\$894	0.67	\$0
TOTALS/	238			282,347				(\$2)	\$0.74	\$880	\$209,550	\$198,784	\$835	\$0.70	(\$48)	\$835	\$0.70	\$0

ANNUAL POTENTIAL GROSS RENT:	#####	#####
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STABILIZED PROFORMA

Providence at Veteran's Memorial, Houston, #12601

STABILIZED FIRST YEAR PROFORMA													
	COMPARABLES		APPLICANT				TDHCA				VARIANCE		
	Database	Other	% EGI	Per SF	Per Unit	Amount	Amount	Per Unit	Per SF	% EGI	%	\$	
POTENTIAL GROSS RENT		\$0		\$0.74	\$880	\$2,514,600	\$2,385,408	\$835	\$0.70		-5.4%	(\$129,192)	
Fees		\$0			\$14.51	\$41,436					0.0%	(41,436)	
Misc.Other Income		\$0			\$5.93	\$16,932					0.0%	(16,932)	
		\$0			\$0.00	\$0					0.0%	-	
Underwriter's Total Secondary Income		\$0					\$57,120	\$20.00			100.0%	57,120	
POTENTIAL GROSS INCOME		\$0				\$2,572,968	\$2,442,528				-5.3%	(\$130,440)	
Vacancy & Collection Loss		(\$283,332)			10.2% PGI	(261,258)	(183,190)	7.5% PGI			-42.6%	78,068	
Non-Rental Units/Concessions		\$0				(18,816)					0.0%	18,816	
EFFECTIVE GROSS INCOME		\$2,007,911				\$2,292,894	\$2,259,338				-1.5%	(\$33,556)	
General & Administrative	\$96,822	\$407/Unit	151,674	5.74%	\$0.47	\$553	\$131,647	\$151,674	\$637	\$0.54	6.71%	-13.2%	(20,027)
Management	\$85,948	4.9% EGI	74,734	3.20%	\$0.26	\$309	\$73,482	\$84,092	\$353	\$0.30	3.72%	-12.6%	(10,610)
Payroll & Payroll Tax	\$243,125	\$1,022/Unit	363,135	13.95%	\$1.13	\$1,344	\$319,956	\$363,135	\$1,526	\$1.29	16.07%	-11.9%	(43,179)
Repairs & Maintenance	\$132,318	\$556/Unit	141,830	10.94%	\$0.89	\$1,054	\$250,879	\$141,830	\$596	\$0.50	6.28%	76.9%	109,049
Utilities	\$83,649	\$351/Unit	43,678	2.66%	\$0.22	\$256	\$60,892	\$55,188	\$232	\$0.20	2.44%	10.3%	5,704
Water, Sewer, & Trash	\$113,391	\$476/Unit	122,898	6.02%	\$0.49	\$580	\$138,059	\$122,898	\$516	\$0.44	5.44%	12.3%	15,161
Property Insurance	\$90,489	\$0.32 /sf	191,990	5.47%	\$0.44	\$527	\$125,432	\$131,275	\$552	\$0.46	5.81%	-4.5%	(5,843)
Property Tax	\$159,697	\$671/Unit	222,858	12.31%	\$1.00	\$1,186	\$282,149	\$222,858	\$936	\$0.79	9.86%	26.6%	59,291
Reserve for Replacements	\$70,018	\$294/Unit	-	0.00%	\$0.00	\$0	\$0	\$71,400	\$300	\$0.25	3.16%	-100.0%	(71,400)
TDHCA Compliance Fees			14,042	1.02%	\$0.08	\$98	\$23,417	\$9,520	\$40	\$0.03	0.42%	146.0%	13,897
Cable TV			885	0.02%	\$0.00	\$2	\$439	\$439	\$2	\$0.00	0.02%	0.0%	-
Supportive service contract fees			29,450	1.30%	\$0.11	\$125	\$29,802	\$29,802	\$125	\$0.11	1.32%	0.0%	-
Security			50,808	2.35%	\$0.19	\$226	\$53,807	\$53,807	\$226	\$0.19	2.38%	0.0%	-
TOTAL EXPENSES			\$ 1,407,982	64.98%	\$5.28	\$6,260	\$ 1,489,961	\$1,437,918	\$6,042	\$5.09	63.64%	3.6%	\$ 52,043
NET OPERATING INCOME ("NOI")			\$599,929	35.02%	\$2.84	\$3,374	\$802,933	\$821,420	\$3,451	\$2.91	36.36%	-2.3%	(\$18,487)
CONTROLLABLE EXPENSES	\$2,812/Unit	\$3,459/Unit				\$3,788/Unit			\$3,507/Unit				

LONG TERM OPERATING PROFORMA												
	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	\$2,292,894	\$2,408,403	\$2,456,571	\$2,505,702	\$2,555,817	\$2,821,828	\$3,115,526	\$3,439,793	\$3,797,809	\$4,193,088	\$4,629,508	\$5,111,351
LESS: TOTAL EXPENSES	1,489,961	1,536,157	1,581,470	1,628,127	1,676,168	1,938,617	2,242,397	2,594,042	3,001,121	3,472,404	4,018,052	4,649,834
NET OPERATING INCOME	\$802,933	\$872,246	\$875,101	\$877,576	\$879,649	\$883,211	\$873,129	\$845,751	\$796,688	\$720,683	\$611,456	\$461,516
LESS: DEBT SERVICE	613,298	613,298	613,298	613,298	613,298	613,298	613,298	613,298	613,298	613,298	613,298	613,298
NET CASH FLOW	\$189,634	\$258,947	\$261,803	\$264,277	\$266,350	\$269,913	\$259,831	\$232,452	\$183,389	\$107,385	(\$1,842)	(\$151,782)
CUMULATIVE NET CASH FLOW	\$189,634	\$448,582	\$710,384	\$974,661	\$1,241,012	\$2,588,260	\$3,913,715	\$5,138,470	\$6,163,197	\$6,864,082	\$7,088,016	\$6,646,939
DEFERRED DEVELOPER FEE BALANCE	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
DCR ON UNDERWRITTEN DEBT (Must-Pay)	1.31	1.42	1.43	1.43	1.43	1.44	1.42	1.38	1.30	1.18	1.00	0.75
EXPENSE/EGI RATIO	64.98%	63.78%	64.38%	64.98%	65.58%	68.70%	71.97%	75.41%	79.02%	82.81%	86.79%	90.97%

**TEXAS DEPARTMENT of HOUSING and COMMUNITY AFFAIRS
MULTI FAMILY CREDIT UNDERWRITING ANALYSIS**

DATE: April 29, 2002 PROGRAM: MFB FILE NUMBER: 2002-071
4% LIHTC 02404

DEVELOPMENT NAME

Veterans' Memorial Apartments

APPLICANT

Name: Trails of Sycamore Townhomes L.P. Type: For Profit Non-Profit Municipal Other
Address: 7800 E. Kemper Road City: Cincinnati State: OH
Zip: 45249 Contact: Don Paxton Phone: (513) 489-1990 Fax: (513) 489-2780

PRINCIPALS of the APPLICANT

Name: Housing Initiatives Corporation IV (%): 0.1 Title: Managing General Partner
Name: SunAmerica Affordable Housing Partners, Inc. (%): 99.9 Title: Initial Limited Partner
Name: Frank Mendez (%): N/A Title: President of non-profit G.P.
Name: Brisben Advisors, Inc. (%): N/A Title: Fee developer

GENERAL PARTNER

Name: Housing Initiatives Corporation IV, Inc. Type: For Profit Non-Profit Municipal Other
Address: 816 Congress Avenue, Suite 1775 City: Austin State: TX
Zip: 78701 Contact: Frank Mendez Phone: (512) 404-7887 Fax: (512) 703-2860

DEVELOPER

Name: Brisben Advisors, Inc. Type: For Profit Non-Profit Municipal Other
Address: 7800 E. Kemper Road City: Cincinnati State: OH
Zip: 45249 Contact: Don Paxton Phone: (513) 489-1990 Fax: (513) 489-2780

PROPERTY LOCATION

Location: Veterans' Memorial Parkway & Gears Road QCT DDA
City: Harris County County: Harris Zip: 77067

REQUEST

<u>Amount</u>	<u>Interest Rate</u>	<u>Amortization</u>	<u>Term</u>
1. \$14,700,000	5.91%	30 yrs	30 yrs
2. \$673,861	N/A	N/A	N/A

Other Requested Terms: 1. Tax-exempt private activity mortgage revenue bonds
2. Annual ten-year allocation of low-income housing tax credits

Proposed Use of Funds: New construction

SITE DESCRIPTION

Size: 29.312 acres 1,276,831 square feet Zoning/ Permitted Uses: No zoning (Houston)
Flood Zone Designation: Zone AE (100-yr floodplain) Status of Off-Sites: Partially Improved

**TEXAS DEPARTMENT of HOUSING and COMMUNITY AFFAIRS
CREDIT UNDERWRITING ANALYSIS**

DESCRIPTION of IMPROVEMENTS

Total Units: 250 **# Rental Buildings:** 29 **# Common Area Bldgs:** 3 **# of Floors:** 2 **Age:** 0 yrs **Vacant:** N/A at / /

Number	Bedrooms	Bathroom	Size in SF
30	2	2	1,017
30	2	2	1,028
34	2	2.5	1,115
24	2	2.5	1,158
12	3	2	1,146
16	3	2	1,152
4	3	2	1,213
24	3	2	1,251
24	3	2	1,279
34	3	2	1,297
18	3	2	1,325

Net Rentable SF: 292,756 **Av Un SF:** 1,171 **Common Area SF:** 5,135 **Gross Bldng SF** 297,891

Property Type: Multifamily SFR Rental Elderly Mixed Income Special Use

CONSTRUCTION SPECIFICATIONS

STRUCTURAL MATERIALS

Wood frame on a concrete slab on grade, 30% brick veneer/40% vinyl siding/30% stucco exterior wall covering, drywall interior wall surfaces, composite shingle roofing

APPLIANCES AND INTERIOR FEATURES

Carpeting & vinyl flooring, range & oven, hood & fan, garbage disposal, dishwasher, refrigerator, fiberglass tub/shower, washer & dryer connections, laminated counter tops, individual water heaters

ON-SITE AMENITIES

4,428-SF community building with activity rooms, management offices, fitness facilities, kitchen, restrooms, computer/business center, & model unit; central mail kiosk, swimming pool, separate maintenance & laundry building, equipped children's play area, sports court, limited access gate

Uncovered Parking: 375 spaces **Carpports:** 0 spaces **Garages:** 0 spaces

OTHER SOURCES of FUNDS

INTERIM CONSTRUCTION or GAP FINANCING

Source: SunAmerica, Inc. **Contact:** Mike Fowler

Principal Amount: \$14,700,000 **Interest Rate:** 9%

Additional Information: Bond proceeds

Amortization: N/A yrs **Term:** 2 yrs **Commitment:** None Firm Conditional

LONG TERM/PERMANENT FINANCING

Source: SunAmerica, Inc. **Contact:** Mike Fowler

Principal Amount: \$14,700,000 **Interest Rate:** 5.91%

Additional Information: Bond proceeds

Amortization: 30 yrs **Term:** 30 yrs **Commitment:** None Firm Conditional

Annual Payment: \$1,057,674 **Lien Priority:** 1st **Commitment Date** 4/ 2/ 2002

**TEXAS DEPARTMENT of HOUSING and COMMUNITY AFFAIRS
CREDIT UNDERWRITING ANALYSIS**

LIHTC SYNDICATION

Source:	<u>SunAmerica Affordable Housing Partners, Inc.</u>	Contact:	<u>Mike Fowler</u>	
Address:	<u>1 SunAmerica Center, Century City</u>	City:	<u>Los Angeles</u>	
State:	<u>CA</u>	Zip:	<u>90067</u>	
	Phone:	<u>(310) 693-3203</u>	Fax:	<u>(310) 772-6179</u>
Net Proceeds:	<u>\$5,385,494</u>	Net Syndication Rate (per \$1.00 of 10-yr LIHTC)	<u>80¢</u>	
Commitment	<input type="checkbox"/> None	<input checked="" type="checkbox"/> Firm	<input type="checkbox"/> Conditional	
	Date:	<u>3/ 28/ 2002</u>		
Additional Information:	<u></u>			

APPLICANT EQUITY

Amount:	<u>\$1,914,436</u>	Source:	<u>Deferred developer fee</u>
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VALUATION INFORMATION

ASSESSED VALUE

Land:	<u>\$1,033,660</u>	Assessment for the Year of:	<u>2002</u>
Building:	<u>N/A</u>	Valuation by:	<u>Harris County Appraisal District</u>
Total Assessed Value:	<u>\$1,033,660</u>		

EVIDENCE of SITE or PROPERTY CONTROL

Type of Site Control:	<u>Earnest money contract</u>		
Contract Expiration Date:	<u>5/ 31/ 2002</u>	Anticipated Closing Date:	<u>4/ 31/ 2002</u>
Acquisition Cost:	<u>\$ 1,025,000</u>	Other Terms/Conditions:	<u>\$80,000 earnest money</u>
Seller:	<u>VA Beltway Partners, Ltd., C/O Richard Gould</u>	Related to Development Team Member:	<u>No</u>

REVIEW of PREVIOUS UNDERWRITING REPORTS

No previous reports.

PROPOSAL and DEVELOPMENT PLAN DESCRIPTION

Description: Veterans' Memorial Apartments is a proposed new construction development of 250 units of affordable housing located in northwest Houston. The development is comprised of 29 residential buildings as follows:

- Twelve Building Type I with two two-bedroom townhouse units, three three-bedroom townhouse units, and two three-bedroom flat units,
- Nine Building Type II with four two-bedroom flat units, two two-bedroom townhouse units, and four three-bedroom flat units;
- Three Building Type III with four two-bedroom flat units, two two-bedroom townhouse units, and two three-bedroom flat units;
- Three Building Type IV with four two-bedroom flat units, two two-bedroom townhouse units, and two three-bedroom flat units, and
- Two Building Type V with two two-bedroom townhouse units, ten three-bedroom townhouse units, and two three-bedroom flat units.

Based on the site plan the apartment buildings are distributed fairly evenly throughout the site, with the community building, mailboxes, swimming pool and sport court located near the entrance to the site. A 621-square foot laundry and maintenance building is be located in the northern third of the site. The 4,428-square

**TEXAS DEPARTMENT of HOUSING and COMMUNITY AFFAIRS
CREDIT UNDERWRITING ANALYSIS**

foot community building is planned to have the management offices, adults' and children's activities rooms, an exercise room, kitchen, restrooms, and a business center. The community building also has a three-bedroom model unit attached which the Applicant has indicated in not included in the unit count or intended to be employee-occupied. There appears to be no reason the unit could not be rented to tenants if desired, however, as this unit has independent exterior access.

Supportive Services: The Applicant has contracted with National Realty Management, Inc. to provide the following supportive services to tenants: basic adult education, credit counseling, homebuyer education, and use of computer facilities. The Applicant has agreed to pay \$80/unit/year (\$20,000/year total) for these support services.

Schedule: The Applicant anticipates construction to begin in July of 2002, to be completed in December of 2003, to be substantially leased-up in June of 2004, and to be placed in service in August of 2004.

POPULATIONS TARGETED

Income Set-Aside: The Applicant has elected the 40% at 60% or less of area median gross income (AMGI) set-aside, although as a Priority 1 private activity bond lottery development 100% of the units must have rents restricted to be affordable to households at or below 50% of AMGI. This program allows for prospective tenants to be qualified at the 60% or less of AMGI income level.

Special Needs Set-Asides: There are no plans to reserve units exclusively for special needs tenants, but the Applicant has committed to compliance with TDHCA accessibility standards.

Compliance Period Extension: The Applicant has elected to extend the compliance period an additional 15 years.

MARKET HIGHLIGHTS

A market feasibility study dated March 27, 2002 was prepared by The Danter Company and highlighted the following findings:

Definition of Market/Submarket: "The Site Effective Market Area [EMA] for the subject...site includes the near north area of Houston." (p. V-6) The EMA is an irregular shape that roughly resembles a rectangle, with Rankin Road as its northern boundary, Bammel North Houston Road as its western boundary, West Road as its southernmost boundary, and the Hardy Toll Road as its easternmost boundary. The site itself is in the middle of the western third of the EMA. The Underwriter estimates this EMA area to equate to somewhat less than the area of a three-mile radius.

Total Regional Market Demand for Rental Units: "In 2000, [Houston] households numbered 717,945. Households are expected to number 755,855 by 2005, a total increase from 2000 of 5.3%." (p. V-4)

Total Local/Submarket Demand for Rental Units: The analyst calculated "...5,505 renter households within the potential income range that are not being served by the area tax credit project[s]." (p. IV-17)

ANNUAL INCOME-ELIGIBLE SUBMARKET DEMAND SUMMARY*		
Type of Demand	Units of Demand	% of Total Demand
Household Growth	32	2%
Resident Turnover	1,658	98%
TOTAL ANNUAL DEMAND	1,690	100%

*Calculated by Underwriter using market analyst's demographics

Capture Rate: Calculated by the Underwriter to be 15% for this development alone (the analyst calculated a *market penetration rate* of 4.5% of the existing income-qualified renter market). (p. IV-17) The Market Analyst failed to account for three new developments awarded low income housing tax credits in the past 12 months. Fallbrook Apartments is located in the extreme southwest corner of the EMA and was approved in December of 2001 as a 280-unit 4% LIHTC /private activity bond transaction. Almost immediately next door to Fallbrook Apartments will be Champion Forest, a proposed 192-unit mixed-income development approved as a 2002 9% LIHTC forward commitment in July of 2001 (this development has, as of April 2002 met the underwriting conditions for carryover/allocation). A third development in the extreme southeast corner of the EMA will provide another 248 units in a 4% LIHTC/Private Activity Bond transaction

**TEXAS DEPARTMENT of HOUSING and COMMUNITY AFFAIRS
CREDIT UNDERWRITING ANALYSIS**

approved in July of 2001. With these three developments, totaling 720 additional unstabilized units, the calculated concentration capture rate soars to 57% or well above the 25% TDHCA policy limit established by the Board in July of 2001 and codified in the 2002 QAP. A fourth development, Columbia Greens (approved in 2000), was identified by the Market Analyst as having been placed in service in 2001 and is already fully stabilized. However from a technical perspective it is not known when stabilization was accomplished and if this 232-unit property has been stabilized for less than 12 months it too should be considered in the concentration capture calculation according to the policy elevating the overall capture rate to 71%.

