

BOARD MEETING OF APRIL 16, 2015

J. Paul Ozer, Chair



Juan Muñoz, Vice-Chair

Leslie Bingham Escareño, Member

T. Tolbert Chisum, Member

Tom Gann, Member

J. B. Goodwin, Member

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

**A G E N D A
9:30 AM
April 16, 2015**

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

CALL TO ORDER

ROLL CALL

J. Paul Oxer, Chairman

CERTIFICATION OF QUORUM

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

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

Resolution recognizing April as Fair Housing Month

CONSENT AGENDA

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

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

EXECUTIVE

- a) Board Meeting Minutes Summaries for January 15, 2015, and February 19, 2015

Barbara Deane
Board Secretary

LEGAL

- b) Presentation, Discussion, and Possible Action regarding the adoption of Agreed Final Orders concerning related entities, Amistad Apartments (HTC 00008 / CMTS 26), Padre de Vida Apartments (HTC 03002 / CMTS 3314), Rio de Vida Apartments (HTC 03035 / CMTS 3341), and Vida Que Canta Apartments (HTC 05092 / CMTS 4257)
- c) Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning Bayou Village Apartments (HTC 91132 / CMTS 997)
- d) Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning The Shire Apartments (HTC 02470 / CMTS 3273)

Jeff Pender
Deputy General Counsel

ASSET MANAGEMENT

- e) Presentation, Discussion and Possible Action on Material LURA Amendments
91108 Scattered Coop Infill Housing Austin

Raquel Morales
Director of Asset
Management

RULES

- f) Presentation, Discussion, and Possible Action on withdrawal of proposed amendments to 10 TAC Chapter 10, Subchapter F, §10.607(d) concerning Reporting Requirements; §10.622(d) concerning Special Rules Regarding Rents and Rent Limit Violations; and §10.623 concerning Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period and proposal of new amendments to 10 TAC Chapter 10, Subchapter F, §10.607(d) concerning Reporting Requirements; §10.622 concerning Special Rules Regarding Rents and Rent Limit Violations; and §10.623 concerning Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period and directing their publication for public comment in the *Texas Register*

Stephanie Naquin
Director of MF Compliance

MULTIFAMILY FINANCE

- g) Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with another Issuer
15401 Newsome Homes McKinney
- h) Presentation, Discussion, and Possible Action on Inducement Resolution No. 15-013 for Multifamily Housing Revenue Bonds and an Authorization for Filing Applications for Private Activity Bond Authority
15600 Sphinx at Fiji Lofts Dallas

Jean Latsha
Director of MF Finance

COMMUNITY AFFAIRS

- i) Presentation, Discussion, and Possible Action on Approval of the PY 2015 Department of Energy (“DOE”) Weatherization Assistance Program (“WAP”) State Plan and Awards
- j) Presentation, Discussion and Possible Action Regarding the Possible Absorption of the Alamo Area Council of Government’s Section 8 Housing Choice Voucher Program
- k) Presentation, Discussion and Possible Action Authorizing the Publication of a Request for Proposal (“RFP”) for a Provider of Weatherization Training and Technical Assistance

Michael DeYoung
Director of Community Affairs

Brooke Boston
Deputy Executive Director

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

- a) TDHCA Outreach Activities, March 2015
- b) Report on Single Family HOME Program Activities
- c) Report on previously approved HOME award to Majors Place, Greenville
- d) Compliance Division Update

Michael Lyttle
Chief of External Affairs

Jennifer Molinari
Dir. of HOME Program

Jean Latsha
Director of MF Finance
Patricia Murphy
Chief of Compliance

ACTION ITEMS

ITEM 3: INTERNAL AUDIT

- a) Report on the Meeting of the Audit Committee
- b) Internal Audit Report #15-004 “Review of TDHCA’s Payroll Processes”
- c) Internal Audit Report #15-005 “Review of TDHCA’s Records Retention Process”

Mark Scott
Director of Internal Audit

ITEM 4: BOND FINANCE

- a) Presentation, Discussion, and Possible Action regarding Resolution No. 15-016 authorizing programmatic changes to the To Be Announced (“TBA”) Single Family Taxable Mortgage Program (“TMP-79”)

Monica Galuski
Director of Bond Finance

- b) Presentation, Discussion, and Possible Action on Resolution 15-014 regarding the annual approval of the Department's Investment Policy
- c) Presentation, Discussion, and Possible Action on Resolution 15-015 regarding the annual approval of the Department's Interest Rate Swap Policy

ITEM 5: MULTIFAMILY FINANCE

Presentation, Discussion, and Possible Action on Timely Filed Appeals and Waivers under any of the Department's Program Rules

Jean Latsha
Director of MF Finance

15085 Vista Rita Blanca Apartments II Dalhart

ITEM 6: RULES

Presentation, Discussion and Possible Action on proposed new 10 TAC, Chapter 1, Subchapter C, Previous Participation, and proposed repeal of 10 TAC, Chapter 1, Subchapter A, §1.5 Previous Participation

Patricia Murphy
Chief of Compliance

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 Oser
Chairman

1. The Board may go into Executive Session Pursuant to Tex. Gov't Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee.
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, and pending before the Supreme Court of the United States.*
 - b) *McCardell v. HUD et al.*
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:
 - a) Any posted agenda item
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; and/or-
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 and details on each agenda item in the board book, please visit our website at www.tdhca.state.tx.us or contact Michael Lyttle, 512-475-4542, 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 three (3) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Elena Peinado, 512- 475-3814, at least three (3) days before the meeting so that appropriate arrangements can be made.

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

CONSENT AGENDA

1a

BOARD ACTION REQUEST

BOARD SECRETARY

APRIL 16, 2015

Presentation, Discussion, and Possible Action on Board Meeting Minutes Summaries for January 15, 2015, and February 19, 2015.

RECOMMENDED ACTION

Approve Board Meeting Minutes Summaries for January 15, 2015, and February 19, 2015

RESOLVED, that the Board Meeting Minutes Summaries for January 15, 2015, and February 19, 2015, are hereby approved as presented.

Texas Department of Housing and Community Affairs Governing Board
Board Meeting Minutes Summary
January 15, 2015

On Thursday, the fifteenth day of January, 2015, at 9:30 a.m., the regular monthly meeting of the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA” or the “Department”) was held in the Ric Williamson Hearing Room, Dewitt C. Greer State Highway Building, Austin, Texas.

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

- J. Paul Oxer
- Leslie Bingham Escareño
- T. Tolbert Chisum
- Tom Gann
- J.B. Goodwin
- Dr. Juan Muñoz

J. Paul Oxer served as Chair, and Barbara Deane served as secretary.

1) Following public comment (listed below), the Consent Agenda was approved unanimously by the Board with the following items removed from Consent to allow for additional public comment and/or further discussion: Item 1(l) – Presentation, Discussion, and Possible Action to Accept Guidance Issued by Staff in the Form of Frequently Asked Questions for the 2015 Competitive 9% Low Income Housing Tax Credit Application Round.

- Tanya Lavelle, Easter Seals Central Texas, thanked staff for the report in Report Item 5 and stressed the need for urgency for assisting persons with disabilities with homebuyer assistance.
- Rosa Gonzalez-Abrego, Easter Seals Central Texas, registered written support for Ms. Lavelle’s comments

2) Kathryn Saar, TDHCA 9% Housing Tax Credit Program Manager, provided clarifying information on Consent Agenda Item 1(l) – Presentation, Discussion, and Possible Action to Accept Guidance Issued by Staff in the Form of Frequently Asked Questions for the 2015 Competitive 9% Low Income Housing Tax Credit Application Round. With no public comment, the Board unanimously approved staff recommendation to issue the frequently asked questions guidance.

3) The Board heard Action Item 2(a) – Report of the Meeting of the Audit Committee – which was presented by Mark Scott, TDHCA Director of Internal Audit.

4) Action Item 2(b) – Presentation, Discussion, and Possible Action on the 2015 Internal Audit Charter and Board Resolution No. 15-011 – was presented by Mr. Scott. With no public comment, the Board unanimously approved the 2015 charter and board resolution.

5) Action Item 2(c) – Presentation, Discussion, and Possible Action regarding State Auditor’s Office audit reports on TDHCA’s Financial Statements – was presented by Mr. Scott and David Cervantes, TDHCA Chief Financial Officer. Following public comment (listed below), the Board unanimously accepted the audit reports.

- Cesar Saldiver, State Auditor’s Office, provided information regarding the audit
- Jeannette Quiñonez, State Auditor’s Office, provided information regarding the audit

6) Ms. Saar provided additional information for the Board regarding Report Item 3 – Presentation, Discussion, and Possible action regarding the status of the 2014 Competitive (9%) Housing Tax Credit Application Cycle – and Report Item 4 – Presentation, Discussion, and Possible Action regarding the Submission of Competitive (9%) Housing Tax Credit Pre-Applications in the 2015 Application Cycle.

7) Action Item 3 – Presentation, Discussion, and Possible Action regarding approval for publication in the *Texas Register* of the 2015-1 HOME and TCAP Multifamily Development Program Notice of Funding Availability – was presented by Eric Weiner, TDHCA Loan Program Administrator for Multifamily Programs. With no public comment, the Board unanimously approved staff recommendation to publish the NOFA.

8) Chairman Oxer presented Tim Irvine, TDHCA Executive Director, with a certificate of recognition from Governor Rick Perry in honor of Mr. Irvine’s service on the Texas Task Force on Infectious Disease Preparedness and Response.

9) The Board did not go into Executive Session.

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

There being no further business to come before the Board, the meeting adjourned at 10:05 a.m. The next meeting is set for Thursday, February 19, 2015.

Secretary

Approved:

Chair

**Texas Department of Housing and Community Affairs Governing Board
Board Meeting Minutes Summary
February 19, 2015**

On Thursday, the nineteenth day of February, 2015, at 9:30 a.m., the regular monthly meeting of the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA” or the “Department”) was held in the Ric Williamson Hearing Room, Dewitt C. Greer State Highway Building, Austin, Texas.

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

- J. Paul Oxer
- Leslie Bingham Escareño
- Tom Gann
- J.B. Goodwin
- Dr. Juan Muñoz

J. Paul Oxer served as Chair, and Barbara Deane served as secretary.

1) Michael Lyttle, TDHCA Chief of External Affairs, read Resolution #15-012 into the record. The resolution was in recognition of February 2015 being Black History Month and it was unanimously adopted by the Board.

2) The Board unanimously approved the Consent agenda with clarifying information presented by Brooke Boston, TDHCA Deputy Executive Director, on Item 1(k) – Presentation, Discussion, and Possible Action on Award of Program Year 2014 Community Services Block Grant Administrative and Discretionary Funds and with the exception of Item 1(j) – Presentation, Discussion, and Possible Action regarding Program Year 2015 Community Services Block Grant, Program Year 2015 Low Income Home Energy Assistance Program, and PY 2014 and 2015 Department of Energy Weatherization Assistance Program (“DOE-WAP”) Awards for Cameron and Willacy counties, currently served by Cameron and Willacy Counties Community Projects, Inc. – and Report Item 6 – Report on the Department’s Fair Housing Activities.

3) The Board heard Report Item 6 – Report on the Department’s Fair Housing Activities – presented by Laura Debellas, TDHCA Fair Housing Manager.

4) The Board exercised its discretion to take the following Action Items out of order and prior to consideration of Item 1(j) – Items 2, 3, 4(a), 4(b), and 5, due to the necessity of an Executive Session discussion for Item 1(j).

5) The Board unanimously approved Action Item 2 – Presentation, Discussion, and Possible Action on the election of Governing Board Officers for the upcoming biennium pursuant to Texas Government Code §2306.030 – and elected the following persons: Dr. Juan Muñoz as Vice Chairman; Ms. Barbara Deane as Secretary; Mr. David Cervantes as Treasurer; Mr. Michael Lyttle as Assistant Secretary.

6) Action Item 3 – Presentation, Discussion, and Possible Action regarding Optional Par Termination Rights with respect to Interest Rate Swap Transactions related to Single Family Variable Rate Mortgage Revenue Refunding Bonds, 2004 Series B and Single Family Variable Rate Mortgage Revenue Bonds, 2004 Series D – was presented by Ms. Monica Galusky, TDHCA Director of Bond Finance. The Board unanimously approved staff recommendation to execute the swaps.

7) The Board did not consider Action Item 4(a) – Presentation, Discussion, and Possible Action on Timely Filed Appeals under any of the Department’s Program Rules for #15053, 911 Glenoak Apartments in Corpus Christi – as staff pulled it from the agenda.

8) Action Item 4(b) – Presentation, Discussion, and Possible Action on a Request for the Reissuance of Competitive (9%) Housing Tax Credits to Royal Gardens Mineral Wells (#12074), including any necessary waivers – was presented by Ms. Jean Latsha, TDHCA Director of Multifamily Programs. The Board unanimously approved an amended staff recommendation to treat the housing tax credits as returned in the 2015 cycle for purposes of reporting to the IRS.

9) Action Item 5 – Presentation, Discussion, and Possible Action on Timely Filed Waivers under any of the Department’s Program Rules for #15043 Cleme Manor Apartments in Houston and #15128 Bay City Manor Apartments in Bay City – was presented by Ms. Latsha and the Board unanimously approved staff recommendation to grant the requested waivers.

10) At 10:20 a.m. the Board went into Executive Session and reconvened in open session at 11:32 a.m. No action was taken in or as a result of Executive Session.

11) Consent Agenda Item 1(j) – Presentation, Discussion, and Possible Action regarding Program Year 2015 Community Services Block Grant, Program Year 2015 Low Income Home Energy Assistance Program, and PY 2014 and 2015 Department of Energy Weatherization Assistance Program (“DOE-WAP”) Awards for Cameron and Willacy counties, currently served by Cameron and Willacy Counties Community Projects, Inc. (“CWCCP”) – was presented by Mr. Cameron Dorsey, TDHCA Chief of Staff, with clarifying information provided by Ms. Patricia Murphy, TDHCA Chief of Compliance, and Ms. Megan Sylvester, TDHCA Legal Division. After public comment (listed below), the Board voted unanimously to approve a modified staff recommendation to table the decisions concerning denial of LIHEAP funding and DOE-WAP funding until the March Board meeting; to move forward with the award of the 24.99 percent of LIHEAP along with some access to administrative funds to help with ramp-up; and to award the CSBG funding to CWCCP with four conditions

- Mr. Robert McVey, Chief of Staff for the Honorable Ryan Guillen, Texas State Representative for District 31, testified regarding staff recommendation
- Ms. Amalia Garza, Cameron and Willacy Counties Community Projects, Inc., testified in opposition to staff recommendation.

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

There being no further business to come before the Board, the meeting adjourned at 12:35 p.m. The next meeting is set for Thursday, March 12, 2015.

Secretary

Approved:

Chair

1b

BOARD ACTION REQUEST

LEGAL DIVISION

APRIL 16, 2015

Presentation, Discussion, and Possible Action regarding the adoption of Agreed Final Orders concerning related entities, Amistad Apartments (HTC 00008 / CMTS 26), Padre de Vida Apartments (HTC 03002 / CMTS 3314), Rio de Vida Apartments (HTC 03035 / CMTS 3341), and Vida Que Canta Apartments (HTC 05092 / CMTS 4257)

RECOMMENDED ACTION

WHEREAS, related properties, Amistad Apartments in Donna, Hidalgo County, owned by Amistad Apartments, L.P.; Padre de Vida Apartments in McAllen, Hidalgo County, owned by Padre de Vida Apartments, L.P.; Rio de Vida Apartments in Mission, Hidalgo County, owned by Rio De Vida Apartments, L.P.; and Vida Que Canta Apartments in Mission, Hidalgo County, owned by Vida Que Canta Apartments, L.P., all have a history of uncorrected violations of the applicable land use restriction agreements (“LURAs”) and associated statutory and rule requirements;

WHEREAS, on February 26, 2013, owner’s representative, Jacki Dills, met with the Enforcement Committee and the Committee recommended, subject to Board approval, entering into Agreed Final Orders calling for full correction and administrative penalties for the above properties;

WHEREAS, owner’s representative, Rowan Smith, and the Enforcement Committee were ultimately unable to come to an agreement;

WHEREAS, Staff recommended to the Executive Director that administrative penalties be assessed against Amistad Apartments, L.P.; Padre de Vida Apartments, L.P.; Rio De Vida Apartments, L.P.; and Vida Que Canta Apartments, L.P.;

WHEREAS, the Executive Director issued a Report to the Board on December 18, 2014, regarding a recommended administrative penalty and TDHCA’s intention to initiate a contested case hearing with respect to compliance violations;

WHEREAS, owner’s representatives requested a settlement meeting to be held before the Department scheduled a contested case hearing before the State Office of Administrative Hearings (“SOAH”);

WHEREAS, a settlement meeting was held with TDHCA staff on February 24, 2015;

WHEREAS, all findings of noncompliance at the above properties have been resolved, with the exception of a violation relating to failure to recertify the household in unit 217 at Rio de Vida. The current tenant is not qualified for the program and a notice of nonrenewal has been sent, indicating that the tenant’s lease will not be renewed upon lease expiration on August 31, 2015;

WHEREAS, owner's representatives and the Enforcement Committee have agreed, subject to Board approval, to enter into four partially deferred and forgivable Agreed Final Orders totaling \$17,365.00, structured as follows:

Property	Total Penalty Recommendation	Portion due on or before 5/18/2015	Probated portion to be deferred and possibly forgiven
Amistad	\$3,895.00	\$500.00	\$3,395.00
Padre de Vida	\$2,800.00	\$1,000.00	\$1,800.00
Rio de Vida	\$10,670.00	\$5,335.00	\$5,335.00
Vida que Canta	\$0.00	\$0.00	\$0.00
TOTAL	\$17,365.00	\$6,835.00	\$10,530.00

WHEREAS, staff has based its recommendations for an Agreed Final Order on the Department's rules for administrative penalties and an assessment of each and all of the statutory factors to be considered in assessing such penalties, applied specifically to the facts and circumstances present in this case.

NOW, therefore, it is hereby

RESOLVED, that the four Agreed Final Orders, assessing administrative penalties as indicated above, and subject to partial deferral and forgiveness, for noncompliance at Amistad Apartments (HTC 00008 / CMTS 26), Padre de Vida Apartments (HTC 03002 / CMTS 3314), Rio de Vida Apartments (HTC 03035 / CMTS 3341), and Vida Que Canta Apartments (HTC 05092 / CMTS 4257), substantially in the forms presented at this meeting, and authorizing any non-substantive technical corrections, are hereby adopted as orders of this Board.

BACKGROUND

The following four properties received tax credit allocations from TDHCA for the construction and operation of four apartment complexes located in Hidalgo County:

Property	Owner	Annual HTC Allocation	LURA Effective	# Units
Amistad Apartments	Amistad Apartments, L.P.	\$376,409	2001	76 total units, 75% restricted
Padre de Vida Apartments	Padre de Vida Apartments, L.P.	\$1,025,408	2003	180 units, 100% restricted
Rio de Vida Apartments	Rio De Vida Apartments, L.P.	\$1,004,228	2008	208 units, 84.60% restricted
Vida que Canta Apartments	Vida Que Canta Apartments, L.P.	\$953,820	2006	160 units, 100% restricted

All four properties were determined by staff to be in material noncompliance with the applicable Land Use Restriction Agreements (“LURAs”) and the associated statutory sections and rules, and were referred for an administrative penalty for the following violations, all of which remained unresolved at the time of the February 26, 2013, informal conference:

1. Amistad Apartments:
 - a. 2012 Compliance Fees;
 - b. 2010 Uniform Physical Condition Standards Violations (“UPCS”);
 - c. Household income above limit upon initial occupancy for unit 101;
 - d. No evidence of material participation by a qualified nonprofit;
 - e. Failure to execute required lease provisions; and
 - f. Failure to provide affirmative marketing plan.
2. Padre de Vida Apartments
 - a. No evidence of material participation by a qualified Historically Underutilized Business (“HUB”).
3. Rio de Vida Apartments
 - a. 2012 UPCS violations;
 - b. Household income above limit upon initial occupancy for units 111, 126, 817;
 - c. Failure to maintain or provide tenant income certification and documentation units 113, 121, 215, 217, 414, 421, 425, 426, 428, 511, 514, 521, 523, 616, 625, 627, 628, 1116, 1118, 1213, 1215, 1226, 1313, 1316;
 - d. No evidence of material participation by a qualified nonprofit; and

- e. Failure to provide affirmative marketing plan.
- 4. Vida que Canta Apartments
 - a. 2011 UPCS violations.

Per Committee direction, the Legal Division set a deadline whereby owner representatives could submit corrective documentation in order to avoid attending an administrative penalty informal conference. A large corrective submission was received in response. THDCA staff performed a full review, and found that all of the violations listed above remained unresolved. Examples of problems observed:

1. Work orders indicating that no work had been completed and no parts had been used were submitted as corrective documentation for UPCS violations at Amistad Apartments.
2. Nothing was provided to show material participation of a qualified nonprofit at multiple properties.
3. Documentation submitted with respect to the HUB material participation violation at Padre de Vida included an expired HUB certification.
4. Affirmative marketing plans were submitted, but did not include the required and clearly requested supplemental marketing materials proving that the plan had been implemented.
5. Tenants at multiple properties were not properly screened for all sources of income and assets, and the property managers did not verify all of the sources of income and assets that had been reported.
6. For multiple violations, the owner representative had simply submitted copies of TDHCA compliance monitoring letters, with the word "need" written beside the listed violation, without attaching the document that was needed to address the violation.

An informal conference was held on January 22, 2013, but Respondent did not appear. The informal conference was reset and was attended by Respondent on February 26, 2013. The Committee recommended administrative penalties and training, and set a deadline of June 3, 2013, to submit fully acceptable corrective documentation. All violations were resolved, with the exception of the following violations at Rio de Vida Apartments:

1. Failure to maintain or provide tenant's annual income recertification for unit 217;
2. Failure to maintain or provide tenant's annual income recertification for unit 1118; and
3. Failure to provide evidence of material participation by a qualified nonprofit.

Although Respondent did not object to the penalty recommendation during the administrative penalty informal conference, Respondent later responded by email, indicating that they would not accept the penalty recommendations and that they intended to appeal at the appropriate time. The appropriate appeal at this stage of the administrative penalty process is to proceed with a hearing at SOAH.

The Department is now actively referring contested cases to SOAH and is ready to initiate the formal hearing process for Respondent, as recommended by the Committee and reported to the Board. TDHCA statutes and rules outline the procedure for initiating a contested case:

1. Executive Director issues Report to the Board: Required by TEXAS GOV'T CODE §2306.043 and 10 TEX. ADMIN. CODE §1.14(e)(1).
2. Notice of Report to the Board sent to Owner within 14 days: Required by TEXAS GOV'T CODE §2306.043 and 10 TEX. ADMIN. CODE §1.14(e)(2).
3. Request to Docket with SOAH: Required by 10 TEX. ADMIN. CODE §1.13.

The Executive Director submitted a Report to Board on December 18, 2014, and TDHCA staff sent a Notice of Report to Board to Respondent on December 31, 2014, then agreed to hold a settlement meeting before scheduling a formal hearing with SOAH. A settlement meeting was held on February 24, 2015, and Respondent submitted corrections on March 5, 2015, resolving all remaining violations except the unit 217 finding at Rio de Vida which cannot be resolved until the current nonqualified tenant's lease expires on August 31, 2015, and a new qualified household moves into the unit. In order to avoid the further time and expense associated with continuing to pursue a contested case hearing, owner representatives and the Enforcement Committee agreed to settle the case, subject to Board approval, as follows:

1. One Agreed Final Order per property, assessing the total administrative penalty recommendation at Column 2;
2. The portion of the total administrative penalty recommendation listed in Column 3 is to be paid on or before 5/18/2015;
3. The remainder of the total administrative penalty recommendation as indicated at Column 4 is to be deferred and forgiven if: (a) the properties comply with the requirements of a 3-year probationary period, and (b) Unit 217 of Rio de Vida is made available for occupancy by a qualified household on or before 9/30/2015, 30 days after the expiration of the current tenant's lease, or upon consummation of a Department-approved sale to an unaffiliated buyer.

Property	Total Administrative Penalty Recommendation	Portion due on or before 5/18/2015	Probated portion to be deferred and possibly forgiven
Amistad	\$3,895.00	\$500.00	\$3,395.00
Padre de Vida	\$2,800.00	\$1,000.00	\$1,800.00
Rio de Vida	\$10,670.00	\$5,335.00	\$5,335.00
Vida que Canta	\$0.00	\$0.00	\$0.00
TOTAL	\$17,365.00	\$6,835.00	\$10,530.00

Consistent with direction from the Department's Enforcement Committee, a partially deferred and forgiven administrative penalty is recommended for each property as indicated above, for a total administrative penalty of \$17,365.00.

ENFORCEMENT ACTION AGAINST
AMISTAD APARTMENTS, L.P. WITH
RESPECT TO
AMISTAD APARTMENTS
(HTC FILE # 00008 / CMTS 26)

§
§
§
§
§
§
§

BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 16th day of April, 2015, the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA”) considered the matter of whether enforcement action should be taken against **AMISTAD APARTMENTS, L.P.**, a Texas limited partnership (“Respondent”).

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act (“APA”), Tex. Gov’t Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondent agree to resolve this matter by this Agreed Final Order. The Respondent agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the findings of fact and conclusions of law set out in this Order.

Upon recommendation of the Enforcement Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

WAIVER

Respondent acknowledges the existence of their right to request a hearing as provided by TEX. GOV’T CODE § 2306.044, and to seek judicial review, in the District Court of Travis County, Texas, of any order as provided by TEX. GOV’T CODE § 2306.047. Pursuant to this compromise and settlement, the Respondent waives those rights and acknowledges the jurisdiction of the Board over Respondent.

FINDINGS OF FACT

Jurisdiction:

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, and 10 TEX. ADMIN. CODE §1.14, and 10 TEX. ADMIN. CODE Chapter 60¹, both of which were replaced by 10 Tex. Admin. Code §2 as of November 19, 2014.
2. In 2001, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$376,409.00 to build and operate Amistad Apartments ("Property") (HTC file No. 00008 / CMTS No. 26 / LDLD No. 324).
3. Respondent signed a land use restriction agreement ("LURA") regarding the Property. The LURA was effective September 30, 2001, and filed of record at Document Number 1025783 of the Official Public Records of Real Property of Hidalgo County, Texas ("Records").
4. Respondent is a Texas limited partnership that is approved by TDHCA as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations:

1. A Uniform Physical Condition Standards ("UPCS") inspection was conducted on June 10, 2010. Inspection reports showed numerous serious property condition violations, a violation of 10 TEX. ADMIN. CODE § 60.116 (Property Condition Standard). Notifications of noncompliance were sent and an October 25, 2010, corrective action deadline was set. Partial corrective action was received but 21 violations were not corrected before the deadline. Further corrective documentation was received in response to an administrative penalty informal conference notice, but the following 4 violations remained unresolved for unit 184 because work orders did not meet minimum requirements.

Location / Type	Description	Problem with documentation submitted
Health & Safety	mold/mildew observed	Work order indicates a/c closet was checked, however, mold/mildew was observed in hot water heater closet. Violation uncorrected.
Kitchen	broken / damaged refrigerator seal	Work order indicates "refrigerator working fine-no parts needed". Refrigerator was functioning at the time of inspection, but was not functioning as required because of damage to the refrigerator seal. No work was done to refrigerator seal. Violation uncorrected.

¹ Within this Agreed Final Order, all references to the violations and procedures at 10 TEX. ADMIN. CODE §1.14, 10 TEX. ADMIN. CODE CHAPTER 10, AND 10 TEX. ADMIN. CODE, CHAPTER 60, refer to the versions of the code in effect on February 26, 2013, when the Administrative Penalty Committee held an informal conference with Respondent and recommended an administrative penalty. Procedures have since been replaced by 10 TEX. ADMIN. CODE §2 (Enforcement), but the findings and general procedures remain the same.

Walls	water stains/water damage/mold/mildew	Work order indicates air conditioning closet was checked and there was no damage observed. Damage was in the hot water heater closet. Violation uncorrected.
Windows	deteriorated/missing caulking/seals. foggy/failure requires replacement	Invoice submitted indicates window not installed as of 12-6-10, but the work order indicates completion on 10/20/10 (prior to receipt of window). Violation uncorrected. Window needs to be replaced and documentation must include correct dates.

The Administrative Penalty Committee recommended a penalty and training, and set a deadline of June 3, 2013, to submit fully acceptable corrective documentation. Acceptable documentation was submitted in response to the Committee's deadline and the above violations are considered resolved.

2. An on-site monitoring review was conducted on October 17, 2011, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a March 29, 2012, corrective action deadline was set, however, the following violations were not fully corrected before the deadline:
 - a. Respondent failed to provide documentation that household income was within prescribed limits upon initial occupancy for unit 101, a violation of 10 TEX. ADMIN. CODE §60.108 (Determination, Documentation and Certification of Annual Income) and the Section 4 of the LURA, which require screening of tenants to ensure qualification for the program. Corrective documentation was received in response to an administrative penalty informal conference notice, but the documentation did not meet minimum requirements and was not accepted.
 - b. Respondent failed to provide evidence of material participation by a qualified nonprofit, a violation of 10 TEX. ADMIN. CODE §60.117 (Monitoring for Non-Profit or HUB Participation) which outlines requirements for material participation, and a violation of Appendix A of the LURA which requires Bozrah International Ministries, Inc. to control the property and materially participate in its operation and development, as defined by Section 469(h) of the Internal Revenue Code.
 - c. Respondent failed to execute required lease provisions or exclude prohibited lease language, a violation of 10 TEX. ADMIN. CODE §60.110 (Lease Requirements), which requires leases to include specific language protecting tenants from eviction without good cause and prohibiting owners from taking certain actions such as locking out or seizing property, or threatening to do so, except by judicial process. Partial corrective documentation was received in response to an administrative penalty informal conference notice, including a signed lease addendum for unit 101 but omitting the required certification indicating that the form had been implemented property-wide.

- d. Respondent failed to provide an affirmative marketing plan, a violation of 10 TEX. ADMIN. CODE §60.114 (Requirements Pertaining to Households with Rental Assistance), which requires developments to approve and distribute an affirmative marketing plan and to distribute marketing materials to selected marketing organizations that reach groups identified as least likely to apply and to the disabled. An affirmative marketing plan was received in response to an administrative penalty informal conference notice, but the plan omitted the required marketing materials to prove that the development was carrying out marketing to the disabled.

The Administrative Penalty Committee recommended a penalty and training, and set a deadline of June 3, 2013, to submit fully acceptable corrective documentation. Acceptable documentation was submitted in response to the Committee's deadline and the above violations are considered resolved.

3. On January 1, 2012, TDHCA sent an invoice for annual compliance fees that had come due. The invoice required payment within 30 days. Respondent failed to pay the invoice timely, a violation of Section 7 of the LURA which requires owner to pay an annual compliance fee to the Department in the amount of \$25.00 per unit, for a total of \$1,425.00 per year. A partial fee payment in the amount of \$1,400.00 was submitted late on March 29, 2012, then the final \$25.00 payment was submitted on April 8, 2013, after an informal conference with the Administrative Penalty Committee.
4. An informal conference was held on January 22, 2013, but Respondent did not appear. The informal conference was reset as a courtesy and was attended by Respondent on February 26, 2013. The Administrative Penalty Committee recommended a penalty and training, and set a deadline of June 3, 2013, to submit fully acceptable corrective documentation.
5. All findings indicated above have been resolved.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TAC §1.14 and 10 TAC, Chapter 60, both of which were replaced by 10 Tex. Admin. Code §2 as of November 19, 2014.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.

4. Respondent violated 10 TEX. ADMIN. CODE § 60.116 in 2010, and I.R.C. §42, as amended, by failing to comply with HUD's Uniform Physical Condition Standards when major violations were discovered and not timely corrected.²
5. Respondent violated Section 4 of the LURA and 10 TEX. ADMIN. CODE §60.108 in 2011, by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy for unit 101.
6. Respondent violated 10 TEX. ADMIN. CODE §60.117 and Appendix A of the LURA in 2011, by failing to provide evidence of material participation by a qualified nonprofit.
7. Respondent violated 10 TEX. ADMIN. CODE §60.110 in 2011, by failing to execute required lease provisions or exclude prohibited lease language.
8. Respondent violated 10 TEX. ADMIN. CODE § 60.114 in 2011 by failing to provide an affirmative marketing plan, complete with marketing materials.
9. Respondent violated Section 7 of the LURA by failing to pay required annual compliance fees for 2012.
10. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules and agreements, the Board has personal and subject matter jurisdiction over Respondent pursuant to TEX. GOV'T CODE §2306.041 and §2306.267.
11. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
12. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code Chapter 2306 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to TEX. GOV'T CODE §2306.041.
13. An administrative penalty of \$3,895.00 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the Board of the Texas Department of Housing and Community Affairs orders the following:

IT IS HEREBY ORDERED that Respondent is assessed an administrative penalty in the amount of \$3,895.00, subject to partial deferral and forgiveness as further ordered below.

² HUD's Uniform Physical Condition Standards are the standards adopted by TDHCA pursuant to 10 TEX. ADMIN. CODE 10.616(a)

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay a \$500.00 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before May 18, 2015, to the following address:

If via overnight mail (FedEx, UPS):	If via USPS:
TDHCA Attn: Ysella Kaseman 221 E 11 th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

IT IS FURTHER ORDERED that Respondent must keep the property in compliance by timely submitting corrective documentation to fully resolve any future compliance violations found by TDHCA during a 3 year probationary period, with the 3 year term beginning on the date the TDHCA Board approves this Agreed Final Order and ending 3 years later.

IT IS FURTHER ORDERED that in the event of a Department-approved sale to an unaffiliated third party, the 3 year probationary period shall terminate earlier, upon the date of sale consummation.

IT IS FURTHER ORDERED that Respondent must follow the requirements of 10 Tex. Admin. Code §10.406, a copy of which is included at Attachment 1, and obtain approval from the Department prior to consummating a property sale.

IT IS FURTHER ORDERED that timely correction of future compliance violations shall be determined in accordance with 10 Tex. Admin. Code §10.602 (Notice to Owners and Corrective Action Periods), a copy of which is included at Attachment 2. Any corrective documentation not submitted on or before a compliance monitoring deadline shall be considered untimely and will constitute a violation of this agreement provided that Respondent did not timely request and receive an extension in accordance with the rule.

IT IS FURTHER ORDERED that full resolution of future compliance violations will be determined by whether or not a timely submission includes all documentation that was requested in a file monitoring or physical inspection letter that is sent to Respondent by the TDHCA Compliance Division via the Compliance Monitoring and Tracking System ("CMTS").

IT IS FURTHER ORDERED that if Respondent complies with the terms and conditions of this Agreed Final Order, the satisfactory performance under this Agreed Final Order will be accepted in lieu of the remaining assessed administrative penalty and the remaining \$3,395.00 portion of the administrative penalty will be deferred and forgiven.

IT IS FURTHER ORDERED that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, then the remaining administrative penalty in the amount of \$3,395.00 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Agreed Final Order.

IT IS FURTHER ORDERED that the terms of this Agreed Final Order shall be published on the TDHCA website.

[Remainder of page intentionally blank]

STATE OF TEXAS §
 §
COUNTY OF _____§

BEFORE ME, _____, a notary public in and for the State of _____, on this day personally appeared _____, known to me or proven to me through _____ to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he/she) executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is _____, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of _____ for Respondent. I am the authorized representative of Respondent, owner of Amistad Apartments, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Board of the Texas Department of Housing and Community Affairs."

RESPONDENT:

AMISTAD APARTMENTS, L.P., Texas limited partnership
AMISTAD APARTMENTS I, L.L.C., a Texas limited liability company, its general partner

BOZRAH INTERNATIONAL MINISTRIES INC, a Texas corporation, its 100% shareholder

By: _____
Name: _____
Title: _____

Given under my hand and seal of office this _____ day of _____, 2015.

Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF _____
My Commission Expires: _____

Attachment 1:

Texas Administrative Code

<u>TITLE 10</u>	COMMUNITY DEVELOPMENT
<u>PART 1</u>	TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
<u>CHAPTER 10</u>	UNIFORM MULTIFAMILY RULES
<u>SUBCHAPTER E</u>	POST AWARD AND ASSET MANAGEMENT REQUIREMENTS
<u>RULE §10.406</u>	Ownership Transfers (§2306.6713)

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of this decision. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with §1.5 of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

(b) Requirement. Department approval must be requested for any new member to join in the ownership of a Development. Exceptions include changes to the investment limited partner, non-controlling limited partner, or other partners affiliated with the investment limited partner, or changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner. Any subsequent transfer of the Development will be required to adhere to the process in this section. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. Notwithstanding the foregoing, a Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new members or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(c) Transfers Prior to 8609 Issuance or Construction Completion. Transfers (other than those that do not require Executive Director approval, as set forth in subsection (b) of this section) will not be approved prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) unless the Development Owner can provide evidence that the need for the transfer is due to a hardship (ex. potential bankruptcy, removal by a partner, etc.). The Development Owner must provide the Department with a written explanation describing the hardship and a copy of any applicable agreement between the parties to the transfer, including any Third-Party agreement.

(d) Non-Profit Organizations. If the ownership transfer request is to replace a non-profit organization within the Development ownership entity, the replacement non-profit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and

Texas Government Code §2306.6706.

(2) If the LURA requires ownership or material participation in ownership by a qualified non-profit organization, but the Development did not receive Tax Credits pursuant to §42(h)(5) of the Code, the Development Owner must show that the transferee is a non-profit organization that complies with the LURA.

(e) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner or (ii) determines to sell its ownership interest, in either case, after the issuance of 8609s, the purchaser of that general partnership interest is not required to be a HUB as long as the LURA does not require such continual ownership or a material LURA amendment is approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

(1) the selling HUB is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department's standards for ownership transfers

(f) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. Documentation includes but is not limited to:

(1) a written explanation outlining the reason for the request;

(2) a list of the names of transferees and Related Parties;

(3) detailed information describing the experience and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;

(4) evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least thirty (30) calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired.

(g) Within five (5) business days after the date the Department receives all necessary information under this section, staff shall initiate a qualifications review of a transferee, in accordance with §1.5 of this title, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter.

(h) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) in cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(i) Penalties. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department.

(j) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

Source Note: The provisions of this §10.406 adopted to be effective December 9, 2014, 39 TexReg 9518

Attachment 2:

Texas Administrative Code

<u>TITLE 10</u>	COMMUNITY DEVELOPMENT
<u>PART 1</u>	TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
<u>CHAPTER 10</u>	UNIFORM MULTIFAMILY RULES
<u>SUBCHAPTER F</u>	COMPLIANCE MONITORING
<u>RULE §10.602</u>	Notice to Owners and Corrective Action Periods

(a) The Department will provide written notice to the Owner if the Department does not receive the Annual Owner Compliance Report (AOCR) or if the Department discovers through audit, inspection, review or any other manner that the Development is not in compliance with the provisions of the deed restrictions, conditions imposed by the Department, this subchapter, or other program rules and regulations, including §42 of the Internal Revenue Code.

(b) For a violation other than a violation that poses an imminent hazard or threat to health and safety, the notice will specify a thirty (30) day corrective action period for failure to file the AOCR and a ninety (90) day corrective action period for other violations. During the corrective action period, the Owner has the opportunity to show that either the Development was never in noncompliance or that the event of noncompliance has been corrected. Documentation of correction must be received during the corrective action period for an event to be considered corrected during the corrective action period. The Department may extend the corrective action period for up to six (6) months from the date of the notice to the Development Owner only if there is good cause for granting an extension and the owner requests an extension during the original ninety (90) day corrective action period.

(c) If any communication to the Owner under this section is returned to the Department as refused, unclaimed, or undeliverable, the Development may be considered not in compliance without further notice to the Owner. The Owner is responsible for providing the Department with current contact information, including address(es) (physical and electronic) and phone number(s). The Owner must also provide current contact information to the Department as required by §1.22 of this title (relating to Providing Contact Information to the Department).

(d) Treasury Regulations require the Department to notify Housing Tax Credit Owners of upcoming reviews and instances of noncompliance. The Department will rely solely on the information supplied by the Owner in the Department's web-based Compliance Monitoring and Tracking System (CMTS) to meet this requirement. It is the Owner's sole responsibility to ensure such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in CMTS will be deemed delivered to the Owner. Correspondence from the Department may be directly uploaded to the property's CMTS account using the secure electronic document attachment system. Once uploaded, notification of the attachment will be sent electronically to the email address listed in CMTS. The Department is not required to send a paper copy and if it does so it does as a voluntary and non-precedential courtesy only.

(e) Unless otherwise required by law, events of noncompliance will not be reported to the IRS, referred for enforcement action, considered cause for debarment, or reported in an applicant's compliance history or previous participation review, until after the end of the corrective action period established in the notice described in this section.

Source Note: The provisions of this §10.602 adopted to be effective November 28, 2013, 38 TexReg 8410

ENFORCEMENT ACTION AGAINST
PADRE DE VIDA APARTMENTS, L.P.
WITH RESPECT TO
PADRE DE VIDA APARTMENTS
(HTC FILE # 03002 / CMTS 3314)

§
§
§
§
§
§
§

BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 16th day of April, 2014, the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA") considered the matter of whether enforcement action should be taken against **PADRE DE VIDA APARTMENTS, L.P.**, a Texas limited partnership ("Respondent").

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act ("APA"), Tex. Gov't Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondent agree to resolve this matter by this Agreed Final Order. The Respondent agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the findings of fact and conclusions of law set out in this Order.

Upon recommendation of the Enforcement Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

WAIVER

Respondent acknowledges the existence of their right to request a hearing as provided by TEX. GOV'T CODE § 2306.044, and to seek judicial review, in the District Court of Travis County, Texas, of any order as provided by TEX. GOV'T CODE § 2306.047. Pursuant to this compromise and settlement, the Respondent waives those rights and acknowledges the jurisdiction of the Board over Respondent.

FINDINGS OF FACT

Jurisdiction:

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, and 10 TEX. ADMIN. CODE §1.14 and 10 TEX. ADMIN. CODE Chapter 60¹, both of which were replaced by 10 Tex. Admin. Code §2 as of November 19, 2014.
2. During 2003, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$1,025,408.00 to build and operate Padre de Vida Apartments ("Property") (HTC file No. 03002 / CMTS No. 3314 / LDLD No. 314).
3. Respondent signed a land use restriction agreement ("LURA") regarding the Property. The LURA was effective December 29, 2003, and filed of record at Document Number 1283664 of the Official Public Records of Real Property of Hidalgo County, Texas ("Records").
4. Respondent is a Texas limited partnership that is approved by TDHCA as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations:

1. An on-site monitoring review was conducted on April 12, 2011, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and an August 16, 2011, corrective action deadline was set, however, the following violation was not corrected before the corrective action deadline:
 - a. Respondent failed to provide evidence of material participation by a Historically Underutilized Business ("HUB"), a violation of 10 TEX. ADMIN. CODE §60.117 (Monitoring for Non-Profit or HUB Participation) which outlines requirements for material participation, and a violation of Appendix A of the LURA which requires Charissa Seipp Interiors and Associates to hold an ownership interest in the property and materially participate in its operation and development
2. An informal conference was held on January 22, 2013, but Respondent did not appear. The informal conference was reset as a courtesy and was attended by Respondent on February 26, 2013. The Administrative Penalty Committee recommended a penalty and training, and set a deadline of June 3, 2013, to submit fully acceptable corrective documentation.
3. All findings indicated above have been resolved.

¹ Within this Agreed Final Order, all references to the violations and procedures at 10 TEX. ADMIN. CODE §1.14, 10 TEX. ADMIN. CODE CHAPTER 10, AND 10 TEX. ADMIN. CODE, CHAPTER 60, refer to the versions of the code in effect on February 26, 2013, when the Administrative Penalty Committee held an informal conference with Respondent and recommended an administrative penalty. Procedures have since been replaced by 10 TEX. ADMIN. CODE §2 (Enforcement), but the findings and general procedures remain the same.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TAC §1.14 and 10 TAC, Chapter 60, both of which were replaced by 10 Tex. Admin. Code §2 as of November 19, 2014.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Respondent violated 10 TEX. ADMIN. CODE §60.117 and Appendix A of the LURA in 2011, by failing to provide evidence of material participation by a qualified nonprofit.
5. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules and agreements, the Board has personal and subject matter jurisdiction over Respondent pursuant to TEX. GOV'T CODE §2306.041 and §2306.267.
6. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
7. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code Chapter 2306 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to TEX. GOV'T CODE §2306.041.
8. An administrative penalty of \$2,800.00 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the Board of the Texas Department of Housing and Community Affairs orders the following:

IT IS HEREBY ORDERED that Respondent is assessed an administrative penalty in the amount of \$2,800.00, subject to partial deferral and forgiveness as further ordered below.

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay an \$1,000.00 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before May 18, 2015, to the following address:

If via overnight mail (FedEx, UPS):	If via USPS:
TDHCA Attn: Ysella Kaseman 221 E 11 th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

IT IS FURTHER ORDERED that Respondent must keep the property in compliance by timely submitting corrective documentation to fully resolve any future compliance violations found by TDHCA during a 3 year probationary period, with the 3 year term beginning on the date the TDHCA Board approves this Agreed Final Order and ending 3 years later.

IT IS FURTHER ORDERED that in the event of a Department-approved sale to an unaffiliated third party, the 3 year probationary period shall terminate earlier, upon the date of sale consummation.

IT IS FURTHER ORDERED that Respondent must follow the requirements of 10 Tex. Admin. Code §10.406, a copy of which is included at Attachment 1, and obtain approval from the Department prior to consummating a property sale.

IT IS FURTHER ORDERED that timely correction of future compliance violations shall be determined in accordance with 10 Tex. Admin. Code §10.602 (Notice to Owners and Corrective Action Periods), a copy of which is included at Attachment 2. Any corrective documentation not submitted on or before a compliance monitoring deadline shall be considered untimely and will constitute a violation of this agreement provided that Respondent did not timely request and receive an extension in accordance with the rule.

IT IS FURTHER ORDERED that full resolution of future compliance violations will be determined by whether or not a timely submission includes all documentation that was requested in a file monitoring or physical inspection letter that is sent to Respondent by the TDHCA Compliance Division via the Compliance Monitoring and Tracking System ("CMTS").

IT IS FURTHER ORDERED that if Respondent complies with the terms and conditions of this Agreed Final Order, the satisfactory performance under this Agreed Final Order will be accepted in lieu of the remaining assessed administrative penalty and the remaining \$1,800.00 portion of the administrative penalty will be deferred and forgiven.

IT IS FURTHER ORDERED that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, then the remaining administrative penalty in the amount of \$1,800.00 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Agreed Final Order.

IT IS FURTHER ORDERED that the terms of this Agreed Final Order shall be published on the TDHCA website.

[Remainder of page intentionally blank]

Approved by the Governing Board of TDHCA on _____, 2015.

By: _____
Name: J. Paul Oxer
Title: Chair of the Board of TDHCA

By: _____
Name: Barbara B. Deane
Title: Secretary of the Board of TDHCA

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

Before me, the undersigned notary public, on this _____ day of _____, 2015, personally appeared J. Paul Oxer, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this _____ day of _____, 2015, personally appeared Barbara B. Deane, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF _____ §

BEFORE ME, _____, a notary public in and for the State of _____, on this day personally appeared _____, known to me or proven to me through _____ to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he/she) executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is _____, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of _____ for Respondent. I am the authorized representative of Respondent, owner of Padre de Vida Apartments, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Board of the Texas Department of Housing and Community Affairs."

RESPONDENT:
PADRE DE VIDA APARTMENTS, L.P., a Texas limited partnership
PADRE DE VIDA APARTMENTS I, L.L.C., a Texas limited liability company, its general partner

By: _____
Name: _____
Title: _____

Given under my hand and seal of office this _____ day of _____, 2015.

Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF _____
My Commission Expires: _____

Attachment 1:

Texas Administrative Code

<u>TITLE 10</u>	COMMUNITY DEVELOPMENT
<u>PART 1</u>	TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
<u>CHAPTER 10</u>	UNIFORM MULTIFAMILY RULES
<u>SUBCHAPTER E</u>	POST AWARD AND ASSET MANAGEMENT REQUIREMENTS
<u>RULE §10.406</u>	Ownership Transfers (§2306.6713)

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of this decision. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with §1.5 of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

(b) Requirement. Department approval must be requested for any new member to join in the ownership of a Development. Exceptions include changes to the investment limited partner, non-controlling limited partner, or other partners affiliated with the investment limited partner, or changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner. Any subsequent transfer of the Development will be required to adhere to the process in this section. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. Notwithstanding the foregoing, a Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new members or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(c) Transfers Prior to 8609 Issuance or Construction Completion. Transfers (other than those that do not require Executive Director approval, as set forth in subsection (b) of this section) will not be approved prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) unless the Development Owner can provide evidence that the need for the transfer is due to a hardship (ex. potential bankruptcy, removal by a partner, etc.). The Development Owner must provide the Department with a written explanation describing the hardship and a copy of any applicable agreement between the parties to the transfer, including any Third-Party agreement.

(d) Non-Profit Organizations. If the ownership transfer request is to replace a non-profit organization within the Development ownership entity, the replacement non-profit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and

Texas Government Code §2306.6706.

(2) If the LURA requires ownership or material participation in ownership by a qualified non-profit organization, but the Development did not receive Tax Credits pursuant to §42(h)(5) of the Code, the Development Owner must show that the transferee is a non-profit organization that complies with the LURA.

(e) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner or (ii) determines to sell its ownership interest, in either case, after the issuance of 8609s, the purchaser of that general partnership interest is not required to be a HUB as long as the LURA does not require such continual ownership or a material LURA amendment is approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

(1) the selling HUB is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department's standards for ownership transfers

(f) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. Documentation includes but is not limited to:

(1) a written explanation outlining the reason for the request;

(2) a list of the names of transferees and Related Parties;

(3) detailed information describing the experience and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;

(4) evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least thirty (30) calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired.

(g) Within five (5) business days after the date the Department receives all necessary information under this section, staff shall initiate a qualifications review of a transferee, in accordance with §1.5 of this title, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter.

(h) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) in cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(i) Penalties. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department.

(j) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

Source Note: The provisions of this §10.406 adopted to be effective December 9, 2014, 39 TexReg 9518

Attachment 2:

Texas Administrative Code

<u>TITLE 10</u>	COMMUNITY DEVELOPMENT
<u>PART 1</u>	TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
<u>CHAPTER 10</u>	UNIFORM MULTIFAMILY RULES
<u>SUBCHAPTER F</u>	COMPLIANCE MONITORING
<u>RULE §10.602</u>	Notice to Owners and Corrective Action Periods

(a) The Department will provide written notice to the Owner if the Department does not receive the Annual Owner Compliance Report (AOCR) or if the Department discovers through audit, inspection, review or any other manner that the Development is not in compliance with the provisions of the deed restrictions, conditions imposed by the Department, this subchapter, or other program rules and regulations, including §42 of the Internal Revenue Code.

(b) For a violation other than a violation that poses an imminent hazard or threat to health and safety, the notice will specify a thirty (30) day corrective action period for failure to file the AOCR and a ninety (90) day corrective action period for other violations. During the corrective action period, the Owner has the opportunity to show that either the Development was never in noncompliance or that the event of noncompliance has been corrected. Documentation of correction must be received during the corrective action period for an event to be considered corrected during the corrective action period. The Department may extend the corrective action period for up to six (6) months from the date of the notice to the Development Owner only if there is good cause for granting an extension and the owner requests an extension during the original ninety (90) day corrective action period.

(c) If any communication to the Owner under this section is returned to the Department as refused, unclaimed, or undeliverable, the Development may be considered not in compliance without further notice to the Owner. The Owner is responsible for providing the Department with current contact information, including address(es) (physical and electronic) and phone number(s). The Owner must also provide current contact information to the Department as required by §1.22 of this title (relating to Providing Contact Information to the Department).

(d) Treasury Regulations require the Department to notify Housing Tax Credit Owners of upcoming reviews and instances of noncompliance. The Department will rely solely on the information supplied by the Owner in the Department's web-based Compliance Monitoring and Tracking System (CMTS) to meet this requirement. It is the Owner's sole responsibility to ensure such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in CMTS will be deemed delivered to the Owner. Correspondence from the Department may be directly uploaded to the property's CMTS account using the secure electronic document attachment system. Once uploaded, notification of the attachment will be sent electronically to the email address listed in CMTS. The Department is not required to send a paper copy and if it does so it does as a voluntary and non-precedential courtesy only.

(e) Unless otherwise required by law, events of noncompliance will not be reported to the IRS, referred for enforcement action, considered cause for debarment, or reported in an applicant's compliance history or previous participation review, until after the end of the corrective action period established in the notice described in this section.

Source Note: The provisions of this §10.602 adopted to be effective November 28, 2013, 38 TexReg 8410

ENFORCEMENT ACTION AGAINST
RIO DE VIDA APARTMENTS, L.P.
WITH RESPECT TO
RIO DE VIDA APARTMENTS
(HTC FILE # 3035 / CMTS # 3341)

§
§
§
§
§
§
§

BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 16th day of April, 2015, the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA”) considered the matter of whether enforcement action should be taken against **RIO DE VIDA APARTMENTS, L.P.**, a Texas limited partnership (“Respondent”).

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act (“APA”), Tex. Gov’t Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondent agree to resolve this matter by this Agreed Final Order. The Respondent agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the findings of fact and conclusions of law set out in this Order.

Upon recommendation of the Enforcement Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

WAIVER

Respondent acknowledges the existence of their right to request a hearing as provided by TEX. GOV’T CODE § 2306.044, and to seek judicial review, in the District Court of Travis County, Texas, of any order as provided by TEX. GOV’T CODE § 2306.047. Pursuant to this compromise and settlement, the Respondent waives those rights and acknowledges the jurisdiction of the Board over Respondent.

FINDINGS OF FACT

Jurisdiction:

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, and 10 TEX. ADMIN. CODE §1.14 and 10 TEX. ADMIN. CODE Chapter 60¹, both of which were replaced by 10 Tex. Admin. Code §2 as of November 19, 2014.
2. During 2003, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$1,004,228.00 to build and operate Rio de Vida Apartments ("Property") (HTC file No. 03035 / CMTS No. 3341 / LDLD No. 317).
3. Respondent signed a land use restriction agreement ("LURA") regarding the Property. The LURA was effective November 1, 2004, and filed of record at Document Number 1418987 of the Official Public Records of Real Property of Hidalgo County, Texas ("Records"), as amended by a First Amendment executed on May 22, 2008, and filed in the Records at Document Number 1900766.
4. Respondent is a Texas limited partnership that is approved by TDHCA as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations:

5. A Uniform Physical Condition Standards ("UPCS") inspection was conducted on January 10, 2012. Inspection reports showed numerous serious property condition violations, a violation of 10 TEX. ADMIN. CODE § 60.118 (Property Condition Standards). Notifications of noncompliance were sent and an April 23, 2012, corrective action deadline was set. Partial corrective action was received but the violations at Attachment 1 were not corrected before the deadline.
6. An on-site monitoring review was conducted on October 19, 2011, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a March 29, 2012, corrective action deadline was set, however, the following violations were not fully corrected before the deadline:
 - a. Respondent failed to provide documentation that household income was within prescribed limits upon initial occupancy for units 111, 126, or 817, a violation of 10 TEX. ADMIN. CODE §60.108 (Determination, Documentation and Certification

¹ Within this Agreed Final Order, all references to the violations and procedures at 10 TEX. ADMIN. CODE §1.14, 10 TEX. ADMIN. CODE CHAPTER 10, AND 10 TEX. ADMIN. CODE, CHAPTER 60, refer to the versions of the code in effect on February 26, 2013, when the Administrative Penalty Committee held an informal conference with Respondent and recommended an administrative penalty. Procedures have since been replaced by 10 TEX. ADMIN. CODE §2 (Enforcement), but the findings and general procedures remain the same.

of Annual Income) and the Section 4 of the LURA, which require screening of tenants to ensure qualification for the program.

- b. Respondent failed to maintain or provide tenant income certification and documentation for units 113, 121, 215, 217, 414, 421, 425, 426, 428, 511, 514, 521, 523, 616, 625, 627, 628, 1116, 1118, 1213, 1215, 1226, 1313, and 1316, a violation of 10 TEX. ADMIN. CODE §60.111 (Annual Recertification), which requires developments to annually collect an Annual Eligibility Certification form from each household.
 - c. Respondent failed to provide evidence of material participation by a qualified nonprofit, a violation of 10 TEX. ADMIN. CODE §60.117 (Monitoring for Non-Profit or HUB Participation) which outlines requirements for material participation, and a violation of Appendix A of the LURA which requires Bozrah International Ministries, Inc. to materially participate as one of the general partners or managing members in the development and operation of the property.
 - d. Respondent failed to provide an affirmative marketing plan, a violation of 10 TEX. ADMIN. CODE §60.114 (Requirements Pertaining to Households with Rental Assistance), which requires developments to approve and distribute an affirmative marketing plan and to distribute marketing materials to selected marketing organizations that reach groups identified as least likely to apply and to the disabled.
7. An informal conference was held on January 22, 2013, but Respondent did not appear. The informal conference was reset as a courtesy and was attended by Respondent on February 26, 2013. The Administrative Penalty Committee recommended a penalty and training, and set a deadline of June 3, 2013, to submit fully acceptable corrective documentation.
8. Partial documentation was submitted in response to the Committee's deadline and the following violations from above were unresolved:
- a. Failure to maintain or provide tenant's annual income recertification for unit 217, described at FOF #6b. Documentation submitted indicated that a new household occupied the unit on January 9, 2013, but the tenant is not eligible for the program.
 - b. Failure to maintain or provide tenant's annual income recertification for unit 1118, described at FOF #6b. Documentation submitted for this unit actually related to unit 1313. Nothing submitted for unit 1118.
 - c. Failure to provide evidence of material participation by a qualified nonprofit, described at FOF #6c. No documentation was provided.
9. Additional documentation was submitted on March 5, 2015, and the following finding remains unresolved at the time of this order:
- a. Failure to maintain or provide tenant's annual income recertification for unit 217, described at FOF #6b. Documentation submitted indicated that a new household occupied the unit on January 9, 2013 and received a lease renewal in 2014,

despite never being eligible for the program. The nonqualified tenant's lease will expire August 31, 2015, and the tenant has received a notice of nonrenewal from the property manager.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TAC §1.14 and 10 TAC, Chapter 60, both of which were replaced by 10 Tex. Admin. Code §2 as of November 19, 2014.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Respondent violated 10 TEX. ADMIN. CODE § 60.118 in 2012, and I.R.C. §42, as amended, by failing to comply with HUD's Uniform Physical Condition Standards when major violations were discovered and not timely corrected.²
5. Respondent violated Section 4 of the LURA and 10 TEX. ADMIN. CODE §60.108 in 2011, by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 111, 126, and 817.
6. Respondent violated 10 TEX. ADMIN. CODE §60.111 in 2011, by failing to maintain or provide tenant income certification and documentation for units 113, 121, 215, 217, 414, 421, 425, 426, 428, 511, 514, 521, 523, 616, 625, 627, 628, 1116, 1118, 1213, 1215, 1226, 1313, and 1316.
7. Respondent violated 10 TEX. ADMIN. CODE §60.117 and Appendix A of the LURA in 2011, by failing to provide evidence of material participation by a qualified nonprofit.
8. Respondent violated 10 TEX. ADMIN. CODE § 60.114 in 2011, by failing to provide an affirmative marketing plan, complete with marketing materials.
9. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules and agreements, the Board has personal and subject matter jurisdiction over Respondent pursuant to TEX. GOV'T CODE §2306.041 and §2306.267.
10. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.

² HUD's Uniform Physical Condition Standards are the standards adopted by TDHCA pursuant to 10 TEX. ADMIN. CODE 10.616(a)

11. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code Chapter 2306 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to TEX. GOV'T CODE §2306.041.
12. An administrative penalty of \$10,670.00 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the Board of the Texas Department of Housing and Community Affairs orders the following:

IT IS HEREBY ORDERED that Respondent is assessed an administrative penalty in the amount of \$10,670.00.

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay a \$5,335.00 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before May 18, 2015, to the following address:

If via overnight mail (FedEx, UPS):	If via USPS:
TDHCA Attn: Ysella Kaseman 221 E 11 th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

IT IS FURTHER ORDERED that Respondent must make unit 217 available for occupancy by a qualified household on or before September 30, 2015, 30 days after the expiration of the current nonqualified tenant's lease.

IT IS FURTHER ORDERED that Respondent must keep the property in compliance by timely submitting corrective documentation to fully resolve any future compliance violations found by TDHCA during a 3 year probationary period, with the 3 year term beginning on the date the TDHCA Board approves this Agreed Final Order and ending 3 years later.

IT IS FURTHER ORDERED that in the event of a Department-approved sale to an unaffiliated third party, the 3 year probationary period shall terminate earlier, upon the date of sale consummation.

IT IS FURTHER ORDERED that Respondent must follow the requirements of 10 Tex. Admin. Code §10.406, a copy of which is included at Attachment 2, and obtain approval from the Department prior to consummating a property sale.

IT IS FURTHER ORDERED that timely correction of future compliance violations shall be determined in accordance with 10 Tex. Admin. Code §10.602 (Notice to Owners and Corrective Action Periods), a copy of which is included at Attachment 3. Any corrective documentation not submitted on or before a compliance monitoring deadline shall be considered untimely and will

constitute a violation of this agreement provided that Respondent did not timely request and receive an extension in accordance with the rule.

IT IS FURTHER ORDERED that full resolution of future compliance violations will be determined by whether or not a timely submission includes all documentation that was requested in a file monitoring or physical inspection letter that is sent to Respondent by the TDHCA Compliance Division via the Compliance Monitoring and Tracking System (“CMTS”).

IT IS FURTHER ORDERED that if Respondent complies with the terms and conditions of this Agreed Final Order, the satisfactory performance under this Agreed Final Order will be accepted in lieu of the remaining assessed administrative penalty and the remaining \$5,335.00 portion of the administrative penalty will be deferred and forgiven.

IT IS FURTHER ORDERED that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, then the remaining administrative penalty in the amount of \$5,335.00 shall be immediately due and payable to the Department. Such payment shall be made by cashier’s check payable to the “Texas Department of Housing and Community Affairs” within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Agreed Final Order.

IT IS FURTHER ORDERED that the terms of this Agreed Final Order shall be published on the TDHCA website.

[Remainder of page intentionally blank]

Approved by the Governing Board of TDHCA on _____, 2015.

By: _____
Name: J. Paul Oxer
Title: Chair of the Board of TDHCA

By: _____
Name: Barbara B. Deane
Title: Secretary of the Board of TDHCA

THE STATE OF TEXAS §
§
COUNTY OF _____ §

Before me, the undersigned notary public, on this _____ day of _____, 2015, personally appeared J. Paul Oxer, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this _____ day of _____, 2015, personally appeared Barbara B. Deane, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

Attachment 1

2012 UPCS Violations

(see attached)

**Note – violations with a checkmark or a date beside them were considered corrected at the time of the 2/26/2013 administrative penalty informal conference. All other violations were considered uncorrected.*

Texas Department of Housing and Community Affairs
List of Deficiencies Found

Printed On: January 23, 2012

Inspectable Area	Inspectable Item	Deficiency	1	2	3	Comments
Río De Vida Apartments 301 South Inspiration Road Mission, TX 78572						
Building:						
Unit:						
	TX0303502	Fencing and Gates				L3 Cyclone exterior fence is damaged at east and south sides, Pedestrian gate/entrance at automatic entry gate did not lock, missing hardware
		Fencing and Gates				L3 Large hole in exterior fencing at south side
		Grounds		L2		Soil erosion at NW corner of laundry building and under side walk near gas meter at laundry building.
		Health & Safety				L3 Flower bed at front of office has broken landscape lighting at ground level, exposed wires.
	TX0303501	Mailbox/Signs				L3 Several mail boxes are missing front panels
		Market Appeal		L1		Graffiti on play ground equipment.
		Market Appeal				L2 Cigarette butts and trash in front of unit 1213
Building: Bldg 1						
Unit:						
		Community Room				
		Doors				L3 Back exterior double door to pool, self closing latch is broken.
		Building Systems				
		Electrical System				L3 Damaged/missing plastic main breaker covers near electric meters. Missing exterior outlet cover near panels.
		Fire Protection				L3 Fire extinguishers expired
		Building Exterior				
		Health & Safety				L3 Missing inner safety panel at electrical panel at west side, exposed wires
		Building Systems				
		HVAC				L2 Rusted corroded AC cutoff boxes at the west side.
		Kitchen				
		Kitchen				L1 Refrigerator seal at kitchen area is deteriorated.
		Building Exterior				
		Lighting				L2 Exterior light is broken at south side.
		Walls				L2 Open gap at east side, missing dryer vent cover
		Unit: Unit 112				
		Doors				L1 Closet door is missing
		Health & Safety				L3 Window egress blocked at 1st bedroom
		Kitchen				L2 Disposer Inoperable
		Kitchen				L1 Replace seal
		Kitchen				L1 Oven door is damaged does not close properly
		Walls				L1 Marking on wall
	3510	Unit: Unit 115				
		Kitchen				L1 Refrigerator-Missing/Damaged/Inoperable
Building: Bldg 10						
Unit:						
		Building Systems				
		Fire Protection				L3 Fire extinguishers expired
		Building Exterior				
		Lighting				L2 Missing exterior light fixture
		Walls				L1 Graffiti at wall at backside.
		Unit: Unit 1012				
		Doors				L1 Missing master bedroom door.
		Floors				L2 Heavy stains at master bedroom carpet
		Health & Safety				L3 Roaches at kitchen
		Kitchen				L1 Replace seal
		Outlets/Switches				L3 Missing outlet cover master bedroom.
		Unit: Unit 1026				
		Doors				L3 Damaged self closing entry door hinge.

**Texas Department of Housing and Community Affairs
List of Deficiencies Found**

Printed On: January 23, 2012

3511	Inspectible Area	Deficiency	5	9	3	Comments
	Kitchen	Range Hood/Exhaust Fans - Excessive Grease/Inoperable	L1			Missing exhaust fan filter
	Building: Bldg 11					
	Unit:					
	Building Systems					
	Fire Protection	Missing/Damaged/Expired Extinguishers ✓		L3		Fire extinguishers expired
	Building Exterior					
	Lighting	Broken Fixtures/Bulbs		L2		Missing exterior light fixtures at the west side
	Unit: Unit 1113					
	Kitchen	Range Hood/Exhaust Fans - Excessive Grease/Inoperable	L1			Exhaust fan filter is dirty
	Unit: Unit 1127					
	Health & Safety	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable		L3		Fire egress blocked at 1st bedroom
	Kitchen	Range Hood/Exhaust Fans - Excessive Grease/Inoperable	L1			Exhaust filter dirty
	Kitchen	Range/Stove - Missing/Damaged/Inoperable	L1			Oven door did not close
	Outlets/Switches	Missing/Broken Cover Plates	L1			Crack outlet cover at kitchen
	Building: Bldg 12					
	Unit:					
	Building Systems					
	Electrical System	Missing Covers		L3		Missing exterior outlet cover at south side
	Fire Protection	Missing/Damaged/Expired Extinguishers ✓		L3		Fire extinguishers expired
	Unit: Unit 1213					
	Floors	Floor Covering Damage		L2		Tile floor damaged at master bedroom
	Outlets/Switches	Missing/Broken Cover Plates	L1			Broken outlet master bedroom
	Walls	Needs Paint	L1			Drawing on walls at 2nd bedroom
	Unit: Unit 1223					
	Doors	Damaged Hardware/Locks		L3		Damaged self closing entry door hinge.
	Electrical	GFI Inoperable		L3		GFCI at master bath & kitchen failed to trip
	Kitchen	Refrigerator - Missing/Damaged/Inoperable	L1			Replace seal.
	Unit: Unit 1224					
	Doors	Damaged Hardware/Locks		L3		Damaged self closing entry door hinge.
	Doors	Damaged Frames/Threshold/Lintels/Trim	L2			Door frame is damaged at guest bath
	Health & Safety	Infestation - Insects ✓		L3		Roaches at kitchen
	Kitchen	Refrigerator - Missing/Damaged/Inoperable	L1			Replace seal
	Kitchen	Dishwasher/Garbage Disposal - Damaged/Inoperable	L2			Dishwasher did not work
	Building: Bldg 13					
	Unit:					
	Building Systems					
	Fire Protection	Missing/Damaged/Expired Extinguishers ✓		L3		Fire extinguishers expired
	Building Exterior					
	Lighting	Broken Fixtures/Bulbs		L2		Missing exterior light fixtures.
	Roofs	Missing/Damaged Components from Downspout/Gutter		L2		Missing downspout at south side
	Unit: Unit 1317					
	Bathroom	Cabinets - Damaged/Missing	L1			Missing drawer fronts at master bath
	Doors	Damaged Hardware/Locks		L3		Damaged self closing entry door hinge.
	Doors	Deteriorated/Missing Seals (Entry Only)		L3		Daylight at back patio door. Bad seal.
	Kitchen	Range/Stove - Missing/Damaged/Inoperable		L3		Oven door missing.
	Kitchen	Cabinets - Missing/Damaged	L2			Missing drawer fronts at kitchen
	Unit: Unit 1326					
	Bathroom	Shower/Tub - Damaged/Missing	L2			Missing shower head
	Unit: Unit 1328					
	Bathroom	Water Closet - Damaged/Clogged/Missing	L2			Missing both toilet tank lids
	Outlets/Switches	Missing/Broken Cover Plates	L1			Missing cover plates at bedroom #2
	Building: Bldg 14					
	Unit:					
	Building Systems					
	Fire Protection	Missing/Damaged/Expired Extinguishers ✓		L3		Fire extinguishers expired
	Building: Bldg 15					

**Texas Department of Housing and Community Affairs
List of Deficiencies Found**

Printed On: January 23, 2012

3503

3504

3505

3506

Inspectible Area	Inspectible Item	Deficiency	1	2	3	Comments
Unit:	Building Systems					
	Fire Protection	Missing/Damaged/Expired Extinguishers ✓			L3	Fire extinguishers expired
Building:	Bldg 16					
Unit:	Building Systems					
	Fire Protection	Missing/Damaged/Expired Extinguishers ✓			L3	Fire extinguishers expired
Building:	Bldg 2					
Unit:	Building Systems					
	Fire Protection	Missing/Damaged/Expired Extinguishers ✓			L3	Fire extinguishers expired
	Building Exterior					
	Walls	Stained/Peeling/Needs Paint	L1			Graffiti at the east stairwell
Unit:	Unit 224					
	Health & Safety	Hazards - Tripping ✓ 4-25-12			L3	Tripping hazard, TV cable on the ground
Building:	Bldg 3					
Unit:	Building Systems					
	Fire Protection	Missing/Damaged/Expired Extinguishers ✓			L3	Fire extinguishers expired
	Building Exterior					
	Windows	Damaged/Missing Screens	L1			More than three screens are damaged. (7)
Unit:	Unit 312					
	Doors	Damaged Hardware/Locks			L3	Damaged self closing entry door hinge.
Unit:	Unit 328					
	Doors	Damaged Hardware/Locks			L2	Missing striker plate at master bedroom door.
	Kitchen	Range/Stove - Missing/Damaged/Inoperable	L1			Left Rear burner did not function.
Building:	Bldg 4					
Unit:	Building Systems					
	Fire Protection	Missing/Damaged/Expired Extinguishers ✓			L3	Fire extinguishers expired
	Building Exterior					
	Lighting	Broken Fixtures/Bulbs	L2			Damaged exterior light at east side
	Roofs	Missing/Damaged Components from Downspout/Gutter	L2			Missing downspout at west side
Unit:	Unit 424					
	Doors	Damaged Hardware/Locks			L3	Damaged self closing entry door hinge.
Building:	Bldg 5					
Unit:	Building Systems					
	Fire Protection	Missing/Damaged/Expired Extinguishers ✓			L3	Fire extinguishers expired
Unit:	Unit 517					
	Bathroom	Plumbing - Leaking Faucet/Pipes	L1			Shower fixtures loose at wall at guest bath
	Electrical	GFI Inoperable	L3			GFCI at kitchen failed to trip
	Health & Safety	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable	L3			Fire egress blocked at master bedroom.
Unit:	Unit 524					
	Bathroom	Water Closet - Damaged/Clogged/Missing	L3			Missing toilet tank
	Doors	Deteriorated/Missing Seats (Entry Only)	L3			Deteriorated back door seat.
	Doors	Damaged Frames/Threshold/Lintels/Trim	L2			Front door binds when closed.
	Doors	Damaged Hardware/Locks	L3			Damaged self closing entry door hinge.
	Kitchen	Cabinets - Missing/Damaged	L3			Damaged cabinets at kitchen and bath.
	Kitchen	Refrigerator-Missing/Damaged/Inoperable	L3			Missing - Vacant
Building:	Bldg 6					
Unit:	Building Systems					
	Fire Protection	Missing/Damaged/Expired Extinguishers ✓			L3	Fire extinguishers expired
	Sanitary System	Missing Drain/Cleanout/Manhole Covers	L3			Sewer drain cap damaged at west and south sides.
Unit:	Unit 612					
	Bathroom	Water Closet - Damaged/Clogged/Missing ✓	L2			Missing toilet seat at guest bath
	Doors	Damaged Hardware/Locks ✓	L3			Damaged self closing entry door hinge.
	Lighting	Missing/Inoperable Fixture ✓	L2			Light fixture in master closet hanging from electrical wire

**Texas Department of Housing and Community Affairs
List of Deficiencies Found**

Printed On: January 23, 2012

Inspectible Area	Deficiency	5	9	3	Comments
Unit: Unit 617	Windows Deteriorated/Missing Caulking/Seals			L3	Fogged window at living area
Unit: Unit 617	Doors Damaged Hardware/Locks			L3	Damaged self closing entry door hinge.
Unit: Unit 617	Health & Safety Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable			L3	Egress blocked 2nd bedroom
Unit: Unit 618	Doors Damaged Hardware/Locks			L3	Damaged self closing entry door hinge.
Unit: Unit 618	Health & Safety Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable			L3	Fire egress-blocked at master bedroom
Unit: Unit 618	Kitchen Dishwasher/Garbage Disposal - Damaged/Inoperable			L2	Inoperable
Unit: Unit 625	Doors Damaged Hardware/Locks			L3	Damaged self closing entry door hinge.
Unit: Unit 625	Kitchen Dishwasher/Garbage Disposal - Damaged/Inoperable			L2	Disposer inoperable
Unit: Unit 625	Kitchen Range/Stove - Missing/Damaged/Inoperable			L2	Oven door does not close, missing control knobs at oven
Unit: Unit 628	Bathroom Water Closet - Damaged/Clogged/Missing			L2	Missing toilet tank lid at master bath
Unit: Unit 628	Bathroom Cabinets - Damaged/Missing		L1		Missing drawer fronts at both baths
Unit: Unit 628	Doors Deteriorated/Missing Seals (Entry Only)			L3	Daylight at patio door, need weather stripping.
Unit: Unit 628	Doors Missing Door			L3	Missing doors at both baths and hall closet
Unit: Unit 628	Kitchen Refrigerator-Missing/Damaged/Inoperable			L3	Mold in refrigerator, sat for 124 days
Unit: Unit 628	Kitchen Plumbing - Leaking Faucet/Pipes			L3	Missing drain pipes at kitchen sink, not connected
Unit: Unit 628	Kitchen Outlets/Switches Missing/Broken Cover Plates			L1	Damaged plate 1st bedroom
Building: Bldg 7	Unit: Building Systems Fire Protection Missing/Damaged/Expired Extinguishers ✓			L3	Fire extinguishers expired
Unit: Unit 724	Health & Safety Infestation - Insects ✓			L3	Roaches kitchen
Unit: Unit 724	Health & Safety Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable			L3	Fire egress blocked at bedroom
Unit: Unit 724	Walls Water Stains/Water Damage/Mold/Mildew			L1	Mildew at master bath tub/shower
Building: Bldg 8	Unit: Building Systems Electrical System Missing Covers			L3	Missing exterior outlet weather cover at east side
Building: Bldg 8	Unit: Building Systems Fire Protection Missing/Damaged/Expired Extinguishers ✓			L3	Fire extinguishers expired
Unit: Unit 813	Health & Safety Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable			L3	Fire egress blocked master bedroom
Unit: Unit 813	Health & Safety Infestation - Insects ✓			L3	Roaches in kitchen
Unit: Unit 815	Bathroom Cabinets - Damaged/Missing			L1	Missing drawer fronts at master bath
Unit: Unit 815	Doors Damaged Hardware/Locks			L3	Missing deadbolt lock assembly at patio door.
Unit: Unit 815	Outlets/Switches Missing/Broken Cover Plates			L1	Missing cover plate at kitchen sink
Unit: Unit 824	Housekeeping Housekeeping			L3	Skippers, unit was left full of trash.
Unit: Unit 824	Bathroom Cabinets - Damaged/Missing			L1	Bathroom drawer front damaged/missing
Unit: Unit 824	Bathroom Water Closet - Damaged/Clogged/Missing			L2	Toilet at guest bath runs.
Unit: Unit 824	Doors Missing Door			L1	Bedroom closet door missing.
Unit: Unit 824	Floors Water Stains/Water Damage/Mold/Mildew			L2	Heavy carpet stains at master bedroom.
Unit: Unit 824	Health & Safety Infestation - Insects			L3	Roaches kitchen
Unit: Unit 824	Kitchen Range Hoods/Exhaust Fans -Excessive Grease/Inoperable			L1	Exhaust fan filter is dirty
Unit: Unit 824	Outlets/Switches Missing/Broken Cover Plates			L1	Missing cover at living area
Building: Bldg 9	Unit: Building Systems Domestic Water Leaking Central Water Supply			L3	Leak at water supply pipes near foundation at North side.