Local Housing Authority Waiting List Information: “There is a list of 600 applicants waiting to join the Harris County HUD Section 8 certificate/voucher program.” (p. IV-18)

Market Rent Comparables: The market analyst surveyed 10 comparable market rate and two LIHTC apartment projects totaling 2,585 units in the market area. “Notably, the subject...project will have townhouse units that are significantly larger than many comparable projects, especially the...tax credit project[s] in the area. Along with the amenities, rent levels, and anticipated quality, the Veterans’ Memorial proposed project would be in a good market position.” (p. IV-39)

RENT ANALYSIS (net tenant-paid rents)					
Unit Type	Proposed	Program Max	Differential	Market	Differential
2-Bedroom	\$596	\$597	-\$1	\$672	-\$76
3-Bedroom	\$684	\$685	-\$1	\$779	-\$95

Ref: p. IV-26

(NOTE: Differentials are amount of difference between proposed rents and program limits and average market rents, e.g., proposed rent =\$500, program max =\$600, differential = -\$100)

Submarket Vacancy Rates: “The surveyed market rate properties are 93.2% occupied. Overall, vacancies within the Site EMA are somewhat high...Among the 46 area market rate properties, 13 are 100% occupied. The two tax credit properties are over 99% occupied. ” (p. IV-6)

Absorption Projections: “...absorption is expected to average 16.0 to 19.5 units per month, resulting in a 14.5- to 17.5-month absorption period to achieve a 95% occupancy level.” (p. IV-47) Given that an additional 720 units of affordable housing are planned within the EMA but were not accounted for in this calculation, and given that all these units will arrive in the market at roughly the same time, the true absorption period for all these units could be recalculated to be 50 to 60 months.

Known Planned Development: No information provided in the market study. As discussed above, this is a major flaw in the market study that leads the Market Analyst to a faulty conclusion.

Effect on Existing Housing Stock: No information provided.

While the Underwriter disagrees with the conclusions of the market study and finds it missed three recently approved LIHTC transactions in the EMA, the market study provided sufficient demographic information on which to base an underwriting recommendation. Based upon the excessive concentration capture rate, any allocation of tax credits for this development should be conditioned upon a waiver by the Board of the Department’s concentration policy.

SITE and NEIGHBORHOOD CHARACTERISTICS

Location: The site is a very irregularly-shaped parcel located in the northwest area of Houston, approximately ten miles from the central business district. The site is situated on the west sides of Veterans’ Memorial Parkway and Gears Road.

Population: The estimated 2000 population of the primary market area was 71,539 and is expected to increase by 6.4% to approximately 76,117 by 2005. Within the primary market area there were estimated to be 23,091 households in 2000.

Adjacent Land Uses: Land uses in the overall area in which the site is located are mixed, with vacant land, residential, retail, and public uses. Adjacent land uses include:

- **North:** Retail and Greens Road, with single-family residential beyond
- **South:** Undeveloped land and drainage canals with the Sam Houston Tollway beyond
- **East:** Veterans’ Memorial Parkway and Gears Road with retail and single-family residential beyond
- **West:** Single-family residential, a drainage canal, and an elementary school

TEXAS DEPARTMENT of HOUSING and COMMUNITY AFFAIRS
CREDIT UNDERWRITING ANALYSIS

Site Access: Access to the property is from the southeast or northwest along Veterans' Memorial Parkway or Gears Road or the east or west from Greens Road. The project is to have two entries from Veterans' Memorial Parkway and one from Greens Road. Access to the Sam Houston Tollway and Interstate Highway 45 is three miles east, which provide connections to all other major roads serving the Houston area.

Public Transportation: Public transportation to the area is provided by the Houston bus system with a stop on Veterans' Memorial Parkway adjacent to the site.

Shopping & Services: The site is within one mile of a major grocery/pharmacy and a neighborhood shopping centers, and within three miles of a regional shopping mall and a variety of other retail establishments and restaurants. An elementary school is adjacent to the site and other schools, churches, and hospitals and health care facilities are located within a short driving distance from the site.

Special Adverse Site Characteristics:

- According to the Federal Emergency Management Act (FEMA) Flood Insurance Rate Map (FIRM), the site lies within Zone AE, a 100-year flood area. The original application stated that the site was not in a 100-year floodplain, and this fact was also not identified by the environmental analyst. In response to the Underwriter's query regarding proposed flood hazard mitigation measures, the Applicant provided information that the residential buildings will be elevated so as to have a finished floor level 18 inches above the 100-year base flood elevation level. At the time of this report it is unknown if the Applicant also plans to elevate the parking areas, access roads, and other improvements. Such information has not been provided in this application and the sitework costs do not appear to account for these costs. The Applicant submitted no documentation from Harris County as to the conditions under which the proposed structures can obtain permits and be built within or up and out of the floodplain. Federal law prohibits federal funds from being used in new properties within the 100-year floodplain. For example, FHA will not close on a new construction transaction located within the 100-year floodplain. The LIHTC program, however, is generally not considered to be a direct source of federal funds. The Department has no formally approved policy on new development in the floodplain. The Department's previous experience has typically been in re-funding projects already built in the floodplain or projects on the edge of the floodplain which either include no improvements in the floodplain or which raise the base level of the improvements to above the floodplain with fill. In several prior instances, the Department has required proof of flood insurability, and the cost of such insurance could be included in the expense proforma. In addition, the Department has, in some instances, required that the net rents be reduced by an amount equal to the cost of flood insurance for the tenants' personal property, or required that the owner pay to insure the personal property of each of the ground floor tenants who could be affected by flooding. In this case, the entire site and immediately surrounding streets are within the 100-year floodplain, so that every unit would be affected and building out of the floodplain may serve at best to create an island during years in which the area is inundated with floodwaters. The Applicant did not provide a plan of mitigation, so it is not known if imported fill will be required to build above the floodplain. The project's sitework costs do not appear to contain items specific to the needs of a 100-year flood zone-impacted site. Such costs should generally be itemized and evaluated prior to committing to the allocation of funds. Because of this significant uncertainty and because a mitigation plan of the flood risk for buildings and tenants has not been clearly identified in the application, the Underwriter believes an affirmative recommendation for funding cannot be made. Any recommendation for funding should be conditioned upon acceptance of a floodplain mitigation plan approved by Harris County and the Department and a re-evaluation of the project's costs, proforma, and financing structure after all of the costs of mitigation including the fill cost, building insurance, and renter's insurance have been included and verified.
- The title commitment lists a vendor's lien in the amount of \$750,000 that must be cleared by the closing. Receipt, review, and acceptance of a copy of the release of lien on the property or an updated title commitment showing clear title is a condition of this report.

Site Inspection Findings: The site has not been inspected by a TDHCA staff member, and receipt, review, and acceptance of an acceptable site inspection report is a condition of this report.

HIGHLIGHTS of SOILS & HAZARDOUS MATERIALS REPORT(S)

A Phase I Environmental Site Assessment report dated December 12, 2001 was prepared by CEI Engineering Associates, Inc. and contained the following findings and recommendations: "Based on information obtained

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and observations made, it is the opinion of CEI that this assessment revealed no evidence of recognized environmental conditions in relation to the subject property with the exception of the following:

- All necessary local, state, and federal permits should be obtained.
- The site is heavily wooded. Therefore, any woodland ordinances established by local, state, or federal agencies should be observed.
- There is a substantial amount of trash and debris located on the property. This debris should be removed to an approved landfill prior to the start of construction.” (p. 17)

OPERATING PROFORMA ANALYSIS

Income: The Applicant’s rent projections are the maximum rents allowed under LIHTC guidelines, and are attainable according to the market analyst. The Applicant’s potential gross rent estimate is \$3,103 lower than the Underwriter’s due to the Applicant’s rounding of the tenant-paid utility allowances. Estimates of secondary income and vacancy and collection losses are in line with TDHCA underwriting guidelines.

Expenses: The Applicant’s originally submitted total expense estimate contained an erroneous total per unit figure of \$3,278 instead of the actual amount of \$2,433. This latter amount is 24% lower than an adjusted TDHCA database-derived estimate of \$3,215 per unit for comparably-sized developments. The Applicant’s budget shows that many line item estimates appear significantly understated when compared to the database averages, particularly:

- General and administrative: \$43K/53% lower (the Underwriter used the low end of the TDHCA database range and also confirmed this figure as lower than the local Houston IREM historical figures).
- Payroll: \$51K/25% lower (the Underwriter used the IREM per unit regional average of \$833/unit).
- Repairs and maintenance: \$10.6K/11% lower (the Underwriter used the low end of the database range and again confirmed this figure as lower than local IREM figures).
- Utilities: \$37K/59% lower (the Underwriter’s estimate is based on local utility allowances and is significantly less than the TDHCA database and local IREM figures).
- Water, sewer, and trash: \$33.8K/36% lower (the Underwriter’s estimate is based on local utility allowances and is lower than the TDHCA database and within the range for local IREM figures).
- Insurance: \$28.7K/61% lower (the Underwriter’s estimate of \$0.16/NRSF is based on the low end of the TDHCA underwriting guidelines and is likely to be significantly understated in light of insurance industry trends within the past year, especially the damage caused by Hurricane Alison in Houston. While the local IREM figure is much lower and on par at a per foot basis with the Applicant’s estimate, this historical figure has not yet been affected by the considerably higher insurance premiums reported statewide by developers in the past six to twelve months. NOTE: flood insurance specific to this site is not included in any of the estimates).
- Property tax: (\$10.7K/15% lower (the Underwriter’s figure is based on a PILOT agreement amount provided by the Applicant. A fully executed copy of this agreement which calls for the exemption of 75% of the assessed value has not yet been provided, and any approval of allocation of tax credits and bonds should be conditioned upon receipt, review, and acceptance of such an agreement. The anticipated net assessed value would be \$8,750 per unit and based upon the existing tax rate would result in a tax payment of \$73,156 per year.)
- The Applicant did not include an estimate for TDHCA compliance fees, which the Underwriter estimated to be \$6,250 and included “below the line” along with estimated supportive service fees of \$20K. This allows the debt service to reflect repayment of expenses that cannot be waived and repayment of bonds only. Should the debt have to be resized up to reach a 1.10 this would suggest that these expenses may need to be paid from cash flow or waived, deferred, or not paid if cash flow is insufficient.

Conclusion: The Applicant’s estimated total estimated operating expense is inconsistent with the Underwriter’s expectations and the Applicant’s net operating income is not within 5% of the Underwriter’s estimate. Therefore, the Underwriter’s NOI will be used to evaluate debt service capacity. Due primarily to the difference in estimated expenses, the Underwriter’s estimated aggregate debt coverage ratio (DCR) of 0.95 and bonds-only DCR of 0.99 are significantly less than the program minimum standard of 1.10. Therefore, the maximum bonds-only debt service for this project should be limited to \$930,235. As it appears that the rate and terms of this debt have been set, the only method remaining to achieve this debt service goal would be a reduction of the debt amount not to exceed \$13,055,352.

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CONSTRUCTION COST ESTIMATE EVALUATION

Land Value: The site cost of \$1,025,000 (\$0.80/SF or \$35K/acre) is assumed be reasonable since the acquisition is an arm's-length transaction.

Sitework Cost: The Applicant's claimed sitework costs of \$6,435 per unit are considered reasonable compared to historical sitework costs for multifamily projects. These costs, however, do not appear to include costs associated with flood hazard mitigation, as the problem did not appear to be identified when they were developed, and they are, therefore, expected to increase significantly. Receipt, review, and acceptance of a detailed cost breakdown for all sitework costs, including costs per unit of materials and numbers of units required. Should this revised estimate exceed \$6,500/unit, which appears likely, the cost breakdown must be certified by an architect or engineer familiar with the sitework costs of this proposed project, to be accompanied by a letter from a certified public accountant stating which costs are includable in eligible basis, as a condition of this report.

Direct Construction Cost: The Applicant's costs are more than \$1.5M (12%) lower than the Underwriter's Marshall & Swift *Residential Cost Handbook*-derived estimate after all of the Applicant's additional justifications were considered. Although a related general contractor is being used and a fixed price contract may be offered, this would still suggest that the Applicant's direct construction costs are understated, especially as they are unlikely to include significant costs associated with flood hazard mitigation.

Ineligible Costs: Through a transcription error the Applicant incorrectly overstated accounting fees by \$81K; the Underwriter removed this overstatement, resulting in an equivalent reduction in the Applicant's eligible basis. Since this error only affected the Applicant's eligible basis, the Applicant's total development costs were not affected.

Fees: The Applicant's contractor's fees for general requirements, general and administrative expenses, and profit are all at the maximums allowed by TDHCA guidelines. The Applicant's developer fees, however, exceed 15% of the Applicant's adjusted eligible basis and therefore the eligible portion of the Applicant's developer fee must be reduced by \$286,824.

Conclusion: The Underwriter regards total costs to be understated by \$1.73M or 7%. This percentage exceeds the acceptable 5% margin of tolerance, and therefore the Underwriter's cost estimate is used to size the total sources of funds needed for the project. The Applicant's requested credit amount, as adjusted for the current applicable percentage, is less than the Underwriter's eligible basis tax credit calculation. Therefore, the Applicant's tax credit calculation, as adjusted, is used to establish the eligible basis method of determining the credit amount. As a result an eligible basis of \$18,775,941 is used to determine a credit allocation of \$689,077 from this method. This is \$15,216 more than initially requested due to the Applicant's use of a lower applicable percentage of 3.52% rather than the 3.67% underwriting rate used for developments using the 2002 QAP and submitting an application for credits in April 2002. The resulting syndication proceeds will be used to compare to the gap of need using the Applicant's costs to determine the recommended credit amount.

FINANCING STRUCTURE ANALYSIS

The Applicant intends to finance the development with three types of financing from two sources: a conventional interim to permanent loan based on bond proceeds, syndicated LIHTC equity, and deferred developer's fees.

Bonds: The bonds are tax-exempt private activity mortgage revenue bonds to be issued by TDHCA and placed privately with SunAmerica, Inc. As of the date of the underwriting analysis, the documentation provided indicated that there will be \$11,760,000 in tax-exempt senior Series A bonds with an anticipated interest rate of 5.55%, and \$2,940,000 in tax-exempt subordinate Series B bonds with an anticipated all-in interest rate of 5.96%. The Underwriter used a blended interest rate of 5.91%. The final interest rate will be made available at closing. The bonds will be amortized over 30 years. The original commitment reflects that 80% of the bonds will be credit enhanced by American International Group Inc., (AIG) or a financial institution selected by SunAmerica, however, details of this credit enhancement were not provided. The commitment also reflects that SunAmerica is a wholly-owned subsidiary of AIG. Subsequent to the submission of these documents the lender has indicated that the total debt amount has been reduced by \$250K. Receipt, review, and acceptance of revised financial commitments reflecting the final bond structure,

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the terms of the credit enhancement, and the all-in debt rate and terms is a condition of this report.

Conventional Interim to Permanent Loan: There is a commitment for interim to permanent financing through SunAmerica, Inc. in the amount of \$14,700,000 during both the interim period and at conversion to permanent. The commitment letter indicated a term of three years for the construction portion and 30 years for the permanent. Interest-only payments will be made during the construction period at an interest rate of 9%; the construction loan will bear interest at an estimated fixed rate of 5.91%. Again, this commitment appears to have been premature and new commitments will be required. The Applicant intends to fund the remainder of the construction phase with \$3,769,846 in LIHTC syndication proceeds and \$3,530,084 from internal sources.

LIHTC Syndication: SunAmerica Affordable Housing Partners, Inc. has offered terms for syndication of the tax credits. The commitment letter shows net proceeds are anticipated to be \$5,385,494 based on a syndication factor of 80%. The funds would be disbursed in a two-phased pay-in schedule:

1. 70% up closing of the construction loan;
2. 30% upon attainment of 90% occupancy for three consecutive months and a DCR 1.15 for six consecutive months.

Deferred Developer's Fees: The Applicant's initially proposed deferred developer's fees of \$1,914,436 amount to 70% of the total fees. However, with the lender's confirmed reduction in debt, this amount will increase by at least \$250K, resulting in an Applicant expectation that 79% of the requested developer fees be deferred.

Financing Conclusions: Based on the Applicant's adjusted estimate of eligible basis, the LIHTC allocation should not exceed \$689,077 annually for ten years, resulting in syndication proceeds of approximately \$5,707,101. As a result of the Applicant's understated operating expenses as discussed earlier, the project is not expected to have sufficient net operating income available to service the requested amount of debt. Based on the Underwriting analysis the Applicant's first lien debt service should not exceed \$930,235, which results in a reduction in the bond amount to \$13,055,352. The Applicant initially anticipated the need to defer \$1.9M in developer fee, but based on the Underwriter's estimate of total development cost it is anticipated there will be a need to defer \$2,449,036 (100%) of the developer fee and \$1,761,292 (100%) of the contractor fee, which will still leave an unfunded gap of \$961,761. These deferred fees are unlikely to be repaid until after year 15, and the funding gap renders the proposed development infeasible.

Alternatively, if the Applicant's total development cost estimate is used to size the funding requirement, deferral of 100% of developer's fees would still be required but only approximately \$988,441 (56%) of contractor's fees would need to be deferred. These combined fees would still be unlikely to be repaid until after year 15 but theoretically could make the project feasible. Accepting this alternative would involve a tremendous leap of faith in accepting the Developer's anticipated costs as feasible. Historically this developer has indicated that the Department's development costs did not adequately consider the higher costs of the proposed townhome product. Moreover, the Developer's costs in this instance do not appear to account for the cost of flood plain mitigation which will require significant fill work to bring the foundations of the buildings above the base flood elevation, much less the drives and parking areas. While the Developer is only a fee developer in this case and ultimate ownership of the development will reside in the hands of a non-profit organization based in Austin, the Developer will have significant medium- to long-term interest in the success of the project since they will have to defer a significant portion of their fees. In fact, the gap of funds needed to fully fund this development, even at the Applicant's lower total development cost, is nearly insurmountable. Moreover, there is a great risk of having a portion of the requested deferred fees being considered unrepayable because the amount exceeds that reasonably calculated to be repayable in 15 years, even at zero percent interest. Any such amount would need to be reduced from eligible basis, creating an unending spiral of eligible basis reduction and thereby leading to the collapse of the equity syndication structure. In addition, and due to these factors as well as the excessive capture rate, overstated debt service, and flood plain mitigation issues, the Underwriter strongly discourages the acceptance of this alternative.

REVIEW of ARCHITECTURAL DESIGN

The units are in mixed one- and two-story flat and townhouse-style structures with varied brick veneer/stucco/siding exterior wall finish and pitched roofs. Each unit has an individual covered exterior entry.

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Exterior Elevations: The exterior building elevations are unusually attractive, with varied rooflines, wall finishes, and architectural elements such as archways, columns, and window shutters. The units are of larger than average size for market rate and LIHTC units.

Unit Floorplans: The units are all well arranged, with adequate storage space and a utility closets with hookups for full-size appliances. All of the two-story townhouse units have at least a half-bathroom on the first floor.

IDENTITIES of INTEREST

The principals of the Developer, William Brisben and Robert Schuler, also own the General Contractor and the Property Manager. These are common relationships for LIHTC developments.

APPLICANT'S/PRINCIPALS' FINANCIAL HIGHLIGHTS, BACKGROUND, and EXPERIENCE

Financial Highlights:

- The Applicant and General Partner are single-purpose entities created for the purpose of receiving assistance from TDHCA and therefore have no material financial statements.
- A consolidated financial statement for the main non-profit general partner affiliate, Housing Initiatives Corporation (HIC), was not provided, however, statements of several of the other affiliates and a personal financial statement of the president, Frank Mendez was provided. Receipt, review, and acceptance of a consolidated financial statement of Housing Initiatives Corporation, if it exists, is a condition of this report.
- The fee developer, Brisben Advisors, Inc., did not provide a financial statement, and receipt, review, and acceptance of same is a condition of this report.

Background & Experience:

- The Applicant and General Partner are new entities formed for the purpose of developing the project.
- The Developer, Brisben Advisors, Inc., and the related General Contractor, Brisben Development, Inc., listed completion of 63 affordable and conventional housing projects totaling 8,098 units.

SUMMARY OF SALIENT RISKS AND ISSUES

- The Applicant's estimated operating expenses and operating proforma are more than 5% outside of the Underwriter's verifiable ranges.
- The Applicant's development costs differ from the Underwriter's verifiable estimate by more than 5%.
- The proposed sources of funding are insufficient to fund the development as proposed.
- Significant inconsistencies in the application could affect the financial feasibility of the project.
- Significant locational risks exist regarding location in the 100-year floodplain.
- The recommended amount of deferred developer and contractor fees cannot be repaid within ten years, and any amount unpaid past ten years would be removed from eligible basis.
- The principals of the Applicant do not appear to have the development experience/financial capacity to support the development if needed.
- The significant financing structure changes being proposed have not been reviewed/accepted by the Applicant, lenders, and syndicators, and acceptable alternative structures may exist.

RECOMMENDATION

NOT RECOMMENDED DUE TO THE FOLLOWING:

1. The recommended sources and amounts of funding are insufficient to fund the development as evaluated.
2. The development is unlikely to generate sufficient net operating income to allow an increase in debt, nor are there sufficient fees that could be deferred to fund the anticipated funding shortfall.
3. The development is located entirely within the 100-year floodplain and the Applicant did not provide a sufficient mitigation plan.
4. The concentration capture rate, based upon the Site Effective Market Area demographics, is

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CREDIT UNDERWRITING ANALYSIS

57% or well above the Department's policy limit of 25%.

ALTERNATIVE

ANY ALLOCATION OF AN LIHTC ALLOCATION FOR THIS DEVELOPMENT SHOULD NOT EXCEED \$689,077, AND ISSUANCE OF TAX-EXEMPT BONDS SHOULD NOT EXCEED \$13,055,352, TO BE FULLY AMORTIZED OVER 30 YEARS. THE BLENDED INTEREST RATE OF THE BOND SERIES SHOULD NOT EXCEED 5.91%. THESE AWARDS SHOULD BE CONDITIONED UPON THE FOLLOWING:

1. TDHCA Board waiver of the Department's concentration policy in regards to this project;
2. TDHCA Board acceptance of the Applicant's conservative construction cost estimate via receipt, review, and acceptance of a fixed price contract consistent with the Applicant's costs as proposed in the application and reflected in this report;
3. TDHCA Board acceptance of a 15+ year deferred developer and contractor fee repayment schedule;
4. Receipt, review, and acceptance of revised financial commitments reflecting the final bond structure, the terms of the credit enhancement and the final all-in debt rates and terms;
5. Receipt, review, and acceptance of a flood hazard mitigation plan to include, at a minimum, consideration and documentation of floodplain reclamation sitework costs, building flood insurance and tenant flood insurance costs;
6. Should total estimated sitework costs exceed \$6,500/unit, receipt, review, and acceptance of a third party detailed sitework cost breakdown for all sitework costs, including costs per unit of materials and numbers of units required, certified by an architect or engineer familiar with the sitework costs of this proposed project, to be accompanied by a letter from a certified public accountant stating which costs are includable in eligible basis;
7. Receipt, review, and acceptance of a fully executed PILOT agreement reflecting not less than a 75% exemption of assessed value to be at net not greater than \$8,750 per unit;
8. Receipt, review, and acceptance of a copy of the release of lien on the property or an updated title commitment showing clear title;
9. Receipt, review, and acceptance of a consolidated financial statement of Housing Initiatives Corporation;
10. Receipt, review, and acceptance of a financial statement from the fee developer evidencing financial capacity sufficient to develop and support the project;
11. Receipt, review, and acceptance of a satisfactory TDHCA site inspection report; and
12. Should the terms of the proposed total cost, debt or equity syndication be altered, the financial elements of this report should be re-evaluated.

Credit Underwriting Supervisor:

Jim Anderson

Date: April 29, 2002

Director of Credit Underwriting:

Tom Gouris

Date: April 29, 2002

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
April 12, 2012

Presentation, Discussion, and Possible Action to Approve the Parameters, subject to Bond Review Board Approval, for Modification to Terms of Previous TDHCA Issued Multifamily Mortgage Revenue Bonds

RECOMMENDED ACTION

Approve modification to terms of bonds as presented.

WHEREAS, the private activity bonds for Timber Oaks Apartments (#12602) were originally issued by the Department in June 2003; and

WHEREAS, the property has encountered a series of operating and ownership issues and an application seeking modifications to the terms of the bonds was submitted to the Department on January 13, 2012; and

WHEREAS, the owner indicates that the partial redemption and modifications to the terms will facilitate a more viable financing structure and reduce the ongoing operating deficits; and

WHEREAS, the additional state volume cap will not be used but the modifications necessitate a reissuance of bonds under state law and federal tax law; and

WHEREAS, the Executive Award and Review Advisory Committee recommends the approval of the reissuance of Multifamily Mortgage Revenue Bonds Series 2003 for the Timber Oaks Apartments; therefore,

It is hereby,

RESOLVED, that modification to and reissuance of the Multifamily Housing Revenue Refunding Bonds Series 2003 for the Timber Oaks Apartments is hereby approved in the form presented to this meeting; and

FURTHER RESOLVED, that staff is authorized, empowered, and directed, for and on behalf of the Department to execute and deliver such documents, instruments, and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

BACKGROUND

General Information: The bonds for the Timber Oaks Apartments were originally issued through TDHCA in June of 2003. The original Series 2003A Tax-Exempt bond amount was \$10,900,000 and the Series 2003B Taxable bond amount was \$2,300,000. The original financing structure included privately placed bonds with Charter Municipal Mortgage Acceptance Company and as such were unrated with no

credit enhancement. The initial interest rate on the tax exempt bonds was 6.75% and the taxable bonds was 8.75%.

The property was completed and placed in service 2004. However, the development was unable to lease up and reach stabilized operations within 24 months in accordance with the original bond documents. The general partner has turned over twice since the development was completed with an affiliate of the investor limited partner replacing the prior general partner in 2011. The investor limited partner has continuously funded deep operating deficits since the property placed in service and is now seeking modifications to the financing structure to significantly reduce future operating deficits and facilitate a viable long-term financing structure.

Through correspondence between the Department’s bond counsel and the Office of the Attorney General, the modifications sought were determined be extensive enough to constitute a reissuance under state law. As a result, the Board’s approval of the modifications is necessary. However, the “reissuance” will not utilize any additional state volume cap. Moreover, the changes will effectively be implemented through a supplemental trust indenture and modification agreement rather than through a completely new indenture and bond documents. The following chart summarizes the modifications that are recommended.

	Original Indenture	Modification to Indenture
Redemption	The original bonds were subject to mandatory redemption at the bondholder’s direction in the amounts needed in order to achieve Stabilization, which is defined as 90% occupancy and a 1.15 debt coverage ratio (DCR) for six months by September 30, 2006.	The development will be deemed to have met Stabilization as of the date of execution of the modification agreement based on a DCR of 1.02.
Interest Rate	6.75% (tax exempt)	The 6.75% rate on the tax exempt bonds and 8.75% rate on the taxable bonds will remain the same. Both rates will be split into two component rates: a base rate of 4.75% per annum plus a contingent interest rate equal to 2% per annum and 4% per annum, respectively. Essentially, the contingent interest rate will be paid from the excess cash flow from the Development which will be escrowed with the Trustee until the Development generates enough cash flow from operations to pay debt service at the full coupon.
Maturity and Sinking Fund Redemption Schedule	Maturity Date: July 1, 2043 (tax-exempt) & November 1, 2038 (taxable) Basis of Amortization: Level debt service over the term	Maturity Date: November 1, 2038 (tax exempt) & March 1, 2027 (taxable) Basis of Amortization: Level debt service over the shortened term

Other Information

Organizational Structure and Compliance: The Borrower is OHC/GP I, Ltd. and the General Partner is RCC Guaranteed Asset Managers II, LLC with Centerline GP Holdings LLC as the manager, both of which are wholly owned subsidiaries of the investor limited partner. On May 14, 2009 the Department approved an ownership transfer request to remove Colonial Equities, Inc.; .005% owner of OHC/GP I, Ltd. RCC Guaranteed SLP II, LP, which was already a member of said ownership, assumed the .005% vacated by Colonial.

Public Hearing: The original bond maturity is being modified; however the weighted average maturity (“WAM”) will not be extended; therefore, a TEFRA public hearing is not required.

Census Demographics: The site is located at 700 Timber Oaks Lane, Grand Prairie, Tarrant County. Demographics for the census tract (1130.02) include AMFI of \$48,449; the total population is 5,407; the percent of the population that is minority is 74.83%; the number of owner occupied units is 631; number of renter occupied units is 1,222; and the number of vacant units is 100. (Census Information from FFIEC Geocoding for 2011).



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MULTIFAMILY FINANCE PRODUCTION DIVISION

Multifamily Housing Revenue Refunding Bonds Series 2003

**Timber Oaks Apartments
700 Timber Oaks Lane
Grand Prairie, Texas**

**OHC/GP I, Ltd.
264 Units
\$10,900,000 Tax Exempt – Series 2003A
\$2,300,000 Taxable – Series 2003B**

TABLE OF EXHIBITS

TAB 1	Bond Resolution
TAB 2	Sources & Uses of Funds Estimated Cost of Issuance
TAB 3	Department's Real Estate Analysis

RESOLUTION NO. 12-026

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A SUPPLEMENTAL TRUST INDENTURE AND MODIFICATION AGREEMENT IN CONNECTION WITH MULTIFAMILY HOUSING MORTGAGE REVENUE BONDS (TIMBER OAKS APARTMENTS) SERIES 2003A AND TAXABLE MULTIFAMILY HOUSING MORTGAGE REVENUE BONDS (TIMBER OAKS APARTMENTS) SERIES 2003B; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the "Issuer") 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 individuals and families of low, very low and extremely low income (as defined in the Act) and families of moderate income (as defined in the Act and determined by the Governing Board of the Issuer (the "Board") from time to time); and

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

WHEREAS, the Act and Chapter 1207, Texas Government Code, as amended, further authorize the Department to issue its revenue bonds for the purpose of refunding any bonds theretofore issued by the Department under such terms, conditions and details as shall be determined by the Board; and

WHEREAS, the Issuer previously issued its Multifamily Housing Mortgage Revenue Bonds (Timber Oaks Apartments) Series 2003A in the original principal amount of \$10,900,000 (the "Tax-Exempt Bonds") and its Taxable Multifamily Housing Mortgage Revenue Bonds (Timber Oaks Apartments) Series 2003B in the original principal amount of \$2,300,000 (the "Taxable Bonds" and together with the Tax-Exempt Bonds, collectively, the "2003 Bonds") pursuant to the terms and provisions of that certain Trust Indenture dated as of July 1, 2003 (the "Indenture"), between the Issuer and Wells Fargo Bank Texas, N.A., predecessor to Wells Fargo Bank, National Association, as trustee (the "Trustee"); and

WHEREAS, the proceeds of the 2003 Bonds were loaned to OHC/GPI Ltd. (the "Borrower") for the purpose of financing a portion of the costs of a 264-unit multifamily housing development known as Timber Oaks Apartments and located in Grand Prairie, Texas (the "Project"), pursuant to that certain Loan Agreement dated as of July 1, 2003 (the "Loan Agreement") among the Issuer, the Borrower and the Trustee; and

WHEREAS, the Borrower and Centerline Mortgage Capital Inc. (the "Servicer") (on behalf of the holder of the 2003 Bonds) have requested that the Issuer enter into a supplemental trust indenture and modification agreement (the "Supplement") to make certain modifications to the terms of the 2003 Bonds and conforming changes to the Indenture and the Loan Agreement; and

WHEREAS, the modifications to be implemented by the Supplement are expected to result in a reissuance under State law of the 2003 Bonds (the reissued 2003 Bonds are hereinafter referred to individually as the "reissued Tax-Exempt Bonds" or the "reissued Taxable Bonds," as applicable, and collectively as the "Bonds"); and

WHEREAS, the Issuer's execution of the Supplement shall be subject to receipt of the consents, opinions, approvals or notices required by the Indenture; and

WHEREAS, the Issuer now desires to take certain actions with respect to the Supplement;

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

Section 1. The Supplement, in substantially the form presented at this meeting, is hereby approved and adopted by the Issuer, and the Chair of the Board, the Executive Director or Acting Director of the Department and the Director of Multifamily Finance Production of the Department are each hereby authorized and empowered to execute and deliver the Supplement on behalf of the Issuer, with such changes as may be approved by the Issuer's counsel and the officer executing the same, such approval to be evidenced by such officer's execution thereof.

Section 2. The reissued Tax-Exempt Bonds shall (a) bear interest at a rate of interest equal to (i) the base rate of 4.75% per annum plus (ii) the contingent rate of 2.00% per annum, payable from and to the extent of cash flow as more fully described in the Supplement, payable from the date of reissuance until paid on the maturity date or earlier redemption or acceleration thereof (subject to adjustment as provided in the Indenture; provided, however, that the default interest rate on the reissued Tax-Exempt Bonds shall not exceed the maximum rate permitted by applicable law); (b) be reissued in the principal amount of \$10,900,000, and (c) have a final maturity date of November 1, 2038.

Section 3. The reissued Taxable Bonds shall (a) bear interest at a rate of interest equal to (i) the base rate of 4.75% per annum plus (ii) the contingent rate of 4.00% per annum, payable from and to the extent of cash flow as more fully described in the Supplement, payable from the date of reissuance until paid on the maturity date or earlier redemption or acceleration thereof (subject to adjustment as provided in the Indenture; provided, however, that the default interest rate on the reissued Taxable Bonds shall not exceed the maximum rate permitted by applicable law); (b) be reissued in the principal amount of \$1,874,563, and (c) have a final maturity date of March 1, 2027.

Section 4. The officers of the Board and the employees and agents of the Issuer, and each of them, shall be and each is expressly authorized, empowered and directed from time to time and at any time to do and perform all acts and things and to execute, acknowledge and deliver in the name and under the corporate seal and on behalf of the Issuer all certificates, financing statements, instruments and other documents, whether or not herein mentioned, as they may determine to be necessary or desirable in order to carry out the terms and provisions of this resolution, as well as the terms and provisions of the Supplement, such determination to be conclusively evidenced by the performance of such acts and things and the execution of any such certificate, financing statement, instrument or other document.

Section 5. The Issuer's execution of the Supplement is expressly subject to receipt of the consents, opinions, approvals or notices required by the Indenture.

Section 6. The Board hereby authorizes and approves the submission of the application for approval of state bonds to the Texas Bond Review Board on behalf of the Department in connection with the Bonds in accordance with Chapter 1231, Texas Government Code.

Section 7. The Board hereby authorizes and approves the submission by the Department's Bond Counsel to the Attorney General of the State, for his approval, of a transcript of legal proceedings relating to the Bonds.

Section 8. The Secretary and Assistant Secretary to the Board hereby are authorized to certify and authenticate minutes and other records on behalf of the Department for the Bonds and all other Department activities.

Section 9. The Board has determined that the proposed reissuance of the 2003 Bonds is in the best interest of the Department and will provide a potential savings in debt payable by the Department. The manner in which the 2003 Bonds are being reissued does not make it practicable to make the determination required by Section 1207.008, Texas Government Code.

Section 10. 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 11. This resolution shall be in full force and effect from and upon its adoption.

(Execution page follows)

PASSED AND APPROVED this 12th day of April, 2012.

Chair, Governing Board

ATTEST:

Secretary to the Governing Board

(SEAL)

Timber Oaks Apartments

Estimated Sources & Uses of Funds

Sources of Funds

Series 2003A Tax-Exempt Bond Proceeds	\$ 10,900,000
Series 2003B Taxable Bond Proceeds	1,874,563
Centerline Contribution	165,800
June 1, 2012 Principal Payment (Mandatory Debt Service)	6,801
Total Sources	\$ 12,947,164

Uses of Funds

UPB on Tax Exempt Bonds (June 2012)	\$ 10,900,000
UPB on Taxable Bonds (June 2012)	1,881,364
Other Construction Costs (General Require, Overhead, Profit)	-
Developer Fees and Overhead	-
Direct Bond Related	165,800
Bond Purchase Costs	-
Other Transaction Costs	-
Real Estate Closing Costs	-
Total Uses	\$ 12,947,164

Estimated Costs of Issuance of the Bonds

Direct Bond Related

TDHCA Issuance Fee (.50% of Issuance)	\$ 54,500
TDHCA Application Fee	5,000
TDHCA Bond Administration Fee (2 years)	21,800
TDHCA Bond Compliance Fee (\$25 per unit)	6,600
TDHCA Bond Counsel and Direct Expenses (Note 1)	20,000
TDHCA Financial Advisor and Direct Expenses	35,000
Disclosure Counsel (\$5k Pub. Offered, \$2.5k Priv. Placed. See Note 1)	2,500
Trustee Fee (.10% of UPB)	10,900
Trustee's Counsel (Note 1)	-
Attorney General Transcript Fee	9,500
Texas Bond Review Board Application Fee	-
Texas Bond Review Board Issuance Fee (.025% of Reservation)	-
Bond Amortization Analysis	-
Total Direct Bond Related	\$ 165,800

Timber Oaks Apartments

Bond Purchase Costs	
LOC Origination Fee & Expenses	-
LOC Ongoing Fees	-
Underwriter's Discount	-
Underwriter's Counsel	-
Rating Agency	-
OS Printing/Mailing	-
Total Bond Purchase Costs	<u>\$ -</u>
Other Transaction Costs	
Tax Credit Related Costs	-
Construction Contingency	-
Soft Construction Costs	-
Construction Period Interest	-
Lease-Up Reserves	-
Miscellaneous	-
Total Other Transaction Costs	<u>\$ -</u>
Real Estate Closing Costs	
Title and Recording	-
Total Real Estate Costs	<u>\$ -</u>
Estimated Total Costs of Issuance	<u>\$ 165,800</u>

Costs of issuance of up to two percent (2%) of the principal amount of the Bonds may be paid from Bond proceeds. Costs of issuance in excess of such two percent must be paid by an equity contribution of the Borrower.

Note 1: These estimates do not include direct, out-of-pocket expenses (i.e. travel). Actual Bond Counsel and Disclosure Counsel are based on an hourly rate and the above estimate does not include on-going administrative fees.



Memorandum

To: File

From: Diamond Unique Thompson, Real Estate Analysis
Brent Stewart, Director of Real Estate Analysis

cc: Shannon Roth, Multifamily Finance Production

Date: April 3, 2012

Re: Providence at Rush Creek (fka Parkview Townhomes), TDHCA #12600
\$15,000,000 Tax-Exempt Series 2003A
\$2,300,000 Taxable Series 2003B

Providence at Veteran's Memorial, TDHCA #12601
\$15,000,000 Tax-Exempt Series 2004A
\$1,300,000 Taxable Series 2004B

Timber Oaks Apartments, TDHCA #12602
\$10,900,000 Tax-Exempt Series 2003A
\$2,300,000 Taxable Series 2003B

General Background:

The above bond transactions were approved and issued as three separate transactions by TDHCA in 2003 and 2004. Determination Notices for a 4% tax credit allocation was also approved.