3507

3508

3509

**Texas Department of Housing and Community Affairs
List of Deficiencies Found**

Printed On: January 23, 2012

Inspectable Area	Inspectable Item	Deficiency	5	4	3	Comments
	Fire Protection	Missing/Damaged/Expired Extinguishers ✓			L3	Fire extinguishers expired
Unit: Unit 926	Bathroom	Plumbing - Clogged Drains		L1		Master bedroom sink drains slow
	Doors	Damaged Hardware/Locks		L3		Damaged self closing entry door hinge.
	Doors	Damaged Frames/Threshold/Lintels/Trim		L2		Door frame is damaged at the 1st bedroom
	Health & Safety	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable		L3		Fire egress blocked at master bedroom.
	Kitchen	Dishwasher/Garbage Disposal - Damaged/Inoperable		L2		Dishwasher and disposer inoperable
Building: Laundry Building	Unit:					
	Building Exterior					
	Doors	Damaged Hardware/Locks		L3		Missing hardware lock assembly at front door.
	Doors	Damaged Surface (Holes/Paint/Rusting)		L2		Rust at water heater closet door at back side.
	Building Systems					
	Fire Protection	Missing/Damaged/Expired Extinguishers ✓		L3		expired fire extinguisher
	Building Exterior					
	Health & Safety	Hazards - Sharp Edges		L3		Broken glass at back side window
	Health & Safety	Electrical Hazards - Exposed Wires/Open Panels		L3		Missing cover plate at exterior outlet near coke machine
	Health & Safety	Hazards - Other		L3		Loose exterior outlet at south side
	Roofs	Missing/Damaged Components from Downspout/Gutter		L1		Damaged downspout at front corner
	Walls	Cracks/Gaps		L2		Front exterior siding damaged due to front door hitting it. Need door stops, add trim and caulk corner.
	Windows	Broken/Missing/Cracked Panes		L3		Broken window outer pane
Building: Office/Pool	Unit:					
	Restrooms/Pool Structures					
	Doors	Damaged Hardware/Locks 405-10		L3		Door latch at womens bath is damaged.
	Building Systems					
	Fire Protection	Missing/Damaged/Expired Extinguishers ✓		L3		Fire extinguishers expired
	Building Exterior					
	Health & Safety	Electrical Hazards - Exposed Wires/Open Panels		L3		Exposed wires rusted cover at outlet near downspout and fence north side. Missing Cutoff at AC disconnect south side.
	Health & Safety	Electrical Hazards - Exposed Wires/Open Panels		L3		Exposed wires at missing exterior light poles around the pool area.
	Restrooms/Pool Structures					
	Lighting	Missing/Inoperable Fixture		L3		Damaged/missing exterior light poles around pool area, exposed wires. Missing cover or light fixture at wall near pool bathrooms.
Community Room	Windows	Cracked/Broken/Missing Panes		L1		Cracked window at the north side TV room near NE corner.

Attachment 2:

Texas Administrative Code

<u>TITLE 10</u>	COMMUNITY DEVELOPMENT
<u>PART 1</u>	TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
<u>CHAPTER 10</u>	UNIFORM MULTIFAMILY RULES
<u>SUBCHAPTER E</u>	POST AWARD AND ASSET MANAGEMENT REQUIREMENTS
<u>RULE §10.406</u>	Ownership Transfers (§2306.6713)

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of this decision. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with §1.5 of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

(b) Requirement. Department approval must be requested for any new member to join in the ownership of a Development. Exceptions include changes to the investment limited partner, non-controlling limited partner, or other partners affiliated with the investment limited partner, or changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner. Any subsequent transfer of the Development will be required to adhere to the process in this section. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. Notwithstanding the foregoing, a Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new members or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(c) Transfers Prior to 8609 Issuance or Construction Completion. Transfers (other than those that do not require Executive Director approval, as set forth in subsection (b) of this section) will not be approved prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) unless the Development Owner can provide evidence that the need for the transfer is due to a hardship (ex. potential bankruptcy, removal by a partner, etc.). The Development Owner must provide the Department with a written explanation describing the hardship and a copy of any applicable agreement between the parties to the transfer, including any Third-Party agreement.

(d) Non-Profit Organizations. If the ownership transfer request is to replace a non-profit organization within the Development ownership entity, the replacement non-profit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and

Texas Government Code §2306.6706.

(2) If the LURA requires ownership or material participation in ownership by a qualified non-profit organization, but the Development did not receive Tax Credits pursuant to §42(h)(5) of the Code, the Development Owner must show that the transferee is a non-profit organization that complies with the LURA.

(e) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner or (ii) determines to sell its ownership interest, in either case, after the issuance of 8609s, the purchaser of that general partnership interest is not required to be a HUB as long as the LURA does not require such continual ownership or a material LURA amendment is approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

(1) the selling HUB is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department's standards for ownership transfers

(f) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. Documentation includes but is not limited to:

(1) a written explanation outlining the reason for the request;

(2) a list of the names of transferees and Related Parties;

(3) detailed information describing the experience and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;

(4) evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least thirty (30) calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired.

(g) Within five (5) business days after the date the Department receives all necessary information under this section, staff shall initiate a qualifications review of a transferee, in accordance with §1.5 of this title, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter.

(h) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) in cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(i) Penalties. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department.

(j) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

Source Note: The provisions of this §10.406 adopted to be effective December 9, 2014, 39 TexReg 9518

Attachment 3:

Texas Administrative Code

<u>TITLE 10</u>	COMMUNITY DEVELOPMENT
<u>PART 1</u>	TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
<u>CHAPTER 10</u>	UNIFORM MULTIFAMILY RULES
<u>SUBCHAPTER F</u>	COMPLIANCE MONITORING
<u>RULE §10.602</u>	Notice to Owners and Corrective Action Periods

(a) The Department will provide written notice to the Owner if the Department does not receive the Annual Owner Compliance Report (AOCR) or if the Department discovers through audit, inspection, review or any other manner that the Development is not in compliance with the provisions of the deed restrictions, conditions imposed by the Department, this subchapter, or other program rules and regulations, including §42 of the Internal Revenue Code.

(b) For a violation other than a violation that poses an imminent hazard or threat to health and safety, the notice will specify a thirty (30) day corrective action period for failure to file the AOCR and a ninety (90) day corrective action period for other violations. During the corrective action period, the Owner has the opportunity to show that either the Development was never in noncompliance or that the event of noncompliance has been corrected. Documentation of correction must be received during the corrective action period for an event to be considered corrected during the corrective action period. The Department may extend the corrective action period for up to six (6) months from the date of the notice to the Development Owner only if there is good cause for granting an extension and the owner requests an extension during the original ninety (90) day corrective action period.

(c) If any communication to the Owner under this section is returned to the Department as refused, unclaimed, or undeliverable, the Development may be considered not in compliance without further notice to the Owner. The Owner is responsible for providing the Department with current contact information, including address(es) (physical and electronic) and phone number(s). The Owner must also provide current contact information to the Department as required by §1.22 of this title (relating to Providing Contact Information to the Department).

(d) Treasury Regulations require the Department to notify Housing Tax Credit Owners of upcoming reviews and instances of noncompliance. The Department will rely solely on the information supplied by the Owner in the Department's web-based Compliance Monitoring and Tracking System (CMTS) to meet this requirement. It is the Owner's sole responsibility to ensure such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in CMTS will be deemed delivered to the Owner. Correspondence from the Department may be directly uploaded to the property's CMTS account using the secure electronic document attachment system. Once uploaded, notification of the attachment will be sent electronically to the email address listed in CMTS. The Department is not required to send a paper copy and if it does so it does as a voluntary and non-precedential courtesy only.

(e) Unless otherwise required by law, events of noncompliance will not be reported to the IRS, referred for enforcement action, considered cause for debarment, or reported in an applicant's compliance history or previous participation review, until after the end of the corrective action period established in the notice described in this section.

Source Note: The provisions of this §10.602 adopted to be effective November 28, 2013, 38 TexReg 8410

ENFORCEMENT ACTION AGAINST
VIDA QUE CANTA APARTMENTS, L.P.
WITH RESPECT TO
VIDA QUE CANTA APARTMENTS
(HTC FILE # 05092 / CMTS # 4257)

§
§
§
§
§
§
§

BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 16th day of April, 2015, the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA") considered the matter of whether enforcement action should be taken against **VIDA QUE CANTA APARTMENTS, L.P.**, a Texas limited partnership ("Respondent").

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act ("APA"), Tex. Gov't Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondent agree to resolve this matter by this Agreed Final Order. The Respondent agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the findings of fact and conclusions of law set out in this Order.

Upon recommendation of the Enforcement Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

WAIVER

Respondent acknowledges the existence of their right to request a hearing as provided by TEX. GOV'T CODE § 2306.044, and to seek judicial review, in the District Court of Travis County, Texas, of any order as provided by TEX. GOV'T CODE § 2306.047. Pursuant to this compromise and settlement, the Respondent waives those rights and acknowledges the jurisdiction of the Board over Respondent.

[remainder of page intentionally blank]

FINDINGS OF FACT

Jurisdiction:

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, and 10 TEX. ADMIN. CODE §1.14¹ and 10 TEX. ADMIN. CODE Chapter 60, both of which were replaced by 10 Tex. Admin. Code §2 as of November 19, 2014.
2. During 2005, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$953,820.00 to build and operate Vida Que Canta Apartments ("Property") (HTC file No. 05092 / CMTS No. 4257 / LDLD No. 322).
3. Respondent signed a land use restriction agreement ("LURA") regarding the Property. The LURA was effective December 12, 2006, and filed of record at Document Number 1712424 of the Official Public Records of Real Property of Hidalgo County, Texas ("Records").
4. Respondent is a Texas limited partnership that is approved by TDHCA as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations:

5. A Uniform Physical Condition Standards ("UPCS") inspection was conducted on June 8, 2011. Inspection reports showed numerous serious property condition violations, a violation of 10 TEX. ADMIN. CODE § 60.118 (Property Condition Standards). Notifications of noncompliance were sent and an October 25, 2011, corrective action deadline was set. Partial corrective action was received but violations listed at Attachment 1 were not corrected by the deadline.
6. An informal conference was held on January 22, 2013, but Respondent did not appear. The informal conference was reset as a courtesy and was attended by Respondent on February 26, 2013. The Administrative Penalty Committee recommended a penalty and training, and set a deadline of June 3, 2013 to submit fully acceptable corrective documentation.
7. All findings indicated above have been resolved.

¹ Within this Agreed Final Order, all references to the violations and procedures at 10 TEX. ADMIN. CODE §1.14, 10 TEX. ADMIN. CODE CHAPTER 10, AND 10 TEX. ADMIN. CODE, CHAPTER 60, refer to the versions of the code in effect on February 26, 2013, when the Administrative Penalty Committee held an informal conference with Respondent and recommended an administrative penalty. Procedures have since been replaced by 10 TEX. ADMIN. CODE §2 (Enforcement), but the findings and general procedures remain the same.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TAC §1.14 and 10 TAC, Chapter 60.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Respondent violated 10 TEX. ADMIN. CODE § 60.118 in 2011 and I.R.C. §42, as amended, by failing to comply with HUD's Uniform Physical Condition Standards when major violations were discovered and not timely corrected.²
5. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules and agreements, the Board has personal and subject matter jurisdiction over Respondent pursuant to TEX. GOV'T CODE §2306.041 and §2306.267.
6. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
7. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code Chapter 2306 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to TEX. GOV'T CODE §2306.041.
8. An administrative penalty of \$0.00 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the Board of the Texas Department of Housing and Community Affairs orders the following:

IT IS HEREBY ORDERED that Respondent is assessed an administrative penalty in the amount of \$0.00.

IT IS FURTHER ORDERED that the terms of this Agreed Final Order shall be published on the TDHCA website.

² HUD's Uniform Physical Condition Standards are the standards adopted by TDHCA pursuant to 10 TEX. ADMIN. CODE 10.616(a)

Approved by the Governing Board of TDHCA on _____, 2015.

By: _____
Name: J. Paul Oxe
Title: Chair of the Board of TDHCA

By: _____
Name: Barbara B. Deane
Title: Secretary of the Board of TDHCA

THE STATE OF TEXAS §
§
COUNTY OF _____ §

Before me, the undersigned notary public, on this _____ day of _____, 2015, personally appeared J. Paul Oxe, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this _____ day of _____, 2015, personally appeared Barbara B. Deane, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF _____ §

BEFORE ME, _____, a notary public in and for the State of _____, on this day personally appeared _____, known to me or proven to me through _____ to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he/she) executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is _____, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of _____ for Respondent. I am the authorized representative of Respondent, owner of Vida Que Canta Apartments, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Board of the Texas Department of Housing and Community Affairs."

RESPONDENT:

VIDA QUE CANTA APARTMENTS, L.P., a Texas limited partnership

VIDA QUE CANTA APARTMENTS I, L.L.C.,
a Texas limited liability company, its general partner

**BOZRAH INTERNATIONAL MINISTRIES
INC**, a Texas corporation, its 100% shareholder

By: _____
Name: _____
Title: _____

Given under my hand and seal of office this _____ day of _____, 2015.

Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF _____

My Commission Expires: _____

Attachment 1

2011 UPCS Violations

(see attached)

**Note – Violations with a hand-written date to the left were considered corrected at the time of the 2/26/2013 informal conference with the Administrative Penalty Committee. Violations without a date were considered uncorrected.*

**Texas Department of Housing and Community Affairs
List of Deficiencies Found**

Printed On: July 22, 2011

Inspectable Area	Inspectable Item	Deficiency		Comments
Vida Que Canta Apartments 607 S. Inspiration Road Mission, TX 78572				
Building:				
Unit:				
	Fencing and Gates	Damaged/Falling/Leaning	L3	pool gate hardware is inoperable
	Fencing and Gates	Missing Sections	L3	sections of perimeter fence are laying on the ground
	Market Appeal	Graffiti	L1	graffiti on play equipment
Building: Bldg .1				
Unit:				
	Building Systems			
	Electrical System	Missing Covers	L3	condenser cover panel is not secured
6-9-11	Fire Protection	Missing/Damaged/Expired Extinguishers	L3	fire extinguishers are expired in units: 112, 113 & 121
	Building Exterior			
	Health & Safety	Electrical Hazards - Exposed Wires/Open Panels	L3	condenser cover panel is not secured
	Roofs	Missing/Damaged Components from Downspout/Gutter	L1	missing splash-blocks
Unit: 112				
9-19-11	Bathroom	Shower/Tub - Damaged/Missing	L1	missing tub stoppers in both bathrooms
	Callings	Holes/Missing Tiles/Panels	L1	hole in calling above water heater/ around vent pipe
	Health & Safety	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable	L3	window blocked in master bedroom
		Inoperable/Not Lockable	L3	window blocked in master bedroom
9-19-11	Windows			
	(sub for unit 114)			
10-24-11	Doors	Damaged Frames/Threshold/Lintels/Trim	L3	back door/ can see daylight on side of the door
	Kitchen	Refrigerator-Missing/Damaged/Inoperable	L1	gap between seal and refrigerator
Unit: 121				
6-8-11	Health & Safety	Flammable Materials - Improperly Stored	L3	in oven - Fixed Onsite
Building: Bldg .2				
Unit:				
Building Systems				
	Electrical System	Missing Covers	L3	condenser cover panels not secured
6-9-11	Fire Protection	Missing/Damaged/Expired Extinguishers	L3	fire extinguishers are expired in units: 212, 214 & 223
	Building Exterior			
	Health & Safety	Electrical Hazards - Exposed Wires/Open Panels	L3	condenser cover panels not secured
	Windows	Damaged Sills/Frames/Lintels/Trim	L2	brick is broken on window sill for unit 212 compromising weather tightness
Unit: 212				
	Health & Safety	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable	L3	window is blocked in master bedroom
	Windows	Inoperable/Not Lockable	L3	window is blocked in master bedroom
Unit: 214				
10-17-11	Bathroom	Shower/Tub - Damaged/Missing	L1	missing tub stopper
Unit: 223 (sub for unit 224)				
10-17-11	Bathroom	Shower/Tub - Damaged/Missing	L1	missing tub stopper
Building: Bldg .3				
Unit:				
Building Systems				
	Electrical System	Missing Covers	L3	condenser cover panels are not secured
6-9-11	Fire Protection	Missing/Damaged/Expired Extinguishers	L3	fire extinguishers are expired in units: 313, 312 & 323
	Building Exterior			
	Health & Safety	Electrical Hazards - Exposed Wires/Open Panels	L3	condenser cover panels are not secured
	Roofs	Missing/Damaged Components from Downspout/Gutter	L1	missing splash-blocks
Unit: 312 (sub for unit 318)				
10-5-11	Kitchen	Dishwasher/Garbage Disposal - Damaged/Inoperable	L2	disposal is inoperable
Unit: 313 (sub for unit 314)				
10-19-11	Doors	Damaged Surface (Holes/Paint/Rusting)	L2	hole in closet door/ behind front door
Unit: 323 (sub for unit 324)				
10-18-11	Bathroom	Shower/Tub - Damaged/Missing	L1	missing stopper
6-9-11	Health & Safety	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable	L3	window is blocked in master bedroom - Fixed Onsite

**Texas Department of Housing and Community Affairs
List of Deficiencies Found**

Printed On: July 22, 2011

Inspectable Area	Inspectable Item	Deficiency			Comments
10-19-11	Smoke Detector	Missing/Inoperable		L3	smoke detectors are inoperable
6-8-11	Walls	Damaged	L1		2 holes in wall in hallway
	Windows	Inoperable/Not Lockable		L3	window is blocked in master bedroom - Fixed Onsite
	Building: Bldg. 4				
	Unit:	TX-05-09204			
	Building Systems				
	Electrical System	Missing Covers		L3	condenser cover panels not secured & missing 2 breaker covers
6-9-11	Fire Protection	Missing/Damaged/Expired Extinguishers		L3	fire extinguishers are expired in units: 424, 425 & 412
	Building Exterior				
	Health & Safety	Electrical Hazards - Exposed Wires/Open Panels		L3	condenser cover panels not secured
	Unit: 412 (sub for unit 428)				
8-24-11	Bathroom	Water Closet - Damaged/Clogged/Missing		L2	water is running in toilet in hall bath
	Unit: 424 (sub for unit 418)				
	Health & Safety	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable		L3	door knob cover on front door causes emergency fire exit to be unusable
	Unit: 425				
10-17-11	Bathroom	Water Closet - Damaged/Clogged/Missing		L2	water is running in toilet in hall bath
6-8-11	Health & Safety	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable		L3	window is blocked in 2nd bedroom - Fixed Onsite
	Building: Bldg. 5				
	Unit:	TX-05-09205			
	Building Systems				
	Electrical System	Missing Covers		L3	condenser cover panels not secured
6-9-11	Fire Protection	Missing/Damaged/Expired Extinguishers		L3	fire extinguishers are expired in units: 511, 512 & 518
	Building Exterior				
	Health & Safety	Electrical Hazards - Exposed Wires/Open Panels		L3	condenser cover panels not secured
	Unit: 511				
10-17-11	Bathroom	Shower/Tub - Damaged/Missing	L1		missing tub stoppers in master bath & hall bath
10-17-11	Doors	Damaged Hardware/Locks		L3	back door deadbolt lock is inoperable & hall bath door lock is inoperable
10-17-11	Smoke Detector	Missing/Inoperable		L3	inoperable by kitchen
	Unit: 512				
10-17-11	Bathroom	Shower/Tub - Damaged/Missing	L1		missing stopper in master bath
8-24-11	Bathroom	Water Closet - Damaged/Clogged/Missing		L3	toilet is clogged in hall bath
6-8-11	Health & Safety	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable		L3	window is blocked in 2nd bedroom - Fixed Onsite
	Unit: 518				
10-5-11	Bathroom	Levatory Sink - Damaged/Missing	L1		missing stopper
	Health & Safety	Flammable Materials - Improperly Stored		L3	in oven
	Building: Bldg. 6				
	Unit:	TX-05-09206			
	Building Systems				
	Electrical System	Missing Covers		L3	condenser cover panels not secured
6-9-11	Fire Protection	Missing/Damaged/Expired Extinguishers		L3	fire extinguishers are expired in units: 612, 616 & 624
	Building Exterior				
	Health & Safety	Electrical Hazards - Exposed Wires/Open Panels		L3	condenser cover panels not secured
	Roofs	Missing/Damaged Components from Downspout/Gutter	L1		missing splash-blocks
	Unit: 612				
10-4-11	Smoke Detector	Missing/Inoperable		L3	all inoperable
	Unit: 615				
6-8-11	Health & Safety	Hazards - Tripping		L3	cable across walk-way - Fixed Onsite
9-21-11	Kitchen	Range Hoods/Exhaust Fans - Excessive Grease/Inoperable		L3	exhaust fan is inoperable
	Unit: 624				
8-24-11	Bathroom	Water Closet - Damaged/Clogged/Missing		L2	toilet in hall bath is running
	Kitchen	Range/Stove - Missing/Damaged/Inoperable	L2		left front burner is inoperable
	Smoke Detector	Missing/Inoperable		L3	smoke alarms are missing
	Building: Bldg. 7				
	Unit:	TX-05-09207			

**Texas Department of Housing and Community Affairs
List of Deficiencies Found**

Printed On: July 22, 2011

Inspectable Area Inspectable Item	Deficiency	5	2	3	Comments
6-9-11 Building Systems Electrical System Fire Protection	Missing Covers Missing/Damaged/Expired Extinguishers			L3	condenser cover panels not secured fire extinguishers are expired in units: 726, 714 & 726
Building Exterior: Health & Safety Roofs	Electrical Hazards - Exposed Wires/Open Panels Missing/Damaged Components from Downspout/Gutter		L1	L3	condenser cover panels not secured missing splash-blocks
Unit: 714 (sub for unit 723) Health & Safety	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable			L3	windows blocked in master bedroom & in 2nd bedroom
Unit: 725 (sub for unit 716) 8-24-11 Bathroom Electrical	Water Closet - Damaged/Clogged/Missing GFI Inoperable		L2	L3	toilet is running in hall bath in hall bath
6-8-11 Health & Safety Unit: 726	Flammable Materials - Improperly Stored			L3	in oven - Fixed Onsite
10-5-11 Doors Kitchen	Damaged Hardware/Locks Plumbing - Leaking Faucet/Pipes		L1	L3	back door keyless deadbolt is inoperable kitchen faucet is leaking
Building: Bldg. 8 Unit: 6-9-11 Building Systems Fire Protection Building Exterior Roofs	Missing/Damaged/Expired Extinguishers Missing/Damaged Components from Downspout/Gutter			L3	fire extinguishers are expired in units: 822, 818 & 828 missing splash-blocks
Walls	Stained/Peeling/Needs Paint		L1		paint is peeling on trim around 2 doors on patio of unit 826
Unit: 822 (sub for unit 811) 10-5-11 Bathroom Smoke Detector	Shower/Tub - Damaged/Missing Missing/Inoperable		L1	L3	missing stopper in master bath & in hall bath missing smoke detectors
Unit: 826 9-22-11 Bathroom Doors	Shower/Tub - Damaged/Missing Damaged Hardware/Locks		L1	L3	missing stopper in hall bath master bath door lock is inoperable
6-8-11 Health & Safety Building: Bldg. 9 Unit: Building Systems Electrical System	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable			L3	window blocked in 2nd bedroom - Fixed Onsite
6-8-11 Fire Protection Building Exterior Health & Safety Roofs	Missing Covers Missing/Damaged/Expired Extinguishers			L3	electrical box with duplex cover is pulled away from wall/ exposing connections fire extinguishers are expired in units: 912, 922 & 925
Electrical Hazards - Exposed Wires/Open Panels			L3		electrical box with duplex cover is pulled away from wall/ exposing connections
Missing/Damaged Components from Downspout/Gutter			L1		missing splash-blocks
Unit: 912 10-17-11 Doors Health & Safety	Damaged Hardware/Locks Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable			L3	master bath/ privacy lock is inoperable window blocked in 2nd bedroom
Windows	Inoperable/Not Lockable			L3	window blocked in 2nd bedroom
Unit: 922 10-14-11 Bathroom Doors Electrical Health & Safety Health & Safety	Shower/Tub - Damaged/Missing Damaged Hardware/Locks Missing Breakers/Fuses		L1	L3	missing stopper in hall bath back door deadbolt lock is inoperable missing breakers
Electrical Hazards - Exposed Wires/Open Panels			L3		missing breakers
Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable			L3		window is blocked in 2nd bedroom
10-14-11 Smoke Detector Windows	Missing/Inoperable Inoperable/Not Lockable			L3	smoke alarms are inoperable window is blocked in 2nd bedroom
Unit: 925 (sub for unit 928) 10-17-11 Bathroom Smoke Detector	Lavatory Sink - Damaged/Missing Missing/Inoperable		L1	L3	missing stopper in master bath missing smoke alarms

TX-05-09208

TX-05-09209

**Texas Department of Housing and Community Affairs
List of Deficiencies Found**

Printed On: July 22, 2011

Inspectable Area	Inspectable Item	Deficiency		Severity	Comments
Building: Bldg 10	Unit:	TX-05-09210			
Building Systems	Electrical System	Missing Covers		L3	missing duplex cover & condenser cover panels are missing/ not secured
6-9-11	Fire Protection	Missing/Damaged/Expired Extinguishers		L3	fire extinguishers are expired in units: 1013, 1021 & 1027
Building Exterior	Health & Safety	Electrical Hazards - Exposed Wires/Open Panels		L3	condenser cover panels are missing/ not secured
	Roofs	Missing/Damaged Components from Downspout/Gutter	L1		missing splash-blocks
Unit: 1013	Bathroom	Water Closet - Damaged/Clogged/Missing		L2	toilet in hall bath is running
8-24-11	Health & Safety	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable		L3	window is blocked in master bedroom
	Smoke Detector	Missing/Inoperable		L3	smoke detectors are inoperable
	Windows	Inoperable/Not Lockable		L3	window is blocked in master bedroom
Unit: 1021	Bathroom	Shower/Tub - Damaged/Missing		L1	missing stopper in master bath
10-17-11	Doors	Deteriorated/Missing Seals (Entry Only)		L3	back door/ can see daylight at bottom of door
	Electrical	GFI Inoperable		L3	inoperable in bathroom
	Health & Safety	Flammable Materials - Improperly Stored		L3	in oven
Unit: 1027	Bathroom	Shower/Tub - Damaged/Missing		L1	missing stopper in hall bath
10-17-11	Bathroom	Water Closet - Damaged/Clogged/Missing		L2	toilet in master bath is running
Building: Bldg 11	Unit:	TX-05-09211			
6-9-11	Building Systems	Missing/Damaged/Expired Extinguishers		L3	fire extinguishers are expired in units: 1112 & 1121
	Fire Protection				
	Building Exterior	Missing/Damaged Components from Downspout/Gutter	L1		missing splash-blocks
	Roofs				
Building: Laundry	Unit:				
10-17-11	Laundry Room	Damaged Hardware/Locks		L3	self closing hardware on entry door is inoperable
10-17-11	Doors	Missing/Damaged/Inoperable		L3	dryer vent is inoperable/ torn
	Dryer Vent				
6-9-11	Building Systems	Missing/Damaged/Expired Extinguishers		L3	fire extinguisher is expired in laundry
	Fire Protection				
10-17-11	Health & Safety	Electrical Hazards - Exposed Wires/Open Panels		L3	broken plug cover in laundry
	Health & Safety				
	Building Exterior	Missing/Damaged Components from Downspout/Gutter	L2		missing downspout & splash-block
	Roofs				
10-17-11	Walls	Missing Pieces/Holes/Spalling	L2		missing part of stone beneath sliding
Building: Office/ Community/ Maintenance	Unit:				
	Community Room				
	Doors	Damaged Hardware/Locks		L3	exit door from community room to pool area is unusable
	Building Systems				
	Electrical System	Missing Covers		L3	community building/ condenser electrical box is missing cover; & duplex cover missing on bldg exterior
10-17-11	Emergency Power	Auxiliary Lighting Inoperable		L3	inoperable in community room
	Fire Protection	Missing/Damaged/Expired Extinguishers		L3	fire extinguisher expired → 10-17-11
	Health & Safety				
	Health & Safety	Electrical Hazards - Exposed Wires/Open Panels		L3	community building/ condenser electrical box is missing cover
	Health & Safety	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable		L3	exit door from community room to pool area is unusable

1c

BOARD ACTION REQUEST

LEGAL DIVISION

APRIL 16, 2015

Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning Bayou Village Place Apartments (HTC 91132 / CMTS 997)

RECOMMENDED ACTION

WHEREAS, Bayou Village Place Apartments (“Property”), owned by SSH Apartments, Inc. (“Owner”), has a history of uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

WHEREAS, on March 24, 2015, owner’s representatives met with the Enforcement Committee and agreed, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of \$1,500, to be fully forgiven if all violations are resolved as instructed in the Agreed Final Order on or before May 18, 2015;

WHEREAS, unresolved compliance findings include: written tenant selection criteria violation; Affirmative Marketing Plan violation; Fair Housing Disclosure Notice violations for units 214, 370, 388, 336, 294, 331, 159, 185, 372, 405, 411, 352, and 353; Notice of Amenities and Services violations for units 214, 336, 159, 185, 411, 352, and 353; Tenant income certification and documentation violation for unit 366; and unit 247 being unavailable for rent; and

WHEREAS, staff has based its recommendations for an Agreed Final Order on the Department’s rules for administrative penalties and an assessment of each and all of the statutory factors to be considered in assessing such penalties, applied specifically to the facts and circumstances present in this case;

NOW, therefore, it is hereby

RESOLVED, that an Agreed Final Order assessing an administrative penalty of \$1,500, subject to forgiveness as outlined above for noncompliance at Bayou Village Place Apartments (HTC 91132 / CMTS 997), substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as the order of this Board.

BACKGROUND

SSH Apartments, Inc. is the owner of Bayou Village Place Apartments ("Property"), a low income apartment complex comprised of 314 units, located in Houston, Harris County. The Property is subject to a Land Use Restriction Agreement ("LURA") signed by the prior owner in 1993 in consideration for an allocation of housing tax credits in the amount of \$164,448.00 to rehabilitate the Property.

The following compliance violations were referred for an administrative penalty and remain unresolved:

1. Written tenant selection criteria violation;
2. Affirmative marketing plan violation;
3. Fair Housing Disclosure Notice violations for units 214, 370, 388, 336, 294, 331, 159, 185, 372, 405, 411, 352, and 353;
4. Notice of Amenities and Services violations for units 214, 336, 159, 185, 411, 352, and 353;
5. Tenant income certification and documentation violations for unit 366;
6. Failure to make unit 247 available for rent. The unit was being used as a maintenance shop at the time of the last review.

Owner met with the Enforcement Committee on March 24, 2015, and agreed to sign an Agreed Final Order with the following terms:

1. A \$1,500.00 administrative penalty, subject to forgiveness in stages as indicated below;
2. Owner must correct the file monitoring violations as indicated in Attachment 1 of the Agreed Final Order, and submit full documentation of the corrections to TDHCA on or before May 18, 2015;
3. If Owner complies with all requirements and addresses all violations as required, the full administrative penalty will be forgiven; and
4. If Owner violates any other provision of the Agreed Final Order, the full administrative penalty would immediately come due and payable.

Consistent with direction from the Department's Enforcement Committee, a probated and, upon successful completion of probation, fully forgivable administrative penalty in the amount of \$1,500 is recommended.

ENFORCEMENT ACTION AGAINST
SSH APARTMENTS, INC. WITH
RESPECT TO BAYOU VILLAGE
PLACE APARTMENTS
(LIHTC FILE # 91132 / CMTS # 997)

§
§
§
§
§

BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 16th day of April, 2015, the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA") considered the matter of whether enforcement action should be taken against **SSH APARTMENTS, INC.**, a Texas corporation ("Respondent").

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act ("APA"), Tex. Gov't Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondent agree to resolve this matter by this Agreed Final Order. The Respondent agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the findings of fact and conclusions of law set out in this Order.

Upon recommendation of the Enforcement Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

WAIVER

Respondent acknowledges the existence of their right to request a hearing as provided by TEX. GOV'T CODE § 2306.044, and to seek judicial review, in the District Court of Travis County, Texas, of any order as provided by TEX. GOV'T CODE § 2306.047. Pursuant to this compromise and settlement, the Respondent waives those rights and acknowledges the jurisdiction of the Board over Respondent.

FINDINGS OF FACT

Jurisdiction:

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, and 10 TEX. ADMIN. CODE §2.

2. During 1991, M.I.P. Texas Huntington Partnership ("Prior Owner") was awarded an allocation of Low Income Housing Tax Credits by the Board, in the amount of \$164,448.00 to rehabilitate Bayou Village Place Apartments ("Property") (HTC file No. 91132 / CMTS No. 997 / LDLD No. 153).
3. Prior Owner signed a land use restriction agreement ("LURA") regarding the Property. The LURA was effective February 11, 1993, and filed of record at Document Number P230449 of the Official Public Records of Real Property of Harris County, Texas. In accordance with Section 2 of the LURA, the LURA is a restrictive covenant/deed restriction encumbering the property and binding on all successors and assigns for the full term of the LURA.
4. Respondent is a Texas corporation that is qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

5. An on-site monitoring review was conducted on June 13, 2014, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and an October 20, 2014, corrective action deadline was set, however, the following violations were not corrected before the corrective action deadline:
 - a. Respondent failed to submit pre-onsite documentation via CMTS as required, a violation of 10 TEX. ADMIN. CODE §10.607 (Reporting Requirements), which requires all owners to submit a Unit Status Report quarterly and also prior to an onsite monitoring visit, and a violation of 10 TEX. ADMIN. CODE §10.618, which requires all owners to provide information on low income units in a format designated by the Department and any additional aspects that the Department deems necessary or appropriate during an onsite monitoring review.

The finding was resolved on March 2, 2015, 133 days past the corrective deadline, after an administrative penalty informal conference notice was sent.
 - b. Respondent failed to provide written tenant selection criteria, a violation of 10 TEX. ADMIN. CODE §10.610 (Tenant Selection Criteria), which requires all owners to maintain written tenant selection criteria meeting certain TDHCA requirements outlined in the rule. A plan was later received in response to an administrative penalty informal conference notice, but the submission did not meet all requirements of the rule.

The finding remains unresolved.

¹ Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TEX. ADMIN. CODE, CHAPTERS 10 refer to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

- c. Respondent failed to provide an affirmative marketing plan, a violation of 10 TEX. ADMIN. CODE §10.617 (Affirmative Marketing Requirements), which requires developments to approve and distribute an affirmative marketing plan and to distribute marketing materials to selected marketing organizations that reach groups identified as least likely to apply, and to the disabled. An affirmative marketing plan was later received in response to an administrative penalty informal conference notice, but the plan omitted the required marketing materials to prove that the development was carrying out marketing to groups identified as least likely to apply and to the disabled.

The finding remains unresolved.

- d. Respondent failed to timely provide a Fair Housing Disclosure Notice for units 386, 352, 159, 331, 388, 294, 353, 372, 214, 176, 411, 336, 153, 185, 346, 405, 305 and 370, a violation of 10 TEX. ADMIN. CODE §10.612 (Tenant File Requirements), which requires all developments to provide prospective households with a fair housing disclosure notice within a certain time period. This form has since been combined with the Notice of Amenities and Services into a replacement document called a "Tenant Rights and Resources Guide."

Partially acceptable corrective documentation was submitted March 7, 2015, 138 days past the corrective deadline, after an administrative penalty informal conference notice was sent. The finding remains unresolved for units 214, 370, 388, 336, 294 and 331 because the signed notices submitted on March 7, 2015 had not been signed during the appropriate time period. The finding is uncorrectable for units 153, 159, 185, 372, 405, 411, 352 and 353 because the households moved out without signing during the appropriate time period.

- e. Respondent failed to provide a Notice of Amenities and Services to units 411, 346, 185, 353, 214, 386, 352, 336 and 159, a violation of 10 TEX. ADMIN. CODE §10.613 (Lease Requirements), which required owners to provide to each household, at the time of execution of an initial lease and whenever there was a subsequent change in amenities and services, a notice describing those amenities and services. This form has since been combined with the Fair Housing Disclosure Notice into a replacement document called a "Tenant Rights and Resources Guide."

Partially acceptable corrective documentation was submitted on March 6, 2015, 137 days past the corrective deadline, after an administrative penalty informal conference notice was sent. The finding remains unresolved for units 214 and 336 because nothing was submitted. The finding is uncorrectable for units 159, 185, 411, 352 and 353 because the households moved out without signing.

- f. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 411 and 305, a violation of 10 TEX. ADMIN. CODE §10.611 (Determination, Documentation and Certification of Annual Income) and Section 3(g) of the LURA, which require screening of tenants to ensure qualification for the program;

Acceptable corrective documentation was submitted for both units on March 11, 2015, 142 days past the corrective deadline, after an administrative penalty informal conference notice was sent.

- g. Respondent failed to provide tenant income certification and documentation for units 411, 305, and 366, a violation of 10 TEX. ADMIN. CODE §10.612 (Tenant File Requirements), which requires completion of a tenant income certification, and 10 TEX. ADMIN. CODE §10.611 (Determination, Documentation and Certification of Annual Income) and Section 3(g) of the LURA, which require screening of tenants to ensure qualification for the program.

The findings for units 305 and 411 were resolved on March 11, 2015, 142 days past the corrective deadline, after an administrative penalty informal conference notice was sent. Unit 366 remains unresolved.

- h. Respondent failed to make unit 247 available for rent when the unit was instead used as a maintenance shop, a violation of representations made on page 1 of the LURA, which requires 100% of the units to be used as low income housing.

The finding remains unresolved.

6. The following violations remain outstanding at the time of this order:

- a. Written tenant selection criteria violation described in FOF #5b;
- b. Affirmative marketing plan violation described in FOF #5c;
- c. Fair Housing Disclosure Notice violations for units 214, 370, 388, 336, 294, 331, 159, 185, 372, 405, 411, 352 and 353, as described in FOF #5d;
- d. Notice of Amenities and Services violations for units 214, 336, 159, 185, 411, 352 and 353, as described in FOF #5e;
- e. Tenant income certification and documentation violations for unit 366, as described in FOF #5g;
- f. Unit 247 availability finding described in FOF #5h.