The bonds (both tax-exempt and taxable series for each deal) were issued without rating or credit enhancement and originally purchased by subsidiaries of Charter Municipal Mortgage Acceptance Corporation (which later became Centerline Capital Group). Subsidiaries of Related Capital Company, associated with Charter/Centerline, invested the tax credit equity for each deal.

While the properties were completed and the units placed-in-service timely, the bond documents required stabilization (meeting both occupancy and debt coverage requirements) within 24 months of completion. This did not occur. As a result, the deals entered into a state of financial "distress", although not in technical or payment default due to Centerline's funding of operating deficits and debt service under their guarantee obligations.

Centerline is requesting a restructure of the bond terms in an effort to stabilize the properties. Generally, the restructuring involves a pay-down of the outstanding debt for each property and modification of repayment terms for the debt that will remain outstanding.

The three deals are part of a 17 property portfolio of similarly financed deals across various states (\$234M of total bonds). The bonds are now owned by Freddie Mac. The subject restructurings are part

CENTERLINE BOND RE-FUNDING REQUEST ANALYSIS
MARCH 30, 2012

of an overall workout of the portfolio. Details of the overarching portfolio restructure are not addressed herein and this analysis is limited to the determination of each project's ability to service the restructured debt.

The original general partners have been removed from the ownership entities and Centerline entities are in control of the partnerships and the restructuring efforts. Thus far, Centerline has advanced \$5.5M in total to these three deals to keep the properties out of foreclosure which has left the LURA in place (preservation of the tax credits for the investor).

TDHCA has previously worked with Centerline on other aspects of these deals (8609 issuance, ownership changes and compliance issues). Centerline has corrected all non-compliance issues. TDHCA's interest in the restructure is stabilization of the properties to avoid foreclosure and loss of the tax credit units. As issuer of the bonds, however, the Department is not at financial risk.

Providence at Rush Creek, TDHCA #12600

Providence at Rush Creek, originally known as Parkview Townhomes is a 248-unit, is a +/- 262,080 square foot multifamily complex on 16.18 acres in the southern portion of Arlington, Tarrant County, Texas. 100% of the units are set aside for people earning 60% or less of the area median income.



The Development consists of twelve two- and three-story garden-style apartment buildings plus a one-story community building. The amenities at the Development include a swimming pool, playground, community building with kitchen facilities, vending area, and television, central laundry room, children's after school center, business center and fitness center.

The bonds were originally issued on December 17, 2003 for \$15,000,000 (Series A, tax-exempt) and \$1,600,000 (Series B, taxable). Total debt equalled \$16.6M. The required stabilization date was May 31, 2007 which did not occur.

At original underwriting in 2003, TDHCA's stabilized net operating income ("NOI") was \$1.3M and the DCR on the bonds as structured was 1.10 times (acceptable per REA rules in 2003). The owner's application projections were slightly higher indicating a DCR of 1.18 times. Actual NOI for YE 2011 of \$932K is consistent with both the owner's and REA's pro forma.

CENTERLINE BOND RE-FUNDING REQUEST ANALYSIS
MARCH 30, 2012

Although 10 years later, actual rents are roughly equal to rents at the original underwriting (indicative of minimal growth in maximum LIHTC rents but increases to utility allowances). The Applicant's projected rents are consistent with current 2012 max rents; however, per the rent roll as of March 22, 2012, the units are currently collecting rents are approximately \$21 to \$77 less than the maximums. The Underwriter has utilized the current rent roll rents, resulting in Potential Gross Income of \$2.5M, or \$170K less than the Applicant's projected income. However, the Applicant has estimated a 13.6% vacancy and collection loss. The rent roll shows a current physical occupancy of 96% and the vacancy & collection loss included in the un-audited 2011 actual operating expense statement is consistent with the Department's standard 7.5% rate. Despite the discrepancies in PGI and vacancy and collection, the Applicant's Effective Gross Income is within 5% of the Underwriter's estimate.

The Applicant's total annual operating expense projection at \$5,656 per unit is within 5% of the Underwriter's estimate of \$5,888, derived from actual operating history, the TDHCA database, and third-party data sources. Historical expenses, \$400K higher than underwritten expenses, show higher property taxes (\$1K/unit) than comparable LIHTC deals. G&A expenses are extremely high (also \$1K/unit) which if normalized (\$400 to \$500 per unit) would provide additional cash flow to cover the contingent interest payments.

As of 3Q11, Centerline has previously advanced over \$1.8 million to this property for operating deficits.

In the restructure, Centerline will reduce the total debt by \$2.5M (completely paying off the taxable bonds and reducing the tax-exempt bonds by \$1.4M). The overall interest rate on the remaining tax-exempt debt will remain at 6.6% but repayment will be split into a must-pay component at 4.75% and a contingent component at 1.85% (deferred and dependant upon cash flow). The maturity date will be accelerated to April 1, 2041 (originally December 1, 2043).

	<u>Current</u>	<u>Modified</u>	<u>Change</u>
Series A-Tax-Exempt Principal	15,000,000	13,534,302	(1,465,698)
Interest Rate (Must-Pay)	6.60%	4.75%	-1.85%
Interest Rate (Contingent)	0.00%	1.85%	1.85%
Series B-Taxable Principal (*)	1,045,977	-	(1,045,977)
Interest Rate	8.50%	0.00%	-8.50%
Total Debt	16,045,977	13,534,302	(2,511,675)
Total Debt Service (Must-Pay)	1,192,332	740,671	(451,661)
Total Debt Service (All-In)	1,192,332	911,950	(280,382)
Centerline Pro Forma NOI	911,486	911,486	
DCR - Must Pay	0.76	1.23	
DCR - All-In	0.76	1.00	
TDHCA Pro Forma NOI	897,231	897,231	
DCR - Must Pay	0.75	1.21	
DCR - All-In	0.75	0.98	

(*) Originally \$1.6M reduced through sinking fund payments

CENTERLINE BOND RE-FUNDING REQUEST ANALYSIS
MARCH 30, 2012

Providence at Veteran's Memorial, TDHCA #12601

Providence at Veterans Memorial is a 238-unit, +/- 282,000 square foot multifamily apartment complex on 33.6 acres in north Houston, Harris County, Texas. 100% of the units are set aside for people earning 60% or less of the area median income.



Providence at Veterans Memorial consists of two- and three-bedroom rental apartments. The amenities at the Development include a Community Room with a kitchen, picnic area, clubhouse, swimming pool, exercise room, all-sports court, playground, and central laundry room.

The bonds were originally issued on January 27, 2004 for \$15,000,000 (Series A, tax-exempt) and \$1,300,000 Series B, taxable). The required stabilization date was May 31, 2007 which did not occur.

At original underwriting in 2002, TDHCA's stabilized net operating income ("NOI") was \$1.3M and the DCR on the bonds as structured was 1.10 times (acceptable per REA rules in 2002). The owner's application projections were slightly higher indicating a DCR of 1.15 times.

The Applicant's projected rents are consistent with current 2012 max rents; however, per current CMTS information and the rent roll as of November 30, 2011, the units are currently collecting rents are ~\$37 to \$59 less than the maximums. The Underwriter has utilized the current CMTS and rent roll rent averages, resulting in Potential Gross Income of \$2.4M, or \$130K less than the Applicant's projected income. However, the Applicant has estimated a 10.2% vacancy and collection loss. The un-audited 2011 actual operating expense statement shows an elevated vacancy loss (~12%); however, the rent roll shows a current physical occupancy of 92%, therefore, the Underwriter has utilized the Department's standard 7.5% rate. Despite the discrepancies in PGI and vacancy and collection, the Applicant's Effective Gross Income is within 5% of the Underwriter's estimate.

The Applicant's total annual operating expense projection at \$6,260 per unit is within 5% of the Underwriter's estimate of \$6,042, derived from actual operating history, the TDHCA database, and third-party data sources. Historical expenses show higher property taxes (\$1K/unit) than comparable LIHTC deals. G&A expenses are extremely high (also \$1K/unit) which if normalized (\$400 to \$500 per unit) would provide additional cash flow to cover the contingent interest payments.

CENTERLINE BOND RE-FUNDING REQUEST ANALYSIS
MARCH 30, 2012

As of 3Q11, Centerline has previously advanced over \$2.3 million to this property for operating deficits.

In the restructure, Centerline will reduce the total debt by \$8.9M (completely paying off the taxable bonds and reducing the tax-exempt bonds by \$8.1M). The overall interest rate on the remaining tax-exempt debt will remain at 6.6% but repayment will be split into a must-pay component at 4.75% and a contingent component at 1.85% (deferred and dependant upon cash flow). The maturity date will be accelerated to January 1, 2041 (originally January 1, 2044).

	<u>Current</u>	<u>Modified</u>	<u>Change</u>
Series A-Tax-Exempt Principal	15,000,000	6,887,290	(8,112,710)
Interest Rate (Must-Pay)	6.60%	4.75%	-1.85%
Interest Rate (Contingent)	0.00%	1.85%	1.85%
Series B-Taxable Principal (*)	759,130	-	(759,130)
Interest Rate	8.50%	0.00%	-8.50%
Total Debt	15,759,130	6,887,290	(8,871,840)
Total Debt Service (Must-Pay)	990,000	378,206	(611,794)
Total Debt Service (All-In)	1,167,528	613,298	(554,230)
Centerline Pro Forma NOI	802,933	802,933	
DCR - Must Pay	0.81	2.12	
DCR - All-In	0.69	1.31	
TDHCA Pro Forma NOI	821,420	821,420	
DCR - Must Pay	0.83	2.17	
DCR - All-In	0.70	1.34	

(*) Originally \$1.3M reduced through sinking fund payments

CENTERLINE BOND RE-FUNDING REQUEST ANALYSIS
MARCH 30, 2012

Timber Oaks, TDHCA #12602

Timber Oaks Apartments is a 264-unit, +/- 249,800 square foot multifamily apartment community on 15.4 acres in Grand Prairie, Tarrant County, Texas. 100% of the units are set aside for people earning 60% or less of the area median income.



The development consists of 11 three-story garden-style apartment buildings in addition to a community building and offers an extensive in unit and common area amenity package. Timber Oaks consists of one bedroom, one bath; two bedroom, one bath; two bedroom, two bath; and three bedroom two, bath units.

The bonds were originally issued on July 29, 2003 for \$10,900,000 (Series A, tax-exempt) and \$2,300,000 Series B, taxable). The required stabilization date was September 30, 2006, which did not occur.

At original underwriting in 2003, TDHCA's stabilized net operating income ("NOI") was \$1M and the DCR on the bonds as structured was 1.10 times (acceptable per REA rules in 2003). The owner's application projections were slightly higher indicating a DCR of 1.14 times. Actual NOI for YE 2011 of \$936K is consistent with both the owner's and REA's pro forma.

Although 10 years later, actual rents are slightly lower than rents at the original underwriting (indicative of minimal growth in maximum LIHTC rents but increases to utility allowances). Timber Oaks is 100% at 60% Income and 50% rent restricted. With the exception of the 854 s.f. 2BR units, the Applicant's projected rents are higher (\$9-\$12) than current 2012 max 50% rents. Additionally, per the rent roll as of March 22, 2012, the units are currently collecting rents are ~\$2 to \$15 higher than the maximums. The Underwriter has utilized max 50% rents, resulting in Potential Gross Income of \$2M, or \$29K less than the Applicant's projected income. However, the Applicant has estimated a 9.8% vacancy and collection loss. The rent roll shows a current physical occupancy of 94% and the vacancy & collection loss included in the un-audited 2011 actual operating expense statement is consistent with the Department's standard 7.5% rate. Despite the discrepancies in PGI and vacancy and collection, the Applicant's Effective Gross Income is within 5% of the Underwriter's estimate.

The Applicant's total annual operating expense projection at \$3,165 per unit is not within 5% of the Underwriter's estimate of \$3,544, derived from actual operating history, the TDHCA database, and third-party data sources.

CENTERLINE BOND RE-FUNDING REQUEST ANALYSIS
MARCH 30, 2012

As of 3Q11, Centerline has previously advanced over \$1.41 million to this property for operating deficits.

In the restructure, Centerline will reduce the total debt by \$418K (no redemption on the taxable bonds and completely paying off the tax-exempt). The overall interest rate on the tax-exempt debt will remain at 6.75% but repayment will be split into a must-pay component at 4.75% and a contingent component at 2% (deferred and dependant upon cash flow). Similarly, the interest rate on the taxable bonds will be reduced to 4.75% from 8.75%, with the remaining 4.00% deferred as contingent interest payable out of operating cash flow. The maturity date will be accelerated to March 1, 2027 (originally January 1, 2025).

	<u>Current</u>	<u>Modified</u>	<u>Change</u>
Series A-Tax-Exempt Principal	10,900,000	10,900,000	-
Interest Rate (Must-Pay)	6.75%	4.75%	-2.00%
Interest Rate (Contingent)	0.00%	2.00%	2.00%
Series B-Taxable Principal (*)	418,636	-	(418,636)
Interest Rate	8.75%	0.00%	-8.75%
Total Debt	11,318,636	10,900,000	(418,636)
Total Debt Service (Must-Pay)	898,102	592,904	(305,198)
Total Debt Service (All-In)	960,958	695,241	(265,717)
Centerline Pro Forma NOI	996,447	996,447	
DCR - Must Pay	1.11	1.68	
DCR - All-In	1.04	1.43	
TDHCA Pro Forma NOI	938,543	938,543	
DCR - Must Pay	1.05	1.58	
DCR - All-In	0.98	1.35	

(*) Originally \$2.3M reduced through sinking fund payments

CENTERLINE BOND RE-FUNDING REQUEST ANALYSIS
MARCH 30, 2012

Conclusion/Recommendation:

The principal reduction and modification to the interest payment structure produces debt coverage ratios on the must-pay debt within current REA guidelines. As a result, the long-term viability of the deals is greatly improved and potential on-going deficit funding by Centerline is significantly reduced.

The Underwriter recommends approval of the requests.

UNIT MIX/RENT SCHEDULE
Timber Oaks, Grand Prairie, #12602

LOCATION DATA	
CITY:	Grand Prairie
COUNTY:	Tarrant
PROGRAM REGION:	3
RURAL RENT USED:	No
IREM REGION:	

UNIT DISTRIBUTION		
# Beds	# Units	% Total
Eff		
1	72	27.3%
2	144	54.5%
3	48	18.2%
4		
TOTAL	264	100.0%

Applicable Programs
MRB

PROFORMA ASSUMPTIONS	
REVENUE GROWTH:	2.00%
EXPENSE GROWTH:	3.00%
HIGH COST ADJUSTMENT:	
APPLICABLE FRACTION:	100.00%
APP % - ACQUISITION:	
APP % - CONSTRUCTION:	
AVERAGE SF	946

UNIT MIX / MONTHLY RENT SCHEDULE																			
UNIT DESCRIPTION						PROGRAM RENT LIMITS			APPLICANT'S PROFORMA RENTS				TDHCA PROFORMA 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%	\$632	72	1	1	747	\$632	\$106	\$526	\$9	\$0.72	\$535	\$38,520	\$37,872	\$526	\$0.70	\$0	\$528	0.71	\$2
TC60%	\$758	24	2	1	854	\$758	\$119	\$639	(\$9)	\$0.74	\$630	\$15,120	\$15,132	\$631	\$0.74	(\$9)	\$631	0.74	\$0
TC60%	\$758	120	2	2	1,000	\$758	\$119	\$639	\$10	\$0.65	\$649	\$77,880	\$76,680	\$639	\$0.64	\$0	\$654	0.65	\$15
TC60%	\$876	48	3	2	1,158	\$876	\$134	\$742	\$12	\$0.65	\$754	\$36,192	\$35,616	\$742	\$0.64	\$0	\$747	0.64	\$5
TOTALS/AVERAGE		264			249,864				\$8	\$0.67	\$635	\$167,712	\$165,300	\$626	\$0.66	(\$1)	\$634	\$0.67	\$8

ANNUAL POTENTIAL GROSS RENT: #####

STABILIZED PROFORMA

Timber Oaks, Grand Prairie, #12602

STABILIZED FIRST YEAR PROFORMA												
	COMPARABLES		APPLICANT				TDHCA				VARIANCE	
	Database	Un-Audited 2011	% EGI	Per SF	Per Unit	Amount	Amount	Per Unit	Per SF	% EGI	%	\$
POTENTIAL GROSS RENT		\$0		\$0.67	\$635	\$2,012,544	\$1,983,600	\$626	\$0.66		-1.5%	(\$28,944)
Fees		\$0			\$9.75	\$30,900					0.0%	(30,900)
Misc. Other Income		\$0			\$0.38	\$1,200					0.0%	(1,200)
Parking Laundry Income		\$0			\$3.13	\$9,900					0.0%	(9,900)
Underwriter's Total Secondary Income		\$0					\$42,000	\$13.26			100.0%	42,000
POTENTIAL GROSS INCOME		\$0				\$2,054,544	\$2,025,600				-1.4%	(\$28,944)
Vacancy & Collection Loss		(\$185,118)			9.8% PGI	(201,449)	(151,920)	7.5% PGI			-32.6%	49,529
Non-Rental Units/Concessions		(\$25,708)				(20,000)					0.0%	20,000
EFFECTIVE GROSS INCOME		\$1,909,236				\$1,833,095	\$1,873,680				2.2%	\$40,585

General & Administrative	\$96,094	\$364/Unit	\$116,776	7.14%	\$0.52	\$496	\$130,948	\$116,776	\$442	\$0.47	6.23%	12.1%	14,172
Management	\$89,431	4.7% EGI	94,598	4.53%	\$0.33	\$314	\$83,015	\$93,684	\$355	\$0.37	5.00%	-11.4%	(10,669)
Payroll & Payroll Tax	\$275,124	\$1,042/Unit	247,844	12.09%	\$0.89	\$840	\$221,633	\$247,844	\$939	\$0.99	13.23%	-10.6%	(26,211)
Repairs & Maintenance	\$154,950	\$587/Unit	48,445	4.09%	\$0.30	\$284	\$74,964	\$48,445	\$184	\$0.19	2.59%	54.7%	26,519
Utilities	\$97,099	\$368/Unit	65,005	3.14%	\$0.23	\$218	57,508	\$65,005	\$246	\$0.26	3.47%	-11.5%	(7,497)
Water, Sewer, & Trash	\$145,014	\$549/Unit	208,148	10.15%	\$0.74	\$705	186,129	\$208,148	\$788	\$0.83	11.11%	-10.6%	(22,019)
Property Insurance	\$57,141	\$0.23 /sf	73,968	2.02%	\$0.15	\$140	\$37,075	\$60,306	\$228	\$0.24	3.22%	-38.5%	(23,231)
Property Tax	N/A	\$187,325	\$710/Unit	123	0.01%	\$0.00	\$1	\$200	\$0	\$0.00	0.00%	0.0%	200
Reserve for Replacements	\$74,670	\$283/Unit	105,221	0.00%	\$0.00	\$0	\$0	\$79,200	\$300	\$0.32	4.23%	-100.0%	(79,200)
TDHCA Compliance Fees			12,491	2.16%	\$0.16	\$150	\$39,600	\$10,560	\$40	\$0.04	0.56%	275.0%	29,040
Security			-	0.21%	\$0.02	\$14	\$3,786	\$3,786	\$14	\$0.02	0.20%	0.0%	-
Unidentified "Other" from R&M			-	0.10%	\$0.01	\$7	\$1,790	\$1,790	\$7	\$0.01	0.10%	0.0%	-
TOTAL EXPENSES			\$ 972,618	45.64%	\$3.35	\$3,169	\$836,648	\$ 935,543	\$3,544	\$3.74	49.93%	-10.6%	\$ (98,895)
NET OPERATING INCOME ("NOI")			\$ 936,618	54.36%	\$3.99	\$3,774	\$996,447	\$938,137	\$3,554	\$3.75	50.07%	6.2%	\$58,310