[remainder of page intentionally blank]

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TEX. ADMIN. CODE §2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Respondent violated 10 TEX. ADMIN. CODE §10.607 and §10.618 in 2014, by not submitting pre-on-site documentation including a unit status report and entrance interview questionnaire in preparation for the monitoring review;
5. Respondent violated 10 TEX. ADMIN. CODE §10.610 in 2014, by not maintaining written tenant selection criteria meeting TDHCA requirements;
6. Respondent violated 10 TEX. ADMIN. CODE §10.617 in 2014, by failing to provide a complete affirmative marketing plan;
7. Respondent violated 10 TEX. ADMIN. CODE §10.612 in 2014, by failing to execute the Fair Housing Disclosure Notice during the appropriate time frame for units 386, 352, 159, 331, 388, 294, 353, 372, 214, 176, 411, 336, 153, 185, 346, 405, 305 and 370;
8. Respondent violated 10 TEX. ADMIN. CODE §10.613 in 2014, by failing to execute the Notice of Amenities and Services for units 411, 346, 185, 353, 214, 386, 352, 336 and 159;
9. Respondent violated 10 TEX. ADMIN. CODE §10.611 and Section 3(g) of the LURA in 2014, by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy for the units: 411 and 305;
10. Respondent violated 10 TEX. ADMIN. CODE §10.612, 10 TEX. ADMIN. CODE §10.611, and Section 3(g) of the LURA in 2014, by failing to provide tenant income certification and documentation to ensure qualification for the program;
11. Respondent violated representations made on page 1 of the LURA, by using unit 247 for non-residential use as a maintenance shop instead of being available for occupancy.
12. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules and agreements, the Board has personal and subject matter jurisdiction over Respondent pursuant to TEX. GOV'T CODE §2306.041 and §2306.267.

13. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
14. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code Chapter 2306 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to TEX. GOV'T CODE §2306.041.
15. An administrative penalty of \$1,500.00 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308, which were in place at the time of the violation. It remains appropriate under the replacement rule at 10 TEX. ADMIN. CODE §2, which became effective on November 19, 2014.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the Board of the Texas Department of Housing and Community Affairs orders the following:

IT IS HEREBY ORDERED that Respondent is assessed an administrative penalty in the amount of \$1,500.00, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall fully correct the file monitoring violations as indicated in Attachment 1 and submit full documentation of the corrections to TDHCA on or before May 18, 2015.

IT IS FURTHER ORDERED that Respondent shall follow the requirements of 10 Tex. Admin. Code §10.406, a copy of which is included at Attachment 2, and obtain approval from the Department prior to consummating a property sale.

IT IS FURTHER ORDERED that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, the satisfactory performance under this order will be accepted in lieu of the assessed administrative penalty and the full amount of the administrative penalty will be deferred and forgiven.

IT IS FURTHER ORDERED that if Respondent fails to satisfy any condition or otherwise violates any provision of this order, then the full administrative penalty in the amount of \$1,500.00 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this order, or (2) the property sale closing date.

IT IS FURTHER ORDERED that corrective documentation must be uploaded to the Compliance Monitoring and Tracking System ("CMTS") by following the instructions at this link: <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>. Once uploaded, you must email Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us to notify the

Department that the uploads are complete and ready for review. If it comes due and payable, the penalty payment must be submitted to the following address:

If via overnight mail (FedEx, UPS):	If via USPS:
TDHCA Attn: Ysella Kaseman 221 E 11 th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

IT IS FURTHER ORDERED that the terms of this Agreed Final Order shall be published on the TDHCA website.

By: _____
Name: J. Paul Oxer
Title: Chair of the Board of TDHCA

By: _____
Name: Barbara B. Deane
Title: Secretary of the Board of TDHCA

THE STATE OF TEXAS §
 §
COUNTY OF _____§

Before me, the undersigned notary public, on this _____ day of _____, 2015, personally appeared J. Paul Oxer, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this _____ day of _____, 2015, personally appeared Barbara B. Deane, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

Attachment 1

File Monitoring Violation Instructions

1. Refer to the following link for all references to the rules at 10 TEX. ADMIN. CODE §10 that are referenced below:

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

2. Refer to the following link for copies of forms that are referenced below:

<http://www.tdhca.state.tx.us/pmcomp/forms.htm>

3. **Written tenant selection criteria** – Respondent submitted written tenant selection criteria, however, the criteria were incomplete.

Submit updated written tenant selection criteria addressing all requirements at 10 TEX. ADMIN. CODE §10.610, including but not limited to the requirement to state that the Development will comply with state or federal fair housing and anti-discrimination laws.

4. **Affirmative marketing plan** – Respondent submitted an Affirmative Marketing Plan, however evidence of outreach marketing efforts were not submitted for review. In addition, the rule at 10 TEX. ADMIN. CODE §10.617 has changed. The affirmative marketing web tool referenced in the rule in order to determine groups that are least likely to apply is available online at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm>. The disabled must also be selected as a group that is least likely to apply regardless of the tool results.

Submit updated affirmative marketing plan following the instructions at 10 TEX. ADMIN. CODE §10.617, along with evidence of outreach marketing efforts to selected groups identified in the plan.

5. **Fair Housing Disclosure Notice** – Respondent submitted notices for multiple units, however, they were not signed during the appropriate time period. The notice has since been replaced by the Tenants Rights and Resource Guide as indicated at 10 TEX. ADMIN. CODE §10.613(k).

Correctable findings: Implement Tenants Rights and Resource Guide as indicated at 10 TEX. ADMIN. CODE §10.613(k) and submit signed Tenants Rights and Resource Guide Acknowledgments for units 214, 370, 388, 336, 294 and 331. If the tenant has moved out without signing this form, please submit a letter to TDHCA including the move-out date and acknowledging that the finding cannot be resolved.

Uncorrectable findings: The households that triggered the findings for units 153, 159, 185, 372, 405, 411, 352 and 353 have vacated the units without completing the required form. Therefore, there is no corrective action available and the finding will remain outstanding.

6. **Notice of Amenities and Services** – Respondent submitted notices for multiple units, but the submission was incomplete.

Correctable findings: Implement Tenants Rights and Resource Guide as indicated at 10 TEX. ADMIN. CODE §10.613(k) and submit signed Tenants Rights and Resource Guide Acknowledgments for units 214 and 336. If the tenant has moved out without signing this form, please submit a letter to TDHCA including the move-out date and acknowledging that the finding cannot be resolved.

Uncorrectable findings: The households that triggered the findings for units 159, 185, 411, 352 and 353 have vacated the units without completing the required form. Therefore, there is no corrective action available and the finding will remain outstanding.

7. **Tenant income certification and documentation** – Respondent submitted incomplete documentation regarding unit 366.

Submit PENDING REVIEW BY AMY HAMMOND

8. **Unit not available for rent** – Respondent has indicated that unit 247 is no longer a maintenance shop and is occupied by a qualified tenant, but has not submitted corrective documentation.

Submit full tenant file for current qualified household. Full tenant file must include the following documentation in the order listed below:

- a. Tenant application;
- b. Verifications of all sources of income and assets;
- c. Tenant income certification;
- d. Lease;
- e. Lease addendum;
- f. Either a timely signed Fair Housing Disclosure Notice and Notice of Amenities – OR – the Tenant Rights and Resources Guide Acknowledgment. At the time of your monitoring review, the Fair Housing Disclosure Notice and Notice of Amenities and Services were required forms. If you have already received these signed forms for the tenant in unit 247, you may submit the forms via CMTS if the following are met:
 - a. Notice of Amenities and Services signed before 1/9/2015.
 - b. Fair Housing Disclosure Notice signed no more than 120 days and no less than 30 days prior to the date that the household was legally obligated to provide written notice of their intention to terminate or renew their lease.

If the Fair Housing Disclosure Notice and Notice of Amenities and Services were not signed during the appropriate time periods as indicated above, please follow the requirements from the new rule at 10 Texas. Admin. Code §10.613, and submit the Tenant Rights and Resources Guide Acknowledgment instead. This acknowledgment can be signed at any time and must be dated as of the actual date signed.

Attachment 2:

Texas Administrative Code

<u>TITLE 10</u>	COMMUNITY DEVELOPMENT
<u>PART 1</u>	TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
<u>CHAPTER 10</u>	UNIFORM MULTIFAMILY RULES
<u>SUBCHAPTER E</u>	POST AWARD AND ASSET MANAGEMENT REQUIREMENTS
<u>RULE §10.406</u>	Ownership Transfers (§2306.6713)

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of this decision. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with §1.5 of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

(b) Requirement. Department approval must be requested for any new member to join in the ownership of a Development. Exceptions include changes to the investment limited partner, non-controlling limited partner, or other partners affiliated with the investment limited partner, or changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner. Any subsequent transfer of the Development will be required to adhere to the process in this section. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. Notwithstanding the foregoing, a Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new members or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(c) Transfers Prior to 8609 Issuance or Construction Completion. Transfers (other than those that do not require Executive Director approval, as set forth in subsection (b) of this section) will not be approved prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) unless the Development Owner can provide evidence that the need for the transfer is due to a hardship (ex. potential bankruptcy, removal by a partner, etc.). The Development Owner must provide the Department with a written explanation describing the hardship and a copy of any applicable agreement between the parties to the transfer, including any Third-Party agreement.

(d) Non-Profit Organizations. If the ownership transfer request is to replace a non-profit organization within the Development ownership entity, the replacement non-profit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and

Texas Government Code §2306.6706.

(2) If the LURA requires ownership or material participation in ownership by a qualified non-profit organization, but the Development did not receive Tax Credits pursuant to §42(h)(5) of the Code, the Development Owner must show that the transferee is a non-profit organization that complies with the LURA.

(e) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner or (ii) determines to sell its ownership interest, in either case, after the issuance of 8609s, the purchaser of that general partnership interest is not required to be a HUB as long as the LURA does not require such continual ownership or a material LURA amendment is approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

(1) the selling HUB is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department's standards for ownership transfers

(f) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. Documentation includes but is not limited to:

(1) a written explanation outlining the reason for the request;

(2) a list of the names of transferees and Related Parties;

(3) detailed information describing the experience and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;

(4) evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least thirty (30) calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired.

(g) Within five (5) business days after the date the Department receives all necessary information under this section, staff shall initiate a qualifications review of a transferee, in accordance with §1.5 of this title, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter.

(h) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) in cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(i) Penalties. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department.

(j) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

Source Note: The provisions of this §10.406 adopted to be effective December 9, 2014, 39 TexReg 9518

1d

BOARD ACTION REQUEST

LEGAL DIVISION

APRIL 16, 2015

Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning The Shire Apartments (HTC 02470 / CMTS 3273)

RECOMMENDED ACTION

WHEREAS, The Shire Apartments in Port Arthur, Jefferson County, owned by The Shire Apartments, Ltd, has a history of uncorrected violations of the applicable land use restriction agreement (“LURA”) and associated statutory and rule requirements;

WHEREAS, the Executive Director issued a Report to the Board on September 6, 2012, regarding a recommended administrative penalty and TDHCA’s intention to initiate a contested case hearing with respect to uncorrected compliance violations;

WHEREAS, The Shire Apartments was set for a contested case hearing before the State Office of Administrative Hearings (“SOAH”) on April 6, 2015;

WHEREAS, The Shire Apartments, Ltd. has agreed, subject to Board approval, to withdraw its request for a contested case hearing and enter into an Agreed Final Order assessing an administrative penalty of \$5,000 to be paid within 30 days of approval by the TDHCA Board;

WHEREAS, all violations that are subject to the Agreed Final Order have been resolved; and

WHEREAS, staff has based its recommendations for an Agreed Final Order on the Department’s rules for administrative penalties and an assessment of each and all of the statutory factors to be considered in assessing such penalties, applied specifically to the facts and circumstances present in this case,

NOW, therefore, it is hereby

RESOLVED, that the Agreed Final Order assessing an administrative penalty of \$5,000 for noncompliance at The Shire Apartments (HTC 02470 / CMTS 3273), substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as the order of this Board.

BACKGROUND

The Shire Apartments, Ltd. received an annual allocation of \$554,837 in low income housing tax credits in 2003 for the acquisition and rehabilitation of a 310-unit apartment complex in Port Arthur, Jefferson County.

An on-site monitoring review was conducted on January 18, 2011, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found the following violations of the LURA and TDHCA rules:

- a. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 9-4120-203, 15-4000-131, 12-4080-216, 13-4040-123 and 3-4240-107, a violation of 10 TEX. ADMIN. CODE §60.108 and Section 4 of the LURA;
- b. Respondent failed to include required language in tenant leases, a violation of 10 TEX. ADMIN. CODE §60.110 which requires leases to include language prohibiting evictions or nonrenewal of leases for other than good cause.

Notification of noncompliance was sent on January 26, 2011, and documentation was submitted to correct the majority of the findings, but the household income findings for units 3-4240-107, 12-4080-216, and 13-4040-123 remained outstanding because of discrepancies between the tenant files reviewed by TDHCA during the file monitoring review and the files that were later submitted as evidence of correction.

On October 25, 2011, representatives of Respondent met with the TDHCA Administrative Penalties Committee, now known as the Enforcement Committee, to discuss discrepancies in the tenant files that had been presented as evidence of correction for units 3-4240-107, 12-4080-216 and 13-4040-123. Representatives of Respondent alleged that a former property manager who worked at the property from January through April of 2011 had altered tenant records for units 3-4240-107, 12-4080-216 and 13-4040-123 and presented what Respondent termed, "bogus" files, to TDHCA.

The Committee voted to ask the TDHCA Compliance Division staff to perform an additional file monitoring review to analyze the falsified files for unit 3-4240-107, 12-4080-216, and 13-4040-123, along with other files, after which the Committee would make a final decision based upon those results.

On November 17, 2011, a monitoring review was performed and new findings were identified for units 6-4180-202, 8-4140-201, 18-3900-256, 19-3940-163, 19-3940-168 and 20-3980-273. Department staff sampled several tenant files and photocopied employment verification forms found in the resident files. Department staff then contacted the employers directly and obtained copies of the employment verification forms sent to Respondent. Several employment verification discrepancies were noted for units 6-4180-202, 8-4140-201, 19-3940-163, and 19-3940-168. For example:

- a. The employment verification form in Respondent's file for unit 8-4140-201 indicated an hourly wage of \$14.00, an overtime rate of \$21.00 per hour and that the applicant works 40 hours per week. Department staff contacted the employer and obtained a copy of the employment verification form that was sent to Respondent. The employer verified an

hourly wage of \$21.50, an overtime rate of \$32.25 hourly and that the applicant works 48 hours per week. The annual income for this household, as verified by the employer, was \$58,136. The income limit was \$30,660.

- b. The employment verification form in Respondent's file for unit 19-3940-168 indicates an hourly wage of \$12.00 and that the applicant works 30 hours per week. Department staff contacted the employer and obtained a copy of the employment verification form that was sent to Respondent. The employer verified an hourly wage of \$15.00 and that the applicant works 40 hours per week. The annual income for this household, as verified by the employer, is \$31,200. The income limit was \$27,240.
- c. Upon receipt of the new monitoring report based on the monitoring review performed on November 17, 2011, Respondent alleged that another employee who worked at the property from April through December of 2011 had falsified files as well, including files for units 6-4180-202, 8-4140-201, 19-3940-163, and 19-3940-168.

A Report to the Board was issued September 6, 2012, regarding a recommended administrative penalty and TDHCA's intention to initiate a contested case. The property was later set for an April 6, 2015, contested case hearing before SOAH regarding those previously reported violations.

Opposing counsel has been working with TDHCA Legal staff to negotiate the terms of an Agreed Final Order to avoid the further time and expense associated with a contested case hearing. Both sides have agreed, subject to TDHCA Board approval, to settle the case with an Agreed Final Order calling for payment of a \$5,000 administrative penalty to be paid within 30 days of TDHCA Board approval.

Consistent with direction from the Department's Legal staff, a penalty in the amount of \$5,000 is recommended.

ENFORCEMENT ACTION AGAINST
THE SHIRE APARTMENTS, LTD.
WITH RESPECT TO THE SHIRE
APARTMENTS (HTC FILE # 02470 /
CMTS # 3273)

§
§
§
§
§

BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 16th day of April, 2015, the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA”) considered the matter of whether enforcement action should be taken against **THE SHIRE APARTMENTS, LTD.**, a Texas Limited Partnership (“The Shire” or “Respondent”).

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act (“APA”), Tex. Gov’t Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondent agree to resolve this matter by this Agreed Final Order.

WAIVER

Respondent acknowledges the existence of their right to request a hearing as provided by TEX. GOV’T CODE § 2306.044, and to seek judicial review, in the District Court of Travis County, Texas, of any order as provided by TEX. GOV’T CODE § 2306.047. Pursuant to this compromise and settlement, the Respondent waives those rights and acknowledges the jurisdiction of the Board over Respondent.

The Board makes the following findings of fact and conclusions of law and enters this Order:

FINDINGS OF FACT

Jurisdiction:

1. The Department has jurisdiction over this matter pursuant to Tex. Gov’t Code §§2306.041-.0503, and 10 TEX. ADMIN. CODE §1.14 and 10 TEX. ADMIN. CODE Chapter 60, both of which were replaced by 10 TEX. ADMIN. CODE §2 as of November 19, 2014.
2. During 2003, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$554,837.00 to build and operate The Shire Apartments (HTC file No. 02470 / CMTS No. 3273 / LDLD No. 173).

3. Respondent signed a Declaration of Land Use Restrictive Covenants / Land Use Restriction Agreement for Low-Income Housing Credits ("LURA") regarding The Shire. The LURA was effective July 6, 2005, and filed of record under Document Number 2005039185 of the Official Public Records of Real Property of Jefferson County, Texas ("Records").
4. Respondent is a Texas Limited Partnership that is approved by TDHCA as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.
5. Control of Respondent was transferred on or about March 25, 2015 from The Shire Apartments GP, LLC, the outgoing general partner of The Shire Apartments, Ltd., to Avery Trace, LLC, a Florida limited liability company.

Compliance Violations¹:

6. An on-site monitoring review was conducted on January 18, 2011, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found the following violations of the LURA and TDHCA rules:
 - a. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 9-4120-203, 15-4000-131, 12-4080-216, 13-4040-123 and 3-4240-107, a violation of 10 TEX. ADMIN. CODE §60.108 and Section 4 of the LURA;
 - b. Respondent failed to include required language in tenant leases, a violation of 10 TEX. ADMIN. CODE §60.110 which requires leases to include language prohibiting evictions or nonrenewal of leases for other than good cause.

Notification of noncompliance was sent on January 26, 2011 and documentation was submitted to correct the majority of the findings, but the household income findings for units 3-4240-107, 12-4080-216, and 13-4040-123 remained outstanding because of discrepancies between the tenant file reviewed by TDHCA during the file monitoring review and the file that was later submitted as evidence of correction.

7. On October 25, 2011, representatives of Respondent met with the TDHCA Administrative Penalties Committee, now known as the Enforcement Committee ("Committee"), to discuss discrepancies in the tenant files that had been presented as evidence of correction for units 3-4240-107, 12-4080-216 and 13-4040-123. Representatives of Respondent alleged that a former property manager who worked at the property from January through April of 2011 had altered tenant records for units 3-4240-107, 12-4080-216 and 13-4040-123 and presented what Respondent termed, "bogus" files, to TDHCA.

¹ Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TEX. ADMIN. CODE, CHAPTERS 10 AND 60 refer to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

8. The Committee voted to send TDHCA Compliance Division staff to perform an additional file monitoring review to analyze the falsified files for unit 3-4240-107, 12-4080-216, and 13-4040-123, along with other files, after which the Committee would make a final decision based upon those results.
9. On November 17, 2011, a monitoring review was performed and new findings were identified for units 6-4180-202, 8-4140-201, 18-3900-256, 19-3940-163, 19-3940-168 and 20-3980-273. Department staff sampled several tenant files and photocopied employment verification forms found in the resident files. Department staff then contacted the employers directly and obtained copies of the employment verification forms sent to Respondent. Several employment verification discrepancies were noted for units 6-4180-202, 8-4140-201, 19-3940-163, and 19-3940-168. For example:
 - a. The employment verification form in Respondent's file for unit 8-4140-201 indicated an hourly wage of \$14.00, an overtime rate of \$21.00 per hour and that the applicant works 40 hours per week. Department staff contacted the employer and obtained a copy of the employment verification form that was sent to Respondent. The employer verified an hourly wage of \$21.50, an overtime rate of \$32.25 hourly and that the applicant works 48 hours per week. The annual income for this household, as verified by the employer, was \$58,136. The income limit was \$30,660.
 - b. The employment verification form in Respondent's file for unit 19-3940-168 indicates an hourly wage of \$12.00 and that the applicant works 30 hours per week. Department staff contacted the employer and obtained a copy of the employment verification form that was sent to Respondent. The employer verified an hourly wage of \$15.00 and that the applicant works 40 hours per week. The annual income for this household, as verified by the employer, is \$31,200. The income limit was \$27,240.
10. Upon receipt of the new monitoring report based on the monitoring review performed on November 17, 2011, Respondent alleged that another employee who worked at the property from April through December of 2011 had falsified files as well, including files for units 6-4180-202, 8-4140-201, 19-3940-163 and 19-3940-168.
11. The Shire has submitted satisfactory evidence that all of the above identified issues of noncompliance have been resolved.
12. The Shire Apartments GP, LLC, the former general partner of Respondent, has agreed to be responsible for payment of the administrative penalty on Respondent's behalf.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, and 10 TEX. ADMIN. CODE § 1.14 and 10 TEX. ADMIN. CODE Chapter 60, as replaced by 10 TEX. ADMIN. CODE §2 as of November 19, 2014.

2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Respondent violated Section 4 of the LURA and 10 TEX. ADMIN. CODE §60.108 in 2011 when seven tenant files were falsified for units 3-4240-107, 12-4080-216, 13-4040-123, 6-4180-202, 8-4140-201, 19-3940-163 and 19-3940-168. Providing falsified tenant income documentation constitutes a lack of proper documentation of household income in violation of 10 TEX. ADMIN. CODE §60.108.
5. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules and agreements, the Board has personal and subject matter jurisdiction over Respondent pursuant to TEX. GOV'T CODE §2306.041 and §2306.267.
6. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
7. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code Chapter 2306 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to TEX. GOV'T CODE §2306.041.

An administrative penalty in the negotiated amount of \$5,000.00 is an appropriate amount in accordance with 10 TAC §§60.307 and 60.308, which were in place at the time of the violation. It remains appropriate under the replacement rule at 10 TEX. ADMIN. CODE §2, which became effective on November 19, 2014.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the Board of the Texas Department of Housing and Community Affairs orders the following:

IT IS HEREBY ORDERED that Respondent is assessed an administrative penalty in the amount of \$5,000.00.

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay the \$5,000.00 administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before 30 days from the date this order is executed, to the following address:

If via overnight mail (FedEx, UPS):	If via USPS:
TDHCA Attn: Ysella Kaseman	TDHCA Attn: Ysella Kaseman

221 E 11 th St Austin, Texas 78701	P.O. Box 13941 Austin, Texas 78711
--	---------------------------------------

IT IS FURTHER ORDERED that The Shire Apartments GP, LLC, the former general partner of Respondent, shall be responsible for payment of the administrative penalty on Respondent's behalf.

IT IS FURTHER ORDERED that the Department's EARAC Committee shall not consider violations described in this order that occurred prior to March 25, 2015 in making recommendations to the Board on future applications or awards to Avery Trace, LLC.

IT IS FURTHER ORDERED that the terms of this Agreed Final Order shall be published on the TDHCA website.

[Remainder of page intentionally blank]

Approved by the Governing Board of TDHCA on _____, 2015.

By: _____
Name: J. Paul Oxe
Title: Chair of the Board of TDHCA

By: _____
Name: Barbara B. Deane
Title: Secretary of the Board of TDHCA

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

Before me, the undersigned notary public, on this _____ day of _____, 2015, personally appeared J. Paul Oxe, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this _____ day of _____, 2015, personally appeared Barbara B. Deane, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

BEFORE ME, _____, a notary public in and for the State of _____, on this day personally appeared _____, known to me or proven to me through _____ to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he/she) executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is _____, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of _____ for Avery Trace, LLC. I am the authorized representative of Avery Trace, LLC, incoming general partner of The Shire Apartments, Ltd, the owner of The Shire Apartments, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized to execute this document.
3. Avery Trace, LLC knowingly and voluntarily enters into this Agreed Final Order as incoming general partner for The Shire Apartments, Ltd., and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Board of the Texas Department of Housing and Community Affairs."

RESPONDENT:

THE SHIRE APARTMENTS, LTD.,
a Texas Limited Partnership

By: **AVERY TRACE, LLC**
a Florida limited liability company,
its incoming general partner

By: _____

Name: _____

Title: _____

Given under my hand and seal of office this 25th day of March, 2015.

Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF _____

My Commission Expires: _____

1e

BOARD ACTION REQUEST

ASSET MANAGEMENT

APRIL 16, 2015

Presentation, Discussion, and Possible Action to Approve a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement (“LURA”) for Scattered Coop Infill Housing (File No. 91108)

RECOMMENDED ACTION

WHEREAS, Scattered Coop Infill Housing received an award of 9% Housing Tax Credits in 1991 to construct 26 single family homes in Austin;

WHEREAS, in 1998, the Development Owner represented that an offer was made to the original tenants which would allow the opportunity to execute a Lease Addendum giving them a Right of First Refusal to purchase their rental residence at the end of the 15-year compliance period at a “to be determined” price;

WHEREAS, the Development Owner represented that records from that period indicate none of the residents returned a fully executed Lease Addendum/Right of First Refusal document;

WHEREAS, the Development Owner represented that the last remaining original tenant contacted the Development Owner and expressed her wish to exercise her option to purchase her residence;

WHEREAS, the LURA for the Development does not include a Right of First Refusal provision;

WHEREAS, the Development Owner seeks to fulfill the offer made to the tenants in 1998 and requests approval to add language to Section 5 of the LURA allowing the LURA to terminate for the residence at 1621 East 10th Street if at any time after the Compliance Period the tenant who has continuously occupied the unit exercises a Right of First Refusal to purchase the building from the Project Owner at a purchase price calculated in accordance with Section 42(i)(7)(B); and

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

NOW, therefore, it is hereby

RESOLVED, that the material LURA amendment for Scattered Coop Infill Housing is approved as presented to this meeting and the Executive Director and his designees are

hereby, authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

Scattered Coop Infill Housing, also known as Heritage Heights and located in Austin's Blackshear Neighborhood, was approved in 1991 for the construction of 26 new single family homes in Austin. The units placed in service in December of 1993. The LURA for the Development has a 30-year term, which runs through the end of 2023, and the development is past its 15-year federal compliance period. On March 13, 2015, the Development Owner, Austin Inner-City Redevelopment - Phase I, Ltd. (AICR), requested approval to add language to Section 5 of the LURA allowing the LURA to terminate for the residence at 1621 East 10th Street if at any time after the Compliance Period the tenant who has continuously occupied the unit exercises a Right of First Refusal to purchase the building from the Project Owner at a purchase price calculated in accordance with Section 42(i)(7)(B). There is currently no Right of First Refusal provision in the LURA.

The owner represented to the Department that in 1998, AICR offered the original tenants the opportunity to execute a Lease Addendum giving the tenants a right of first refusal to purchase their rental residence at the end of the 15-year compliance period. A copy of the Addendum to Residential Lease Agreement was provided to the Department and stated that the purchase price would be an amount established by the Owner on or before 180 calendar days following the termination of the compliance period which is at least equal to the Minimum Purchase Price. The Minimum Purchase Price is stated to be equal to the sum of the principal amount of outstanding indebtedness secured by the current residence (other than indebtedness incurred within the 5-year period ending on the date of the sale of the residence to the tenant) and all federal, state, and local taxes attributable to the sale of the residence. According to the Owner, their records indicate that none of the residents returned a fully executed Addendum to Residential Lease Agreement.

The owner also represented that AICR was contacted in 2013 by the last remaining original resident who had received the offer in 1998 and wished to exercise her option to purchase the residence in which she has lived continuously. AICR originally denied the request due to the resident's inability to produce a copy of the executed Addendum to Residential Lease Agreement and also because the Extended Use Period was still in effect. However, the Development Owner's intention is now to fulfill the offer made to the original tenant.

The owner has complied with the amendment and notification requirements under the Department's rule at Government Code §2306.6712 and 10 TAC §10.405(b) and is providing the opportunity for public input. A public hearing is scheduled for March 31, 2015, at 3:00 p.m.

Staff recommends approval, subject to no negative public comment received, to add language to Section 5 of the LURA allowing the LURA to terminate for the residence at 1621 East 10th Street if at any time after the Compliance Period the tenant who has continuously occupied the unit exercises a Right of First Refusal to purchase the building from the Project Owner at a purchase price calculated in accordance with Section 42(i)(7)(B). The action being taken is in accordance with the Department's mission to provide permanent affordable housing opportunities for low and moderate income Texans.

**AUSTIN
INNER-
CITY
REDEVELOPMENT, PHASE I, LTD.**

1000 EAST 11TH STREET, 2ND FLOOR ■ AUSTIN, TX 78702 ■ 512-974-3100

Bert Lumbreras
President

Elizabeth A. Spencer
Vice President

Rebecca Giello
Secretary-Treasurer

March 13, 2015

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
P. O. Box 13941
Austin, Texas 78711-3941

RE: TDHCA Ref #91108/981

Dear Mr. Irvine:

The purpose of this letter is to **revise** the December 26, 2014 written request from Austin Inner-City Redevelopment, Phase I, Ltd. (AICR) to amend the existing LURA for the Scattered Cooperative Infill Program (SCIP I). In 1991, AICR received an award of 9% Low Income Housing Tax Credits for SCIP I. The Land Use Restriction Agreement (LURA), dated December 28, 1993, was executed by AICR and the former Texas Housing Agency and is attached for your reference.

SCIP I

SCIP I consists of 26 rental units, each of which is a single-family, detached 3-bedroom/2-bath residence. The homes are located in Austin's Blackshear Neighborhood in the 1600 Block of East 9th, East 10th, and East 11th Streets. The project is locally known as Heritage Heights at Blackshear. (Map attached.)

REVISED Request to Amend the LURA

AICR respectfully requests that the two changes requested in the December 26, 2014 letter be withdrawn and replaced with the revised proposed amendment (below). The purpose of the new proposed amendment would allow the one remaining original resident an opportunity to exercise a Right of First Refusal to purchase the SCIP I home she has rented since 1993.

AICR's request is to amend "Section 5 – Term of Agreement" of the existing LURA by including a new Section 5(b)(3) to read:

- "(3) At any time after the Compliance Period, if the tenant who has continuously occupied the residence at 1621 East 10th Street, which is part of the Project, exercises a right of first refusal to purchase the building from the Project Owner at a purchase price calculated in accordance with Section 42(i)(7)(B)."

We believe that the basis for approval of AICR's request to amend the LURA is contained in IRS Revenue Ruling 95-49 which holds that:

"An extended low-income housing commitment satisfies section 42(h)(6) even though its provisions may be suspended or terminated after the compliance period when a tenant exercises a right of first refusal to purchase a low-income building."

Background

In 1998, AICR offered the then-remaining original tenants the opportunity to execute a Lease Addendum giving them a Right of First Refusal to purchase their rental residence if they chose to do so. The conditions were that the tenants would continue to rent the residence and abide by the terms and conditions of their leases through the end of the initial Compliance Period, approximately December 31, 2008. At that point, they would have the choice to exercise the Right of First Refusal to purchase their property at a "to be determined" price.

There is no record that any of the tenants receiving the offer returned a fully-executed Lease Addendum/Right of First Refusal document. At the time, the lack of response from tenants was considered to be a lack of interest. However, in 2013, AICR was contacted by the one remaining original tenant who had received the offer in 1998. She wished to exercise her option to purchase her residence but was unable to produce a copy of the executed Lease Addendum. Without that document and with the Extended Use Period in effect, AICR's position concerning her request was that AICR could not sell the home to her.

AICR's Intention

Our intention in seeking this amendment is to fulfill an offer made by City representatives long ago to those original low-income tenants of SCIP I, of which there is only one remaining. Through amending the LURA, we want to give her a chance to purchase her residence: the one she has cared for loyally, in which she has raised her three sons, and the place she has called her home for the last 20 years.

I have included several attachments, such as an AICR Board resolution authorizing this request to amend the LURA. The list of attachments follows on the next page.

Thank you for your consideration, and should you have any questions, please contact me at 512-974-3182 or by e-mail at betsy.spencer@austintexas.gov, or you can contact Mr. David Potter, Neighborhood Development Program Manager at 512-974-3192 or by e-mail at david.potter@austintexas.gov).

Sincerely,



Elizabeth A. Spencer
Vice-President, AICR *and*
Director, Neighborhood Housing and Community Development, City of Austin

List of Attachments

1. Land Use Restriction Agreement dated 12/28/91.
2. Map of Heritage Heights with Rental Properties Noted
3. AICR Board Authorization for the Request to Amend the LURA
4. Certificate of Fact from the Texas Secretary of State
5. Franchise Account Status from the State Comptroller's Office
6. 2013 Audit: Austin Inner-City Redevelopment, Phase I, Ltd.
7. Minimum Purchase Price Calculation

DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR LOW-INCOME HOUSING CREDITS 0805073219

93156808

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS (this "Agreement"), dated as of 12/28/93, by AICR, * and its successors and assigns (the "PROJECT OWNER") is given as a condition precedent to the allocation of low-income housing tax credits by The Texas Housing Agency, an instrumentality of the State of Texas and a public corporation (together with any successor to its rights, duties and obligations, the "Agency").

WITNESSETH:

12:01 PM 8055

15.00 INDX 2 3 12/30/93

WHEREAS, the Project Owner is or shall be the Project Owner of a low income rental housing development located on lands in the City of Austin, County of Travis, State of Texas, more particularly described in Exhibit A hereto, known as or to be known as SCIP 1 (the "Project"); and

12:01 PM 8055

5.00 RECM 2 3 12/30/93

WHEREAS, the Agency has been designated by the Governor of the State of Texas as the housing credit agency for the State of Texas for the allocation of low-income housing tax credit dollars (the "Credit"); and

12:01 PM 8055

1.00 SEC 2 3 12/30/93 931568.08-DGC#

WHEREAS, Project Owner has applied to the Agency for an allocation of Credits to the Project in an amount not to exceed \$249,449 low income housing tax credit dollars (\$ 249,449); and

WHEREAS, the Project Owner has represented to the Agency in Project Owner's Low Income Housing Credit Application (the "Application") authorized by the Agency's Low Income Rental Housing Tax Credit Rules ("Rules") that Project Owner shall lease 100% of the units in the Project to individuals or families whose income is 60% or less of the area median gross income (including adjustments for family size) as determined in accordance with Section 42 of the Internal Revenue Code respectively, ("Low Income Tenants") ("Code"). All reference to the Code is to Section 42 of the Internal Revenue Code as amended and existing on December 18, 1989.

WHEREAS, the Agency has determined the Project would support a Credit allocation in the amount of \$249,449; and

WHEREAS, the Project Owner has represented the Agency in Project Owner's application that it will impose additional rent restrictions or will covenant to maintain the Section 42 rent and income restrictions for an additional period of time to be determined by the Agency. (Optional, check if applicable)

WHEREAS, the Code has required as a condition precedent to the allocation of the Credit that the Project Owner execute, deliver and record in the official land deed records of the county in which the Project is located this Agreement in order to create certain covenants running with the land for the purpose of enforcing the requirements of Section 42 of the Code by regulating and restricting the use and occupancy and transfer of the Project as set forth herein;

WHEREAS, the Project Owner, under this Agreement, intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and are covenants running with the Project land for the term stated herein and binding upon all subsequent owner of the Project for such term, and are not merely personal covenants of the Project Owner.

NOW, THEREFORE, in consideration of the promises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Project Owner agrees as follows:

* Austin Inner-City Redevelopment - Phase I project, a Texas limited partnership, TRAVIS COUNTY, TEXAS

SECTION 1 - DEFINITIONS

All words and phrases defined in Section 42 of the Code and Treasury or HUD regulations pertaining thereto, as well as all capitalized terms used herein and defined in the Agency Rules shall have the same meanings in this Agreement.

SECTION 2 - RECORDING AND FILING; COVENANTS TO RUN WITH THE LAND

- (a) Upon execution and delivery by the Project Owner, the Project Owner shall cause this Agreement and all amendments hereto to be recorded and filed in the official public land deed records of the county in which the Project is located, and shall pay all fees and charges incurred in connection therewith. Upon recording, the Project Owner shall immediately transmit to the Agency an executed original of the recorded Agreement showing the date, deed book and page numbers of record. The Project Owner agrees that the Agency will not issue the Internal Revenue Service Form 8609 constituting final allocation of the Credit unless and until the Agency has received the recorded executed original of the Agreement.
- (b) The Project Owner intends, declares and covenants, on behalf of itself and all future Project Owners and operators of the Project land during the term of this Agreement, that this Agreement and the covenants and restrictions set forth in the Agreement regulating and restricting the use, occupancy and transfer of the Project land and the Project (i) shall be and are covenants running with the Project land, encumbering the Project land for the term of this Agreement, binding upon the Owner's successors in title and all subsequent Project Owners and Operators of the Project land, (ii) shall bind the Project Owner (and the benefits shall inure to the Agency and any past, present or prospective tenant of the Project) and its respective successors and assigns during the term of this Agreement. The Project Owner hereby agrees that any and all requirements of the laws of the State of Texas to be satisfied in order for the provisions of this Agreement to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements of privileges of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the land. For the longer of the period this Credit is claimed or the term of this Agreement, each and every contract, deed or other instrument hereafter executed conveying the Project or portion thereof shall expressly provide that such conveyance is subject to this Agreement, provided, however, the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Project or portion thereof provided that such conveyance is subject to this Agreement.
- (c) The Project Owner covenants to obtain the consent of any existing recorded lienholder on the Project to the Agreement and such consent shall be a condition precedent to the issuance of Internal Revenue Service Form 8609 constituting final allocation of the Credit.

SECTION 3 - REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER

The Project Owner hereby represents, covenants and warrants as follows:

- (a) The Project Owner (i) is a limited partnership duly organized under the laws of the State of Texas, and is duly authorized and qualified to transact business under the laws of this State, to transact in the State any and all business contemplated by this Agreement and the Agency Rules; (ii) possesses all requisite power, authority, licenses, and permits to own its properties and assets and to conduct its business; and (iii) has all legal right, power and authority to execute and deliver this Agreement.