CONTROLLABLE EXPENSES	\$2,910/Unit	\$2,599/Unit		\$2,542/Unit		\$2,599/Unit
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LONG TERM OPERATING PROFORMA												
	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	\$1,873,680	\$1,911,154	\$1,949,377	\$1,988,364	\$2,028,131	\$2,239,221	\$2,472,281	\$2,729,598	\$3,013,697	\$3,327,365	\$3,673,679	\$4,056,039
LESS: TOTAL EXPENSES	935,543	962,673	990,597	1,019,341	1,048,927	1,210,396	1,397,002	1,612,685	1,862,011	2,150,265	2,483,564	2,868,993
NET OPERATING INCOME	\$938,137	\$948,481	\$958,779	\$969,024	\$979,205	\$1,028,825	\$1,075,279	\$1,116,913	\$1,151,685	\$1,177,100	\$1,190,116	\$1,187,046
LESS: DEBT SERVICE	695,241	695,241	695,241	695,241	695,241	695,241	695,241	695,241	695,241	695,241	695,241	695,241
NET CASH FLOW	\$242,896	\$253,240	\$263,538	\$273,783	\$283,964	\$333,584	\$380,038	\$421,672	\$456,444	\$481,859	\$494,875	\$491,805
CUMULATIVE NET CASH FLOW	\$242,896	\$496,136	\$759,674	\$1,033,457	\$1,317,421	\$2,887,078	\$4,695,932	\$6,723,330	\$8,939,214	\$11,301,988	\$13,755,975	\$16,228,404
DEFERRED DEVELOPER FEE BALANCE	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
DCR ON UNDERWRITTEN DEBT (Must-Pay)	1.35	1.36	1.38	1.39	1.41	1.48	1.55	1.61	1.66	1.69	1.71	1.71
EXPENSE/EGI RATIO	49.93%	50.37%	50.82%	51.27%	51.72%	54.05%	56.51%	59.08%	61.78%	64.62%	67.60%	70.73%

**TEXAS DEPARTMENT of HOUSING and COMMUNITY AFFAIRS
MULTIFAMILY UNDERWRITING ANALYSIS**

DATE: June 17, 2003 PROGRAM: 4% LIHTC FILE NUMBER: 03406
 MRB 2003-058

DEVELOPMENT NAME

Timber Oaks Apartments

APPLICANT

Name: OHC/GP I, Ltd. Type: For Profit
 Address: 16200 Dallas Parkway, Suite 190 City: Dallas State: TX
 Zip: 75248 Contact: Richard Shaw Phone: (972) 733-0096 Fax: (972) 733-1864

PRINCIPALS of the APPLICANT/ KEY PARTICIPANTS

Name:	<u>Outreach Housing Corporation</u>	(%):	<u>.05</u>	Title:	<u>Managing General Partner</u>
Name:	<u>Colonial Equities, Inc.</u>	(%):	<u>.05</u>	Title:	<u>Co-General Partner</u>
Name:	<u>Richard C. Ruschman</u>	(%):	<u>N/A</u>	Title:	<u>President of MGP</u>
Name:	<u>Richard Shaw</u>	(%):	<u>N/A</u>	Title:	<u>49% owner of Colonial Equities, Inc.</u>

PROPERTY LOCATION

Location: 700 Timber Oaks Lane QCT DDA
 City: Grand Prairie County: Tarrant Zip: 75051

REQUEST

<u>Amount</u>	<u>Interest Rate</u>	<u>Amortization</u>	<u>Term</u>
1) \$646,854	N/A	N/A	N/A
2) \$10,900,000	6.75%	40 yrs	40 yrs
3) \$2,300,00	6.75%	40 yrs	40 yrs

Other Requested Terms: 1) Annual ten-year allocation of low-income housing tax credits
 2) Tax-Exempt bonds
 3) Taxable bonds

Proposed Use of Funds: New Construction Property Type: Multifamily

Set-Aside(s): General Rural TX RD Non-Profit Elderly At Risk

RECOMMENDATION

- RECOMMEND APPROVAL OF AN LIHTC ALLOCATION NOT TO EXCEED \$640,007 ANNUALLY FOR TEN YEARS, SUBJECT TO CONDITIONS:
- RECOMMEND APPROVAL OF A TAX-EXEMPT BOND AMOUNT OF NOT MORE THAN \$10,900,000 AND A TAXABLE BOND AMOUNT OF NOT MORE THAN \$2,300,000, AT THE TERMS AND RATES REQUESTED WITH THE POSSIBLE REDEMPTION OF \$1,471,435, SUBJECT TO CONDITIONS:

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CONDITIONS

- Should the terms or rates of the proposed debt or syndication change, the transaction should be re-evaluated.

REVIEW of PREVIOUS UNDERWRITING REPORTS

No previous reports.

DEVELOPMENT SPECIFICATIONS

IMPROVEMENTS

Total Units: 264 **# Rental Buildings:** 11 **# Common Area Bldgs:** 1 **# of Floors:** 3 **Age:** N/A yrs

Net Rentable SF: 250,368 **Av Un SF:** 948 **Common Area SF:** 3,090 **Gross Bldg SF:** 253,458

STRUCTURAL MATERIALS

Wood frame on a post-tensioned concrete slab on grade, 60% masonry/brick veneer/40% Hardiplank siding exterior wall covering with wood trim, drywall interior wall surfaces, composite shingle roofing.

APPLIANCES AND INTERIOR FEATURES

Carpeting & vinyl flooring, range & oven, hood & fan, garbage disposal, dishwasher, refrigerator, microwave oven, fiberglass tub/shower, washer & dryer connections, ceiling fans, laminated counter tops, individual water heaters.

ON-SITE AMENITIES

A 3,090 square foot community building with activity room, management offices, fitness facilities, kitchen, restrooms, computer center and central mailroom; swimming pool and equipped children's play area are located at the entrance to the property. In addition a sports courts and perimeter fencing are also planned for the site.

Uncovered Parking: 550 spaces **Carpports:** N/A spaces **Garages:** N/A spaces

PROPOSAL and DEVELOPMENT PLAN DESCRIPTION

Description: Timber Oaks is a relatively dense 14.2 units per acre new construction development of 264 units of affordable housing located in Grand Prairie. The development is comprised of 11 evenly distributed large garden style walk-up residential buildings as follows:

- (I) Building Type A with twelve one-bedroom/ one-bath units and twelve three-bedroom/ two-bath units;
- (II) Building Type B with twenty-four two-bedroom/ two-bath units;
- (III) Building Type C with twelve one-bedroom/ one-bath units and twelve two- bedroom/ one-bath units;

Architectural Review: The exterior elevations are functional with varied rooflines. All units are of average size for LIHTC units. Each unit will have a semi-private entry that is off of a breezeway and shared with three other units.

Supportive Services: The Applicant has indicated that Outreach Housing Corporation will provide supportive services to the tenants. A contract between the Applicant and Outreach Housing Corporation was not provided, however, the Applicant budgeted \$5,000 in annual supportive services expenses.

Schedule: The Applicant anticipates construction to begin in July of 2003, to be completed in September of 2004, to be placed in service and substantially leased-up in December of 2004.

SITE ISSUES

SITE DESCRIPTION

Size: 15 acres 653,400 square feet **Zoning/ Permitted Uses:** HD

Flood Zone Designation: Zone X **Status of Off-Sites:** Partially Improved

SITE and NEIGHBORHOOD CHARACTERISTICS

Location: Grand Prairie is located in the Dallas/Fort Worth Metropolitan Area in Tarrant County. The site

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is an irregularly-shaped parcel located in the southwest area of Grand Prairie, within close proximity to the central business district. The site is situated on the southwest corner of Timber Oaks Lane and Osler Drive.

Adjacent Land Uses:

- **North:** vacant land, medical offices
- **South:** elementary school
- **East:** Dallas-Fort Worth Medical Center-Grand Prairie
- **West:** single-family residential

Site Access: “The subject site has good proximity to IH-20, IH-30 and SH-360...SH-360 is a six lane, divided, limited access freeway that intersects with IH-30 and SH-183/SH-121 to the north and leads to D/FW International Airport.” (p. 27)

Public Transportation: The availability of public transportation is unknown.

Shopping & Services: “The subject has excellent proximity to shopping. Six Flags Mall is located at the northeast corner of SH-360 and Division Street, two blocks north of the subject...There are numerous restaurants located in proximity to these malls and throughout the neighborhood.” (p. 27)

Special Adverse Site Characteristics:

- **Zoning:** A zoning verification letter from the City of Grand Prairie dated April 8, 2003 states that the property is zoned for Multi-Family-2 use.

Site Inspection Findings: TDHCA staff performed a site inspection on May 14, 2003 and found the location to be acceptable for the proposed development.

HIGHLIGHTS of SOILS & HAZARDOUS MATERIALS REPORT(S)

A Phase I Environmental Site Assessment report dated April 8, 2003 was prepared by Lark & Associates and contained the following findings and recommendations:

“Our firm has concluded that this site has been found to have no current environmental concerns. Based upon this report and other evaluations of this site our firm does rank this property as **LOW RISK**. Our firm does consider that no further environmental investigation is necessary at this time.” (p. 5)

POPULATIONS TARGETED

Income Set-Aside: The Applicant has elected the 20% at 50% or less of area median gross income (AMGI) set-aside. As a Priority 1 private activity bond lottery project, 100% of the units must have rents restricted to be affordable to households at or below 50% of AMGI, though all of the units may lease to residents earning up to 60% of the AMFI. The Underwriter confirmed with the Applicant the selection of the 20% at 50% set-aside which will unnecessarily limit the income band of eligible residents for this property.

MAXIMUM ELIGIBLE INCOMES						
	1 Person	2 Persons	3 Persons	4 Persons	5 Persons	6 Persons
60% of AMI	\$25,740	\$29,400	\$33,120	\$36,780	\$39,720	\$42,660

MARKET HIGHLIGHTS

A market feasibility study dated April 25, 2003 was prepared by Jack Poe Company Incorporated and highlighted the following findings:

Definition of Market/Submarket: “...the primary market area is concluded to be a five mile radius from the subject site, which includes the majority of the cities of Grand Prairie and Arlington.” (p. 27)

Population: The estimated 2001 population of the PMA was 280,049 and is expected to increase by 7% to approximately 299,820 by 2006. Within the primary market area there were estimated to be 107,309 households in 2006. The defined market area exceeds the population guideline in the Department’s rules by 30,049 or 12%. A 12% decrease in estimated demand will have a negligible effect on capture rate in this instance.

Total Local/Submarket Demand for Rental Units: “There is significant inventory of LIHTC units in the

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Primary Market Area, and each development is benefiting from good demand. The population of the primary market is growing and demand for LIHTC units is increasing.” (p. 59)

ANNUAL INCOME-ELIGIBLE SUBMARKET DEMAND SUMMARY				
Type of Demand	Market Analyst		Underwriter	
	Units of Demand	% of Total Demand	Units of Demand	% of Total Demand
Household Growth	322	2%	318	2%
Resident Turnover	15,569	98%	15,350	98%
Other Sources: 10 yrs pent-up demand	N/A	N/A	N/A	N/A
TOTAL ANNUAL DEMAND	15,891	100%	15,668	100%

Ref: p. 55

Inclusive Capture Rate: The Underwriter calculated an inclusive capture rate of 2% based upon a revised supply of unstabilized comparable affordable units of 264 divided by a revised demand of 15,668. The Market Analyst calculated an inclusive capture rate of 7.9% based upon a supply of unstabilized comparable affordable units of 1,258, which consists of the subject property plus 6 developments that are applying for tax credits in the 2003 application cycle. Of the list that the Market Analyst provided, the only developments currently being underwritten for the 2003 application cycle are Oak Timbers (64 rent restricted units) and Apartments at Curtis Wright Field (123 rent restricted units). Both of these developments are targeting the elderly population, therefore, the Underwriter did not include the rent restricted units from these developments since they are not considered comparable to the subject property.

Market Rent Comparables: The Market Analyst surveyed 8 comparable apartment projects totaling 2,110 units in the market area. (p. 35-42)

RENT ANALYSIS (net tenant-paid rents)					
Unit Type (% AMI)	Proposed	Program Max	Differential	Market	Differential
1-Bedroom (50%)	\$522	\$522	\$0	\$575	-\$53
2-Bedroom (50%)-854	\$628	\$628	\$0	\$750	-\$122
2-Bedroom (50%)-1000	\$628	\$628	\$0	\$850	-\$222
3-Bedroom (50%)-1158	\$726	\$726	\$0	\$1,025	-\$299

(NOTE: Differentials are amount of difference between proposed rents and program limits and average market rents, e.g., proposed rent =\$500, program max =\$600, differential = -\$100)

Submarket Vacancy Rates: “Occupancy remains above 90% for each floor plan type in the primary market.” (p. 33)

Absorption Projections: “...we project that the subject will be approximately 30% occupied (79 units) once construction is completed, and that it will take approximately seven months to lease up the remaining units and reach a stabilized occupancy of 92.5%.” (p. 58)

Known Planned Development: “The North Arlington Seniors Apartments is under construction. Additionally, there are six complexes, including the subject, that are applying for tax credits in the 2003 application cycle.” (p. 33)

The Underwriter found the market study to provide sufficient information to make a funding recommendation.

OPERATING PROFORMA ANALYSIS

Income: At the time of application, the 2003 rent limits had not been released and thus the Applicant used estimated 2002 rent limits in setting rents. Based on the Applicant’s intention to charge maximum program rents, the Underwriter used the 2003 maximum rents for the Fort Worth/Arlington MSA in this analysis, which results in an increase of \$80,640 in potential gross rent. The Applicant stated that the landlord will pay water heat in this project, and rents and expenses were calculated accordingly. The Applicant utilized Tarrant County utility allowances which are \$16, \$20 and \$27 lower than the more appropriate Grand Prairie PHA

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allowances. While the property does exist in Tarrant County it lies in a part of Tarrant County which is within the City of Grand Prairie making Grand Prairie the more appropriate utility allowance to use. The utility allowance difference results in a \$64K overstatement of potential gross rent. The Applicant's estimate of secondary income is significantly higher than the \$15/unit/month maximum allowed by TDHCA underwriting guidelines. It should be noted that the Applicant included \$1,200/month for carport rental, however, the latest architectural drawings submitted do not indicate that carports will be available for the development. The Underwriter used \$24.61/unit/month for secondary income which is the TDHCA average for the DFW area. Estimates of vacancy and collection losses are in line with TDHCA underwriting guidelines.

On June 16, 2003 the Applicant contacted the Underwriter to discuss the Underwriter's use of the Grand Prairie utility allowance instead of the Tarrant County utility allowance. According to the Applicant, this transaction was structured to use Tarrant County rents and utility allowances. However, since the Underwriter will utilize the Grand Prairie utility allowances, the Applicant indicated that Dallas rents should be used since these allowances are significantly higher for the Dallas County area. The Underwriter contacted Veronica with the Grand Prairie Housing and Neighborhood Services to ask which utility allowance is used for developments in Grand Prairie. Veronica confirmed that the Grand Prairie allowances should be used for any development that is considered to be located in Grand Prairie. She also indicated that utility allowances used to be broken out between Tarrant County and Grand Prairie but this is no longer in practice. She further indicated that the payment standard for all Grand Prairie is based on Dallas County, not Tarrant County. Based on these discussions and discussions with our Compliance department, the Underwriter will continue to utilize the Grand Prairie utility allowances and will also use the Dallas MSA maximum tax credit rents for purposes of this analysis. A copy of the Dallas County Voucher Rent Limits based on estimated utility allowances was faxed to the Underwriter. It should be noted that the maximum net Dallas MSA 50% rents are less than the payment standards for Dallas County with the exception of the one-bedroom units. The one-bedroom maximum LIHTC rent is \$34 more than the payment standard for Dallas County while the two and three-bedroom rents are \$15 and \$201 less than the payment standard, respectively. Thus, using the Dallas MSA maximum rents results in \$101,088 more in rental income for the Applicant than originally estimated.

Expenses: The Applicant's total expense estimate of \$2,994 per unit is more than 5% lower than a TDHCA database-derived estimate of \$3,697 per unit for comparably-sized developments with normal tax credit property taxes. The Applicant's budget shows several line item estimates, however, that deviate significantly when compared to the database averages, particularly general and administrative (\$59K lower), payroll (\$52K lower), repairs and maintenance (\$10K higher), utilities (\$39K lower), water, sewer, and trash (\$26K lower), insurance (\$12K higher) and property tax (\$27K lower). The Underwriter discussed these differences with the Applicant but was unable to reconcile them even with additional information provided by the Applicant. It should be noted that the Applicant indicated that the development is eligible for a tax exemption and have projected their annual property taxes at the 25% pilot rate and has since indicated he would comply with the new legislation regarding property tax exemptions if required. Receipt, review and acceptance of a final PILOT, if applicable, by cost certification is a condition of this report.

Conclusion: The Applicant's total estimated operating expense is inconsistent with the Underwriter's expectations and the Applicant's net operating income is not within 5% of the Underwriter's estimate. Therefore, the Underwriter's NOI will be used to evaluate debt service capacity. Due primarily to the difference in operating expenses, the Underwriter's estimated bonds-only debt coverage ratio (DCR) of 1.03 is less than the program minimum standard of 1.10. This suggests that the Applicant's debt service should be limited by a reduction of the bond-financed permanent loan amount. Based on the information provided by the Applicant, the maximum bond-financed permanent loan debt service for this project may be limited to \$920,404. This would result in a mandatory redemption of the amount of taxable bonds proposed by \$828,565 based on the proposed financing structure.

ACQUISITION VALUATION INFORMATION				
APPRAISED VALUE				
Land Only: 15.00 acres	\$924,000	Date of Valuation:	04/	25/ 2003

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Existing Building(s): "as is"	<u>N/A</u>	Date of Valuation:	<u> / /</u>
Total Development: "as is"	<u>N/A</u>	Date of Valuation:	<u> / /</u>
Appraiser: <u>Jack Poe Company</u>	City: <u>Dallas</u>	Phone:	<u>(214) 720-9898</u>

APPRAISED ANALYSIS/CONCLUSIONS

Analysis: The appraiser concludes that the maximally productive and highest and best use of this property, as vacant, is to develop it with a low income rental housing development such as that one that is proposed. The appraiser's estimated land value is based on four comparable land sales within the same area as the subject property. Land sales ranged in price per square foot from \$1.17 to \$1.89. Adjustments to the comparable land sales were made based on variables that generally affect the value of vacant land such as terms of sale, date of sale, location, size, use (zoning), availability of utilities and topography. Based on the information presented, the estimated land value of the subject property is \$1.41 per square foot.