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

12093 0002

- (b) The execution and performance of this Agreement by the Project Owner (i) will not violate or, as applicable, have not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, have not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Project Owner is a party or by which it or the Project is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.
- (c) The Project Owner will, at the time of execution and delivery of this Agreement, have good and indefeasible title to the premises constituting the Project free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Agreement, any loan documents relating to the Project or other permitted encumbrances).
- (d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Project Owner, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement) or would materially adversely affect its financial condition.
- (e) The Project constitutes or will constitute a qualified low-income building or qualified low-income project, as applicable, as defined in Section 42 of the Code and applicable regulations.
- (f) Each unit in the Project contains complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation (unless the Project qualifies as a single-room occupancy project or transitional housing for the homeless) which are to be used on other than a transient basis.
- (g) During the term of this Agreement, all units subject to the Credit shall be leased and rented or made available to members of the general public who qualify or conform to our program and the Code (or otherwise qualify for occupancy of the low-income units) under the applicable election specified in Section 42(g) of the Code.
- (h) The Project Owner agrees to comply fully with the requirements of Texas Law or the Federal Fair Housing Act, from time to time.
- (i) During the term of this Agreement, the Project Owner covenants, agrees and warrants that each low-income unit is and will remain suitable for occupancy to the extent required by Texas Law and under regulations prescribed by the Secretary of the Treasury taking into account local health, safety, and building codes.
- (j) Subject to the requirements of Section 42 of the Code and this Agreement, the Project Owner may sell, transfer or exchange the entire Project at any time, but the Project Owner shall notify in writing and obtain the agreement of any buyer or successor or other person acquiring the Project or any interest therein that such acquisition is subject to the requirements of this Agreement and to the requirements of Section 42 of the Code and applicable regulations. This provision shall not act to waive any other restriction on sale, transfer or exchange of the project or any low-income portion of the Project. The Project Owner agrees that the Agency may void any sale, transfer or exchange of the project if the buyer or successor or other person fails to assume in writing the requirements of this Agreement and the requirements of this Agreement and the requirements of Section 42 of the Code.
- (k) The Project Owner agrees to notify the Agency in writing prior to any sale, transfer or exchange of the entire Project or any portion of the Project.

DECLARATION OF LAND USE RESTRICTIVE COVENANTS
FOR LOW INCOME HOUSING CREDITS (11-80)

PAGE 4

- (l) The Project Owner shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project or permit the use of any residential rental unit for any purpose other than rental housing during the term of this Agreement unless required by law.
- (m) The Project Owner represents, warrants and agrees that if the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Project Owner will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of this Agreement.
- (n) The Project Owner warrants that it has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

SECTION 4 - INCOME RESTRICTIONS/RENTAL RESTRICTIONS

The Project Owner represents, warrants and covenants throughout the term of this Agreement and in order to satisfy the requirements of Section 42 of the Code ("Section 42 Occupancy Restrictions") that:

- (a) (1) At least 20% or more of the residential units in the Project are both rent-restricted and/or occupied by individuals whose income is 50% or less of area median income. _____
- (2) At least 40% or more of the residential units in the Project are both rent-restricted and/or occupied by individuals whose income is 60% or less of area median income. X

(Check applicable percentage election)

- (b) The determination of whether a tenant meets the low-income requirement shall be made by the Owner at least annually on the basis of the current income of such Low-Income Tenant.

SECTION 5 - TERM OF AGREEMENT

- (a) Except as hereinafter provided, this Agreement and the Section 42 Occupancy Restrictions specified herein shall commence with the first day in the compliance period on which any building which is part of the Project is placed in service and shall end on the date which is 15 years after the close of the Compliance Period.
- (b) Notwithstanding subsection (a) above the Project Owner shall comply with the requirements of Section 42 relating to the extended use period for an additional 15 years, after the compliance period, provided, however, the extended use period for any building which is part of this Project shall terminate:
 - (1) On the date the building is acquired by foreclosure or instrument in lieu of foreclosure; or
 - (2) On the last day of the Compliance Period, or any such time thereafter, if the Project Owner has properly requested that the Agency assist in procuring a "Qualified Contract", as defined in the Code, for the acquisition of the low-income portion of any building which is a part of the Project and the Agency is unable to present a qualified contract. To properly request the Agency's assistance in procuring a "Qualified Contract" for the acquisition of the low-income portion of any building which is part of the Project, the Project Owner must submit a written request to the Agency one (1) year prior to the expiration of the Compliance period, or on the last day of any subsequent year of the extended use period.

REAL PROPERTY RECORDS
TRAVIS COUNTY TEXAS

12093 0004

The Agency will have one (1) year from the date of the project owner's written request to find a buyer to acquire the project owner's interest in the low-income portion of the building. The Agency will attempt to procure a qualified contract for the acquisition of the low income portion of any project only once during the extended use period.

- (c) Notwithstanding subsection (b) above, the Section 42 rent requirements shall continue for a period of three years following the termination of the extended use requirement pursuant to the procedures specified in subsection (b) above. During such three year period, the Project Owner shall not evict or terminate the tenancy of an existing tenant of any low-income unit other than for good cause and shall not increase the gross rent above the maximum allowed under the Code with respect to such low-income unit.

SECTION 6 - ENFORCEMENT OF SECTION 42 OCCUPANCY RESTRICTIONS

- (a) The Project Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of Section 42 of the Code and applicable regulations of this Agreement. Moreover, Project Owner covenants to take any lawful action (including amendment of this Agreement as may be necessary, in the opinion of the Agency) to comply fully with the Code and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury, the Internal Revenue Service, or the Department of Housing and Urban Development, from time to time, pertaining to Project Owner's obligations under Section 42 of the Code and affecting the Project.
- (b) The Project Owner acknowledges that the primary purpose for requiring compliance by the Project Owner with the restrictions provided in this Agreement is to assure compliance of the Project and the Project Owner, with Section 42 of the Code and the applicable regulations, AND BY REASON THEREOF, THE PROJECT OWNER IN CONSIDERATION FOR RECEIVING LOW-INCOME HOUSING CREDITS FOR THIS PROJECT HEREBY AGREES AND CONSENTS THAT THE AGENCY AND ANY INDIVIDUAL WHO MEETS THE INCOME LIMITATION APPLICABLE UNDER SECTION 42 (WHETHER PROSPECTIVE, PRESENT OR FORMER OCCUPANT) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE PROJECT OWNER OF ITS OBLIGATIONS UNDER THIS AGREEMENT IN A STATE COURT OF COMPETENT JURISDICTION. The Project Owner hereby further specifically acknowledges that the beneficiaries of the Project Owner's obligations hereunder can not be adequately compensated by monetary damages in the event of any default hereunder.
- (c) The Project Owner hereby agrees that the representations and covenants set forth hereing may be relied upon by the Agency and all persons interested in Project compliance under Section 42 of the Code and the applicable regulations.
- (d) The Project Owner agrees that if at any point following execution of this Agreement, Section 42 of the Code or regulations implementing said Section require the Agency to monitor the Section 42 Occupancy Restrictions, or, alternatively, the Agency chooses to monitor Section 42 Occupancy Restrictions, the Project Owner will take any and all actions reasonably necessary and required by the Agency to substantiate the Project Owner's compliance with the Section 42 Occupancy Restrictions and will pay a reasonable fee to the Agency for such monitoring activities performed by the Agency.

SECTION 7 - MISCELLANEOUS

- (a) Severability. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

DECLARATION OF LAND USE RESTRICTIVE COVENANTS
FOR LOW INCOME HOUSING CREDITS (11-80)

PAGE 8

(b) Notices. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, or delivered by any other method permitted by law, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

To the Agency:

Texas Housing Agency
P.O. Box 13941 Capital Station
Austin, Texas 78711-3941
Attn: Low Income Tax Credit Program

To the Owner:

% Austin Inner-City Corporation, General Partner
505 Barton Springs Road, 6th floor
Austin, Texas 78704
Attn: Edwina Carrington

The Agency, and the Project Owner, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

- (c) Amendment. The Project Owner agrees that it will take all actions necessary to effect amendment of this Agreement as may be necessary to comply with the Code, and any and all applicable rules, regulations, policies, procedures, rulings or other official statements pertaining to the Credit.
- (d) Subordination of Agreement. This Agreement and the restrictions hereunder are subordinate to the loan and loan documents, if any, on the Project except insofar and Section 42 requires otherwise (relating to the three-year vacancy control period following the termination of the extended use requirements during the extended use period).
- (e) Governing Law. This Agreement shall be governed by the laws of the State of Texas, and, where applicable, the laws of the United States of America.
- (f) Survival of Obligations. The obligations of the Project Owner as set forth herein and in the Application shall survive the allocation of the Credit and shall not be deemed to terminate or merge with the awarding of the allocation.

IN WITNESS WHEREOF, the Project Owner has caused this Agreement to be signed by its duly authorized representatives, as of the day and year first written above.

PROJECT OWNER Austin inner-City Redevelopment - Phase I, Ltd.

By: [Signature]

Print name: Jim Smith

Title: President, Austin Inner-City Redevelopment Corporation,
General Partner

Signed, sealed and delivered on the 29th day of December, 1993 in the presence of: Sworn and
Subscribed before me
on the 29th day of December, 1993.

Notary Public in and for the State of _____
whose commission expires: _____



REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

12093 0006

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY
(SCIP I limited partnership rental lots)

The property (including any improvements) referred to in this instrument is described as follows:

- (1) LOTS 7-A and 8-A, in BLOCK 7, of AMENDED PLAT OF LOTS 7 THRU 10, BLOCK 7, McGARY'S SUBDIVISION OF OUTLOT 6, DIV. B, according to the map or plat of record in Volume 92, Page 270-271, of the Plat Records of Travis County, Texas;
- (2) LOTS 7-A, 8-A, 9-A AND 10-A, in BLOCK 8, of AMENDED PLAT OF LOTS 7 THRU 11, BLOCK 8, McGARY'S SUBDIVISION OF OUTLOT 6, DIVISION B, according to the map or plat thereof recorded in Volume 92, Page 61, Plat Records of Travis County, Texas;
- (3) LOTS 4, 5, 6, 8, 10, 11, and 12 in BLOCK "A" of HERITAGE HEIGHTS SECTION ONE, a subdivision of the City of Austin, Travis County, Texas, according to the map or plat thereof recorded in Volume 90, Page 330, Plat Records of Travis County, Texas;
- (4) LOTS 1, 2, 4, 8, 9, and 10 in BLOCK "B" of HERITAGE HEIGHTS SECTION ONE, a subdivision of the City of Austin, Travis County, Texas, according to the map or plat thereof recorded in Volume 90, Page 330, Plat Records of Travis County, Texas; and
- (5) LOTS 2, 4, 5, 6, 9, 10, and 11 in BLOCK "C" of HERITAGE HEIGHTS SECTION ONE, a subdivision of the City of Austin, Travis County, Texas, according to the map or plat thereof recorded in Volume 90, Page 330, Plat Records of Travis County, Texas.

After Recording Return to:
City of Austin
c/o Melinda Ruby
505 Barton Springs Rd. #600
Austin, TX 78704

FILED
93 DEC 30 AM 8:16
DANA ELBEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS

STATE OF TEXAS COUNTY OF TRAVIS
I hereby certify that this instrument was FILED on
the date and at the time stamped herein by me, and
was duly RECORDED, in the Volume and Page of this
named RECORDS of Travis County, Texas, on

Page 1 of 1 page Legal Description

DEC 30 1993

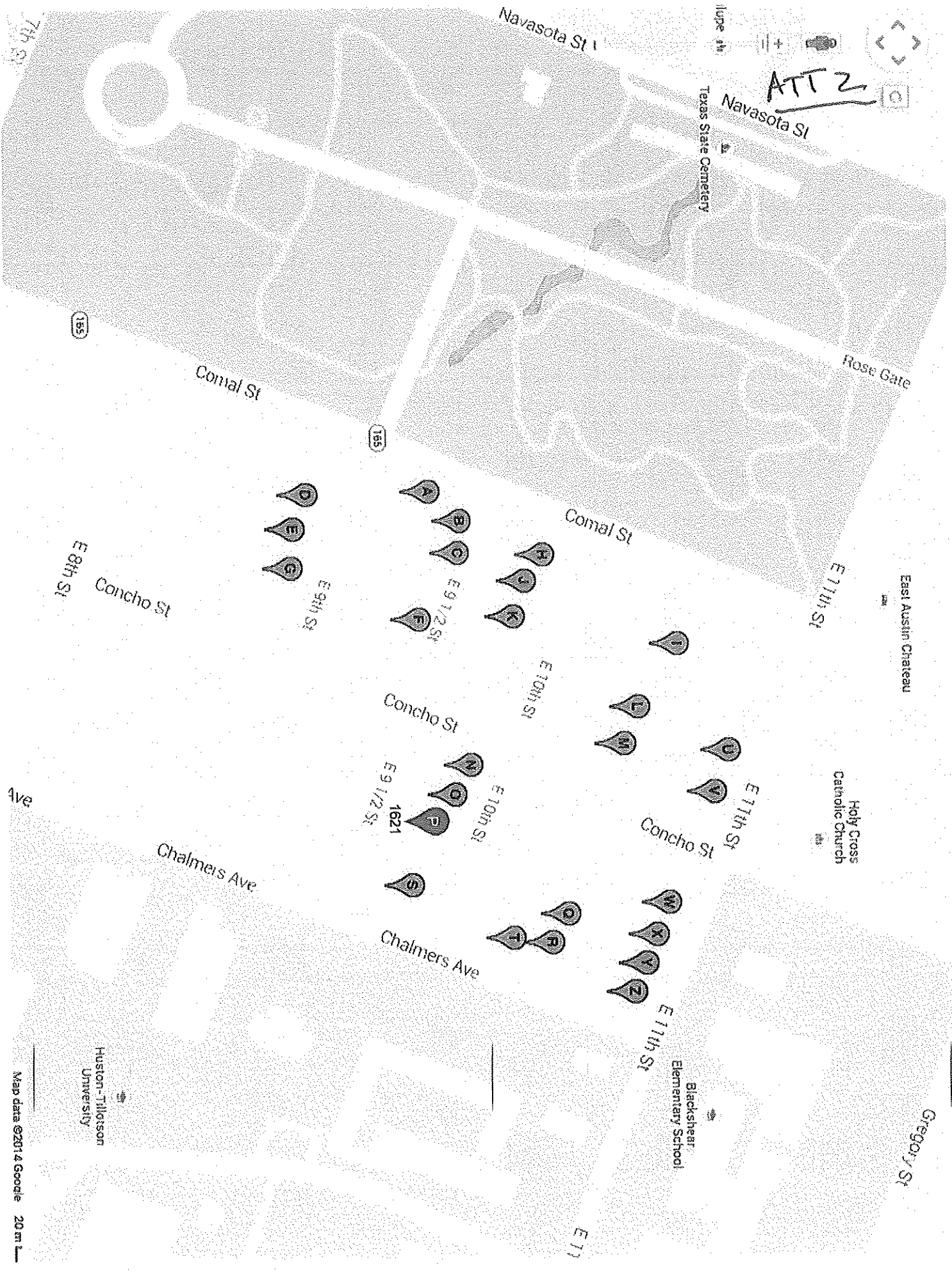
REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

12093 0007



Dana Elbeauvoir
COUNTY CLERK
TRAVIS COUNTY, TEXAS

ATT 2



East Austin Crateau

Holy Cross Catholic Church

Blackshear Elementary School

Huston-Tillotson University

UNANIMOUS WRITTEN CONSENT OF
AUSTIN INNER-CITY REDEVELOPMENT, PHASE I, LTD.
BOARD OF DIRECTORS
IN LIEU OF A MEETING

We, the undersigned, being all of the directors of the Board of Directors of the AUSTIN INNER-CITY REDEVELOPMENT, PHASE I, LTD., a Texas limited partnership ("AICR"), consent to the taking of the following action in lieu of a meeting (the "Unanimous Consent") pursuant to Subdivision A of Article 9.1 of the Texas Non-Profit Corporation Act (the "Act"), and waive any notice to be given in connection therewith, pursuant to Subdivision A of Article 9.09 of the Act. This action is effective **Friday, December 19, 2014**.

RESOLUTION
(AIRC No. 2014-001)

Amendment of Land Use Restriction Agreement

WHEREAS, AICR is the sole owner of the 26 rental properties developed under a program known as the Scattered Cooperative Infill Program ("SCIP I") and financed, in part, using Low Income Housing Tax Credits awarded by the Texas Housing Agency, the predecessor agency to the Texas Department of Housing and Community Affairs ("TDHCA"); and

WHEREAS, the 26 rental properties are subject to a Land Use Restriction Agreement (LURA), dated December 28, 1993, and executed by AICR and the Texas Housing Agency, predecessor agency to TDHCA, which requires a 15-year Initial Compliance Period, which expired December 31, 2008, and an additional 15-Year Extended Use Period; and

WHEREAS, the 26 rental properties are currently within the 15-Year Extended Use Period which will expire on December 31, 2023; and

WHEREAS, in 1998, the remaining original residents who had occupied the property continuously, including Ms. Pamela Franklin, 1621 East 10th Street, Austin, Travis County, Texas, were provided by AICR a Lease Addendum giving each household a Right of First Refusal to Purchase Current Residence which would allow the residents, if they so choose, to purchase the property at a "to be determined" price at the end of the 15-Year Initial Compliance Period; and

WHEREAS, the Lease Addendum did not have a specific date by which residents had to sign and return the Lease Addendum to AICR for the document to become effective; and

WHEREAS, in 2013, Ms. Franklin, being the last of the original SCIP I residents expressed a desire to purchase her residence after living in it continuously and abiding by the terms and conditions of her lease was informed by AICR that she would not be able to purchase the home because it was included in the Extended Use Period required by the LURA; and

WHEREAS, neither Ms. Franklin nor AICR has on file or is able to produce a fully executed copy of the Lease Addendum; and

WHEREAS, the AICR Board of Directors wishes to honor the commitment to give Ms. Pamela Franklin the option to purchase at an affordable price the residence in which she has lived continuously. NOW THEREFORE,

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF AUSTIN INNER-CITY REDEVELOPMENT, PHASE I, LTD. that the president of the corporation is authorized and empowered to make a formal request to TDHCA to amend the LURA to remove from it the property having the Legal Description:

Lot 10-A, Block 8, of AMENDED PLAT OF LOTS 7 THRU 11, BLOCK 8, McGARY'S SUBDIVISION OF OUTLOT 6, DIVISION B, according to the map or plat thereof recorded in Volume 92, Page 61, Plat Records of Travis County, Texas.

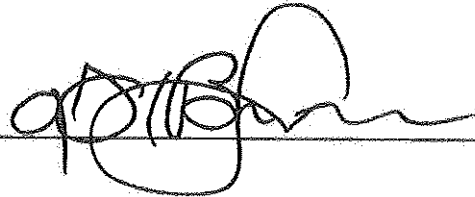
FURTHER RESOLVED, that the president is authorized and empowered to negotiate an additional period of affordability beyond the expiration of the Extended Use Period in exchange for the removal of the above-described property; or to make other negotiations to bring about a mutually beneficial outcome for AICR and TDHCA.

FURTHER RESOLVED; it is the intent of the Board of Directors that the authority granted to the president of the corporation, and which the president hereby delegates to the vice president of the corporation, shall be broadly construed and that no third party shall be required to obtain further authority of the Board for any actions taken by the president in connection with this Resolution AICR No. 2014-001.

This document may be executed in multiple originals.

EXECUTED BY THE UNDERSIGNED, as directors of the AUSTIN INNER-CITY REDEVELOPMENT, PHASE I, LTD, effective the date first above written.

BERT LUMBRERAS
302 West 2nd Street
Austin, TX 78701



ELIZABETH A. SPENCER
1000 East 11th Street, 2nd Floor
Austin, TX 78702

REBECCA GIELLO
1000 East 11th Street, 2nd Floor
Austin, TX 78702

WHEREAS, the AICR Board of Directors wishes to honor the commitment to give Ms. Pamela Franklin the option to purchase at an affordable price the residence in which she has lived continuously. NOW THEREFORE,

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF AUSTIN INNER-CITY REDEVELOPMENT, PHASE I, LTD. that the president of the corporation is authorized and empowered to make a formal request to TDHCA to amend the LURA to remove from it the property having the Legal Description:

Lot 10-A, Block 8, of AMENDED PLAT OF LOTS 7 THRU 11, BLOCK 8, MCGARY'S SUBDIVISION OF OUTLOT 6, DIVISION B, according to the map or plat thereof recorded in Volume 92, Page 61, Plat Records of Travis County, Texas.

FURTHER RESOLVED, that the president is authorized and empowered to negotiate an additional period of affordability beyond the expiration of the Extended Use Period in exchange for the removal of the above-described property; or to make other negotiations to bring about a mutually beneficial outcome for AICR and TDHCA.

FURTHER RESOLVED; it is the intent of the Board of Directors that the authority granted to the president of the corporation, and which the president hereby delegates to the vice president of the corporation, shall be broadly construed and that no third party shall be required to obtain further authority of the Board for any actions taken by the president in connection with this Resolution AICR No. 2014-001.

This document may be executed in multiple originals.

EXECUTED BY THE UNDERSIGNED, as directors of the AUSTIN INNER-CITY REDEVELOPMENT, PHASE I, LTD, effective the date first above written.

BERT LUMBRERAS
302 West 2nd Street
Austin, TX 78701

ELIZABETH A. SPENCER
1000 East 11th Street, 2nd Floor
Austin, TX 78702



REBECCA GIELLO
1000 East 11th Street, 2nd Floor
Austin, TX 78702





Office of the Secretary of State

Certificate of Fact

The undersigned, as Secretary of State of Texas, does hereby certify that the document, Certificate Of Limited Partnership for AUSTIN INNER-CITY REDEVELOPMENT - PHASE I, LTD. (file number 6258710), a Domestic Limited Partnership (LP), was filed in this office on December 20, 1991.

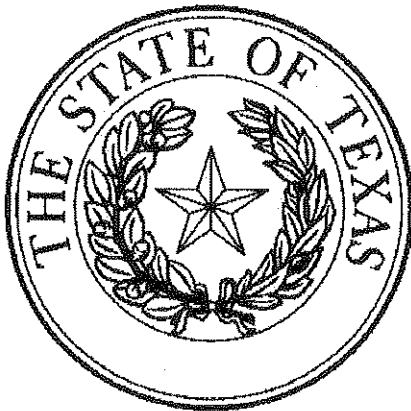
It is further certified that the entity status in Texas is in existence.

It is further certified that our records indicate ELIZABETH A SPENCER as the designated registered agent for the above named entity and the designated registered office for said entity is as follows:

1000 E. ELEVENTH ST.

AUSTIN, TX - 78702 USA

In testimony whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in Austin, Texas on December 15, 2014.



NANDITA BERRY

Nandita Berry
Secretary of State



Franchise Tax Account Status

As of: 12/15/2014 06:03:17 AM

This Page is Not Sufficient for Filings with the Secretary of State

AUSTIN INNER-CITY REDEVELOPMENT - PHASE I, LTD.

Texas Taxpayer Number 32036468513
Mailing Address 1000 E 11TH ST
AUSTIN, TX 78702-1943
Right to Transact ACTIVE
Business in Texas
State of Formation TX
Effective SOS 12/20/1991
Registration Date
Texas SOS File Number 0006258710
Registered Agent Name ELIZABETH A SPENCER
Registered Office Street 1000 E. ELEVENTH ST.
Address AUSTIN, TX 78702

1f

BOARD ACTION REQUEST

COMPLIANCE DIVISION

APRIL 16, 2015

Presentation, Discussion, and Possible Action on withdrawal of proposed amendments to 10 TAC Chapter 10, Subchapter F, §10.607(d) concerning Reporting Requirements; §10.622(d) concerning Special Rules Regarding Rents and Rent Limit Violations; and §10.623 concerning Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period and proposal of new amendments to 10 TAC Chapter 10, Subchapter F, §10.607(d) concerning Reporting Requirements; §10.622 concerning Special Rules Regarding Rents and Rent Limit Violations; and §10.623 concerning Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period and directing their publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, at the Board meeting of February 19, 2015, staff received approval to publish proposed amendments to 10 TAC Chapter 10, Subchapter F, §10.607(d) concerning Reporting Requirements; §10.622(d) concerning Special Rules Regarding Rents and Rent Limit Violations; and §10.623 concerning Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period, in the *Texas Register* for review and public comment;

WHEREAS, the Internal Revenue Service (“IRS”) released a Chief Counsel Advice (“CCA”) Memorandum during the public comment period that directly impacts §10.622 concerning Special Rules Regarding Rents and Rent Limit Violations and §10.623 concerning Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period; and

WHEREAS, upon review, the Department noted an error in §10.607(d) concerning Reporting Requirements that could not be addressed through public comment as the correction would have substantially changed the meaning of the subsection.

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees are authorized, empowered, and directed to withdraw the previously published proposed amendments and propose new amendments to 10 TAC Chapter 10, Subchapter F, §10.607(d) concerning Reporting Requirements; §10.622 concerning Special Rules Regarding Rents and Rent Limit Violations; and §10.623 concerning Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period for public comment in the *Texas Register*, in the form presented to this meeting, for public comment and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

At the Board meeting of February 19, 2015, amendments to certain sections of the Compliance Monitoring rules were approved to be published in the *Texas Register* for review and public comment. During the public comment period, federal guidance was released that directly impacted the sections for which amendments were proposed. Further, one suggestion received through public comment in the last rule making process was intended to be included in that adoption, but was inadvertently omitted.

Attachment 1. Preamble, withdrawal and re-proposed amendments to 10 TAC Chapter 10, Subchapter F, §10.607(d) concerning Reporting Requirements; §10.622 concerning Special Rules Regarding Rents and Rent Limit Violations; and §10.623 concerning Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period

The Texas Department of Housing and Community Affairs (the “Department”) proposes amendments to 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, §10.607(d) concerning Reporting Requirements; §10.622 concerning Special Rules Regarding Rents and Rent Limit Violations; and §10.623 concerning Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period. The purpose for each amendment is described below.

10 TAC§10.607(d), concerning Reporting Requirements. During the most recent rule making process, this subsection was amended. In that rulemaking in paragraph (d)(2), the Department made a change to the proposed amendment based on public comment; however, the rule that was adopted did not accurately incorporate the public comment. Further, when the amendment was originally published in the *Texas Register* for public comment (38 *TexReg* 7460), the *Texas Register* did not publish the amendments as submitted and as approved by the Board at the September 4, 2014 meeting. It appears that instead of publishing the correct language for paragraph (d)(1) as submitted, a duplication of (d)(2) was published for public comment. The purpose of this amendment is to correct the paragraph to align with the public comment as intended and provide that certain reports are due on the 15th business day of the month and to correct the error in the language adopted for (d)(1). Please note, only subsection (d) is being amended, but the rule in its entirety is shown below for context.

10 TAC§10.622(d) (concerning Special Rules Regarding Rents and Rent Limit Violations) and §10.623 (concerning Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period.) The Department published proposed amendments to §10.622 and §10.623 in the *Texas Register* to solicit public comment (38 *TexReg* 7460). During the public comment period, the Internal Revenue Service (“IRS”) released a Chief Counsel Advice (“CCA”) memorandum that addressed the treatment of low income units occupied with resident managers, maintenance personnel and/or security officers. In general, these units are not considered residential rental units, rather facilities reasonably required for the project. Prior to the release of this CCA, guidance from the IRS provided that a if resident manager, maintenance personnel and/or security officer occupied a low income unit and the household was charged rent, then the unit was not considered a facility reasonably required for the project and the household in the unit must be eligible. This newly released CCA reverses the previous IRS guidance. This change affects §§10.622 and 10.623 and, as a result, the amendments proposed during the February 19, 2015 meeting have been withdrawn and the proposed amendments now incorporate the CCA. The change to §10.622(d) is intended to provide owners of non-Housing Tax Credit developments the same specificity regarding how to correct noncompliance related to overcharging rent that is available in subsection (b) for owners of Housing Tax Credits developments. Section 10.623 currently provides that, once a Development completes the 15 year Federal Compliance Period, low-income occupancy requirements can be met Development wide instead of building by building as required during the Compliance Period. The intent was to allow for flexibility; however, the impact of employee occupied units was not taken into consideration. Under certain scenarios, a Development that was meeting the low-income occupancy requirements during the Compliance Period could be found in noncompliance with the application of the rule as currently written. The CCA referenced above specifically addresses

the treatment of employee occupied units and the proposed change to §10.622(h) will resolve this concern.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments are in effect, enforcing or administering the amendments do not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be improved compliance and consistency with federal and state requirements with the requirements and other provisions of the rule. There will not be any additional new economic cost to individuals required to comply with the proposed amendments.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will not be any additional economic effect on small or micro-businesses based on these proposed amendments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held May 1, 2015, through June 1, 2015 to receive input on the proposed amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Stephanie Naquin, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-3359. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. JUNE 1, 2015.**

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendments affect no other code, article, or statute.

10.607. Reporting Requirements.

(a) The Department requires reports to be submitted electronically through the Department's web-based Compliance Monitoring and Tracking System (CMTS) and in the format prescribed by the Department. The Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms must be filed for:

- (1) 9% Housing Tax Credit Developments - no later than the date prescribed in §10.402(g) of this chapter relating to the 10 Percent Test;
- (2) 4% Housing Tax Credit Developments - no later than the date prescribed in §10.402(e) of this chapter (relating to Post Bond Closing Documentation Requirements); or
- (3) For all other multifamily developments, no later than September 1st of the year following the award.

(b) Each Development is required to submit an Annual Owner's Compliance Report (AOCR). Depending on the Development, some or all of the Report must be submitted. The first AOCR is due the second year following the award in accordance with the deadlines set out in subsection (e) of this section. Example 607(1): A Development was allocated Housing Tax Credits in July 2011. The first report is due April 30, 2013, even if the Development has not yet commenced leasing activities.

(c) The AOCR is comprised of four parts:

(1) Part A "Owner's Certification of Program Compliance." All Owners must annually certify compliance with applicable program requirements. The AOCR Part A shall include answers to all questions required by the U. S. Department of the Treasury to be addressed, including those required by Treasury Regulation 1.42-5(b)(1) or the applicable program rules. HTC Developments during their Compliance Period will also be required to provide the contact information of the syndicator in the Annual Owner's Compliance Report;

(2) Part B "Unit Status Report." All Developments must annually report and certify the information related to individual household income, rent, certification dates and other necessary data to ensure compliance with applicable program regulations. In addition, Owners are required to report on the race and ethnicity, family composition, age, use of rental assistance, disability status, and monthly rental payments of individuals and families applying for and receiving assistance or if the household elects not to disclose the information, such election;

(3) Part C "Housing for Persons with Disabilities." The Department is required to establish a system that requires Owners of state or federally assisted housing Developments with 20 or more housing Units to report information regarding housing Units designed for persons with disabilities. The certified answers to the questions on Part C satisfy this requirement; and,

(4) Part D "Form 8703." Tax exempt bond properties must file Form 8703 each calendar year of the qualified project period. The form is due to the IRS by March 31 after the close of the calendar year for which the certification is made. The Department requires Tax Exempt Bond Development Owners to submit a copy of the filed Form 8703 for the preceding calendar year.

(d) The owner is required to report certain financial information to the Department electronically through CMTS. If supplemental information is required it must be uploaded to the Development's CMTS account.

(1) "Annual Owner's Financial Certification" (formerly Part D of the AOCR). Developments funded by the Department must annually provide and certify to the data requested in the Annual Owner's Financial Certification (AOFC). [Developments funded with Exchange or TCAP must also submit a "Quarterly Owner's Financial Certification" and these must be submitted in January, April, July, and October on the 10th day of the month.]

(2) Developments funded with Exchange or TCAP must also submit a "Quarterly Owner's Financial Certification" and these must be submitted in January, April, July, and October on the 15th business day of the month.

(e) Parts A, B, C, and D of the Annual Owner's Compliance Report and the Annual Owner's Financial Certification must be provided to the Department no later than April 30th of each year, reporting data current as of December 31st of the previous year (the reporting year).

(f) Periodic Unit Status Reports. All Developments must submit a Quarterly Unit Status report to the Department through the Compliance Monitoring and Tracking System. Quarterly reports are due in January, April, July, and October on the 10th day of the month. The report must report occupancy as of the last day of the previous month for the reporting period. For example, the report due October 10th should report occupancy as of September 30th of the preceding month. The first quarterly report is due on the first quarterly reporting date after leasing activity commences.

(g) Owners are encouraged to continuously maintain current resident data in the Department's CMTS. Under certain circumstances, such as in the event of a natural disaster, the Department may alter the reporting schedule and require all Developments to provide current occupancy data through CMTS.

(h) All rental Developments funded or administered by the Department will be required to submit a current Unit Status Report prior to an onsite monitoring visit.

(i) Exchange developments must submit IRS Form(s) 8609 with lines 7, 8(b), 9(b), 10(a), 10(c), and 10(d) completed thirty (30) days after the Department issues the executed form(s). If an Owner elects to group buildings together into one or more multiple building projects, the owner must attach a statement identifying the buildings in the project. An owner may request to change the election made on line 8(b) only once during the Compliance Period. The request will be treated as non-material amendment, subject to the fee described in §10.901 of this chapter (relating to Fee Schedule) and the process described in §10.405 of this chapter (relating to Amendments and Extensions).

10.622. Special Rules Regarding Rents and Rent Limit Violations.

(a) Rent or Utility Allowance Violations of the maximum allowable limit for the HTC program. Under the HTC program, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees, cannot exceed the maximum applicable limit (as determined by the minimum set-aside elected by the Owner) published by the Department. If it is determined that a HTC Development, during the Compliance Period, collected rent in excess of the rent limit established by the minimum set-aside, the owner must correct the violation by reducing the rent charged. The Department will report the violation as corrected on January 1st of the year following the violation. The refunding of overcharged rent does not avoid the disallowance of the credit by the IRS.

(b) Rent or Utility Allowance Violations of additional rent restrictions under the HTC program. If Owners agreed to additional rent and occupancy restrictions, the Department will monitor to confirm compliance. If noncompliance is discovered, the Department will require the Owner to restore compliance by refunding (not a credit to amounts owed the Development) any excess rents to a sufficient number of households to meet the set aside. *Example 622(1)*: A 100 unit development is required to lease 10 units to households at the 30 percent income and rent limits. The utility allowance is miscalculated resulting in overcharged rents. Fifteen households have an income under 30 percent. The owner must refund 10 of these households.

(c) Rent Violations of the maximum allowable limit due to application fees under the HTC program. Under the HTC program, Owners may not charge tenants any overhead costs as part of the application fee. Owners must only charge the actual cost for application fees as supported by invoices from the screening company the Owner uses.

(1) The amount of time Development staff spends checking an applicant's income, credit history, and landlord references may be included in the Development's application fee. Development Owners may add up to \$5.50 per Unit for their other out of pocket costs for processing an application without providing documentation. *Example 622(2)*: A Development's out of pocket cost for processing an application is \$17.00 per adult. The property may charge \$22.50 for the first adult and \$17.00 for each additional adult. Should an Owner desire to include a higher amount to cover staff time, prior approval is required and wage information and a time study must be supplied to the Department.

(2) Documentation of Development costs for application processing or screening fees must be made available during onsite visits or upon request. The Department will review application fee documentation during onsite monitoring visits. If the Development pays a flat monthly fee to a third party for credit or criminal background checks, Owners must calculate the appropriate fee to be charged applicants by using the total number of applications processed, not just approved applications. If the Department determines from a review of the documentation that the Owner has overcharged residents an application fee, the noncompliance will be reported to the IRS on Forms 8823 under the category "gross rent(s) exceeds tax credit limits." The noncompliance will be corrected on January 1st of the next year.

(3) Owners are not required to refund the overcharged fee amount. To correct the issue, owners must reduce the application fee for prospective applicants. Once the fee is reduced for prospective applicants, the Department will report the affected units back in compliance on January 1st of the year after they were overcharged the application fee.

(d) Rent or Utility Allowance Violations on Non-HTC Developments, HTC development after the Compliance Period, and foreclosed HTC properties for three years after foreclosure. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund (not a credit to amounts owed the Development) to the affected residents the amount of rent that was overcharged.

(e) Trust Account to be established. If the Owner is required to refund rent under subsection (b) or (d) of this section and cannot locate the resident, the excess monies must be deposited into a trust account for the tenant. The account must remain open for the shorter of a four (4) year period, or until all funds are claimed. If funds are not claimed after the four year period, the unclaimed funds must be remitted to the Texas Comptroller of Public Accounts Unclaimed Property Holder Reporting Section to be disbursed as required by Texas unclaimed property statutes.

(f) Rent Adjustments for HOME Developments:

(1) 100 percent HOME assisted Developments. If a household's income exceeds 80 percent at recertification, the owner must charge rent equal to 30 percent of the household's adjusted income;

(2) HOME Developments with any Market Rate units. If a household's income exceeds 80 percent at recertification, the owner must charge rent equal to the lesser of 30 percent of the household's adjusted income or the comparable Market rent; and

(3) HOME Developments layered with other Department affordable housing programs. If a household's income exceeds 80 percent at recertification, the owner must charge rent equal to the lesser of 30 percent of the household's adjusted income or the rent allowable under the other program.

(g) Special conditions for NSP Developments. To determine if a Unit is rent restricted, the amount of rent paid by the household, plus an allowance for utilities, plus any rental assistance payment must be less than the applicable limit.

(h) Employee Occupied Units (HTC and HTF Developments). IRS Revenue Rulings 92-61, 2004-82 and Chief Counsel Advice Memorandum POSTN-111812-14 provide guidance on employee occupied units. [Provided that all the criteria in the Rulings are met, if the Owner of the Development does not charge the employee for rent,] In general, employee occupied units are considered facilities reasonably required for the project(s) and not residential rental units. Since the building's applicable fraction is calculated using the residential rental units/space in a building, employee occupied units are taken out of

both the numerator and the denominator. To ensure that the building's applicable fraction is met, the Department will monitor in the following manner:

(1) For 100% low-income Building(s)- A unit occupied by an employee will not be monitored by the Department provided that the unit is appropriately designated as exempt.

(2) For mixed income Building(s)- If a unit in a mixed income building is designated as exempt, the applicable fraction will be calculated as described in this subsection. If the building does not meet the required applicable fraction, the exempt unit will be cited in noncompliance unless the employee qualifies as a low income household.

10.623. Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period.

(a) HTC properties allocated credit in 1990 and after are required under §42(h)(6) of the Code to record a LURA restricting the Development for at least thirty (30) years. Various sections of the Code specify monitoring rules State Housing Finance Agencies must implement during the Compliance Period.