Conclusion: Based on the information presented, the appraiser's estimate of the property's value, "As Is", appears to be a reliable estimate.

ASSESSED VALUE

Land: 18.5769 acres	<u>\$364,146</u>	Assessment for the Year of:	<u>2002</u>
Land (prorated per acre):	<u>\$19,602</u>	Valuation by:	<u>Tarrant County Appraisal District</u>
Total Assessed Value (15 acres):	<u>\$294,030</u>	Tax Rate:	<u>2.38</u>

EVIDENCE of SITE or PROPERTY CONTROL

Type of Site Control:	<u>Contract to Purchase Real Estate</u>						
Contract Expiration Date:	<u>08/</u>	<u>10/</u>	<u>2003</u>	Anticipated Closing Date:	<u>08/</u>	<u>10/</u>	<u>2003</u>
Acquisition Cost:	<u>\$924,000</u>			Other Terms/Conditions:	<u></u>		
Seller:	<u>Schwartz Charitable Remainder Trust</u>			Related to Development Team Member:	<u>Yes</u>		

CONSTRUCTION COST ESTIMATE EVALUATION

Acquisition Value: The total acquisition costs consists entirely of the contract purchase price of \$924,000 (\$61,600/acre) as stated in contract. The Appraisal value of the land is also \$924,000 while the tax assessed value of the property is \$294,030. The 15 acre site is part of a larger 18.577 acre site that, according to the appraisal, is to be subdivided. The remaining 3.5 acres that are being purchased will be deeded back to the seller after closing of the contract. Additionally, the information in the application identifies the owner of the Applicant, Richard Shaw, as being a joint venture partner in the land, thus creating an identity of interest land sale. The Underwriter verified this fact with the Applicant and the Applicant confirmed that he was a joint venture partner in the land. According to Mr. Shaw, the subject property is part of a larger parcel of land that he has helped to develop, thus making him a joint venture partner in the land. He indicated, however, that the land is not in his name and that he does not have an ownership interest in the subject property. The Underwriter requested additional documentation providing the original acquisition cost and any holding costs associated with the subject property. The Applicant responded with a letter dated June 2, 2003 in which it states:

"Please let this letter serve as notification that I do not have an ownership interest in the Grand Prairie, Texas property. Three years ago I was partner in the Partnership that sold the property to the Schwartz Charitable Remainder Trust. The information inserted in our application stating that I was a Joint Venture Partner in the land was done so in error. I have not had an ownership interest in this property for three years." The Applicant provided no further documentation of acquisition and holding costs.

The Underwriter allowed the entire site acquisition cost for purposes of this analysis.

Sitework Cost: The Applicant's claimed sitework costs of \$4,872 per unit are considered reasonable compared to historical sitework costs for multifamily projects.

Direct Construction Cost: The Applicant's direct construction cost estimate is \$259K or 2.5% lower than

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the Underwriter's Marshall & Swift *Residential Cost Handbook*-derived estimate, and is therefore regarded as reasonable as submitted.

Ineligible Costs: The Applicant incorrectly included \$35,000 for carports and garages which were taken out of direct costs since the Applicant has indicated that they will be rented and used as a source of additional secondary income. It should be noted, however, that the latest architectural drawings submitted do not indicate that carports will be available. The Applicant also included \$300,000 in marketing as an eligible cost; the Underwriter moved this cost to ineligible costs, resulting in an equivalent reduction in the Applicant's eligible basis.

Interim Financing Fees: The Underwriter reduced the Applicant's eligible interim financing fees by \$171,807K to reflect an apparent overestimation of eligible construction loan interest, to bring the eligible interest expense down to one year of fully drawn interest expense. This results in an equivalent reduction to the Applicant's eligible basis estimate. The Underwriter reduced the Applicant's interim financing fees by \$83K to reflect the net effect of the Applicant's projection of \$83K in income from a guaranteed investment contract, which results in an equivalent reduction in eligible basis.

Fees: The Applicant's contractor's and developer's fees for general requirements, general and administrative expenses, and profit are all within the maximums allowed by TDHCA guidelines.

Conclusion: The Applicant's total development cost estimate is within 5% of the Underwriter's verifiable estimate and is therefore generally acceptable. Since the Underwriter has been able to verify the Applicant's projected costs to a reasonable margin, the Applicant's total cost breakdown, as adjusted, is used to calculate eligible basis and determine the LIHTC allocation. As a result an eligible basis of \$17,631,054 is used to determine a credit allocation of \$640,007 from this method. The resulting syndication proceeds will be used to compare to the gap of need using the Applicant's costs to determine the recommended credit amount.

FINANCING STRUCTURE

INTERIM TO PERMANENT FINANCING

Source: CharterMac **Contact:** Marnie Miller
Principal Amount: \$13,200,000 **Interest Rate:** 6.75% (tax-exempt bonds); 8.75% (taxable bonds)
Additional Information: \$10,900,000- tax exempt bonds
 \$2,300,000- taxable bonds
Amortization: 40 yrs **Term:** _____ yrs **Commitment:** LOI Firm Conditional
Annual Payment: \$ **Lien Priority:** 1st **Commitment Date** 05/ 07/ 2003

LIHTC SYNDICATION

Source: Related Capital Company **Contact:** Justin Ginsberg
Address: 625 Madison Avenue **City:** New York
State: NY **Zip:** 10022 **Phone:** (212) 421-5333 **Fax:** (212) 751-3550
Net Proceeds: \$4,856,000 **Net Syndication Rate (per \$1.00 of 10-yr LIHTC)** 80¢
Commitment LOI Firm Conditional **Date:** 05/ 15/ 2003
Additional Information: _____

APPLICANT EQUITY

Amount: \$1,072,715 **Source:** Deferred Developer Fee

FINANCING STRUCTURE ANALYSIS

The Applicant intends to finance the development with three types of financing from four sources: a bond financed interim to permanent loan, syndicated LIHTC equity, and deferred developer's fees.

Bonds: Charter Mac has offered to provide interim to permanent financing in the amount of \$10,900,000 in tax-exempt bonds and \$2,300,000 in taxable bonds. The commitment letter indicates that the tax-exempt bonds and taxable bonds shall mature 40 years and 20 years, respectively. The interest rate on the tax-exempt

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bonds will be set at 6.75% and 8.75% for the taxable bonds. The Underwriter used a blended interest rate of 6.98%.

LIHTC Syndication: Related Capital Company has offered terms for syndication of the tax credits. The commitment letter shows net proceeds are anticipated to be \$4,856,000 based on a syndication factor of 80%.

Deferred Developer's Fees: The Applicant's proposed deferred developer's fees of \$1,072,715 amount to 52% of the total fees.

Financing Conclusions: As described earlier, the Underwriter's proforma indicates that the development would not be able to support the proposed bond-financed permanent loan amount at a debt coverage ratio that is within the allowable LIHTC guidelines. Therefore, the maximum bond-financed permanent loan debt service for the loan should \$920,404 by a reduction of the taxable bonds. This would result in a mandatory redemption of the proposed taxable bond amount by \$828,565 in order to meet the minimum DCR of 1.10. Since the lenders standard is 1.20 this redemption could actually be slightly higher. Since the Applicant's costs were within 5% of the Underwriter's estimate, the Applicant's total cost breakdown, as adjusted, was used to calculate eligible basis and determine the tax credit allocation. Therefore, the Applicant's adjusted eligible basis determines a LIHTC allocation of \$640,007 annually for ten years, resulting in total syndication proceeds of \$5,118,778. Based on the Underwriter's analysis, the Applicant's deferred developer fee would be increased to \$1,638,648 or 80% of the total fees, which appears to be repayable from development cash flow within 10 years.

If the Applicant were able to secure a 100% property tax exemption for this development, the resulting bonds-only debt coverage ratio of 1.19 would fall within the acceptable TDHCA underwriting guidelines, thus allowing the development to fully service the bond financed permanent loan without a reduction in either the taxable or tax-exempt portions. Additionally the Applicant's deferred developer fee would be reduced to \$810,083, which is repayable from development cash flow by year 10.

DEVELOPMENT TEAM

IDENTITIES of INTEREST

The Applicant, Developer, General Contractor and Property Management firms are all related entities. These are common relationships for LIHTC-funded developments.

APPLICANT'S/PRINCIPALS' FINANCIAL HIGHLIGHTS, BACKGROUND, and EXPERIENCE

Financial Highlights:

- The Applicant and General Partner are single-purpose entities created for the purpose of receiving assistance from TDHCA and therefore have no material financial statements.
- The Developer, Colonial Equities, Inc., submitted an unaudited financial statement as of March 28, 2003 reporting total assets of \$17.5M and consisting of \$943K in cash, \$4M in receivables, \$12M in real property, and \$375K in business interests. Liabilities totaled \$350K, resulting in a net worth of \$17.1M.
- The General Partner, Outreach Housing Corporation, submitted an unaudited financial statement as of March 28, 2003 reporting total assets of \$8.8M and consisting of \$460K in cash, \$5.3M in accounts and notes receivables, \$3M in real property, and \$74K in office fixtures. Liabilities totaled \$750K, resulting in a net worth of \$8M.
- The principal of the Applicant and Developer, Richard Shaw, submitted an unaudited financial statement as of March 28, 2003.

Background & Experience:

- The Applicant and General Partner are new entities formed for the purpose of developing the project.
- The General Partner and Developer have completed six LIHTC and affordable housing developments totaling 1,520 units since 1995.

SUMMARY OF SALIENT RISKS AND ISSUES

- The Applicant's operating expenses is more than 5% outside of the Underwriter's verifiable range.
- The significant financing structure changes being proposed have not been reviewed/accepted by the Applicant, lenders, and syndicators, and acceptable alternative structures may exist.

TEXAS DEPARTMENT of HOUSING and COMMUNITY AFFAIRS
MULTIFAMILY UNDERWRITING ANALYSIS

Underwriter:

Raquel Morales

Date: June 17, 2003

Director of Real Estate Analysis:

Tom Gouris

Date: June 17, 2003

7b

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION

April 12, 2012

Presentation, Discussion, and Possible Waiver of Ineligibility for Applications in the 2012 Competitive Housing Tax Credit Cycle

Recommended Action

Deny requested waivers because the Applicant has not provided clear support for why the waiver is necessary to carry out a purpose set out in Chapter 2306, Texas Government Code.

WHEREAS, an application for tax credits was submitted for Barron's Branch (#12066); and

WHEREAS, after the application deadline and without a notice of administrative deficiency by the Department the applicant disclosed that the proposed Development does not meet the Department's unit mix requirements; and

WHEREAS, the applicant requested that the Department waive the unit mix requirement to allow more three bedroom units than allowed by 10 TAC §50.4(d)(7); and

WHEREAS, the applicant indicates that the waivers will fulfill the purpose and policies of Chapter 2306 by providing for the housing needs of individuals and families, providing for the preservation of affordable housing, and assisting local governments; and

WHEREAS, the staff has not identified specific reasons why the waiver is needed to address a requirement or purpose set out in Chapter 2306, Texas Government Code; and

WHEREAS, the waiver is not necessary to meet the requirements of §50.16(a) of the QAP; therefore

It is hereby,

RESOLVED, that the request for a waiver of §50.4(d)(7) unit mix requirements for Developments proposed in a Central Business District is hereby denied.

Background

Pursuant to §50.5(d)(7) of the 2012-2013 QAP, the applicant disclosed, after submission of an application for Barron's Branch, that the proposed unit mix would exceed the 20% limitation for three bedroom units by 7% for Developments proposed in a Central Business District (CBD).

The QAP limits CBD Developments to no more than 70% one bedrooms and/or Efficiency Units, 70% two bedrooms, and 20% three bedrooms. The application proposes a unit mix which includes 60 (40%) one bedroom units, 44 (29%) two bedroom units, 40 (27%) three bedroom units, and 6 (4%) four bedroom units. The applicant states that the unit mix is necessary to serve the needs of larger families with children and to meet the goals of the City of Waco. In addition, the applicant expressed concerns that the unit mix limitations violate fair housing laws by discriminating against families.

The applicant further indicates that the approval of the waiver would further the goals of Chapter 2306 by first providing housing needs for individuals and families, preserve existing affordable housing since, and assist the City of Waco in providing housing to its residents.

The issue of granting a waiver for unit mix requirements presents several issues. First, under the provisions of 10 TAC §50.16, there would need to be a finding that the waiver was necessary to fulfill purposes or policies of Chapter 2306. While it is clear from the language of Chapter 2306 that compliance with Fair Housing is such a purpose or policy, staff does not believe that it has been established that Fair Housing would be violated without the waiver. The data that staff has independently obtained, corroborated by the applicant's own market study, shows that in the subject market the percentage of large families is actually less than the percentage of 3 bedroom units allowed by the established unit mix requirements. If the application is terminated for the non-conforming unit mix requirement, as opposed to proceeding with an approved waiver, presumably another applicant in the area that would alternatively receive the credits, would also comply with fair housing. Second, granting the waiver would provide the applicant a competitive advantage under the second tie breaker, credits per bedroom. Third, in past situations where similar waivers were sought by the Board, the Board took the position of denying the request (Champion Homes at Copperidge).

Pursuant to §50.16(b) of the QAP, any waiver must be determined necessary to fulfill the purpose and policies of Chapter 2306 of the Texas Government Code. Staff recommends denial of the waiver on the basis that the applicant has not met the burden of documenting that the waiver is necessary to fulfill the purposes or policies of Chapter 2306.

March 20, 2012

Mr. Cameron Dorsey
Director of Housing Tax Credits
Texas Department of Housing and Community Affairs
PO Box 13941
Austin, TX 78711

RE: Waiver Request for HTC Application #12066, Barron's Branch

Dear Mr. Dorsey:

Please accept this letter as a request for a waiver of ineligibility for HTC application #12066, Barron's Branch, in Waco. The application is requesting a waiver of Section 50.4(d)(7), which states that "Any Development (excluding Supportive Housing Developments) proposed in a Central Business District with more than 70% one bedrooms and/or Efficiency Units or 70% two bedrooms or more than 20% three bedrooms" is an ineligible development (see attachment A).

Overview

The proposed Barron's Branch development is located in the Central Business District/Downtown Area of the City of Waco. This development is located in a Revitalization Area and Texas Enterprise Zone. This reconstruction development is also on the site of the former Parkside Village, a family Housing Tax Credit development, which became an eyesore in the City of Waco—a property that went into decline and was vacated, was foreclosed upon by the U.S. Department of Housing and Urban Development, is now owned by the City of Waco, and will be demolished by the City of Waco.

The City of Waco released a Request for Proposals in August 2011 regarding the redevelopment of this site. The Barron's Branch Tax Credit application is a joint vision between the developer and the City of Waco. The City of Waco provided extensive input and planning into the process and this application is the product of the City of Waco's vision for redevelopment and revitalization in Downtown Waco. Downtown is the center of Waco. It is the place where people can live, work, and play. The downtown area contains both diverse neighborhoods and committed advocates. Throughout the application development process for Barron's Branch, the City of Waco, neighborhood residents, and community advocates decided what type of development would best suit this area. They concluded that Downtown Waco is not just for single individuals or small families, but is a place for all people and families of all sizes. Therefore, it is the City's vision to use this site to continue to provide housing opportunities for families, as was previously available at Parkside Village.

In order to achieve this goal, a unit mix that serves all households, small and large, requires three- and four-bedroom units. Through market research and adherence to the area's redevelopment goals, the optimal unit mix for this development was decided to be 60 1-bedroom units, 44 2-bedroom units, 40 3-bedroom units, and 6 4-bedroom units. Unfortunately, based on the language of the 2012 QAP, this unit mix is ineligible for developments located in a Central Business District due to the percentage of three-bedroom units and the addition of four-bedroom units. This application has 16 additional three- and four-bedroom units than allowed. We are requesting a waiver of this section of the QAP and ask that the Department allow the proposed unit-mix for this application.

QAP Requirements and Fair Housing

Prior to 2012, the definition of “Central Business District” did not exist nor were there unit requirements specifically for Central Business Districts. From our recollection of various workshops and meetings held on the 2012 QAP, Central Business District language was added specifically to allow for *more* flexibility in unit mixes for CBD developments—not less. In Mr. Tom Gouris’ comments to the TDHCA Board on October 4, 2011, regarding changes to the second draft of the 2012 QAP, Mr. Gouris stated “Another was to target central business districts and allow them more flexibility in their unit mix than the regular transaction, flexibility that is akin to the senior transactions” (see attachment B). While Mr. Gouris mentions that the flexibility is “akin to the senior transactions,” we believe the intent was to simply provide flexibility in unit mixes. However, the unintended consequence of the drafting of this rule change was that it ended up *requiring* CBD developments to have a much higher percentage of one- and two-bedroom units similar to senior transactions rather than simply *allowing* CBD developments to perhaps have a higher percentage of one- and two-bedroom units such as those found in senior transactions. This language actually offers less flexibility in that it prevents a CBD development from serving larger families because it limits three-bedroom units to no more than 20 percent and implies that four-bedroom units are not allowed.

We have serious concerns that the CBD unit mix limitations in the 2012 QAP have the potential to violate federal Fair Housing laws. The Fair Housing Act, amended in 1988, prohibits discrimination on the basis of familial status, meaning the presence or possible presence of children under the age of 18 in the home. By limiting the unit mix in a Central Business District to 80 percent one- and two-bedroom units, we believe there is potential to violate Fair Housing by limiting the vast majority of units to sizes that can only accommodate single persons and small households.

Fair Housing does allow one well-known waiver when it comes to familial status. A housing development may restrict occupancy to seniors (age 55 and up) if at least 80 percent of the units are set aside for and occupied by seniors. Fittingly, TDHCA requires that projects designated as senior developments have only one- and two-bedroom units. The current CBD unit mix requirements are alarmingly parallel to the senior designation. They require that at least 80 percent of CBD units be one- and two-bedrooms, and actually enable CBD developments to be 100 percent one- and two-bedroom units. This implies, if not requires, that the units be occupied by single individuals, small households, and/or seniors.

We fear that the CBD unit mix language actually discriminates against families because it is written in such a way that enables and actually forces CBD developments to have a unit mix similar to that of a qualified senior development per the Fair Housing Act. Based on “Household Size-Appropriate” defined in the TDHCA Real Estate Analysis Rules of 1.5 persons per bedroom (rounded up), one-bedroom units can house two persons and two-bedroom units can house three persons.

If using the more generous occupancy standards developed in 2001 by Frank Keating during his tenure as General Counsel for HUD that *generally* limit occupancy to two persons per bedroom, larger families are still excluded from the majority of CBD units. One-bedroom units can house two persons and two-bedroom units can house up to four persons. This formula does not take into account the age or sex of any children living in a unit. A four-person family cannot reside in a one-bedroom unit, and probably will not reside in a two-bedroom unit. In local practice, occupancy standards are often more restrictive and a four-person family with children of the opposite sex will be placed in a three bedroom apartment. Under current TDHCA rules, these families are severely limited in their ability to live in a Central Business District.