(b) After the Compliance Period, the Department will continue to monitor HTC Developments using the criteria detailed in paragraphs (1) - (13) of this subsection:

(1) The frequency and depth of monitoring household income, rents, social services and other requirements of the LURA will be determined based on risk. Factors will include changes in ownership or management, compliance history, timeliness of reports and timeliness of responses to Department request;

(2) At least once every three (3) years the property will be physically inspected including the exterior of the Development, all building systems and 10 percent of Low-Income Units. No less than five but no more than thirty-five of the Development's HTC Low-Income Units will be physically inspected to determine compliance with HUD's Uniform Physical Condition Standards;

(3) Each Development shall submit an annual report in the format prescribed by the Department;

(4) Reports to the Department must be submitted electronically as required in §10.607 of this chapter (relating to Reporting Requirements);

(5) Compliance monitoring fees will continue to be submitted to the Department annually in the amount stated in the LURA;

(6) All HTC households must be income qualified upon initial occupancy of any Low-Income Unit. Proper verifications of income are required, and the Department's Income Certification form must be completed unless the Development participates in the Rural Rental Housing Program or a project based HUD program, in which case the other program's certification form will be accepted;

(7) Rents will remain restricted for all HTC Low-Income Units. After the Compliance Period, utilities paid to the Owner are [can be] accounted for in the utility allowance. The tenant paid portion of the rent plus the applicable utility allowance must not exceed the applicable limit. Any excess rent collected must be refunded;

(8) All additional income and rent restrictions defined in the LURA remain in effect;

(9) For Additional Use Restrictions, defined in the LURA (such as supportive services, nonprofit participation, elderly, etc), refer to the Development's LURA to determine if compliance is required after the completion of the Compliance Period or if the Compliance Period was specifically extended beyond 15 years. Example 623(1): The Development's LURA states "The Compliance Period shall be a period of 20 consecutive taxable years and the Extended Use Period shall be a period of 35 consecutive taxable years, each commencing with the first year of the Credit Period." In this scenario, the Additional Use

Restrictions prescribed in the LURA are applicable through year 20, but since the Federal Compliance Period has ended, the Development will be monitored under this section ;

(10) The Owner shall not terminate the lease or evict low-income residents for other than good cause;

(11) The total number of required HTC Low-Income Units can [must] be maintained Development wide;

(12) Owners may not charge fees for amenities that were included in the Development's Eligible Basis; and

(13) Once a calendar year, Owners must continue to collect and maintain current data on each household that includes the number of household members, age, ethnicity, race, disability status, rental amounts and rental assistance (if any). This information can be collected on the Department's Annual Eligibility Certification form or the Income Certification form or HUD Income Certification form or USDA Income Certification form[Owners must continue to collect and report data in accordance §10.612(b)(1) of this chapter (relating to Tenant File Requirements)].

(14) Employee occupied unit will be treated in the manner prescribed in §10.622(h) of this chapter (relating to Special Rules Regarding Rents and Rent Limit Violations).

(c) After the first fifteen (15) years of the Extended Use Period, certain requirements will not be monitored as detailed in paragraphs (1) - (6) of this subsection.

(1) The student restrictions found in §42(i)(3)(D) of the Code. An income qualified household consisting entirely of full time students may occupy a Low-Income Unit. If a Development markets to students or leases more than 15 percent of the total number of units to student households, the property will be found in noncompliance unless the LURA is amended through the Material Amendments procedures found in §10.405 of this chapter (relating to Amendments).

[(2) The building's applicable fraction found in the Development's Cost Certification and/or the LURA. Low-Income occupancy requirements will be monitored Development wide, not building by building;]

[(2) [(3)] All households, regardless of income level or 8609 elections, will be allowed to transfer between buildings within the Development;

[(3) [(4)] The Department will not monitor the Development's application fee after the Compliance Period is over; and

[(4) [(5)] Mixed income Developments are not required to conduct annual income recertifications. However, Owners must continue to collect and report data in accordance with paragraph (b)(13) of this section; and [§10.613 of this chapter (relating to Lease Requirements).]

[(5) [(6)] The Department will not monitor whether rent is being charged for an employee occupied unit.

(d) While the requirements of the LURA may provide additional requirements, right and remedies to the Department or the tenants, the Department will monitor post year fifteen (15) in accordance with this section as amended.

(e) Unless specifically noted in this section, all requirements of this chapter, the LURA and §42 of the Code remain in effect for the Extended Use Period. These Post-Year Fifteen (15) Monitoring Rules apply only to the HTC Developments administered by the Department. Participation in other programs administered by the Department may require additional monitoring to ensure compliance with the requirements of those programs.

1g

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
APRIL 16, 2015

Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with another Issuer

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Newsome Homes was submitted to the Department on January 31, 2015;

WHEREAS, in lieu of a Certification of Reservation, a Carryforward Designation Certificate was issued on January 13, 2015, and will expire on December 31, 2017;

WHEREAS, the proposed issuer of the bonds is the McKinney Housing Finance Corporation;

WHEREAS, the Executive Award and Review Advisory Committee (“EARAC”) recommends the issuance of the Determination Notice with the condition that closing occur within 120 days (on or before August 16, 2015); and

WHEREAS, no compliance history or previous participation issues in accordance with 10 TAC §1.5 were identified or considered by EARAC;

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of \$844,140 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department’s website for Newsome Homes is hereby approved in the form presented to this meeting and

FURTHER RESOLVED, that provided the Applicant has not closed on the bond financing on or before August 16, 2015, the Board authorizes EARAC to extend the Determination Notice date subject to an updated previous participation review, if necessary.

BACKGROUND

General Information: Newsome Homes, located in McKinney, Collin County, includes the demolition of an existing 64-unit public housing complex and the new construction of 180 total units; all of which will be rent and income restricted at 60% AMFI. Sixty-four (64) of the units will have rental assistance through HUD’s Rental Assistance Demonstration (“RAD”) program. Having been originally constructed in 1966, a lead-based paint and asbestos abatement Operations and Maintenance (“O&M”) plan will be

required prior to demolition. The development will continue to serve the elderly population and is zoned appropriately.

Organizational Structure: The Borrower is Newsome Homes, L. P. The General Partner is McKinney-Newsome Homes GP, LLC, of which the sole member is McKinney Affordable Housing Development Corporation, a not for profit organization and is comprised of the McKinney Housing Authority and the following board members and officers: Gary Kesler, Rebecca Salinas, Alonzo Tutson, Justin Beller, Juli Smith, Don Stockford, DeTrise Lefall, and Jermiah Hammer.

The EARAC met on April 6, 2015, and considered the previous participation review documentation relating to the organizational structure as noted above in accordance with the Previous Participation Reviews rule found in 10 TAC §1.5. After considering the information provided, EARAC recommended approval of the award.

Census Demographics: The development is to be located at 231 Amscott in McKinney. Demographics for the census tract (0309.00) include an AMFI of \$35,545; the total population is 8,862; the percent of population that is minority is 73.26%; the poverty rate is 33.15%; the number of owner-occupied units is 1,011 and the number of renter units is 1,568. (Census information is from FFIEC Geocoding for 2014.)

Public Comment: The Department has not received any letters of support or opposition for this Development.

1h

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
APRIL 16, 2015

Presentation, Discussion, and Possible Action on Inducement Resolution No. 15-013 for Multifamily Housing Revenue Bonds and an Authorization for Filing Applications for Private Activity Bond Authority

RECOMMENDED ACTION

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

WHEREAS, the inducement allows staff to submit an application to the Bond Review Board (“BRB”) to await a Certificate of Reservation;

NOW, therefore, it is hereby

RESOLVED, that Inducement Resolution 15-013 to proceed with the application submission to the BRB for possible receipt of State Volume Cap issuance authority from the 2015 Private Activity Bond Program for Sphinx at Fiji Lofts (#15600) is hereby approved in the form presented to this meeting.

BACKGROUND

The BRB administers the state’s annual private activity bond authority for the State of Texas. The Department is an issuer of Private Activity Bonds and is required to induce an application for bonds prior to the submission to the BRB. Approval of the inducement resolution does not constitute approval of the Development but merely allows the Applicant the opportunity to move into the full application phase of the process. Once the application receives a Certificate of Reservation, the Applicant has 150 days to close on the private activity bonds.

During the 150-day process, the Department will review the complete application for compliance with the Department’s Rules and underwrite the transaction in accordance with the Real Estate Analysis Rules. The Department will schedule and conduct a public hearing and the complete application including a transcript from the hearing will then be presented before the Board for a decision on the issuance of the bonds as well as the determination of housing tax credits.

Each year, the State of Texas is notified of the cap on the amount of private activity tax exempt revenue bonds that may be issued within the state. Approximately \$594 million is set aside for multifamily until August 15th for the 2015 program year which includes the TDHCA set aside of approximately \$118 million. Inducement Resolution 15-013 reserves approximately \$16 million in state volume cap.

Sphinx at Fiji Lofts (#15600)

General Information: The proposed development is to be located at 301 South Corinth Street in Dallas, Dallas County. The application proposes the construction of 170 total units serving the general population. This transaction is proposed to be Priority 2 consisting of low income units that will be rent and income restricted at both 30% and 60% of the Area Median Family Income (AMFI), as well as 37 units which will not be rent or income restricted.

Census Demographics: Demographics for the census tract (0049.00) include an AMFI of \$35,614; the total population is 3,849; the minority population is 98.39%; the poverty rate is 43.22%; there are 675 owner occupied units and 510 renter units. (Census information from FFIEC Geocoding 2014).

Public Comment: The Department has not received any letters of support or opposition.

RESOLUTION NO. 15-013

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 1

OFFICIAL INTENT; APPROVAL OF CERTAIN ACTIONS

Section 1.1. Authorization of Issue. The Department declares its intent to issue its Multifamily Housing Revenue Bonds (the "Bonds") in one or more series and in amounts estimated to be sufficient to (a) fund a loan or loans to the Owners to provide financing for the respective Developments in an aggregate principal amount not to exceed those amounts, corresponding to the Developments, set forth in Exhibit A; (b) fund a reserve fund with respect to the Bonds if needed; and (c) pay certain costs incurred in connection with the issuance of the Bonds. Such Bonds will be issued as qualified residential rental development bonds. Final approval of the Department to issue the Bonds shall be subject to: (i) the review by the Department's credit underwriters for financial feasibility; (ii) review by the Department's staff and legal counsel of compliance with federal income tax regulations and State law requirements regarding tenancy in the respective Development; (iii) approval by the Bond Review Board, if required; (iv) approval by the Attorney General of the State of Texas (the "Attorney General"); (v) satisfaction of the Board that the respective Development meets the Department's public policy criteria; and (vi) the ability of the Department to issue such Bonds in compliance with all federal and State laws applicable to the issuance of such Bonds.

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

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

costs that have been or will be paid subsequent to the date that is 60 days prior to the date hereof in connection with the acquisition and construction or rehabilitation of the Developments; (b) to fund any reserves that may be required for the benefit of the holders of the Bonds; and (c) to pay certain costs incurred in connection with the issuance of the Bonds.

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

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

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

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

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

Section 1.9. No Commitment to Issue Bonds. Neither the Owners nor any other party is entitled to rely on this Resolution as a commitment to issue the Bonds and to loan funds, and the Department reserves the right not to issue the Bonds either with or without cause and with or without

notice, and in such event the Department shall not be subject to any liability or damages of any nature. Neither the Owners nor any one claiming by, through or under the Owners shall have any claim against the Department whatsoever as a result of any decision by the Department not to issue the Bonds.

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

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

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

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

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

Section 1.15. Authorized Representatives. The following persons are hereby named as Authorized Representatives of the Department for purposes of executing, attesting, affixing the Department’s seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Board, the Executive Director of the Department, the Chief of Staff of the Department, the Deputy Executive Director of Asset Analysis and Management of the Department, the Director of Bond Finance of the Department, the Director of Texas Homeownership of the Department, the Director of Multifamily Finance of the Department, and the Secretary or any Assistant Secretary to the Board. Such persons are referred to herein collectively as the “Authorized

Representatives.” Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

ARTICLE 2

CERTAIN FINDINGS AND DETERMINATIONS

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

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

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

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

ARTICLE 3

GENERAL PROVISIONS

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

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

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

PASSED AND APPROVED this 16th day of April, 2015.

[SEAL]

By: _____
Chair, Governing Board

ATTEST:

Secretary to the Governing Board

Signature Page to Inducement Resolution

EXHIBIT “A”

Description of the Owner and the Development

Project Name	Owner	Principals	Amount Not to Exceed
Sphinx at Fiji Lofts	SDC Corinth III, LP, a Texas limited partnership	General Partner: Fiji Mixed Development, LLC, a Texas limited liability company	\$16,000,000.00
Costs: Construction of a 170-unit affordable, multifamily housing development located at 301 South Corinth Street, Dallas, Dallas County, Texas 75203.			

1i

BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
APRIL 16, 2015

Presentation, Discussion, and Possible Action on the PY 2015 Department of Energy (“DOE”) Weatherization Assistance Program (“WAP”) State Plan and Awards

RECOMMENDED ACTION

WHEREAS, the Department develops and submits a State Plan to DOE each year to administer the WAP;

WHEREAS, the Draft PY 2015 DOE WAP State Plan was approved for release for public comment at the March 12, 2015, Board meeting;

WHEREAS, the public comment period was open from March 19, 2015, to April 6, 2015, and no public comment was received;

WHEREAS, the Department has prepared the Final PY 2015 DOE WAP State Plan, including entities to be awarded funds, for submission to the DOE;

WHEREAS, the Department expects to receive Federal Fiscal Year (“FFY”) 2015 DOE WAP funds in the amount of \$4,657,454; and

WHEREAS, the DOE WAP funds are allocated based on the formula detailed in 10 TAC §5.503, Distribution of WAP Funds;

NOW, therefore, it is hereby

RESOLVED, that the PY 2015 DOE WAP State Plan, in the form presented to this meeting, is hereby approved with authority to make minimal technical edits including the clarification that where “staff” is indicated the clause be noted as “staff, or its designee;”

FURTHER RESOLVED, that the Executive Director and his designees and each of them be and they hereby are authorized, empowered, and directed, for and on behalf of the Department to submit such plan, together with such grammatical and non-substantive technical corrections as they may deem necessary or advisable, to DOE;

FURTHER RESOLVED, that the awards of Program Year 2015 DOE WAP funds in the amount of \$4,174,581 as indicated in plan Section IV.1 Subgrantees and included as Attachment A of this item, be and are hereby approved as described therein;

FURTHER RESOLVED, that subsequent 2015 DOE WAP funds received and 2014 unutilized funds will be similarly awarded in accordance with the approved method and formula or as needed to accommodate full utilization of funds among only those providers with ability to expend additional funds; and

FURTHER RESOLVED, that funds to be awarded for use in Cameron and Willacy Counties are reserved for the service area, but will not be awarded at this time due to an ongoing review of accounting practices at the current DOE WAP provider.

BACKGROUND

A draft of the 2015 DOE WAP State Plan was approved at the Board meeting of March 12, 2015, for release for public comment. The Draft Plan and announcement of a public hearing was made available on the Department's website and by listserv email distribution, on Thursday, March 19, 2015. The Department conducted a public hearing on Monday, April 6, 2015, at 11:00 a.m. at Department headquarters in Austin. The public comment period closed at 12:00 p.m. on Monday, April 6, 2015. No public comments were received.

DOE regulations also require a Weatherization Assistance Program Policy Advisory Council ("WAP PAC") be designated in the Plan in order to provide guidance and comment on the plan. The WAP PAC members are appointed by the Department and broadly represent organizations and agencies throughout the State that represent low-income persons, particularly low-income elderly persons, low-income persons with disabilities, and low-income Native Americans.

The WAP PAC meeting occurred on Monday, April 6, 2015, by conference call. After receiving an overview of the Weatherization Assistance Program and the Draft PY 2015 DOE WAP State Plan from Department staff, members reviewed and discussed the Plan, and then voted unanimously in favor of the Plan.

The Plan includes awards of funds to entities. At this time, Cameron and Willacy Counties Community Projects, Inc. ("CWCCP"), the entity that administers the DOE WAP in Cameron and Willacy counties, is not recommended for an award due to concerns still pending review by the Executive Award and Review Committee ("EARAC"). The DOE WAP funds allocated to the service area covered by this entity by formula may be proposed for award to an alternate provider.

Combined Community Action, Inc. had certain disallowed costs incurred under prior management but the TDHCA Executive has approved their repayment plan.

The Previous Participation Rule (10 TAC, Chapter 1, Subchapter A, §1.5) includes a review of DOE WAP awards prior to contract execution. The review has been performed and the following entities have been identified with concerns or conditions:

Agency	Issue
Cameron and Willacy Counties Community Projects, Inc.	Organization is not recommended for award. Award is proposed for service area, with provider contract deferred because of an ongoing third party review of certain accounting records and practices at CWCCP.

The Plan is also having minor technical corrections made including but not limited to:

- Section V.2 Selection of Areas to be Served: clarification that the Department continues working to resolve concerns with CWCCP; and
- Section V.8.4 Training and Technical Assistance Approach and Activities:
 - Clarification that the Department will consult with Subgrantees to coordinate training of subcontractors;
 - Clarification that where “staff” is indicated the clause is noted as “staff, or its designee” so that, if needed, staff may outsource components of training; and
 - Removal of a staff member who will be leaving the Department.

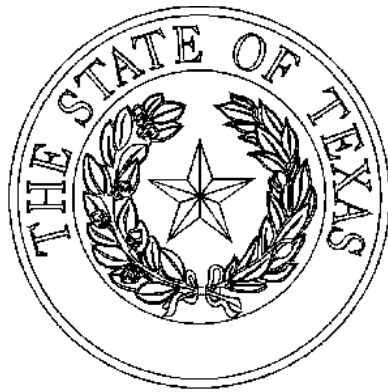
DOE Weatherization funding provides for the installation of weatherization measures to increase energy efficiency of a home including caulking, weather-stripping, adding ceiling, wall, and floor insulation, patching holes in the building envelope, duct work, and repair or replacement of energy inefficient heating and cooling systems. Additionally, the funds allow for Subgrantees to complete financial audits, household energy audits, outreach and engagement activities, and program administration. Further, funding provides for State administration and State training and technical assistance activities.

2015 DOE WAP Subgrantee Awards

	SUBRECIPIENT	Award
1	Alamo Area Council of Governments	339,832
2	Big Bend Community Action Committee, Inc.	61,024
3	Brazos Valley Community Action Agency	138,363
4	Cameron County and Willacy County: Reserved allocation; award TBA	128,032
5	Combined Community Action, Inc.	92,038
6	Community Action Committee of Victoria	125,531
7	Community Action Corporation of South Texas	340,801
8	Community Council of South Central Texas	84,617
9	Community Services, Inc.	239,384
10	Concho Valley Community Action Agency	77,326
11	Dallas County Department of Human Services	327,565
12	Economic Opportunities Advancement Corporation of Planning Region XI	81,658
13	El Paso Community Action Program-Project BRAVO, Inc.	188,330
14	Fort Worth, City of	202,150
15	Greater East Texas Community Action Program	237,404
16	Hill Country Community Action Association, Inc.	112,993
17	Neighborhood Centers, Inc.	516,738
18	Nueces County Community Action Agency	69,763
19	Panhandle Community Services	115,023
20	Rolling Plains Management Corporation	155,270
21	South Plains Community Action Association, Inc.	104,660
22	Texoma Council of Governments	123,845
23	Travis County Health and Human Services and Veteran Services Department	126,353
24	Tri-County Community Action, Inc.	72,041
25	West Texas Opportunities, Inc.	113,840
	Total	4,174,581

2015 DOE WAP STATE PLAN

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS



**PY 2015 STATE PLAN & APPLICATION
FOR
WEATHERIZATION ASSISTANCE PROGRAM
FOR LOW-INCOME PERSONS**

APRIL 2015

APPLICATION FOR FEDERAL ASSISTANCE SF-424

Version 02

1. Type of Submission: <input type="checkbox"/> Preapplication <input checked="" type="checkbox"/> Application <input type="checkbox"/> Changed/Corrected Application	2. Type of Application: <input type="checkbox"/> New <input checked="" type="checkbox"/> Continuation <input type="checkbox"/> Revision	If Revision, select appropriate letter(s) Other (specify):
--	--	---

3. Date Received	4. Applicant Identifier:
------------------	--------------------------

5a. Fed Entity Identifier:	5b. Federal Award Identifier: DE-EE0006186
----------------------------	---

State Use Only:

6. Date Received by State: 07/01/2015	7. State Application Identifier: TX-W-200
---------------------------------------	---

8. APPLICANT INFORMATION:

a. Legal Name: State of Texas		
b. Employer/Taxpayer Identification Number (EIN/TIN): 742610542	c. Organizational DUNS: 806781902	

d. Address:

Street 1:	P.O. BOX 13941
Street 2:	
City:	Austin
County:	
State:	TX
Province:	
Country:	U.S.A.
Zip / Postal Code:	787113941

e. Organizational Unit:

Department Name: Texas Department of Housing and Community Affairs	Division Name: Community Affairs Division
---	--

f. Name and contact information of person to be contacted on matters involving this application:

Prefix: Mr	First Name: Michael
Middle Name:	
Last Name: DeYoung	
Suffix:	

Title: Community Affairs Division Director
--

Organizational Affiliation: Texas Dept. of Housing and Community Affairs
--

Telephone Number: 5124752125	Fax Number: 5124753935
------------------------------	------------------------

Email: michael.deyoung@tdhca.state.tx.us
--

APPLICATION FOR FEDERAL ASSISTANCE SF-424

Version 02

9. Type of Applicant:

A State Government

10. Name of Federal Agency:

U. S. Department of Energy

11. Catalog of Federal Domestic Assistance Number:

81.042

CFDA Title:

Weatherization Assistance Program

12. Funding Opportunity Number:

DE-WAP-0002015

Title:

2015 Weatherization Assistance Funding Opportunity

13. Competition Identification Number:

Title:

14. Areas Affected by Project (Cities, Counties, States, etc.):

Statewide

15. Descriptive Title of Applicant's Project:

Provide Statewide Weatherization Assistance

BUDGET INFORMATION - Non-Construction Programs

1. Program/Project Identification No. EE0006186		2. Program/Project Title Weatherization Assistance Program	
3. Name and Address State of Texas P.O. BOX 13941 Austin, TX 787113941		4. Program/Project Start Date 07/01/2015	5. Completion Date 06/30/2016

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1. 2015 WAP Formula Funds	81.042	\$ 0.00		\$ 4,657,454.00		\$ 4,657,454.00
2. STATE			\$ 0.00		\$ 0.00	\$ 0.00
3.						
4.						
5. TOTAL		\$ 0.00	\$ 0.00	\$ 4,657,454.00	\$ 0.00	\$ 4,657,454.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	Grant Program, Function or Activity				Total (5)
	(1) GRANTEE ADMINISTR ATION	(2) SUBGRANTE E ADMINISTR	(3) GRANTEE T&TA	(4) SUBGRANT EE T&TA	
a. Personnel	\$ 125,273.00	\$ 0.00	\$ 120,835.00	\$ 0.00	\$ 246,108.00
b. Benefits	\$ 31,318.00	\$ 0.00	\$ 30,209.00	\$ 0.00	\$ 61,527.00
c. Travel	\$ 12,090.00	\$ 0.00	\$ 38,490.00	\$ 0.00	\$ 50,580.00
d. Equipment	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
e. Supplies	\$ 2,000.00	\$ 0.00	\$ 722.00	\$ 0.00	\$ 2,722.00
f. Contract	\$ 0.00	\$ 391,669.00	\$ 0.00	\$ 195,000.00	\$ 4,174,581.00
g. Construction	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
h. Other	\$ 5,820.00	\$ 0.00	\$ 5,367.00	\$ 0.00	\$ 11,187.00
i. Total Direct Charges	\$ 176,501.00	\$ 391,669.00	\$ 195,623.00	\$ 195,000.00	\$ 4,546,705.00
j. Indirect	\$ 56,373.00	\$ 0.00	\$ 54,376.00	\$ 0.00	\$ 110,749.00
k. Totals	\$ 232,874.00	\$ 391,669.00	\$ 249,999.00	\$ 195,000.00	\$ 4,657,454.00
7. Program Income	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00

BUDGET INFORMATION - Non-Construction Programs

1. Program/Project Identification No. EE0006186		2. Program/Project Title Weatherization Assistance Program	
3. Name and Address State of Texas P.O. BOX 13941 Austin, TX 787113941	4. Program/Project Start Date 07/01/2015		
	5. Completion Date 06/30/2016		

SECTION A - BUDGET SUMMARY						
Grant Program Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.						
2.						
3.						
4.						
5. TOTAL		\$ 0.00	\$ 0.00	\$ 4,657,454.00	\$ 0.00	\$ 4,657,454.00

SECTION B - BUDGET CATEGORIES						
6. Object Class Categories	Grant Program, Function or Activity				Total (5)	
	(1) PROGRAM OPERATION S	(2) HEALTH AND SAFETY	(3) LIABILITY INSURANCE	(4) FINANCIAL AUDITS		
a. Personnel	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 246,108.00	
b. Benefits	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 61,527.00	
c. Travel	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 50,580.00	
d. Equipment	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	
e. Supplies	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 2,722.00	
f. Contract	\$ 2,751,207.00	\$ 687,802.00	\$ 128,103.00	\$ 20,800.00	\$ 4,174,581.00	
g. Construction	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	
h. Other	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 11,187.00	
i. Total Direct Charges	\$ 2,751,207.00	\$ 687,802.00	\$ 128,103.00	\$ 20,800.00	\$ 4,546,705.00	
j. Indirect	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 110,749.00	
k. Totals	\$ 2,751,207.00	\$ 687,802.00	\$ 128,103.00	\$ 20,800.00	\$ 4,657,454.00	
7. Program Income	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	

**U.S. Department of Energy
WEATHERIZATION ASSISTANCE PROGRAM (WAP)
WEATHERIZATION ANNUAL FILE WORKSHEET**

(Grant Number: EE0006186, State: TX, Program Year: 2015)

IV.1 Subgrantees

Subgrantee (City)	Planned Funds/Units
Alamo Area Council of Governments (San Antonio)	\$339,832.00 33
Big Bend Community Action Committee (Marfa)	\$61,024.00 5
Brazos Valley Community Action Agency (College Station)	\$138,363.00 13
Combined Community Action, Inc. (Giddings)	\$92,038.00 8
Community Action Committee of Victoria Texas (Victoria)	\$125,531.00 12
Community Action Corporation of South Texas (Alice)	\$340,801.00 33
Community Council of South Central Texas, Inc (Seguin)	\$84,617.00 8
Community Services, Inc. (Corsicana)	\$239,384.00 23
Concho Valley Community Action Agency (San Angelo)	\$77,326.00 7
Dallas County Health & Human Services (Dallas)	\$327,565.00 32
Economic Opportunities Advancement Corporation (Waco)	\$81,658.00 7
El Paso Community Action Program, Project Bravo (El Paso)	\$188,330.00 18
Fort Worth, City of (Fort Worth)	\$202,150.00 19
Greater East Texas Community Action Program (Nacogdoches)	\$237,404.00 23
Hill Country Community Action Association, Inc. (San Saba)	\$112,993.00 10
Neighborhood Centers Inc. (Houston)	\$516,738.00 53
Nueces County Community Action Agency (Corpus Christi)	\$69,763.00 6
Panhandle Community Services (Amarillo)	\$115,023.00 11
Rolling Plains Management Corporation (Crowell)	\$155,270.00 15
South Plains Community Action Association, Inc. (Levelland)	\$104,660.00 10
TBD (Reserved for Cameron and Willacy counties)	\$128,032.00 12
Texoma Council of Governments (Sherman)	\$123,845.00 12
Travis County Health and Human Services and Veterans Services (Austin)	\$126,353.00 12
Tri-County Community Action, Inc. (Center)	\$72,041.00 6

**U.S. Department of Energy
WEATHERIZATION ASSISTANCE PROGRAM (WAP)
WEATHERIZATION ANNUAL FILE WORKSHEET**

(Grant Number: EE0006186, State: TX, Program Year: 2015)

West Texas Opportunities (Lamesa)	\$113,840.00 11
Total:	\$4,174,581.00 399

IV.2 WAP Production Schedule

Weatherization Plans	Units
Total Units (excluding reweatherized)	399
Reweatherized Units	0

Note: Planned units by quarter or category are no longer required, no information required for persons.

Average Unit Costs, Units subject to DOE Project Rules		
<i>VEHICLE & EQUIPMENT AVERAGE COST PER DWELLING UNIT (DOE RULES)</i>		
A	Total Vehicles & Equipment (\$5,000 or more) Budget	\$0.00
B	Total Units Weatherized	399
C	Total Units Reweatherized	00
D	Total Dwelling Units to be Weatherized and Reweatherized (B + C)	399
E	Average Vehicles & Equipment Acquisition Cost per Unit (A divided by D)	\$0.00
<i>AVERAGE COST PER DWELLING UNIT (DOE RULES)</i>		
F	Total Funds for Program Operations	\$2,751,207.00
G	Total Dwelling Units to be Weatherized and Reweatherized (from line D)	399
H	Average Program Operations Costs per Unit (F divided by G)	\$6,895.26
I	Average Vehicles & Equipment Acquisition Cost per Unit (from line E)	\$0.00
J	Total Average Cost per Dwelling (H plus I)	\$6,895.26

IV.3 Energy Savings

Method used to calculate savings: WAP algorithm Other (describe below)

Method used to calculate savings description:

This year estimated energy savings (MBtus):

Prior year estimated energy savings (MBtus): **Actual:**

IV.4 DOE-Funded Leveraging Activities

N/A

IV.5 Policy Advisory Council Members

Check if an existing state council or commission serves in this category and add name below

Combined Community Action Inc.	Type of organization: Non-profit (not a financial institution) Contact Name: Kelly Franke Phone: (979)540-2985 Email: KJFranke@ccaction.com
Greater East Texas Community Action Program	Type of organization: Non-profit (not a financial institution) Contact Name: Karen Swenson, Executive Director Phone: (936)564-2491

**U.S. Department of Energy
WEATHERIZATION ASSISTANCE PROGRAM (WAP)
WEATHERIZATION ANNUAL FILE WORKSHEET**

(Grant Number: EE0006186, State: TX, Program Year: 2015)

Railroad Commission of Texas, Alt. Fuels Div.	Email: kswenson@sbcglobal.net Type of organization: Unit of State Government Contact Name: Heather Ball, Dir. Marketing & Public Education Phone: (512)463-7359 Email: heather.ball@rrc.state.tx.us
Texas Department of Aging and Disability Services	Type of organization: Unit of State Government Contact Name: Toni Packard Phone: (512)438-4290 Email: toni.packard@dads.state.tx.us
Ysleta del Sur Pueblo Housing Department	Type of organization: Indian Tribe Contact Name: Al Joseph Phone: 9158599196 Email: ajoseph@ydsp-nsn.gov

IV.6 State Plan Hearings (Note: attach notes and transcripts to the SF-424)

Date Held	Newspapers that publicized the hearings and the dates the notice ran
03/12/2015	The TDHCA Board of Directors authorized release of the draft plan for public comment.
03/19/2015	Draft plan and Notice of Public Hearing posted on the Department's website; public listserv announcement sent announcing availability of the plan and public hearing details. (See Attachment to SF-424 for Notice of Public Hearing)
03/20/2015	Announcement of Public Hearing sent for publication in the Texas Register.
04/06/2015	Public Hearing for the 2015 Texas WAP Plan held; public comment period closed. There were no attendees at the public hearing, and no public comment was received.
04/06/2015	WAP PAC conference call held to discuss plan. Council voted unanimously in favor of the plan. (See SF424 for transcript of the WAP PAC conference call)
04/16/2015	TDHCA Board approved plan and Subgrantee awards for submission to DOE.

IV.7 Miscellaneous

Recipient Business Officer

Michael De Young
Michael.deyoung@tdhca.state.tx.us
221 East 11th Street
Austin, Texas 78701
(512) 475--2125

Recipient Principal Investigator

Michael De Young
Michael.deyoung@tdhca.state.tx.us
221 East 11th Street
Austin, Texas 78701
(512) 475--2125

Policy Advisory Council

The Policy Advisory Council ("PAC") is broadly representative of organizations and agencies and provides balance, background, and sensitivity with respect to solving the problems of low-income persons, including weatherization and energy conservation problems. Historically, the PAC has met annually after the public hearing for the DOE plan.

The low-income elderly population is represented by the PAC members from Combined Community Action and the Greater East Texas Community Action Association. The low-income persons with disabilities population is represented by the PAC member from the Texas Department of Aging and Disability Services. The low-income Native American population is represented by the PAC member from the Ysleta del Sur Pueblo Housing Department.

Liability Insurance

The liability insurance separate line item includes pollution occurrence insurance in addition to the general liability insurance. Most regular liability insurance policies do not provide coverage for pollution occurrence. If Subgrantees require additional funding for liability insurance, they must first provide the Department with three price quotes. When approved, additional liability insurance costs may be paid from administrative or program support categories. The Department strongly recommends the Subgrantees require their contractors to carry pollution occurrence insurance to avoid liability for any mistakes the contractors may make. Each Subgrantee should get a legal opinion regarding the best course to take for implementing the pollution occurrence insurance coverage.

U.S. Department of Energy
WEATHERIZATION ASSISTANCE PROGRAM (WAP)
WEATHERIZATION ANNUAL FILE WORKSHEET

(Grant Number: EE0006186, State: TX, Program Year: 2015)

U.S. Department of Energy
WEATHERIZATION ASSISTANCE PROGRAM (WAP)
STATE PLAN/MASTER FILE WORKSHEET

(Grant Number: EE0006186, State: TX, Program Year: 2015)

This worksheet should be completed as specified in Section III of the Weatherization Assistance Program Application Package.

V.1 Eligibility

V.1.1 Approach to Determining Client Eligibility

Provide a description of the definition of income used to determine eligibility

Pursuant to Weatherization Program Notice ("WPN") 15-3, eligible households will have an income that is at or below 200% of the federal poverty level. Households that contain a member who has received cash assistance payments under Title IV (Temporary Assistance to Needy Families or "TANF") or XVI (Supplemental Security Income for the Aged, Blind, and Disabled or ("SSI") of the Social Security Act or applicable State or local law at any time during the 12-month period preceding the determination of eligibility for weatherization assistance shall be categorically eligible.

Describe what household Eligibility basis will be used in the Program

Subgrantees shall follow the Department's Texas Administrative Code rules, Title 10, Part 1, Chapter 5, when considering eligibility and income determination criteria. The Department will ensure that its Subgrantees have determined eligibility criteria based upon:

Defined terms as detailed in 10 TAC §5.2; and

Income eligibility guidelines as detailed in 10 TAC §5.19, as amended to comply with WPN 15-3.

Describe the process for ensuring qualified aliens are eligible for weatherization benefits

The Welfare Reform Act, officially referred to as the Personal Responsibility and Work Opportunity Act of 1996, H.R. 3734, placed specific restrictions on the eligibility of aliens for "Federal means-tested public benefits" for a period of five years. As defined in a Federal Register notice dated August 26, 1997 (62 FR 45256) the Department of Health and Human Services (HHS) is interpreting "Federal means-tested public benefits" to include only those benefits provided under Federal means-tested, mandatory spending programs. HHS Information Memorandum LIHEAP-IM-25 dated August 28, 1997, states that all qualified aliens, regardless of when they entered the U.S., continue to be eligible to receive assistance and services under the Low-Income Home Energy Assistance Program (LIHEAP) if they meet other program requirements.

To ensure program continuity between LIHEAP and DOE Weatherization for the many Subgrantees operating both programs, the DOE Weatherization Assistance Program will follow the interpretation as adopted by HHS. The primary area of confusion resides in the types of local agencies that are exempt/nonexempt from "status verification requirements." Local agencies that are both charitable and nonprofit would be exempt, which comprise about three-quarters of the local agency network. However, those agencies which are designated as local government agencies operating the Weatherization Assistance Program and do not subgrant eligibility determination to a qualified nonprofit organization would not be exempt and, therefore, must conduct "status verification." WAP Subgrantees that are not exempt shall use the Systematic Alien Verification for Entitlements (SAVE) system to verify the status of qualified aliens that apply for weatherization services.

The DOE and LIHEAP WAP are in compliance with **LIHEAP-IM-99-10 issued June 15, 1999 retracting any requirement that weatherization providers must do any type of certification of alien status in multifamily buildings.**

V.1.2 Approach to Determining Building Eligibility

Procedures to determine that units weatherized have eligibility documentation

Subgrantees maintain a client file for each unit weatherized, including documented proof that the dwelling unit is an eligible dwelling unit as defined in 10 CFR §440.22. The Department determines that weatherized units have eligibility documentation during monitoring reviews.

Describe Reweathering compliance

Texas limits reweatherization to 5% of all units weatherized. To ensure the cap is not exceeded, Subgrantees may not reweatherize a unit without prior approval

U.S. Department of Energy
WEATHERIZATION ASSISTANCE PROGRAM (WAP)
STATE PLAN/MASTER FILE WORKSHEET

(Grant Number: EE0006186, State: TX, Program Year: 2015)

from the Department.

Reweathering will be allowed on units that have received limited weatherization prior to September 30, 1994. A new energy audit must be conducted on each unit reweatherized.

Describe what structures are eligible for weatherization

10 TAC §5.2 includes the following definitions which describe structures eligible for weatherization:

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

Multifamily Dwelling Unit--A structure containing more than one Dwelling Unit.

Rental Unit--A Dwelling Unit occupied by a person who pays rent for the use of the Dwelling Unit.

Shelter--A Dwelling Unit or units whose principal purpose is to house on a temporary basis individuals who may or may not be related to one another and who are not living in nursing homes, prisons, or similar institutional care facilities.

Describe how Rental Units/Multifamily Buildings will be addressed

In accordance with 10 CFR §440.22(b)(3), the Department requires that Subgrantees keep on file procedures that address protection of renters' rights, to ensure:

- Written permission of the building owner or his agent before commencing work.
- Cash/in-kind contribution from building owner when feasible.
- Benefits of the services accrue primarily to the low-income tenants residing in such units.
- For a reasonable period of time after completion, the household will not be subjected to rent increases (unless those increases are demonstrably related to other matters other than the weatherization work performed).
 - There are adequate procedures whereby the Grantee can receive tenant complaints and owners can appeal, should rental increases occur.
- No undue or excessive enhancement shall occur to the value of the dwelling unit.
- To secure the federal investment and to address issues of eviction from and sale of property, per 10 CFR §440.22(c), Grantees may seek landlord agreement to placement of a lien (or other contractual restrictions) upon the property being weatherized.

The Department will abide by 10 CFR §440.22, ensuring that not less than 66% of the eligible building units (50% for duplexes and four-unit buildings, and certain eligible types of large multifamily buildings) are eligible units or will become eligible dwelling units within 180 days under a Federal, State or local government program for rehabilitating the building or making similar improvements. WPN 10-15 provides guidance on Department of Housing and urban Development ("HUD") and Department of Agriculture ("USDA") multifamily buildings that have been pre-determined to meet income eligibility guidelines. WPN 11-09 provides guidance on the review and verification required for those buildings. Assessments and client file documentation for rental units and multifamily units are also detailed in the Multifamily Weatherization Best Practice posted on the Department's website at <http://www.tdhca.state.tx.us/community-affairs/wap/docs/WAP-BP-MFWeatherization.pdf>.

Because large multifamily buildings have different audit requirements, Subgrantees must obtain prior written approval through the Department to use the 50% eligibility, and DOE must approve the proposed activity. The Department will seek DOE approval.

Describe the deferral Process

A dwelling unit should not be weatherized when there is a potentially harmful situation that may adversely affect the occupants or the agency's weatherization crew and staff. Only after the unit owner corrects the problems shall weatherization work begin. It is not necessarily the responsibility of the Subgrantee to correct such problems. The crew must declare their intent to defer weatherization on an eligible unit on the audit form. The audit form should include the client's name and address, dates of the audit/assessment, and the date on which the client was informed of the issue in writing. The written notice to the client must include a clear description of the problem, conditions under which weatherization could continue, the responsibility of all parties involved, and any rights or options the client has. A copy of the notice must be given to the client, and a signed copy placed in the client application file.