In addition to preventing discrimination, the Fair Housing Act seeks to promote equal housing opportunities for all. The City of Waco’s desire to rebuild subsidized housing in this location was also motivated by the desire to provide housing opportunities to families in areas with more opportunities for

jobs. The City is in the process of revitalizing its downtown center and affordable housing is needed so that families can have access to the increased job opportunities provided by the City's center. By restricting CBD developments to a unit mix with smaller units, TDHCA will effectively remove this site as a viable housing choice for families in the Downtown Area.

The proposed unit mix for Barron's Branch is one that enables all individuals and families to live in Downtown Waco and does not violate Fair Housing Laws. The City of Waco wants to serve families with children as well as individuals and seniors. The City wants to bring families of all sizes into the Downtown Area where they can live, work, play and shop. Larger families (families with multiple children) need three- and four-bedroom units. While we appreciate and applaud the Department's effort to provide more flexibility for developments located in a CBD, we are unsure why TDHCA decided that three-bedroom units should be limited to 20 percent. This limitation has inadvertently provided less flexibility in serving larger families. Furthermore, this requirement is in opposition to the City of Waco's own plan and vision for their Downtown Area and has the consequence of effectively preventing the City of Waco from furthering its own goals. A restriction of unit mix should be one that is determined locally and based upon the local needs and concerns. Please also note that the market study for this proposed development finds an overall capture rate of 1.6 percent based on the proposed unit mix (see attachment C). The three- and four-bedroom units have extremely low capture rates ranging from 3.3 percent to 6.8 percent.

Furtherance of TDHCA's Statutory Goals

"Provide for the housing needs of individuals and families"

The approval of this waiver would further the goals of TDHCA's enabling statute, Chapter 2306. Firstly, this is the only application in Urban Region 8 that is the only true "general" population development that does not intend to limit occupancy to seniors and where 100 percent of the units are open to individuals and families of all ages. Section 2306.001(2), states that one of the purposes of the Department is to "provide for the housing needs of individuals and families of low, very low, and extremely low income and families of moderate income" (see attachment D). With a combination of unit types, including three- and four-bedroom units, Barron's Branch has the ability to house everyone, including seniors and single persons as well as families, which is a purpose of the Department.

"The preservation of affordable housing"

Secondly, Barron's Branch furthers the goal of preserving affordable housing. Section 2306.008 states that the Department shall "support in the manner described by Subsection (b) the preservation of affordable housing for individuals with special needs, as defined by Section 2306.511, and individuals and families of low income at any location considered necessary by the department" (see attachment E). Barron's Branch is a reconstruction development in that it will be built on the site of the former Parkside Village Housing Tax Credit development. Parkside Village was a 2000 4% HTC transaction for families that had local bonds and HUD funding. The property fell into disrepair with serious health and safety hazards, was eventually vacated and foreclosed upon by HUD, and is now owned by the City of Waco. While this application did not meet the QAP definition of an At-Risk development because the development was lost through foreclosure, the Barron's Branch application will preserve the location and site of affordable housing in Waco. Barron's Branch will welcome those qualified individuals and families that were forced to relocate from Parkside Village due to health and safety hazards back to the neighborhood and into a safe, decent, and affordable home.

"Assist local governments"

Finally, Barron's Branch will further the purpose in 2306.001(1) which states that the purposes of the Department are to "assist local governments in: (A) providing essential public services for their residents; and (B) overcoming financial, social, and environmental problems" (see attachment F). As discussed above, Barron's Branch will be built on the site of the former Parkside Village HTC development, which

is now owned by the City of Waco. TDHCA made a previous investment into this site with the 2000 allocation of HTC's for a housing development that unfortunately spiraled into disrepair. We are appealing to TDHCA to adhere to the purpose in 2306.001(1) and assist this local government, the City of Waco, in providing essential housing to its residents and overcoming the financial, social, and environmental problems of a TDHCA-funded HTC development that must now be demolished.

At the March 11, 2010, TDHCA Board Meeting, Ms. Patricia Murphy, discussed the poor physical condition of Parkside Village and the issues of noncompliance that plagued the development (see attachment G). Though TDHCA sent out notices, inspected the property, and assessed penalties, Ms. Murphy confirmed that there was not much that the Department could do to improve the quality of the development for residents. Board Member Lowell A. Keig asked, "And aside from assessing penalties, what can we do to help those residents?" Ms. Murphy replied, "There's not much that our agency can do. Local code enforcement is there and it's issuing citations, so 24-hour notices. In addition, HUD is involved in the property and there may be some things that they can do, and I have a call scheduled with HUD." Then-Executive Director Michael Gerber summed up the situation by stating, "The enforcement tools that we have certainly have been enhanced, but this is a case where it's hard to shut down a property and where do those folks go. At the same time, the health and safety issues are extreme." The proposed plan and unit mix answers this question and will provide the residents somewhere to go while providing a better living environment for them.

In the end, the City of Waco issued code violation citations, repairs were not made, health and safety violations increased, the property was vacated, HUD foreclosed on the property, and currently the City of Waco controls the site. The City is now forced to pick up the pieces of a failed affordable housing development partially funded through TDHCA and must manage the financial, social, and environmental fallout. This type of decline and foreclosure was extremely detrimental to the Downtown Area and the social effect on the neighborhood has been devastating. In addition, now the City of Waco is saddled with the potential environmental problems of a vacant property and the cost of demolishing and clearing the site. However, rather than the City becoming discouraged with the Housing Tax Credit program, it believes in the plans that have been developed and looks forward to having the community redeveloped in a manner that is in line with its overall plans for Downtown revitalization.

Parkside Village had a significant number of three- and four-bedroom units available for larger families that have now been lost. Parkside Village had 12 1-bedroom units, 52 2-bedroom units, 120 3-bedroom units, and 16 4-bedroom units. The City of Waco needs the immediate replacement of this lost housing including three- and four-bedroom units and Barron's Branch will help attract these families back to Downtown Waco.

Tie Breaker Concerns

Though the unit mix in this application was developed in response to the neighborhood's needs and with respect to the former Parkside Village development where 68 percent of the units had more than two bedrooms, we understand that the presence of multiple-unit bedrooms has implications on the 2012 HTC Tie Breaker factors. The second tie breaker examines the following: "The amount of requested tax credits per person assisted calculated at 1.5 persons per Bedroom (Efficiency Units will be considered to have one Bedroom for the purposes of this provision) as of the date of Application submission. The lower credits per Bedroom will win this second tie breaker" (see attachment H).

In the event that this application is competitive and tied with other applications, an option for the Department would be to limit the calculations used in the Tie Breaker to the CBD unit mix required in the QAP at the time of application submission. The proposed Barron's Branch unit mix includes 150 total units: 60 one-bedroom (40%), 44 two-bedroom (29.3%), 40 three-bedroom (26.7%), and 6 four-bedroom (4%). The current QAP requirements limit one-bedroom units to 70 percent, two-bedroom units to 70

percent, and three-bedroom units to 20 percent. Our proposed unit mix has an additional 10 three-bedroom units and 6 four-bedroom units than currently allowed by the limits. A suggestion would be to limit the three-bedroom units to the 20 percent limit and then count the remaining multiple-bedroom units as two-bedroom units for purposes of the tie breaker. This would translate to 60 one-bedroom units (40%), 60 two-bedroom units (40%) and 30 three-bedroom units (20%). A second option would be to entirely eliminate from the tie breaker calculation the three and four bedroom units that exceed the allowable percentages.

In any event, we understand and expect the Department to calculate the tie breaker in a manner that is consistent and fair to all Applicants, and that a waiver for additional larger units should not result in an unfair advantage in the calculation of the tie breaker for this particular development.

Conclusion

In conclusion, Barron's Branch, HTC Application #12066, is requesting a waiver of the Central Business District unit mix limitations. We believe that there is good cause to grant this waiver in that Fair Housing concerns will be avoided, large families will have the ability to reside in a TDHCA-funded development in Downtown that advances the City of Waco's plans and goals, and TDHCA will assist a local government in reversing the financial, social, and environmental destruction of a failed affordable housing property.

Thank you for your attention to this matter and we appreciate your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Sarah Anderson".

Sarah Anderson
Principal, SDA 1305, LLC



CITY OF WACO

Housing & Community Development Services

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Waco, Texas 76702-2570
254/ 750-5656
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www.waco-texas.com

March 20, 2012

Cameron Dorsey
Director, Housing Tax Credits
Texas Department of Housing and Community Affairs
PO Box 13941
Austin, TX 78711

RE: 12066 Barron's Branch Unit Mix Waiver Request

Dear Mr. Dorsey:

The City of Waco expresses its enthusiastic support for Housing Tax Credit application 12066 Barron's Branch and the City also requests a waiver for the unit mix for this application.

Barron's Branch is a reconstruction of the former Parkside Village apartments, which was a previous affordable property funded through the U.S. Department of Housing and Urban Development (HUD) and the Texas Department of Housing and Community Affairs (TDHCA). Regrettably, this property went into decline and HUD foreclosed on the property. The City of Waco subsequently obtained the property (July 2011).

The decline and foreclosure of Parkside Village has been devastating to the community. The individuals and families who lived at the project were forced to relocate and this was a great loss of affordable housing for the Downtown Area. When the City of Waco obtained the property, we had to decide the best way to proceed with the site and what would be in the best interest of the neighborhood and Downtown Waco. After discussions with community leaders, the Planning Department, and City leaders, we released a Request for Proposals in August 2011 concerning the redevelopment of the site. We felt that the best use of this site was to keep affordable housing in the Downtown Area with a mixed-use project that offered commercial on the site.

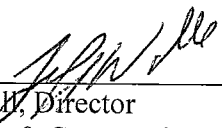
During the application development process for Barron's Branch, we worked with the developer on every aspect of the application including the unit mix that would best serve this area. We wanted all persons to have an opportunity to live in Downtown Waco, including young single persons, small households, and families with multiple children, and seniors. Out of 200 total units, 60% of the units at Parkside Village had 3 bedrooms. With such a large percentage of units available for families, this project succeeded in bringing families into the Downtown Area and closer to jobs and services. One of the additional benefits to this site is its close proximity to Dewey Park and the Dewey Park Community Center, which provide educational and recreational opportunities for the surrounding community and is utilized by many families and children in the area. We need to bring these families back to the area, which is why Barron's Branch needs a sufficient number of units with 3 and 4 bedrooms. We believe that the proposed unit mix for Barron's Branch has a good mix of units that will serve single people and seniors in the units with 1 bedroom, small households in the units with 2 bedrooms, and larger families with children in the units with 3 and 4 bedrooms. We envision a

unique living environment with people of all incomes and people of all ages living together and enjoying the benefits of Downtown Waco.

We ask TDHCA to help us with the redevelopment of the former Parkside Village apartments. The City of Waco has made and will continue to make a significant investment into this proposed development. In addition to the City's planning that has already occurred for Barron's Branch, the City has committed \$1,000,000 of its own limited resources to demolish the existing buildings on the site and make it ready for the new development. After demolition, the City will retain ownership of the underlying land through a ground lease and continue its involvement with the development. We cannot afford to have another development decline like Parkside Village and we must work quickly and adeptly to restore affordable housing in Downtown Waco that is available to all, including families with children. The developer has committed to completing this project and being ready for occupancy by December 2013. Please help us get our families back to Downtown Waco.

Thank you and please contact me with any questions.

Sincerely,



Jeff Wall, Director
Housing & Community Development Services

- accordance with the terms of the loan, as amended, or was otherwise in default with any provisions of any loans from the Department; or
- (4) the Applicant or the Development Owner that exercises common Control of one or more tax credit properties in the state of Texas has failed to cure any fees described in §50.14 of this chapter (relating to Program Related Fees) seven (7) days prior to the Board meeting at which the decision for the Application is to be made; or
 - (5) an Applicant or a Related Party and any Person who is active in the construction, Rehabilitation, ownership, or exercises common Control of the proposed Development, including a General Partner or contractor, and a Principal or Affiliate of a General Partner or contractor, or an individual employed as a consultant, lobbyist or attorney by an Applicant or a Related Party, violates §2306.1113 of the Texas Government Code relating to Ex Parte Communication as further described in §50.7 of this chapter (relating to Application Process); or
 - (6) it is determined by the Department's Executive Director that there is evidence that establishes probable cause to believe that an Applicant, Development Owner, Developer, or any of their employees or agents has violated a state revolving door or other standard of conduct or conflict of interest statute, including §2306.6733 of the Texas Government Code, or a section of Chapter 572 of the Texas Government Code, in making, advancing, or supporting the Application; or
 - (7) the Applicant, Development Owner, Developer, Guarantor, General Contractor, or any Affiliate of such entity whose previous funding contracts or commitments have been partially or fully deobligated during the twelve (12) months prior to the submission of the Application and through the date of final allocation due to a failure to meet contractual obligations; or
 - (8) the Applicant, Development Owner, Developer, Guarantor, General Contractor, or any Affiliate of such entity whose pre-development award of non-tax credit funds from the Department has not been repaid in accordance with the terms of repayment for the Development at the time of Carryover Allocation or Bond closing; or
 - (9) the Application is submitted after the Application submission deadline (time or date); has multiple Parts of the Application missing; is not bookmarked in accordance with the instructions in the Tax Credit (Procedures) Manual; or has a Material Deficiency as defined under §1.1 of this title (relating to Definitions and Amenities for Housing Program Activities); or
 - (10) for Applications submitted under the State Housing Credit Ceiling, if more than 150% of the credit amount available in the sub-region is requested at the time of the original submission of the Application based on estimates released by the Department on December 1. The Department will consider the amount in the Funding Request of the Application to be the amount of housing tax credits requested.
- (d) **Ineligible Developments.** Those Developments identified in paragraphs (1) - (16) of this subsection are considered ineligible for funding under the Housing Tax Credit Program:
- (1) Hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities which are usually classified as transient housing (as provided in the §42(i)(3)(B)(iii) and (iv) of the Code) are not eligible. However, structures formerly used as hospitals, nursing homes or dormitories are eligible for Housing Tax Credits if the Development involves the conversion of the building to a non-transient multifamily residential Development;
 - (2) A property that provides continual or frequent nursing, medical or psychiatric services. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living;
 - (3) Any Qualified Elderly Development of two stories or more that does not include elevator service for any Units or living space above the first floor;

- (4) Any Qualified Elderly Development with any Units having more than two bedrooms with the exception of up to three employee Units reserved for the use of the manager, maintenance, and/or security officer. These employee Units must be specifically designated as such;
- (5) Any Development with any building(s) with four or more stories that does not include an elevator;
- (6) Any Qualified Elderly Development proposing more than 70% two-bedroom Units;
- (7) Any Development (excluding Supportive Housing Developments) proposed in a Central Business District with more than 70% one bedrooms and/or Efficiency Units or 70% two bedrooms or more than 20% three bedrooms. An Application may reflect a total of Units for a given bedroom size greater than these percentages to the extent that the increase is only to reach the next highest number divisible by four;
- (8) Any Development that violates §1.15 of this title (relating to Integrated Housing Rule);
- (9) A proposed Rehabilitation (excluding Reconstruction) of an Existing Residential Development that is more than forty (40) years old unless the property is either:
 - (A) to be rehabilitated with support of historic tax credits;
 - (B) to be done as adaptive reuse; or
 - (C) a Development that includes an architect's or engineer's statement confirming that the proposed rehabilitation will be structurally viable for its required affordability period, assuming customary ongoing maintenance;
- (10) Any Development located in an Urban Area involving New Construction, Reconstruction or Adaptive Reuse of Units (except for a Qualified Elderly Development, a Development proposed in a Central Business District, a Development composed entirely of single family dwellings, or Supportive Housing Developments) in which any of the designs in subparagraphs (A) - (D) of this paragraph are proposed. For Applications involving a combination of single family detached dwellings and multifamily dwellings, the percentages in this subparagraph do not apply to the single family detached dwellings, but they do apply to the multifamily dwellings. An Application may reflect a total of Units for a given bedroom size greater than the percentages in subparagraphs (A) - (D) of this paragraph to the extent that the increase is only to reach the next highest number divisible by four:
 - (A) more than 30% of the total Units are one bedroom and/or Efficiency Units; or
 - (B) more than 55% of the total Units are two bedroom Units; or
 - (C) more than 40% of the total Units are three bedroom Units; or
 - (D) more than 5% of the total Units in the Development with four or more bedrooms;
- (11) Any Development which is intended to house seniors that is not consistent with the definition of a Qualified Elderly Development;
- (12) Any Development that is reasonably believed by Staff not to clearly meet the general public use requirement under Treasury Regulation §1.42-9 unless the Applicant has obtained a private letter ruling that the proposed Development is permitted;
- (13) Development Sites with negative characteristics in subparagraphs (A) - (G) of this paragraph will be considered ineligible. If Staff identifies what it believes would constitute an unacceptable negative site feature not covered by the those identified in subparagraphs (A) - (G) of this paragraph Staff may seek Board clarification and, after holding a hearing before the Board, the Board may make a final determination as to whether that feature is unacceptable. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD or TRDO-USDA are exempt. For purposes of this exhibit, the term 'adjacent' is interpreted as sharing a boundary with the Development Site. The distances are to be measured from the nearest boundary of the Development Site to the boundary of the negative characteristic. If none of these negative characteristics exist, the Applicant must sign a certification to that effect. The negative characteristics include:
 - (A) developments located adjacent to or within 300 feet of junkyards;
 - (B) developments located adjacent to or within 300 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet

Nidia and Michelle have a list in the agenda. We're doing it essentially in the project order which is sort of a different approach to this. We're going to start more or less in the middle. We'll get to that in a bit. We've got two major agenda items: the QAP and then the requests for forward commitments. So let's start with the QAP.

Tom, good morning.

MR. GOURIS: Tom Gouris, deputy executive director for Housing Programs. Good morning.

MR. OXER: So far.

MR. GOURIS: So far.

As you might recall, last meeting we had a draft QAP that had a considerable amount of comment and a request from one board member, Mr. Conine, to come back, re-look at some things and then bring that back to this meeting. We, in fact, did have a fairly lengthy conversation throughout that process with Mr. Conine and had an industry roundtable last Tuesday to discuss some of the changes and some of the ideas and continued to work those changes up through last Thursday and published a draft QAP at that time.

Some of the changes from the last meeting, and I'll be quick and highlight them would be that we've added some constraints to identify more policy initiatives, policy directions, and taken some things away that maybe weren't as necessary and maybe obfuscated the policy issues that were trying to be drawn.

One of the policy issues that was added was the proposal that

rehabilitations that are more than 40 years old must be submitted as reconstruction to be considered eligible. Another was to target central business districts and allow them more flexibility in their unit mix than the regular transaction, flexibility that is akin to the senior transactions. We also adjusted the high opportunity areas and the provisions for folks who would be eligible for the 30 percent boost by excluding green building transactions and historic transactions to qualify for that reason only. We revised slightly the tie-breakers, adding a second tie-breaker to deal with the amount of credit per unit. There was a lot of discussion about the \$2 million cap, and I'm sure you'll hear about that. We did bring that back to \$2 million. The legislature provided the board with the ability to raise that cap to \$3 million but not the requirement to do so, and so we brought it back to \$2 million for this draft.

I believe we increased the rehabilitation cost on rehab units up to \$25,000 and a comparable increase on the USDA transactions as well. We adjusted the experience requirements so that the Texas-only experience was eliminated. We adjusted the pre-application requirements so that the site control document that had been required as a document for pre-application is not required. Site control is going to be assumed based on the application but not verified at that point, we'll verify it at application, and we're not going to verify that they had it at pre-app, we're going to verify that they have it as effective at application.