Should a client request a second opinion on a deferral or walk-away, the Subgrantee is encouraged to contact the appropriate local government inspector to request an inspection of the site. Should the client refuse to have a local government inspector inspect the unit, the crew will note the refusal in the client file, and no work shall be performed on the unit. If the inspector deems that work pending deferral can or should be performed, crews/contractors and contractors are

U.S. Department of Energy
WEATHERIZATION ASSISTANCE PROGRAM (WAP)
STATE PLAN/MASTER FILE WORKSHEET

(Grant Number: EE0006186, State: TX, Program Year: 2015)

encouraged to work with the inspector's suggestions to make the improvements. However, the inspector does not make the final determination on the amount of work, cost of work, or measures applied to the unit. Should the Subgrantee deem the suggested measures to be financially or programmatically out of the scope of weatherization, the Subgrantee may defer the weatherization work on the unit. Documentation of this determination, whether the weatherization is completed or not, must be included in the client file.

Crewmembers or contractors who work on a unit that could or should be a deferral or walk-away do so at their own risk.

V.1.3 Definition of Children

Definition of children (below age): **6**

V.1.4 Approach to Tribal Organizations

Recommend tribal organization(s) be treated as local applicant?

If YES, Recommendation. If NO, Statement that assistance to low-income tribe members and other low-income persons is equal.

The 70th Texas Legislature created the Native American Restitutionary Program (Oil Overcharge Restitutionary Act, Texas Government Code, Chapter 2305) for the purposes of providing oil overcharge restitution to the Texas Native Americans. In the Texas WAP, the Native-American Indian population is treated and served in the same manner as other applicants.

V.2 Selection of Areas to Be Served

The Texas WAP is available to eligible low-income households in all 254 counties of the state. Subgrantees are held responsible for all intake, eligibility, and weatherization activities. If the Subgrantees' performance record is satisfactory according to both state and federal regulations, then the Department will offer to renew the contract if the Subgrantee so desires. The Department's award committee may decline to recommend an award or place additional conditions on an award based upon its previous participation review as outlined in 10 TAC §1.5.

New or additional DOE subgrantees for counties that become unserved by the DOE WAP will be selected according to DOE regulations found in 10 CFR§440.15. A new or additional subgrantee is defined as a CAA or other public or nonprofit entity that is not currently operating a Department-funded Weatherization Assistance Program. At present, all Texas counties are served with a network of 25 existing Subgrantees. This number is subject to change depending on the needs of the program throughout the year.

At this time Programs for Human Services, the entity that administers the DOE WAP in Chambers, Galveston, Hardin Jefferson, Liberty and Orange counties, is in the process of merging with another existing service provider. The DOE WAP funds allocated to the service area covered by this entity by formula will be held for the service area pending completion of the merger.

Further, Tri-County Community Action (TCCA), the entity that serves Harrison, Jasper, Newton, Panola, Sabine, San Augustine, Shelby, Tyler and Upshur counties has placed its weatherization program on hold pending the hire of additional staff. The Department will continue to work with TCCA as it gets its program on track. Should TCCA or the Department determine that the program should move forward without TCCA as the administrator of the program, the service area will be assigned to an existing Subgrantee or a new subgrantee will be selected according to DOE regulations found in 10 CFR§440.15.

Finally, due to unresolved monitoring issues, Cameron and Willacy Counties Community Projects, Inc. (CWCCP), the entity that serves Cameron and Willacy counties, was not recommended for a WAP award at this time by the Department's committee that recommends such awards. The TDHCA Governing Board approved a request to directly select or release a Request for Applications for a temporary or permanent replacement provider to provide prompt assistance in delivering services in Cameron and Willacy counties should concerns with CWCCP not be resolved timely.

Formula Distribution

The Department updates the budget allocation proportion by county and Subgrantee based on poverty income, elderly poverty, median household income (from the 2010 U.S. Census data), and climate data (from the National Climatic Data Center, Climate Normals, 2010), as outlined in 10 TAC §5.503.

The Department allocates funds to Subgrantees by applying a formula based upon the DOE allocation for program year; or if the allocation amount is not known, based on an assumption of level funding from the previous program year. Once the allocation amount is known, the formula is re-run. The allocation formulas reflect the 2010 Census data. If any carryover funds are available, they will be distributed by allocation formula and used to increase the number of units to be weatherized. The Department will adjust guidance to reflect the adjusted average expenditure limit per unit for the program year.

U.S. Department of Energy
WEATHERIZATION ASSISTANCE PROGRAM (WAP)
STATE PLAN/MASTER FILE WORKSHEET

(Grant Number: EE0006186, State: TX, Program Year: 2015)

If the Department determines it is necessary to permanently reassign a service area to a new subgrantee, the subgrantee will be chosen in accordance with 10 CFR §440.15. The fund allocations for individual service areas are determined by a 5-factor distribution formula as outlined in 10 TAC §5.503:

- (1) Number of non-elderly poverty households per county;
- (2) Number of elderly poverty households (65+) per county;
- (3) Median income variance per county;
- (4) Inverse poverty household density ratio per county; and
- (5) Heating/Cooling Degree days per county.

The Department may deobligate all or part of the funds provided under this contract if a Subgrantee has not expended funds as specified in the contract according to the expenditure rate and households served during the sixth month of the program year. A Subgrantee's failure to expend the funds provided under this contract in a timely manner may also result in the Subgrantee's ineligibility to receive additional funding during the program year.

V.3 Priorities for Service Delivery

The Department will ensure by contract that its Subgrantees give priority to weatherizing dwellings owned or occupied by low-income persons who are particularly vulnerable such as the Elderly, Persons with Disabilities, Families with Young Children, Households with High Energy Burden, and Households with High Energy Consumption. Applicants from these groups must be placed at the top of a Subgrantee's waiting list. The Department ensures that Subgrantees give proper attention to these requirements through monitoring/evaluation of the Subgrantee.

V.4 Climatic Conditions

The climatic conditions for the State of Texas are imbedded in the algorithms of the Weatherization Assistant (WA 8.9) energy audit software tool engineered by the Oak Ridge National Laboratory for the Department of Energy. As part of the energy audit modeling, the Department requires the Subgrantee Network to select the nearest weather station to the dwelling units. The Weather files imbedded in the WA 8.9 contains 30 year data of Heating and Cooling degree days for each weather station.

As described in the report prepared by the Pacific Northwest National Laboratory & Oak Ridge National Laboratory for the Department of Energy, the state of Texas has several IECC climate zones. http://apps1.eere.energy.gov/buildings/publications/pdfs/building_america/ba_climateguide_7_1.pdf. These climate zones are used as an aid in helping Subgrantees to identify the appropriate climate designation for the counties in which they are providing WAP services. In addition to prescribing appropriate mechanical equipment (example of climate specific measures would be evaporative cooling which may be prescribed in the Hot Dry climate of Texas and not in the Mixed Humid part of Texas) the IRC prescriptive thermal envelope of measures are different. The climate zones found in Texas are as follows:

1. Hot-Humid

A hot-humid climate is defined as a region that receives more than 20 inches (50 cm) of annual precipitation and where one or both of the following occur:

- A 67°F (19.5°C) or higher wet bulb temperature for 3,000 or more hours during the warmest six consecutive months of the year; or
- A 73°F (23°C) or higher wet bulb temperature for 1,500 or more hours during the warmest six consecutive months of the year.

IRC Prescriptive Thermal Envelope Measures:

Zone 2A and 2B		Zone 3A
Ceiling	R 30	R30
Windows	U 0.65	U 0.50
Walls	R-13	R-13
Floors	R – 13	R 13
SHGC	0.30	0.30

2. Hot-Dry

A hot-dry climate is defined as a region that receives less than 20 inches (50 cm) of annual precipitation and where the monthly average outdoor temperature remains

U.S. Department of Energy
WEATHERIZATION ASSISTANCE PROGRAM (WAP)
STATE PLAN/MASTER FILE WORKSHEET

(Grant Number: EE0006186, State: TX, Program Year: 2015)

above 45°F (7°C) throughout the year.

IRC Prescriptive Thermal Envelope Measures:

Zone 3A and 3B	
Ceiling	R30
Windows	U0.50
Walls	R13
Floors	R 13
SHGC	.030

3. Mixed-Humid

A mixed-humid climate is defined as a region that receives more than 20 inches (50 cm) of annual precipitation, has approximately 5,400 heating degree days (65°F basis) or fewer, and where the average monthly outdoor temperature drops below 45°F (7°C) during the winter months.

IRC Prescriptive Thermal Envelope Measures:

Zone 3A	
Ceiling	R30
Windows	U 0.50
Walls	R13
Floors	R 13
SHGC	.030

4. Mixed-Dry

A mixed-dry climate is defined as a region that receives less than 20 inches (50 cm) of annual precipitation, has approximately 5,400 heating degree days (50°F basis) or less, and where the average monthly outdoor temperature drops below 45°F (7°C) during the winter months.

IRC Prescriptive Thermal Envelope Measures:

Zone 4	
Ceiling	R38
Windows	U 0.35
Walls	R13
Floors	R 19

In addition to the 2009 IRC adopted by the State of Texas, several individual cities have adopted amendments to the code. The adoption and amendments to the 2009 IRC impact the WA 8.9 energy audits in that cities are required to evaluate user defined measures to meet the codes adopted by each individual City.

V.5 Type of Weatherization Work to Be Done

V.5.1 Technical Guides and Materials

Type of Work to be Done

- A. Low Cost/No Cost: The Department will not require any low cost/no cost services.
- B. Incidental Repair: If such repairs are necessary to make the installation or preservation of weatherization materials effective, the cost of incidental repair materials shall not exceed the cost of weatherization materials. The goal of the WAP remains energy conservation, not housing rehabilitation.
- C. The purchase and installation of through the door water/ice units and stand alone freezers in not allowed.
- D. Storm doors are not allowable weatherization measures in the State of Texas.

U.S. Department of Energy
WEATHERIZATION ASSISTANCE PROGRAM (WAP)
STATE PLAN/MASTER FILE WORKSHEET

(Grant Number: EE0006186, State: TX, Program Year: 2015)

E. The Department will not require a minimum material expenditure ratio.

Shelters. Shelters may be weatherized if prior written approval is given by the Department. Living space (size) for purposes of determining expenditure level is to be calculated at 800 square feet per unit or each floor considered a unit.

Fuel Switching. Per WPN 13-5, Revised Energy Audit Approval Procedures and Other Related Audit Issues, dated September 23, 2013, the Department does not permit the general practice of fuel switching when replacing furnaces, water heaters, and other appliances. However, the Department **may** allow the changing or converting of a furnace/appliance using one fuel source to another on a limited, case-by-case basis. These approvals will only be granted when all related costs demonstrate the effectiveness of the fuel switch over the life of the measure.

Electric Base Load Measures (EBL). Approved EBL measures include replacement of refrigerators, electric water heaters, and compact fluorescent lights. EBL measures must be determined cost effective with an SIR of 1 or greater by either audit analysis or separate DOE approved analytical tools. Refrigerators must be metered for a minimum of two (2) hours. All dwelling units will be evaluated to determine the most cost effective measures to be installed in each unit weatherized and to determine the order in which measures will be installed. The evaluation of each unit must include building envelope measures, mechanical measures, and Electric Base Load measures.

Lead-Based Paint Safe Work Practices. Approved Lead Safe Work practices include but may not be limited to "Renovate Right" pamphlet given to clients, test kits, worker protection gear, materials for set-up, and camera(s) to document process.

Technical Guides and Materials

The Department is currently revising the documents bulleted below to include the Standard Work Specifications for Home Energy Upgrades (SWS) where applicable. Department Staff has attended several webinars through DOE-sponsored partners and continues to have ongoing communication with DOE trainers to ensure compliance by July 1, 2015. Communication of the forthcoming requirements will be delivered to the Subrecipient Network via contracts, Texas Administrative Code, website announcements/posting and webinar(s) prior to commencement of the 2015 program year.

The following Technical Guides and Materials are available on the Department's website:

<http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>:

- Material Installation Standards Manual (September 28, 2012)
- Weatherization Field Guide (May 21, 2010)
- Mechanical Systems Field Guide (October 30, 2010)
- NEAT Training Guide (October 25, 2011)

Updates are pending receipt of "Deck of Cards" guidance from Santa Fe Community College regarding multifamily units and mobile homes. Once the updates are completed and approved by DOE, the documents will be posted online and Subgrantees and their subcontractors required to attend one or more webinars for training on how to use the guides.

Further, the Department has several Weatherization Best Practices posted at:

<http://www.tdhca.state.tx.us/community-affairs/wap/wap-best-practices.htm>.

All Subgrantee agreements and vendor contracts active in PY 2015 and beyond will contain language which clearly documents the SWS specifications for work quality outlined in WPN 15-4, Section 2. A signed contract shall confirm that the organization understands and agrees to these expectations. Each contract will include the following clause or exhibit:

Materials and Work Standards

A. Subrecipient shall weatherize eligible dwelling units using only weatherization materials which meet or exceed the standards prescribed by DOE in Appendix A of 10 CFR Part 440.

B. All weatherization measures installed shall meet or exceed the standards prescribed by DOE in Weatherization Program Notice (WPN) 15-4 regarding Standard Work Specifications, as detailed in the Department's Materials Installation Standards Manual.

D. All weatherization work must be performed in accordance to the DOE-approved energy audit procedures, 10 CFR Part 440 Appendix A, State of Texas adopted International Residential Code (or that of jurisdictions authorized by State law to adopt later editions).

E. Subgrantee will include the substance of this section in all subcontracts.

U.S. Department of Energy
WEATHERIZATION ASSISTANCE PROGRAM (WAP)
STATE PLAN/MASTER FILE WORKSHEET

(Grant Number: EE0006186, State: TX, Program Year: 2015)

V.5.2 Energy Audit Procedures

Audit Procedures and Dates Most Recently Approved by DOE

Single-Family : NEAT- DOE approved March 28, 2011

Manufactured Housing : MHEA- DOE approved March 28, 2011

Multi-Family : NEAT- under 24 units NEAT (which are individually heated or cooled)- DOE approved March 28, 2011

Comments

The Department will be sending a request for re-approval of its energy audit programs. The Department will request a tier-one review, using an already-DOE-approved audit tool designed to calculate the required Savings-to- Investment ratios, particularly the National Energy Audit (NEAT) for single family and small multifamily (conditional) and the Manufactured Home Energy Audit (MHEA) for manufactured housing. To guide preparations for this request, the Department uses an Audit Approval Task Tracker (example attached to SF-424). The Department will not request the use of a Priority List.

The Department expects to begin review and updates of the measures considered, audit procedures and field protocols, measures installed, general heat waste reduction lists, and health and safety aspects of the audits in June 2015. The Department will submit its request on or before December 31, 2015 for approval prior to the March 28, 2016 expiration of our current approval.

Pursuant to WPN 13-5, since the Department will request to use an already-DOE-approved audit tool, our request will not include a description of the energy estimating methodology, measure interaction, or cost-effectiveness requirements listed in Attachment 1. Our request will include the measures that are typically enabled and provide the input data, assumptions, and audit results (recommended measures) for at least ten sample dwelling units from a sampling of Subgrantees. These audits will be typical of those weatherized by the Texas WAP representing climate zones throughout the state. All of the information on field procedures and administrative requirements described in Attachment 1 will be provided with the request.

V.5.3 Final Inspection

The Department has provided the Subgrantee network with sufficient T&TA funding to complete the QCI certification process through an IREC certified training provider. The Department is tracking the progress of each Subgrantee to ensure full compliance with unit inspection requirements of WPN 15-4. The QCI certification for Subgrantee staff will continue through spring 2015 with a goal of having state and Subgrantee staff trained up before the start of the program in July 2015.

The Department currently has four certified QCI staff. When a certified QCI from the Department goes out to review a unit, they will sign a form stating that the audit for the unit was reviewed and that a state QCI inspected the unit. To ensure that work is completed according to program standards, the Department is updating the Materials Installation Standards Manual ("MISM") to include the SWS requirements. Updates to this and other program documents are pending release of the complete "Deck of Cards" from Santa Fe Community College. The weatherization network will be notified when this document is completed and posted on the Department's website. Language included in all WAP contracts will require use of the MISM on every unit.

Our goal is that every Subgrantee has at least one QCI on staff. The Department is requesting that Subgrantees with a QCI on staff use that staff member as an Independent QCI that is not involved with the weatherized unit prior to final inspection. The Department defines prior involvement as performing the audit, creating the work order, or performing any weatherization work on the weatherized unit. The Department has created a QCI Final Inspection sheet for Subgrantees which will allow TDHCA to determine if a QCI employed by the Subgrantee had prior involvement with that unit.

Due to Subgrantee staffing levels, the Department understands that some Subgrantees may not have the ability to have a QCI that is independent of prior activity with the weatherized unit. To ensure compliance with DOE requirements regarding the minimum number of weatherized units to be inspected, the Department has decided to utilize the DOE Prescribed QCI Policy as described below:

- Independent QCI: In situations where a Subgrantee's QCI is an individual that has no involvement in the prior work on the home either as the auditor or as a member of the crew the following will apply: The Department will perform quality assurance reviews (Unit Inspections) of at least 5 percent of all completed units.
- Independent Auditor/QCI: In situations where a Subgrantee's QCI Auditor performs either the assessment, the audit, creates the work order and performs the final quality control inspection, the following will apply: The Department will perform quality assurance reviews of at least 10 percent of all completed units.

U.S. Department of Energy
WEATHERIZATION ASSISTANCE PROGRAM (WAP)
STATE PLAN/MASTER FILE WORKSHEET

(Grant Number: EE0006186, State: TX, Program Year: 2015)

During Unit Inspections or desk reviews, specific data will be collected from Quality Control Inspection forms. The data collected will be reviewed by the Compliance Monitors and/or Community Affairs Division Training and Technical staff to ensure that the individual(s) functioning as both the auditor and the inspector are able to consistently perform both tasks. The Department will use its QCI staff to perform directed training and technical assistance in instances where the individual is found to be deficient. Where necessary, additional Subgrantee staff may be sent for Tier 1 Training at an IREC approved training site.

The Department uses a Building Weatherization Report ("BWR") to gather information about each weatherized unit and to get the Subgrantee's certification that the unit passed a final inspection. The Department has revised the BWR to include a certification from the Subgrantee's QCI that the audit for the unit was reviewed and that the unit passed final inspection by a certified QCI. The revised BWR is submitted as an attachment to the SF-424.

The Department will perform monitoring and verification measures to ensure that no dwelling units are reported as completed prior to the installation of all prescribed weatherization measures, final inspections, and certification of completion of work in a workmanlike manner and in accordance with the priorities determined by required audit procedures. In conducting the fiscal portion of the monitoring process, the State will verify that all files reviewed and all units inspected have appropriate documentation and supporting fiscal records that demonstrate the completion of the unit prior to reporting the unit as completed. The Subgrantee may not pay an independent third party for any work performed on a unit until the unit has been completed and approved during final inspection. Verification will be accomplished by review of fiscal records, including: purchase request/orders, invoices, general ledgers, check request, dates checks are issued and clearing dates.

V.6 Weatherization Analysis of Effectiveness

Pursuant to 10 TAC, Chapter 1, Subchapter A, §1.5, a review of a Subgrantee's compliance history in Department programs must be approved by the Department's Executive Award and Review Advisory Committee ("EARAC") and provided to the Department's Board of Directors in order that the Board may consider the compliance history and make and document its award decisions with full knowledge of these matters. Prior to the award of DOE funds to any Subgrantee, the EARAC is provided for review:

1. A report of any instance(s) of noncompliance that remain uncorrected and for which the applicable period for corrective action has expired;
2. A report of any instance(s) of noncompliance that have been corrected within the last three years, but that were not corrected within the applicable period for corrective action; and
3. If the Subgrantee is subject to the requirement of an annual single audit:
 - A. A report of any required single audit or single audit certification form that is currently past due; and
 - B. If such single audit has been submitted and the most recent single audit report contained findings, a copy of that single audit.

The Community Affairs Monitoring section, the section of the Compliance Division that monitors the WAP, submits information regarding its monitoring activity to the EARAC for review. If EARAC finds that a Subgrantee has outstanding issues related to any of the criterion listed above that the Subgrantee's review may not be approved by EARAC, or may be approved with conditions that will be written into the Subgrantee's WAP contract.

Issues identified during this review point to areas in a Subgrantee that require attention, both from a monitoring standpoint and a T&TA standpoint. The reviews not only hold the Subgrantee accountable, they also give the monitoring and T&TA sections guidance in planning future activities.

On a more direct level, the T&TA staff meets with monitoring staff every other week in order to keep an updated evaluation of each Subgrantee. In those meetings, monitoring staff relay issues they find related to individual Subgrantee's as well as overall trends they identify. The T&TA staff applies this information when determining the needs for agency-specific T&TA (for instance, if a Subgrantee has failed inspections) and to plan the curriculum for the regional trainings.

Further, Subgrantee performance is reviewed periodically and at the end of the program year. The Department tracks Subgrantee performance over time by reviewing their monthly production and expenditure reports. Each T&TA staff member reviews the reports submitted by a certain number of Subgrantees and plans activities and the provision of T&TA when necessary. Analysis of reports includes the following:

- Number of homes completed;
- Number of applications pending;
- Number of homes in progress;
- Contract amount;
- Total funds expended;
- Balance of funds; and
- Special comments

U.S. Department of Energy
WEATHERIZATION ASSISTANCE PROGRAM (WAP)
STATE PLAN/MASTER FILE WORKSHEET

(Grant Number: EE0006186, State: TX, Program Year: 2015)

V.7 Health and Safety

Attached to SF-424

V.8 Program Management

V.8.1 Overview and Organization

The Department is the state's lead agency responsible for affordable housing and community assistance programs. The Department annually administers funds derived from mortgage revenue bond financing and refinancing, federal grants, and federal tax credits.

In 1991, the 72nd Texas Legislature created the Department. The Department's enabling legislation combined programs from the Texas Housing Agency, the Community Development Block Grant Program from the Texas Department of Commerce, and the Texas Department of Community Affairs.

On September 1, 1992, two programs were transferred to the Department from the Texas Department of Human Services: the Low Income Home Energy Assistance Program and the Emergency Nutrition and Temporary Emergency Relief Program. Effective September 1, 1995, in accordance with House Bill 785, regulation of manufactured housing was transferred to the Department. In accordance with House Bill 7, effective September 1, 2002, the Community Development Block Grant and Local Government Services Programs were transferred to the newly created Office of Rural Community Affairs. Effective September 1, 2002, in accordance with Senate Bill 322, the Manufactured Housing Division became an independent entity administratively attached to TDHCA. As a state agency, the Department is under the authority of the Governor of the State of Texas.

The Department's services are offered through four program divisions: Office of Colonia Initiatives, Multifamily Finance Production, Single Family Finance Production, and Community Affairs, which administers the WAP.

The Department subcontracts with a network of Subgrantees that provide the WAP services. The network is comprised of community action agencies (CAAs), regional Councils of Government (COGs), and organizations in the other public or private nonprofit entity category (PPNPs). All network Subgrantees are provided a draft copy of the yearly weatherization state plan, a notice of the state public hearing, and invited to participate in the public comment process.

Historically, the regular weatherization program year ran from April through March. Starting PY 2015, the weatherization program year will run from July through June.

The Department will continue to administer the program through Subgrantees in accordance with 10 CFR §440.15 provisions and State regulations. If existing Subgrantees are successfully administering the Program, the Department will offer to renew the contract if the Subgrantee so desires and if grant funds are available. When the Department determines that an organization is not administering the program satisfactorily, it may take the following action:

- Correction of the problem(s) with training or technical assistance;
- Re-assignment of the service area (or service area portion) to another Department existing Subgrantee; or,
- Solicitation or selection of a new or additional Subgrantee in accordance with 10 CFR §440.15 provisions.

A new or additional Subgrantee is defined as a CAA or other public or nonprofit entity that is not currently operating a DOE Weatherization Assistance Program.

Consolidation/downsizing: Any downsizing will occur through normal attrition, through a Subgrantee's determination that it can no longer administer the program efficiently/effectively, or through the Department's determination that a Subgrantee can no longer administer the program efficiently/effectively.

Reassignment of service areas for just cause: In the event that a service area can no longer be served by a Subgrantee, the Department reserves the right to reassign services areas. If it appears necessary to permanently reassign the service area, a new Subgrantee may be chosen in an open, competitive solicitation process in accordance with 10 CFR §440.15 or the reassignment may become permanent.

Client Education

The Department will continue to require WAP Subgrantees to provide client education to each WAP client. Subgrantees will be required to provide (at a minimum) educational materials in verbal and written format. Client education will include temperature strips that indicate the temperature in the room and energy savings materials.

V.8.2 Administrative Expenditure Limits

U.S. Department of Energy
WEATHERIZATION ASSISTANCE PROGRAM (WAP)
STATE PLAN/MASTER FILE WORKSHEET

(Grant Number: EE0006186, State: TX, Program Year: 2015)

The Department will use 5% of its grant funds for state administration. An additional 5% will be distributed for local WAP field operations under contract. Contract funds are intended for local administration, liability insurance coverage, local fiscal audit, materials, labor, program support and health and safety measures. To help ensure that Subgrantees comply with the full and proper use of all the contract funds, written definitions are to be provided to Subgrantees on budget categories as deemed necessary. The Department has elected to provide the maximum allowable funds for Subgrantee administration to Subgrantees receiving less than \$350,000, so it has not included procedures for deciding which Subgrantees will receive additional funds. This decision is based on the following factors:

- Subgrantees often have to rely on other programs for WAP outreach and other administrative support;
- Subgrantees have had to adjust budgeting to keep pace with cost-of-living increases -- staff salaries, fringe benefits, rent, postage, travel, etc.;
- The State of Texas is 877 miles from Northern to Southern tips, 834 miles from Eastern to Western tips, and is comprised of a total of 266,807 square miles. The extra geography that Subgrantees have to cover to serve all the area's clients equitably requires additional staff, staff time, postage and phone costs, and vehicle wear and maintenance. (Source of Mileage Data: Texas Department of Transportation);
- Salaries, space, utilities, telephone, and similar costs associated with program support personnel should be charged to program support; and
- The increasing cost of maintaining appropriate qualified staff is challenging.

For Subgrantees receiving over \$350,000, the administrative allowance will be 5% of each subgrant. For Subgrantees receiving less than \$350,000, the administrative allowance will be 10% of each subgrant.

V.8.3 Monitoring Activities

The Department will monitor the Weatherization Assistance Program ("WAP") with the Monitoring staff included in the budget. Subgrantee is defined as an organization with whom the Department contracts and provides WAP funds.

Names and credentials of Department staff dedicated to monitoring DOE activities follow. Monitoring staff are paid out of Grantee Administration budget category.

- Rosy Falcon – over 6 years of weatherization monitoring; BPI certified; has attended DOE sponsored conferences.
- J.R. Mendoza – over 12 years of program management and weatherization monitoring experience; Certified Fraud Examiner; RESNET certified; attended KBSI and HERS trainings; has attended DOE sponsored conferences; QCI certified.
- Kevin Glienke – over 6 years of weatherization monitoring experience; BPI Certified; has attended DOE sponsored conferences; QCI certified.
- Christie Joyner - one year of weatherization monitoring; Masters Degree in Accounting.

There is staff in the T&TA section of the Department that are QCI certified. It is not anticipated, but possible, that some of those staff members could assist with the unit inspections of homes weatherized through funds provided through this State Plan.

The Department will monitor each of the DOE Subgrantees during the contract period which will be July 1, 2015 through June 30, 2016. Many of the DOE Subgrantees also receive funds through the Department of Health and Human Services' Community Service Block Grant and Low Income Home Energy Assistance Program. Whenever possible, all three programs will be monitored during one visit to the Subgrantee.

Financial and Administrative monitoring will include, at minimum, a review the Subgrantee's General Ledgers and policies and procedures (including procurement) as well as support documentation for reported expenditures. These documents will be reviewed to ensure compliance with DOE, Department and other applicable rules and regulations. Through client file monitoring, the Department will ensure that program beneficiaries are eligible low-income families. Through unit inspections, Department staff will ensure that installed measures are allowable and meet or exceed DOE requirements. The Department will review whether charged measures were installed properly and determine compliance with health and safety procedures, client eligibility, energy audit procedures, client education procedures and compliance with the SWS.

The Department plans to inspect 5% of all completed weatherized units. In order to achieve the 5% inspection rate, and comply with the requirements of WPN 15-4, the Department is requesting that Subgrantees with a QCI on staff do not have that staff member involved with the weatherized unit prior to final inspection. The Department defines prior involvement as performing the audit, creating the work order or performing any weatherization work on the weatherized unit. The Department has created a QCI Final Inspection sheet, for Subgrantees which will allow TDHCA to determine if a QCI employed by the Subgrantee had prior involvement with that unit. The Department will review each QCI final inspection document to ensure compliance with the requirement to inspect 5% and will increase the required inspections if necessary.

The Department recognizes that there may be a need to perform additional unit inspections towards the end of the contract period to comply with the requirements of WPN 15-4 if there were not enough units available to sample during the full monitoring review.

U.S. Department of Energy
WEATHERIZATION ASSISTANCE PROGRAM (WAP)
STATE PLAN/MASTER FILE WORKSHEET

(Grant Number: EE0006186, State: TX, Program Year: 2015)

Monitors will complete checklists to evaluate a Subgrantee's compliance. The checklists cover Financial and Administrative requirements, health and safety procedures, client eligibility, energy audit procedures, client education procedures, and compliance with the SWS. Compliance Monitors also review the hard copy of NEAT audit which is required to be in the client file to assure that the scope of the work was directed by the audit.

Monitors typically scan documents as support if there will be findings noted. Upon completion of the review, monitors conduct an exit interview and explain findings noted, if any.

The following list provides additional monitoring details that may occur during the monitoring review.

- Monitors may request copies of fiscal records/support documentation and perform a desk review to gauge the fiscal condition of the Subgrantee prior to onsite monitoring.
- In addition, as needed, monitors may perform a desk review of records requested but not provided during the onsite review and records requested to clarify issues identified during the onsite monitoring visit. The Department recognizes the requirement to issue monitoring letter within 30 days of the review. The Department does not consider the review complete until receipt of information needed to ascertain compliance. Monitoring letters will be issued within 30 days of receipt of all necessary information.
- On occasion, while onsite monitors overlook findings that are identified through a management or peer review of the report and working papers. In these instances, Department staff will strive to call the Subgrantee to discuss the matter prior to the report being issued.

The Department will issue monitoring reports within 30 days of completion of the review. Subgrantees are provided a 30 day corrective action period to respond and provide evidence of correction. On a case by case basis, the Department may grant an extension to respond to the report if there is good cause and the request is made during the corrective action period. The Department will review each response and determine if the Subgrantee has resolved the compliance issue. If the Department determines that the issue is not resolved, the Subgrantee will be notified and required to submit an additional response(s) until the compliance issue is resolved. In certain circumstances, the Department may "close" a compliance issue when there remain no additional actions that can be taken to resolve the issue. At the conclusion of this process, any unresolved compliance issues will be reported to DOE (instances of suspected fraud or serious program abuse will be reported immediately to DOE).

The Texas WAP has a successful and compliant history. However, in the event that TDHCA identifies a Subgrantee with significant and unresolved noncompliance the following plan will be implemented. Subgrantees that cannot or will not comply will be referred by the Compliance Division to the Training and Technical Assistance Team for placement on an Improvement Plan. Those Subgrantees will be required to meet assigned milestones before they are released from the plan. Failure to meet milestones may result in contract sanctions, up to and including administrative penalties, debarment, placement on a modified cost reimbursement method of payment, contract suspension, or contract termination.

1. Program Oriented Management Training – Prior to continuing any weatherization-related program activity, all Subgrantee staff that performs any action related to the WAP will be required to complete Program Oriented Management Training ("POM"). POM will include:

- A. Review of WAP statutes and rules
- B. Review of state program requirements
- C. Review of financial and administrative best practices
- D. Review of program best practices

2. Intensive Training and Technical Assistance – Once POM is completed, Subgrantee staff will receive training on critical program components. At each stage of Intensive T&TA, TDHCA team members will provide one-on-one guidance to Subgrantee staff to ensure the correct completion of each component. At the end of Intensive T&TA, Subgrantee staff will have completed another step toward completion a weatherized unit.

- A. Client file documentation
- B. Payment and reimbursement documentation
- C. Accompanied unit assessment
- D. Accompanied Audit completion
- E. Accompanied Interim construction walk-through
- F. Accompanied Final inspection

3. Staged Program Operation – When Subgrantee staff has completed Intensive T&TA, the Subgrantee will be released to complete a determined number of client intakes. Once the client intakes are completed, TDHCA team members will review the ensuing steps of the weatherization process in the following steps:

- A. Review of the client file documentation
- B. Review of unit assessments
- C. Review of audit input and completion to work order
- D. Accompanied final inspection

U.S. Department of Energy
WEATHERIZATION ASSISTANCE PROGRAM (WAP)
STATE PLAN/MASTER FILE WORKSHEET

(Grant Number: EE0006186, State: TX, Program Year: 2015)

Once the Subgrantee has completed the determined number of units and the units have passed TDHCA monitoring, the Subgrantee will be released from the Improvement Plan for the remainder of the program year. The Subgrantee will be reviewed at the end of the program year for determination of continued funding.

If it is determined that the Subgrantee is not able to administer the weatherization program, the Department will follow the requirements in 10 TAC §2.202 Contract Closeout.

V.8.4 Training and Technical Assistance Approach and Activities

All training provided will include requirements for compliance with QWP specifications. The Department will conduct training and technical assistance throughout the program year. Department staff may determine that additional training is needed for a particular Subgrantee or the Subgrantee may request it. The Training staff consults with Monitoring staff to determine Subgrantees' additional training needs on an on-going basis. Training will include manufactured housing, management and production schedule, lead safe work practices, building envelope measures, energy audit, health and safety, all with a goal of increasing the efficiency, quality and effectiveness of our program.

In order to assist with the implementation of the QWP specifications, the Department will identify training needs through a four pronged approach:

A) Review of Findings - The training team will provide training to address specific findings in order to correct identified deficiencies.

B) Referral by the Monitoring staff - Training areas will focus on input from the referring Monitor.

C) Online request produced by the Subgrantee - The Department has created an online training and technical assistance database to track training requested by the Subgrantee network. The requestor has a menu of WAP topics to select from. The online training request form can be found on the Department's website, <http://www.tdhca.state.tx.us/community-affairs/wap/index.htm>. The Department's training staff will contact the requestor and customize the training around their needs.

D) Management Request - Management may make a specific request and dictate the type of training needed.

Tier 1 Training.

Tier 1 Training began in the spring of 2014 with five Department staff members becoming certified in QCI at an IREC-approved training center. The Department then started providing pre-assessment T&TA to assist Subgrantee staff in preparing for the QCI certification prior to a Subgrantee scheduling QCI training. The Department has a Certified BPI Online Proctor on staff who is able to proctor the written exam for those that do not pass it the first time, thereby reducing the time and travel costs for our network. The exam is proctored in collaboration with Santa Fe Community College. The Department has yet to devise an adequate system for preparing Subgrantees for the written portion of the test, other than reiterating the study of the Job Task Analysis ("JTAs") and using test taking strategies utilizing a decision tree for multiple choice tests. The Department would appreciate any technical assistance DOE can provide regarding this issue.

Of the twenty-five Subgrantees, fifteen have at least one staff member that is QCI certified. The QCI certification for Subgrantee staff will continue through spring 2015 with a goal of having Subgrantee staff trained up before the start of the program in July 2015.

Added to the training plan is Tier 1 Training for subcontractors. Heading into PY 2014, the Department's training plan focused on comprehensive training for all WAP agency staff workers that is aligned with the NREL Job Task Analysis for the position in which the worker is employed. Going into PY 2015 and beyond, the Department proposes to add to that focus JTA-aligned training for subcontractors. This addition reflects feedback from Department monitoring staff and DOE's plan for improvements in work quality. Coordination with Subgrantees to implement subcontractor training will commence in the near future, with a goal that each subcontractor will be required to have at least one crew member who is certified as a Retrofit Installer and one who is certified as a Crew Leader by the start of PY 2016.

Tier 1 training will be provided by Department training and technical assistance staff or its designee. Tier 1 Training will continue long-term with Department and Subgrantee staff gaining Energy Auditor certification in single family and multifamily, and with Weatherization Installer certifications for subcontractors, along with ongoing training to maintain those skills and certifications. Department and Subgrantee network staff will be required to obtain Energy Auditor (EA) certification by the beginning of program year 2016, and the Department will be requiring all Subgrantees to ensure their contractors also receive other Tier 1 trainings, including Renovation, Repair, and Painting and Occupational Safety and Health Administration (OSHA) 10. Each subcontractor for whom DOE funds are used to provide training for the certification will be required to enter into a retention agreement with the Subgrantee.

The Department has provided the Subgrantee network information for obtaining workforce credentials by providing on our website

U.S. Department of Energy
WEATHERIZATION ASSISTANCE PROGRAM (WAP)
STATE PLAN/MASTER FILE WORKSHEET

(Grant Number: EE0006186, State: TX, Program Year: 2015)

(<http://www.tdhca.state.tx.us/community-affairs/wap/quality-work-plan.htm>) a QWP section dedicated to agencies obtaining the QCI. As other Tier 1 training information becomes available we will be adding content to our website.

Tier 2 Training.

Tier 2 training will be provided by Department training and technical assistance staff or its designee. With experience as Program Officers and Trainers, the staff has experience in Subgrantee monitoring, unit assessments, audits, materials installation, inspections, and the training and technical assistance that support each. The staff consists of:

- Marco Cruz – 20+ years experience in the WAP. Certified QCI, Lead-Safe Renovator, OSHA-30
- Laura Saintey – 10+ years experience in the construction industry and 5+ years experience in the WAP. Certified QCI, Lead-Safe Renovator, OSHA-10, BPI Building Analyst Professional, BPI Certified Online Proctor
- The Department currently has an open job posting for at least one trainer to replace staff leaving the Department at the end of April.

TDHCA will follow its regular T&TA plan (as described below) for its entire Subgrantee network with an emphasis on using the JTAs as the guide to provide acute training to correct identified deficiencies and general training to ensure continuous improvement in the network. The Department has divided the state into five regions and has planned to provide quarterly training in each region: El Paso (west), Lubbock (northwest), Dallas (north central), Houston (east), and San Antonio (south central). The Department plans to assist Subgrantees in their travel costs to State-sponsored and DOE-sponsored/approved training opportunities as funds permit.

At each regional training, topics related to the JTAs for energy auditors and installers will be covered. JTAs for crew leaders will be covered as well, however as relating to how to supervise a hired crew as only one of our Subgrantees uses in-house crews. The regional trainings will cover issues regularly identified by monitoring and training staff as well as Quality Management, Health and Safety, Client Education, ASHRAE, heating and cooling systems assessments and blower door usage, and refresher material related to each JTA, including but not limited to:

Energy Auditor Domains:

Demonstrating Professional Energy Auditor Conduct
Collecting information about the Building for an Energy Audit
Testing the Building for an Energy Audit Evaluating Collected Energy Audit Data

Retrofit Installer Domains: (While only one of our Subgrantees has in-house installers, it is critical that they all understand exactly what is required of an installer as well as the specifications for installation. These modules will discuss the installer JTAs on a supervisory level, and will focus more pointedly on specifications for installation.)