We went back to the 2010 language for financial feasibility. We had included some additional considerations for term sheets and

Attachment C

The following table summarizes the overall capture rate, as well as the individual capture rate by unit type. *The overall capture rate includes additional demand from income qualified home owners; while the capture rate by unit type does not include this additional demand.*

The following table summarizes the overall capture rate, as well as the individual capture rate by unit type. As shown is the calculation of the overall capture rate, the rate is below the maximum allowable under the TDHCA underwriting guidelines.

Methodology	Subject's # of Units	Other L/I Units	Total Demand	Capture Rate
HISTA	131	0	8,107	1.6%
1 Bdrm @ 30%	6	0	460	1.3%
1 Bdrm @ 50%	18	0	653	2.8%
1 Bdrm @ 60%	28	0	625	4.5%
2 Bdrm @ 30%	6	0	258	2.3%
2 Bdrm @ 50%	12	0	348	3.5%
2 Bdrm @ 60%	20	0	418	4.8%
3 Bdrm @ 30%	4	0	123	3.3%
3 Bdrm @ 50%	12	0	232	5.2%
3 Bdrm @ 60%	19	0	278	6.8%
4 Bdrm @ 60%	6	0	178	3.4%

1.8 – OVERVIEW OF THE RENTAL MARKET

1.8.1 - Current Market Conditions

The overall occupancy reported in the market is 95.7%. The following table reports on the PMA as a whole. Similar details for comparable “Income Restricted” and “Market Rate” properties can be found in Chapter 8 of this report.

SUBCHAPTER A. GENERAL PROVISIONS

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
 - (B) overcoming financial, social, and environmental problems;
- (2) provide for the housing needs of individuals and families of low, very low, and extremely low income and families of moderate income;
- (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;
- (4) assist the governor and the legislature in coordinating federal and state programs affecting local government;
- (5) inform state officials and the public of the needs of local government;
- (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
- (7) serve as a source of information to the public regarding all affordable housing resources and community support services in the state.

Sec. 2306.002. POLICY. (a) The legislature finds that:

- (1) every resident of this state should have a decent, safe, and affordable living environment;
 - (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
 - (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.

Sec. 2306.003. PUBLIC PURPOSE. The duties imposed and activities authorized by this chapter serve public purposes, and public money may be borrowed, spent, advanced, loaned, granted, or appropriated for those purposes.

Sec. 2306.004. DEFINITIONS. In this chapter:

- (1) "Board" means the governing board of the department.
- (2) "Bond" means an evidence of indebtedness or other obligation, regardless of the source of payment, issued by the department under Subchapter P, including a bond, note, or bond or revenue anticipation note, regardless of whether the obligation is general or special, negotiable or nonnegotiable, in

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THIS DOCUMENT HAS BEEN COMPILED BY TDHCA AND IS NOT TO BE CONSIDERED AN OFFICIAL VERSION OF CHAPTER 2306 OF THE TEXAS GOVERNMENT CODE!

Sec. 2306.005. REFERENCES TO FORMER LAW. A reference in law to the Texas Housing Agency or the Texas Department of Community Affairs means the Texas Department of Housing and Community Affairs.

Sec. 2306.006. RULES OF ABOLISHED AGENCIES. Rules of the abolished Texas Housing Agency and the Texas Department of Community Affairs continue in effect as rules of the Texas Department of Housing and Community Affairs until amended or repealed by the department.

Sec. 2306.007. ESTABLISHING ECONOMICALLY DEPRESSED OR BLIGHTED AREAS. (a) To establish an economically depressed or blighted area under Section 2306.004(6)(B) or (C), the governing body of a municipality must hold a public hearing and find that the area:

- (1) substantially impairs or arrests the sound growth of the municipality; or
- (2) is an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.

(b) The governing body of a municipality holding a hearing under this section must give notice as provided by Chapter 551, except that notice must be published not less than 10 days before the date of the hearing.

Sec. 2306.008. PRESERVATION OF AFFORDABLE HOUSING. (a) The department shall support in the manner described by Subsection (b) the preservation of affordable housing for individuals with special needs, as defined by Section 2306.511, and individuals and families of low income at any location considered necessary by the department.

- (b) The department shall support the preservation of affordable housing under this section by:
- (1) making low interest financing and grants available to private for-profit and nonprofit buyers who seek to acquire, preserve, and rehabilitate affordable housing; and
 - (2) prioritizing available funding and financing resources for affordable housing preservation activities.

SUBCHAPTER B. GOVERNING BOARD AND DEPARTMENT

Sec. 2306.022. APPLICATION OF SUNSET ACT. The Texas Department of Housing and Community Affairs is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires September 1, 2013.

Sec. 2306.024. BOARD MEMBERS: APPOINTMENT AND COMPOSITION. The board consists of seven public members appointed by the governor.

Sec. 2306.025. TERMS OF BOARD MEMBERS. Members of the board hold office for staggered terms of six years, with the terms of two or three members expiring on January 31 of each odd-numbered year.

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SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2306.001. PURPOSES. The purposes of the department are to:

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 - (A) providing essential public services for their residents; and
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- (2) provide for the housing needs of individuals and families of low, very low, and extremely low income and families of moderate income;
- (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;
- (4) assist the governor and the legislature in coordinating federal and state programs affecting local government;
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 - (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
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- (1) every resident of this state should have a decent, safe, and affordable living environment;
 - (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
 - (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.

Sec. 2306.003. PUBLIC PURPOSE. The duties imposed and activities authorized by this chapter serve public purposes, and public money may be borrowed, spent, advanced, loaned, granted, or appropriated for those purposes.

Sec. 2306.004. DEFINITIONS. In this chapter:

- (1) "Board" means the governing board of the department.
- (2) "Bond" means an evidence of indebtedness or other obligation, regardless of the source of payment, issued by the department under Subchapter P, including a bond, note, or bond or revenue anticipation note, regardless of whether the obligation is general or special, negotiable or nonnegotiable, in

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MR. CONINE: So they make you combine them together.

MS. HULL: Yes.

MR. CONINE: That's very helpful and thanks for doing that.

And Brooke, same for you, the report is very concise and you can go pick out exactly what information we need and I appreciate you putting that together for the Board.

MR. GERBER: I think we're done with Item 10, and we now go to the Executive Director items. And I'm going to ask Patricia Murphy to come forward, and some of you saw in the news clips some information about Parkside Village in Waco. Patricia was there last week, and some of you have asked about that development, and let Patricia give us an overview.

MS. MURPHY: Patricia Murphy, chief of Compliance and Asset Oversight.

Parkside Village was allocated 4 Percent Housing Tax Credits from our agency in 2000, they also have some funding from HUD, and they have local tax-exempt bonds. Our agency did a uniform physical condition standards inspection of the property last spring, some pretty serious physical deficiencies were noted in our report. The notice of non-compliance went out, provided the 90-day corrective action period. We did get a response to the report but staff did not accept the response because what they sent in we were not able to confirm corrections.

The 8823s were issued to the Internal Revenue Service last October and we sent the notice saying we did not accept your response and gave a little grace period for them to send new information in. We did not get

a response, so in December staff referred the property to the Department's Enforcement and Administrative Penalties Committee, and their informal conference is tomorrow afternoon.

The *Waco Tribune* picked up a story about this property and it was a couple of weeks ago I did go down and met with the reporter and with local code enforcement -- we have a strong relationship there with the local code enforcement -- to take a look because they have started to send in some corrective actions and I kind of wanted to get a feel for are the items corrected or not, and no, they're not corrected, so we're meeting with them tomorrow.

Any other questions about this one?

MR. CONINE: The gestapo is in town.

(General laughter.)

MR. KEIG: Are any of the items of non-compliance, are they matters for health and safety that are emergent?

MS. MURPHY: Yes, they are.

MR. KEIG: And aside from potentially assessing penalties, what can we do to help those residents?

MS. MURPHY: There's not much that our agency can do. Local code enforcement is there and it's issuing citations, so 24-hour notices. In addition, HUD is involved in this property and there may be some things that they can do, and I have a call scheduled with HUD for the morning.

MR. GERBER: We'll keep you apprised on this project. The enforcement tools that we have certainly have been enhanced, but this is a

case where it's hard to shut down a property and where do those folks go. At the same time, the health and safety issues are extreme.

MS. MURPHY: This Department does not have the authority to condemn or force them to close.

MR. GERBER: We have worked, though, very closely with code enforcement folks -- Waco is a good example; I know you've been very active in Fort Worth as well -- to really try to get them to take strong action. We had a property in San Antonio as well that sometimes getting those local folks to take action. One of the things that was impressive about the former mayor of Houston is that he really put an emphasis on code enforcement and he Department did work very effectively with the city's code enforcement folks to shut down some of those problem properties in our stock and in theirs, or to address the issues that were present in our stock.

MR. IRVINE: If I might. Tim Irvine, for the record. There are a range of issues that constitute health and safety issues. I mean, a rucked carpet is something you can trip over, so I guess that's a threat to my safety. And then there are things that present truly imminent threats to life or well-being, and there's certainly the avenue of working with local code enforcement and/or the attorney general to pursue injunctive relief if we see an uncured condition that is truly an imminent and serious threat.

MR. CONINE: Would you mind updating us on this at the next Board meeting?

MS. MURPHY: Sure.

MR. CONINE: Anything else from your Executive Director

Set-Aside involves Rehabilitation it will be attributed to, and come from the, At-Risk Set-Aside; if an Application in this Set-Aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region;

- (2) Applications with the highest scores in the At-Risk Set-Aside Statewide until the minimum requirements stated in subsection (c)(3) of this section are attained;
 - (3) Remaining funds within each Uniform State Service Region will then be selected based on the highest scoring Developments in each of the 26 sub-regions, regardless of Set-Aside, in accordance with the requirements under subsection (b) of this section, without exceeding the credit amounts available for a Rural Regional Allocation and Urban Regional Allocation in each region. To the extent that Applications in the TRDO-USDA Set-Asides are not competitive enough within their respective Set-Aside, they will also be able to compete, with no Set-Aside preference, within their appropriate sub-region;
 - (4) If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region that remain after allocation under paragraph (3) of this subsection those tax credits shall then be made available in any other Rural Area in the state to the Application in the most underserved Rural sub-region as compared to the Region's Rural Allocation. This rural redistribution will continue until at least 20% of the funds available to the state are allocated to Rural Areas. (§2306.111(d)(3)) This will be referred to as the Rural collapse;
 - (5) If there are any tax credits remaining in any sub-region after the Rural collapse, in the Rural Regional Allocation or Urban Regional Allocation, they then will be combined and made available to the Application in the most underserved sub-region as compared to the sub-region's allocation. This will be referred to as the statewide collapse;
 - (6) Staff will ensure that at least 10% of the State Housing Credit Ceiling is allocated to Qualified Nonprofit Organizations to satisfy the Nonprofit Set-Aside. If 10% is not met through the existing competitive process, then the Department will add the highest scoring Application by a Qualified Nonprofit Organization statewide until the 10% Nonprofit Set-Aside is met and this set-aside will take precedence over selection for the Rural Regional Allocation and Urban Regional Allocation. Funds for the Rural Regional Allocation or Urban Regional Allocation within a region, for which there are no eligible feasible Applications, will be redistributed as provided in subsection (d) of this section. If the Department determines that an allocation recommendation would cause a violation of the \$2 million limit described in §50.5(c) of this chapter (relating to Site and Development Restrictions), the Department will make its recommendation by selecting the Development(s) that most effectively satisfy the Department's goals in meeting Set-Aside and regional allocation goals. Based on Application rankings, the Department shall continue to underwrite Applications until the Department has processed enough Applications satisfying the Department's underwriting criteria to enable the allocation of all available Housing Tax Credits according to regional allocation goals and Set-Aside categories. To enable the Board to establish a waiting list, the Department shall underwrite as many additional Applications as necessary to ensure that all available Competitive Housing Tax Credits are allocated within the period required by law. (§2306.6710(a) - (f); §2306.111)
- (f) **Tie Breaker Factors.**
- (1) In the event that two or more Applications receive the same number of points in any given Set-Aside category, Rural Regional Allocation or Urban Regional Allocation, or Rural or state collapse and each of the tied Applicants are practicable and economically feasible, the Department will utilize the factors in this paragraph, in the order they are presented, to determine which Development will receive a preference in consideration for a tax credit Commitment.

- (A) Applications located in a census tract that has the lowest average of units per capita, supported by Housing Tax Credits, including those supported by Tax Exempt Bonds, at the time the Application Round begins will win the first tie breaker.
 - (B) The amount of requested tax credits per person assisted calculated at 1.5 persons per Bedroom (Efficiency Units will be considered to have one Bedroom for the purposes of this provision) as of the date of Application submission. The lower credits per Bedroom will win this second tie breaker.
 - (C) Each scoring item for the tied Applications will be compared in descending order until an item is identified where one Applicant's score is greater than the score of the tied Applicants and the Applicant with the highest score on that item will win this third tie breaker.
- (2) This paragraph identifies how ties will be handled when dealing with the restrictions on location identified in §50.8(2)(B) of this chapter (relating to Threshold Criteria), and in dealing with any issues relating to capture rate calculation. When two Tax-Exempt Bond Developments would violate one of these restrictions, and only one Development can be selected, the Department will utilize the Certificate of Reservation docket number issued by the Texas Bond Review Board (TBRB) in making its determination. When two Competitive Housing Tax Credits Applications in the Application Round would violate one of these restrictions, and only one Development can be selected, the Department will utilize the tie breaker identified in paragraph (1) of this subsection. When a Tax-Exempt Bond Development and a Competitive Housing Tax Credit Application in the Application Round would both violate a restriction, the following determination will be used:
- (A) Tax-Exempt Bond Developments that receive their Certificate of Reservation from the TBRB on or before April 30 of the current program year will take precedence over the Housing Tax Credit Applications in the current Application Round;
 - (B) Housing Tax Credit Applications approved by the Board for tax credits in July of the current program year will take precedence over the Tax-Exempt Bond Developments that received their Certificate of Reservation from the TBRB on or between May 1 and July 31 of the current program year; and
 - (C) After July 31, a Tax-Exempt Bond Development with a Certificate of Reservation from the TBRB will take precedence over any Housing Tax Credit Application from the current Application Round on the waiting list. However, if no Certificate of Reservation has been issued by the date the Board approves an allocation to a Development from the waiting list of Applications in the current Application Round then the waiting list Application will be eligible for its allocation.
- (g) **Staff Recommendations.** (§2306.1112 and §2306.6731) In accordance with the QAP and other applicable Department rules, the Department Staff shall make its recommendations to the Executive Award and Review Advisory Committee for that committee to recommend to the Board. That committee, in making its recommendations, is not constrained to whether the proposed award meets legal and regulatory requirements and may, as it deems appropriate provide information about other factors and concerns. The committee, if it is not unanimous, shall report opposing minority views.

§50.7. Application Process.

- (a) The purpose of this section is to outline the process by which Housing Tax Credit Applications are accepted and reviewed by the Department.
- (b) **General.** The application process has two parts, a pre-application which is voluntary but creates an opportunity for a greater score on the required Application and applies only to Applications submitted under the State Housing Credit Ceiling and an Application which is mandatory. An



MARVA BECK
STATE REPRESENTATIVE
DISTRICT 57

April 4, 2012

Timothy Irvine
Executive Director
Texas Department of Housing
and Community Affairs
P.O. Box 13941
Austin, TX 78711

RE: 12066 Barron's Branch

Dear Mr. Irvine,

I am in firm support of the Barron's Branch housing tax credit application for Waco, TX. This is an important development that has the potential to revitalize a section of Downtown Waco and bring households and families back into the City's core. I understand that this application requires a waiver in order to serve more large families with children than the Texas Department of Housing and Community Affairs (TDHCA) currently allows. I support this waiver.

I have concerns that the current Central Business District requirement that no more than 20% of total units contain 3 bedrooms deters large families from making their homes in metropolitan areas. The City of Waco would like to offer the opportunity for larger families to live in their Downtown and has performed extensive planning and research to support this choice. I agree that the local City and market should determine this decision.

Please reconsider the Central Business District unit mix requirement and grant the waiver request to Barron's Branch in Waco.

Sincerely,

A handwritten signature in cursive script that reads "Marva E Beck".

Marva Beck

April 3, 2012

Mr. Cameron Dorsey
Director of Housing Tax Credits
Texas Department of Housing and Community Affairs
221 E. 11th St.
Austin, TX 78701

*(via overnight courier &
email Cameron.dorsey@tdhca.state.tx.us)*

RE: Waiver Request for HTC Application #12066, Barron's Branch

The applicant for the referenced HTC Application has asked that we provide additional information to TDHCA with respect to the Fair Housing implications of the Qualified Allocation Plan (QAP) provision that fundamentally restricts Central Business District (CBD) developments to 80% one and two bedroom units (QAP Section 50.4(d)(7)).

The CBD unit mix limitation in the QAP appears on its face to be subject to challenge based on federal Fair Housing laws that protect families. The Fair Housing Act, as amended in 1988, prohibits discrimination in the financing of dwellings on the basis of familial status, meaning the presence or possible presence of children under the age of 18 in the home. By limiting the unit mix in a CBD to 80 percent one- and two-bedroom units, the QAP may violate Fair Housing by restricting TDHCA's low income housing tax credit financing in the CBD to those projects where the vast majority of units can only accommodate single persons and small households. Clearly if a city passed a zoning law prohibiting more than 20% 3-bedroom apartment units in apartment projects, this zoning statute would have a discriminatory impact on families with children, and would be subject to legitimate challenge from housing advocates. The QAP CBD unit mix limitation has this same impact.

Fair Housing does allow one exemption to familial status. A housing development may restrict occupancy to seniors (age 55 and up) if at least 80 percent of the units are set aside for and occupied by seniors, and the QAP requires that seniors projects have only one- and two-bedroom units. The current CBD unit mix requirements parallel the senior unit mix limitation; however, a seniors' project unit mix limitation is only acceptable due to the specific, limited federal exemption for seniors' projects from the familial status Fair Housing protections, and there is no similar Fair Housing Act exemption for CBD, downtown or urban developments that are not seniors restricted. The CBD unit mix limitation requires that at least 80 percent of CBD units be one- and two-bedrooms, and actually enables CBD developments to be 100 percent one-

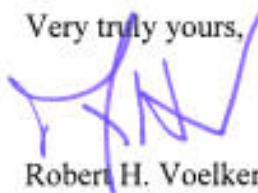
Mr. Cameron Dorsey
April 3, 2012
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and two-bedroom units. This implies, if not requires, that the units be occupied by single individuals, small households, and/or seniors, which would exclude most, and particularly larger, families with children.

Furthermore, as applied to a family CBD development, the unit mix limitation may also have a discriminatory impact on minorities. Statistically minority families (whether married or single parent) tend to be larger than white families, such that limiting the units sizes in CBD areas may restrict the ability of these larger minority families to find affordable housing in the CBD.

If you have any questions regarding Fair Housing issues with the QAP Central Business District unit mix requirements, please feel free to call me.

Very truly yours,



Robert H. Voelker