Maintaining Safety
Preparing for the Job
Maintaining tools and the job site
Work Implementation (specifications)
Site close-out

Crew Leader Domains: (While only one of our Subgrantees has in-house installers, it is critical that they all understand exactly what is required of a crew leader so that they can properly supervise.)

Develop and/or Review the Work Order
Identify materials and staffing needs
Develop plan to execute work order on site
Prepare house to execute work order
Execute work order and manage project
Final Documentation

The Department will provide the Lead Renovator certification and refresher and any OSHA courses through a certified third party vendor. These trainings will be required, and the Department will keep a running database of the certifications to assure each Subgrantee obtains the needed certifications to implement the Health and Safety requirements of the WAP program.

The Department will continue to provide training opportunities for staff and Subgrantees including online training, attendance at DOE and DOE-approved conferences, and other opportunities for education and training that might become available. Network wide trainings will primarily be conducted through webinars. At least every quarter the Department conducts teleconferences on DOE WAP initiatives and program notices. The PY 2015 Health and Safety Plan will be followed-up with a webinar to reiterate current standards and any changes made so that the network remains aware of program expectations. Attendance will be monitored to ensure at least one member of each subrecipient is in attendance during the webinar.

Evaluation of Training Activities

U.S. Department of Energy
WEATHERIZATION ASSISTANCE PROGRAM (WAP)
STATE PLAN/MASTER FILE WORKSHEET

(Grant Number: EE0006186, State: TX, Program Year: 2015)

In order to evaluate compliance with the quality work specifications and the efficacy of its training activities, the training staff or its designee will review its training activities semi-annually and compare those to the Subgrantee monitoring reports. Additionally, Subgrantees will be given the opportunity to provide feedback through evaluation forms distributed at all training sessions. Training staff or its designee will conduct periodic surveys to solicit input from Subgrantees as to their training needs.

More specific training will be designed for each Agency based on the information prompting the request. TA will be documented by using the online training and technical assistance database. Additionally, for onsite T&TA visits, a report will be produced indicating Subgrantee staff present, materials and documents presented to the Subgrantee, and expected outcomes.

Should a Subgrantee hire a new weatherization coordinator, the Subgrantee will be required to notify the Department in writing within 30 days of the date of hiring the coordinator and request training. The Department will contact Subgrantees within 30 days of the date of notification to arrange for training.

Program Evaluation

Overall program evaluation remains an admitted struggle for the Department. The Department utilizes an online contract system to collect expenditure and performance data from Subgrantees. As designed, this system does not have the capability to capture unit-level data from our Subgrantees. Provision of a comparative snapshot of the current Subgrantees, would require a database that could capture retrofit activities for each unit completed to include air-leakage reduction, duct leakage, square footage of each unit, and pre- and post- retrofit energy consumption data. The system would have to account for the different climates found in a state as large as Texas (even within some individual service areas), weather anomalies and client family size variations over a multi-year period if comparing energy savings based on consumption alone. While the Department certainly sees the value of a system that could provide this information, the feasibility of doing such extensive data collection is difficult to conceive with existing resources.

Client Education

The Department will continue to require WAP Subgrantees to provide client education to each WAP client. Subgrantees will be required to provide (at a minimum) educational materials in verbal and written format. Client education may include temperature strips that indicate the temperature in the room and energy savings materials.

V.9 Energy Crisis and Disaster Plan

n/a

BUILDING WEATHERIZATION REPORT

Agency:			
Contract #:			Audit #:
County:	Name:	Address:	Client Phone #:

Assessment Date:	Contractor Work Start Date:	Work End Date:
Energy Audit Estimated Cost:	Final Blower Door Reading:	Total square footage of conditioned space:

Heating Equipment Location	RPR	RPL	Type	Fuel	Efficiency Pre	Efficiency Post	Carbon monoxide Pre	Carbon monoxide Post	SIR/H&S

Heater Types (check)	
<input type="checkbox"/>	VSH
<input type="checkbox"/>	UVSH
<input type="checkbox"/>	VWF
<input type="checkbox"/>	FF
<input type="checkbox"/>	CH
<input type="checkbox"/>	WS
<input type="checkbox"/>	COOK-STOVE

Cooling Equipment Location	RPR	RPL	Type	Fuel	COP Pre	COP Post			SIR/H&S

A/C Types (check)	
<input type="checkbox"/>	WU
<input type="checkbox"/>	EVAP
<input type="checkbox"/>	CS

Weatherization Materials Installed - <i>(List in SIR Order)</i>	Labor Cost	Material Cost	Quantity #	Program *	Final Inspection
Total Cost of Weatherization Materials:					

*DOE, LIHEAP, etc.

BUILDING WEATHERIZATION REPORT

Repair Materials Installed	Labor Cost	Material Cost	Quantity #	Program *	Final Inspection
Total Cost of Repair Materials:					

Health and Safety Materials Installed	Labor Cost	Material Cost	Quantity #	Program *	Final Inspection
Total Cost of Health and Safety Materials:					

***NOTE:** Weatherization materials donated or funded with other funds should be listed in the appropriate section on this form and indicated as **N/C** or “no charge.”

Cost Category	DOE (\$)	LIHEAP (\$)
Total Material Cost (including incidental repairs and excluding Health and Safety)		
Total Labor Costs (excluding Health and Safety)		
Total Low-Cost /No Cost Materials (not to exceed \$50)		
Total Cost of Health and Safety (including Labor and Materials)		
TOTAL COST OF LABOR AND MATERIALS (including Health and Safety costs)		

THIS UNITS FUND SOURCE (check)	
	DOE
	LIHEAP
LEVERAGED UNIT	
	Yes
	No
Other Program:	

JUSTIFICATION FOR OMISSION

I _____ decline the installation of _____ provided by the weatherization assistance program. I have been informed of the energy savings of said materials.

Yo, _____ declino la instalacion de _____ provista por el programa de asistencia en climatizacion. He sido informado de los ahorros de energia de dichos materiales

Client Signature/Firma del cliente

Date/Fecha

CLIENT CERTIFICATION (CERTIFICATION)

I certify that this weatherization work on my home has been completed. I will, to the best of my ability, utilize; the energy conservation tips provided to me in order to further reduce my energy expenses.

Yo, certifico que este trabajo de climatizacion en mi casa ha sido terminado. Utilizare, de la mejor manera segun mi habilidad, los consejos de conservacion de energia que han provisto para que asi reduzca aun mas gastos de energia.

Client Signature/Firma de cliente

Date/Fecha

QUALITY CONTROL INSPECTION

- I certify that I have reviewed the initial assessment completed on this unit and it meets the required standards outlined by the Department. (initials: _____)
- I certify that I have verified that the Energy Audit for this unit was performed in accordance with audit procedures and protocols approved by the Department of Energy. (initials: _____)
- I certify that the measures installed ranked appropriately in the Energy Audit and were appropriately called for on the work orders. (initials: _____)
- I certify that measures were installed in accordance with the Department of Energy Standard Work Specifications, as incorporated into the Texas Materials Installation Manual. (initials: _____)
- I certify that I have completed a final inspection of this unit. (initials: _____)
- I certify that I have provided the client with energy conservation tips and education on how to operate any appliances installed. (initials: _____)
- I certify that the information provided in this Building Weatherization Report is accurate and complete. (initials: _____)

Inspector Notes:

Signature of Quality Control Inspector

Date

Building Weatherization Report Instructions

Agency: Your agency's full legal name.

Contract #: Your Contract # with TDHCA.

Audit #: Energy Audit Unit Number.

County: The County in which the weatherized unit is located.

Name: The name of the client.

Address: The physical address of the dwelling unit weatherized. Include apartment # if applicable.

Assessment Date: The day the agency completes the whole house assessment.

Contractor Work Start Date:

The day the work order is submitted to the contractor to begin work/order materials.

The Energy Audit must be completed before this date.

Work End Date:

The day the unit passes a final inspection and is signed off by the client.

Final inspection box must be completed during the time of final inspection.

Energy Audit Estimated Cost:

The total cost from the EASY Suggested Measures and Repairs Report

Phone #:

Self explanatory

Final Blower Door Reading:

Self explanatory

Total Square Footage of Conditioned Space:

Self explanatory

Heating Equipment:

Location: Indicate where in the unit the heating equipment is located

RPR: Indicate if you will repair the equipment with a yes or check mark

RPL: Indicate if you will replace the equipment with a yes or check mark

(The following must be entered whether or not the heater will be repaired or replaced)

Type: Use initials listed on the right of the section

VSH - Vented Space Heater

UVSH - Unvented Space Heater

VWF - Vented wall furnace

FF - Floor furnace

CH - Central forced air heater

WS - Wood stove

Cookstove - self explanatory

Fuel: Natural Gas/Propane/Electric

Efficiency: Pre: Before repair or replacement

Post: After repair or replacement

Building Weatherization Report Instructions

Monoxor: self-explanatory

SIR/H&S: Indicate whether the heater will be RPR/RPL with weatherization funds (requires SIR >1) or H&S funds or neither.

Cooling Equipment

All fields the same as for heaters except the monoxor.

A/C Types are

WU - Window Unit

EVAP - Evaporative Water Cooler

CS - Central System

Weatherization Materials Installed with Labor (list in SIR order, highest first)

NOTE

In order to properly complete the consumption studies, the Department is now requiring all agencies to list individual material: Example

Materials Installed	Labor Cost	Materials Cost	Quantity #	Program	Final Inspection
Sheetrock	50	50	5 sheets	DOE	✓
Gaskets	5	5	10	DOE	✓
25 year caulk	24	24	12	DOE	✓

Repair Materials Installed

Enter as above. Labor may be listed on each material or may be listed as a total at the end of the section.

Health and Safety Materials Installed

Enter as example above.

Total Material Cost

Enter the total material cost from Weatherization Section plus Repair Materials Section. Do not include any H&S materials.

Total Labor Cost

Enter the total labor cost from Weatherization Section plus Repair Materials Section. Do not include any H&S labor.

Total Low Cost/No Cost Materials

For an explanation of this total see 10CFR440.20 and or contact TDHCA Training and Technical Staff.

Total Cost of Health and Safety

Enter the total labor and materials cost for H&S measures performed.

Total Cost of Labor and Materials

Add the items above and enter the total.

This Unit designated as:

Place a check mark or X in the appropriate box to indicate from which program this unit cost are to be funded. If the unit is leveraged with another program (such as HOME, HOME/WAP or one of the utility programs), place a Check Mark ✓ or X in the yes box and enter the program name below.

Justification for Omission

In the event that a client refuses to allow one or more weatherization measure(s) that have an SIR of 1 or better, this form must be filled out and signed by the client and the agency representative.

Client Certification

Must be signed and dated **on or after** the date of the by the client. Any signatures obtained prior to that date will be subject to **corrective action** and/or **disallowed cost**.

Certification by Quality Control Inspector

Inspector must initial each item. Please provide notes on any out of the ordinary requirements for the unit. The BWR must be signed and dated **on or after** the date of the inspection by a certified Quality Control Inspector. Any signatures obtained prior to the date of final inspection will be subject to **corrective action** and/or **disallowed cost**.

Audit Approval Task Tracker

Energy Audit Topic	Issues	Action by TDHCA	Status	Specific	Date done	Isolated or widespread?	Texas Plan of action to address	date done
MHEA								
1. Energy estimating methodology	1. Compliant. MHEA							
2. Measure interaction	2. Compliant. MHEA							
3. Cost-effectiveness requirements	3. Compliant. MHEA							
4. Measures considered	4. Lifetimes OK.							
5. Sample audits								
6. Audit procedures and field protocols								
7. Measures installed								
8. Priority list	8. Not Requested.							
9. General heat waste reduction lists								
10. Health and safety								
11. Energy audit procedures required for each building type served	11. Compliant.							

State of Texas

Weatherization Assistance Program

2015 HEALTH AND SAFETY PLAN

This plan will provide guidance to the Texas Weatherization Network. Health and Safety issues will be identified by Program Assessors during the initial assessment. Weatherization Crews (either subcontracted or in house) will perform the task(s) identified in the initial assessment and listed in the work order(s).

Budgeting (Check one):

The grantee is encouraged to budget health and safety costs as a separate category and, thereby, excludes such costs from the average per-unit cost calculation. This separate category also allows these costs to be isolated from energy efficiency costs in program evaluations. The grantee is reminded that, if health and safety costs are budgeted and reported under the program operations category rather than the health and safety category, the related health and safety costs must be included in the calculation of the average cost per home and cost-justified through the audit.

Separate Health & Safety Budget: Texas exercises the option to budget health and safety costs as a separate budget line item.

H&S budget is not contained in Program Operations. It is not included in the average unit cost or SIR.

Incidental Repairs (List repairs, if any, that will be removed as health and safety measures and implemented as incidental repairs.):

If the grantee chooses to identify any health and safety measures as incidental repairs, they must be implemented as such under the grantee’s weatherization program in all cases – meaning, they can never be applied to the health and safety budget category. In order to be considered incidental repairs, the measure must fit the following definition and be cost justified along with the associated efficiency measure. Incidental Repairs means those repairs necessary for the effective performance or preservation of weatherization materials. Such repairs include, but are not limited to, framing or repairing windows and doors which could not otherwise be caulked or weather-stripped and providing protective materials, such as paint, used to seal materials installed under this program.

Minor issues related to drainage, electrical, structural, floor, roof repairs, and replacement of doors and windows that are unrepairable are considered to be an incidental repair in Texas. In instances where >32 sq ft of roof repair, or repair/replacement of doors or windows is recommended because the door/window could not otherwise be caulked or weather-stripped effectively this measure should not be billed as a Health and Safety cost; it must be categorized as an incidental repair. Providing protective materials such as primer or paint to seal and protect the weatherization materials installed shall be categorized as an incidental repair and shall be billed as such. Such materials shall only be allowed to protect weatherization materials installed. They shall not be allowable for cosmetic reasons alone. Reference: “Window Door Replacement Best Practice” (DOE-WAP) and “Window Door Repair Best Practice” (LIHEAP-WAP)

Health and Safety Expenditure Limits (Provide a per-unit average percentage and justification relative to the amount. Low percentages should include a statement of what other funding is being used to support health and safety costs, while larger percentages will require greater justification and relevant historical support.):

The grantee must set health and safety expenditure limits for their Subgrantees, providing justification by explaining the basis for setting these limits and providing related historical experience. It is possible that

these limits may vary depending upon conditions found in different geographical areas. These limits must be expressed as a percentage of the average cost per dwelling unit. For example, if the average cost per dwelling is \$5000, then an expenditure of \$500 per dwelling would equal 10 percent expenditures for health and safety. 10 percent is not a limit on H&S expenditures but exceeding this amount will require ample justification. These funds are to be expended by Subgrantees in direct weatherization activities. While required as a percentage of the average unit cost, if budgeted separately, the health and safety costs are not calculated into the per-house limitation.

Texas exercises the option to budget health and safety costs separately. **NOTE:** DOE calculates Health and Safety for the State of Texas as 25% of the program operations budget. Texas calculates Health and Safety as a percentage of house dollars (materials+labor+program support+health and safety). The calculation (house dollars x 20%) yields a Health and Safety amount that meets the maximum of 20% for Texas Subgrantees.

For Subgrantees, Health and Safety expenditures may not exceed 20% of total unit expenditures (materials, labor, program support, and health and safety) at the end of the contract period. H&S expenditures exceeding this percentage will require justification by the Subgrantee.

The Department feels that the 20% H&S amount is justified based on several factors:

1. The Department anticipates more stringent H&S requirements outlined in WPN 11-6 and WPN 11-6A. It is expected that these additional and specific requirements will result in significant H&S costs. These requirements are historically more aggressive than the H&S agenda Texas has pursued in homes weatherized under the DOE WAP Program.
2. Until January 2011 non-incorporated (non-municipal) rural areas had few established codes and little code enforcement. The WAP ARRA experience has demonstrated that installation costs in these areas are frequently higher because any altered appliance or area must now be brought up to the IRC code.
3. ASHRAE has been adopted and implemented; accounting for an average of \$750/unit, or 15% of the H&S budget.
4. The Department has included Air Conditioning Units as a Health and Safety Measure.

Deferral Policy (Provide a detailed narrative of the grantees overall deferral policy):

Deferral may be necessary if health and safety issues cannot be adequately addressed according to WPN 11-6 guidance. The decision to defer work in a dwelling is difficult but necessary in some cases. This does not mean that assistance will never be available, but that work must be postponed until the problems can be resolved and/or alternative sources of help are found. In the judgment of the auditor, any conditions that exist, which may endanger the health and/or safety of the workers or occupants, should be deferred until the conditions are corrected. Deferral may also be necessary where occupants are uncooperative, abusive, or threatening. The grantee should be specific in their approach and provide the process for clients to be notified in writing of the deferral and what corrective actions are necessary for weatherization to continue. The grantee should also provide a process for the client to appeal to a higher level in the organization.

Per Texas's Health & Safety Plan, a dwelling unit should not be weatherized where there is a major code violation or where there is a potentially harmful situation that may adversely affect the occupants or agency's weatherization crew and/or other staff. When such issues are found to be present, the owner/occupant is notified verbally and in writing; and, only after the owner corrects the identified issues satisfactorily and to code shall any weatherization work begin. The crew must declare their intent to defer weatherization work on an eligible unit on the energy audit worksheet. The audit form shall include the client's name and address, dates of the audit/assessment, date the client was informed, a clear description of the issue(s), a clear description of the condition(s) under which weatherization work could begin/continue, a clear description of the responsibilities of

all parties involved, client's signature(s) indicating that they have been informed of their rights and options and that they understand the issues and their responsibilities. A copy shall be given to the client and a copy shall be placed in the client file.

See Best Practices addressing Client Denials and Referrals posted on the website <http://www.tdhca.state.tx.us/community-affairs/wap/wap-best-practices.htm>

Client Denials and Referrals

Denials/Deferrals--Beyond the Scope

Denials/Deferrals—Health & Safety

Denials/Deferrals—NEAT Audit

Texas has a standard template/sample deferral letter that weatherization agencies may use to create the deferral notice that is sent to the client when conditions so warrant.

Procedure for Identifying Occupant Health Concerns:

Procedures must be developed and explained on how information is solicited from clients to reveal known or suspected occupant health concerns as part of the initial application for weatherization, additional screening of occupants again during the audit, and what steps will be taken to ensure that weatherization work will not worsen the health concern.

Texas has developed a Health & Safety Questionnaire that will be used as part of the application process that will then be further verified by the assessor at the time of the initial assessment and when conducting the H&S Inspection Checklist. (See "Health & Safety Client Questionnaire and Inspection Checklist" under Client Field and Assessment Forms on Department website: <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>

Due to Texas' high humidity levels in much of the state, moisture and mold-like substances are an integral part of assessments. See Best Practices addressing moisture and mold-like substances posted on the website <http://www.tdhca.state.tx.us/community-affairs/wap/wap-best-practices.htm>:

Mold Best Practices: , Flow Chart

Mold-Like Substance Notification and Release Form for Texas Weatherization Programs

Identification of a Mold-Like Substance

In addition, if a Mold-Like Substance is detected clients are provided a copy of the Texas Department of State Health Services, "**CONSUMER MOLD INFORMATION SHEET* Regulation of Mold Assessment and Remediation in Texas.**"

Weatherization agencies and their representatives, including subcontractors, are required to take all reasonable precautions against performing work on homes that will subject the occupants or themselves to health and/or safety risks. In cases where an occupant's health is fragile, or an occupant has been identified to have a health condition, including allergies, and/or the crew work activities would themselves constitute a health and/or safety hazard, the occupant(s) at risk shall be required to leave during the performance of the work activities. In cases where an occupant is identified as having an allergy to a specific weatherization material, that material will not be installed. If comparable alternative materials are available and the occupant has no known allergic to the alternative materials and they meet DOE regulations, crews/contractors may substitute the alternative material(s). If no safe alternative material meeting DOE standards is available, the measure shall not be installed. This must be well documented in the client file.

Documentation Form(s) have been developed (Check Yes or No):

Documentation forms must be developed, include the client's name and address, dates of the audit/assessment and when the client was informed of a potential health and safety issue, a clear description of the problem, a statement indicating if, or when weatherization could continue, and the client(s) signature(s) indicating that they understand and have been informed of their rights and options

Yes X Texas has developed documentation forms and has a deferral notice in place; all will be used for the documentation of potential health and safety issues. These forms include all of the items listed in the gray box directly above.

No

Air Conditioning and Heating Systems

Concurrence or Alteration: Check if you concur with existing guidance from WPN 11-6 or if you are using an alternative action/allowability. Include the guidance action/allowability from WPN 11-6 or alternative guidance in the space provided. Alternatives must be explained and comply with DOE guidance. **Note:** Where an Action/Allowability or Testing is "required" or "not allowed" through WPN 11-6, the grantee must concur or choose to defer all units where the specific issue is encountered. Allowable items under WPN 11-6 leave room for determining if the issue or testing will be addressed and in what circumstances.

X-Concur with WPN 11-6

"Red tagged", inoperable, or nonexistent heating system replacement, repair, or installation is allowed where climate conditions warrant and in households that include at least one member who is 5 years of age and under, elderly, or disabled.

Because Texas is a predominantly hot weather state, air conditioning system replacement, repair, or installation is allowed in households that include at least one member who is 5 years of age and under, elderly, or disabled.

Funding: State that DOE funds are being used or indicate that alternate funding sources will be used to address this particular health and safety category.

DOE funds may be used.

Beyond Scope of DOE WAP: Describe how the issue will be treated if beyond the scope of DOE WAP.

If the heating/cooling system issue is determined to be beyond the scope of DOE WAP, weatherization agencies will defer the work and refer the client to other resource agencies who may be able to address the problem. Texas's deferral policy and protocols shall always be strictly adhered to when deferring weatherization work. If client is completely without cooling and the weather warrants, the weatherization agencies shall make a referral to an agency with funding that can provide at-risk clients with a portable air conditioner. In the case where the heating system issue is determined to be beyond the scope of DOE WAP; and the client is completely without heat and the weather warrants, the weatherization agencies shall make a referral to an agency with funding that can provide client with a temporary means of heat, such as a portable heat pump or blankets.

Standards for Remedy: Describe the standards for remedy of the health and safety category, including testing protocols. Also include when partial weatherization would be appropriate. **Note:** Some health and safety categories, like combustion gases, require testing.

The Department will initially attempt to qualify existing Air Conditioning units and Heating systems as an ECM. If the AC unit or Heating system does not rank and if the client qualifies under the at risk criteria, then the Subgrantee may repair, replace, or provide a new AC unit or furnace as a Health and Safety Measure.

The goal of all testing shall be to make sure Heating/cooling systems are present, operable, and performing safely. Additionally, we want to determine the presence of at-risk occupants.

Standards for Deferral: Describe when deferral should take place for the specific health and safety category.

Deferral should be exercised when existing code violations are present and correcting them would result in a whole-house SIR below a 1, or when there are problems affecting the heat system/furnace that are beyond the

scope of the DOE WAP, such as certain electrical problems. For additional deferral criteria, see deferral section above.
Standards for Referral: Describe when referral should take place for the specific health and safety category. If possible, include associated referral agencies.
Referrals should be made when problems are identified that are beyond the scope of the DOE WAP, such as electrical or other code violations. Examples of referral agencies include, but are not limited to, CEAP, CSBG, HPG, Utility Companies, and other state or local resources.
Training Provision: Discuss how training will be provided for the specific health and safety category. Note: Some health and safety categories, like OSHA, require training.
The Department provided CAZ Testing training across the state. The course covered worst case depressurization testing, with a focus on when to replace systems for high CO levels, when to shut off the system, open window, and when to notify the client and gas company. Best Practices addressing worst case depressurization testing are posted on the website. http://www.tdhca.state.tx.us/community-affairs/wap/wap-best-practices.htm
The updated Health and Safety Presentation (updated for PY 2014) is posted on the Department’s website under Webinars and Workshops at http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm
In addition the Texas Mechanical Systems Field Guides have been distributed to all Subgrantees and posted on the Department’s website under Weatherization Tools and Guides. http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm
Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.
Client Education: Discuss what specific steps will be taken to educate the client, if any, on the specific health and safety category if this is not explained elsewhere in the State Plan. Note: Some health and safety categories, like mold and moisture, require client education.
Clients shall be given all pertinent information on the appropriate use and maintenance of heating units as well as information regarding the proper disposal of bulk fuel tanks when not removed, if applicable.
Disposal Procedures: Provide disposal procedures or indicate where these procedures can be found in the Plan or Field Standards.
Weatherization agencies shall require licensed HVAC subcontractors to dispose of old Heating/cooling systems as part of the repair/installation job. All weatherization agencies and subcontractors must follow local and state regulations when disposing of old Heating/cooling systems components and /or fuels.
Air Conditioning Installation (as specific to installation as a health and safety measure): Provide a narrative on implementation protocols of air conditioning repair, replacement, and installation including justification for allowability that includes climate justification with degree days and how to define at-risk occupants
Air conditioning installation is an allowable health and safety measure in Texas. Texas’ weather and geography directly affects energy consumption in homes. Cooling degree days is a climatic statistic that can be used to reflect the severity and length of the cooling season. Basically, cooling degree days represent the number of hours over the course of a year that the outside air temperature is above 78 degrees Fahrenheit.
Texas is a diverse state with a myriad of climatic conditions. As noted in the following historic average temperatures per larger cities, most areas rarely drop below the heating degree day outside temperature of 65 degrees Fahrenheit. In many areas, heating is needed on a limited basis. However, throughout Texas, cooling is often a necessity.
Texas has several climate zones and the degree of heating necessary varies depending on the area. Combustion Safety is always a prime concern regarding heating systems. Texas is primarily a cooling climate. When conducting energy audits, cooling is a more significant factor than heating in determining energy conservation measures and the health of “vulnerable populations” (i.e.- elderly, children under the age of 5, and those who

have medical needs). In every instance, the cooling loads require more comprehensive measures than heating loads; such as low-e windows, solar screens, reducing humidity, and air conditioners. Therefore, air conditioning installation is an allowable measure in Texas.

Heating/cooling systems Installation (as specific to installation as a health and safety measure): Provide a narrative on implementation protocols of Heating/cooling systems repair, replacement, and installation including justification for allowability that includes climate justification with degree days

See above under air conditioning installation for climate justification for Heating/cooling systems installation. Texas is primarily a cooling climate with occasional severe cold weather conditions. Heat loss emergencies in Texas can put clients at severe health and safety risk that could potentially be life-threatening. Thus, Heating/cooling systems installation as a health and safety measure is allowable. Texas requires heat system installation to follow local and state code and it must be performed by a licensed HVAC professional. Weatherization agencies may subcontract licensed HVAC companies/individuals to perform Heating/cooling systems installations and repairs if they follow proper state procurement procedures.

Appliances and Water Heaters

Concurrence or Alteration: Check if you concur with existing guidance from WPN 11-6 or if you are using an alternative action/allowability. Include the guidance action/allowability from WPN 11-6 or alternative guidance in the space provided. Alternatives must be explained and comply with DOE guidance. **Note:** Where an Action/Allowability or Testing is “required” or “not allowed” through WPN 11-6, the grantee must concur or choose to defer all units where the specific issue is encountered. Allowable items under WPN 11-6 leave room for determining if the issue or testing will be addressed and in what circumstances.

X-Concur with WPN 11-6	Replacement or repair of water heaters is allowed on a case by case basis. Replacement and installation of other appliances are not allowable health and safety costs. Repair and cleaning are allowed.
-------------------------------	---

Funding: State that DOE funds are being used or indicate that alternate funding sources will be used to address this particular health and safety category.

DOE funds may be used for repair and cleaning. Replacement of cook stoves may be done with unrestricted funds from a funding source other than DOE.

Beyond Scope of DOE WAP: Describe how the issue will be treated if beyond the scope of DOE WAP.

If the water heater or appliance issue is determined to be beyond the scope of DOE WAP, the agency will defer the work and refer the client to other resource agencies who may be able to address the problem. Texas’s deferral policy and protocols shall always be strictly adhered to when deferring weatherization work.

Standards for Remedy: Describe the standards for remedy of the health and safety category, including testing protocols. Also include when partial weatherization would be appropriate. **Note:** Some health and safety categories, like combustion gases, require testing.

TDHCA Subgrantee Guidance: The goal of all testing is to verify appliances are present, operable, and performing safely. Testing is outlined in the Weatherization and Mechanical Field Guide posted on the Department’s website under Weatherization Tools and Guides.
<http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>.

TDHCA Subgrantee Guidance for Stoves

Stove replacement is Not allowed:

Cook Stoves with high CO:

- Clean or repair
- If still has high CO levels, then see if another funding source is able to pay for the stove replacement.
- If no other source, the house must be deferred until the occupant can address the stove.
- Document all steps.
- CO deferral levels for Stoves that cannot be remedied

25 ppm for stove top burners
150 ppm for oven.

The Subgrantees must initially attempt to qualify existing Water Heater as an ECM. If the Water Heater does not rank, Subgrantees may repair or replace the existing unit as a Health and Safety Measure. Testing is outlined in the Weatherization and Mechanical Field Guide.

- CO deferral Levels for Gas water heaters that cannot be remedied
100 ppm tested at the flue.

Standards for Deferral: Describe when deferral should take place for the specific health and safety category.

Deferral shall be exercised when the estimated H&S cost exceeds the total cost of all Weatherization Measures.

Standards for Referral: Describe when referral should take place for the specific health and safety category. If possible, include associated referral agencies.

Referrals should be made when problems are identified that are beyond the scope of the DOE WAP, such as electrical or other code violations. Examples of referral agencies include, but are not limited to, CEAP, CSBG, HPG, Utility Companies, and other state or local resources.

Training Provision: Discuss how training will be provided for the specific health and safety category. **Note:** Some health and safety categories, like OSHA, require training.

On-going Health & Safety training will continue via regional training, webinars, Q&As, and postings of FAQs to Department Website. <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>.

The updated Health and Safety Presentation (updated for PY 2014) is posted on the Department’s website under Webinars and Workshops at <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>.

Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.

Client Education: Discuss what specific steps will be taken to educate the client, if any, on the specific health and safety category if this is not explained elsewhere in the State Plan. **Note:** Some health and safety categories, like mold and moisture, require client education.

Clients shall be given all manufacturers information on the appropriate use and maintenance of water heating units.

Disposal Procedures: Provide disposal procedures or indicate where these procedures can be found in the Plan or Field Standards.

All weatherization agencies and subcontractors must follow local and state regulations when disposing of old water heating system components. Go to: <http://www.epa.gov/osw/> for current rules and regulations; along with EPA approved disposal sites.

Asbestos - in siding, walls, ceilings, etc.

Concurrence or Alteration: Check if you concur with existing guidance from WPN 11-6 or if you are using an alternative action/allowability. Include the guidance action/allowability from WPN 11-6 or alternative guidance in the space provided. Alternatives must be explained and comply with DOE guidance. **Note:** Where an Action/Allowability or Testing is “required” or “not allowed” through WPN 11-6, the grantee must concur or choose to defer all units where the specific issue is encountered. Allowable items under WPN 11-6 leave room for determining if the issue or testing will be addressed and in what circumstances.

X-Concur with WPN 11-6	Removal of siding is allowed to perform energy conservation measures. All precautions must be taken not to damage siding. Asbestos siding should never be cut or drilled. Recommended, where possible, to insulate through home interior.
-------------------------------	---

Funding: State that DOE funds are being used or indicate that alternate funding sources will be used to address

this particular health and safety category.

DOE funds may be used.

Beyond Scope of DOE WAP: Describe how the issue will be treated if beyond the scope of DOE WAP.

If the issue is determined to be beyond the scope of DOE WAP, crews/contractors shall follow all Texas Referral and Deferral policies and protocols.

Standards for Remedy: Describe the standards for remedy of the health and safety category, including testing protocols. Also include when partial weatherization would be appropriate. **Note:** Some health and safety categories, like combustion gases, require testing.

Crews/contractors will never cut or drill through asbestos siding. Where asbestos siding exists, they must determine if it can be removed and rehung to work from the outside; and use (LSW) practices. Work will be performed from the inside of the unit, whenever possible.

Definition: Asbestos is the name given to a number of naturally occurring fibrous minerals with high tensile strength, the ability to be woven, and resistance to heat and most chemicals. Because of these properties, asbestos fibers have been used in a wide range of manufactured goods, including roofing shingles, ceiling and floor tiles, paper and cement products, textiles, coatings, and friction products such as automobile clutch, brake and transmission parts. The Toxic Substances Control Act defines asbestos as the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite (cumingtonite/grunerite); anthophyllite; tremolite; and actinolite.

The three most common varieties of asbestos are: chrysotile, amosite, and crocidolite. Chrysotile fibers are pliable and cylindrical, and often arranged in bundles. Amosite and crocidolite fibers are like tiny needles. Unlike most minerals, which turn into dust particles when crushed, asbestos breaks up into fine fibers that are too small to be seen by the human eye.

It is difficult to tell whether a material contains asbestos simply by looking at it, unless it is labeled. If in doubt, treat the material as if it contains asbestos. Testing is allowed by a certified AHERA tester.

Inspect exterior wall surfaces and sub-surfaces for asbestos siding prior to drilling or cutting. Typically, asbestos appears as a whitish, fibrous material which may release fibers that range in texture from coarse to silky.

Check state and local codes prior to the temporary removal and replacement of asbestos siding. It may only be allowable if local and state codes allow temporary removal and replacement of asbestos siding.

Keep activities to a minimum in any areas having damaged material that may contain asbestos. Document and inform the client regarding the damaged material and suspected asbestos. Do not further disturb the material. If necessary, weatherization work to that area may have to be deferred.

In Texas, allow for the temporary removal of asbestos siding so that insulation materials may be installed, provided:

- Technicians wear personal protective equipment;
- The ground in the work area is covered with plastic sheeting to capture broken fragments;
- The pieces of siding to be removed are first sprayed with water;
- Breakage is kept to an absolute minimum;
- The siding is replaced; and
- The cost to benefit ratio is justified.

Do not dust, sweep, or vacuum debris that may contain asbestos.

Never saw, sand, scrape, or drill holes in asbestos materials.

Do not track material that could contain asbestos through the house.

All precautions must be taken not to damage the siding during removal. Asbestos siding should never be cut or drilled.

It is recommended that insulation be installed through interior wall surfaces if possible to completely avoid disturbing or removing the asbestos siding on the exterior of the home.

Follow EPA and OSHA regulations regarding the safe handling of asbestos to ensure worker and client safety. OSHA Fact Sheet No. 92-06 "Better Protection Against Asbestos in the Workplace" is posted on the Department's website under Health and Safety. Follow State and Local codes pertaining to asbestos.

For additional information and guidance regarding asbestos, reference:

REFERENCE: Texas Asbestos Health Protection Rules (TAHPR)

REFERENCE: ADMINISTRATIVE CODE - TITLE 25 - PART 1

[CHAPTER 295.31 - CHAPTER 295.73](#)

'Texas (TX) Asbestos Removal & Abatement Resources' Sources:

- "Texas Administrative Code." Health Services, Texas Asbestos Health Protection. 23 May 2006. 27 Jan 2008. <http://www.dshs.state.tx.us/asbestos/rules.shtm>
- "Asbestos Program." Texas Department of State Health Services. 12 Dec 2005. 9 Feb 2008. <http://www.dshs.state.tx.us/asbestos/about.shtm>.

Standards for Deferral: Describe when deferral should take place for the specific health and safety category.

Deferral should be exercised when local and/or state code does not allow the removal of asbestos siding as part of general contracting work, or when the asbestos siding cannot be removed without disturbing the asbestos. Deferral and appropriate referral should also be exercised when the asbestos siding is already in such a damaged state that it is releasing asbestos fibers and insulation cannot be installed via interior wall surfaces.

Standards for Referral: Describe when referral should take place for the specific health and safety category. If possible, include associated referral agencies.

Referral shall be made at the State level at:
Environmental and Sanitation Licensing Group MC 2835
Texas Department of State Health Services
<http://www.dshs.state.tx.us/asbestos/default.shtm>

MAILING ADDRESS

P. O. Box 149347
Austin, Texas 78714-9347

PHYSICAL ADDRESS

The Exchange Building
8407 Wall Street
Austin, Texas 78754

MAIN PHONE:

(512) 834-6787 Ext. 2198 or (800) 572-5548 Ext. 2198

MAIN FAX:

(512) 834-6707

Asbestos Program Coordinator

Phone: (512) 834-6787, Extension 2198

Training Provision: Discuss how training will be provided for the specific health and safety category. **Note:** Some health and safety categories, like OSHA, require training.

OSHA Fact Sheet No. 92-06 "Better Protection Against Asbestos in the Workplace" is available on the

Department's website under Health and Safety for all Subgrantees' use: <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>

On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>.

The updated Health and Safety Presentation (updated for PY 2014) is posted on the Department's website under Webinars and Workshops at <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>.

Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.

Client Education: Discuss what specific steps will be taken to educate the client, if any, on the specific health and safety category if this is not explained elsewhere in the State Plan. **Note:** Some health and safety categories, like mold and moisture, require client education.

In every instance, clients shall be informed both verbally and in writing that suspected asbestos siding is present. Clients shall also be informed as to the precautions that will be taken. Client written materials shall include information about the potential health risks associated with asbestos.

Disposal Procedures: Provide disposal procedures or indicate where these procedures can be found in the Plan or Field Standards.

Proper disposal procedures are available at Texas Commission on Environmental Quality: Special Waste Disposal: http://www.tceq.texas.gov/permitting/waste_permits/msw_permits/msw_specialwaste.html

Texas Natural Resource Conservation Commission

Technical Assistance Team, Permits Section/MC 124

Municipal Solid Waste Division/ TNRCC

PO Box 13087, Austin , TX 78711-3087

Phone 512-239-6781 Fax 512-239-6717

Asbestos - in vermiculite

Concurrence or Alteration: Check if you concur with existing guidance from WPN 11-6 or if you are using an alternative action/allowability. Include the guidance action/allowability from WPN 11-6 or alternative guidance in the space provided. Alternatives must be explained and comply with DOE guidance. **Note:** Where an Action/Allowability or Testing is "required" or "not allowed" through WPN 11-6, the grantee must concur or choose to defer all units where the specific issue is encountered. Allowable items under WPN 11-6 leave room for determining if the issue or testing will be addressed and in what circumstances.

X-Concur with WPN 11-6	When vermiculite is present, unless testing determines otherwise, take precautionary measures as if it contains asbestos, such as not using blower door tests and utilizing personal air monitoring while in attics. Where blower door tests are performed, it is a best practice to perform pressurization instead of depressurization. Encapsulation by an appropriately trained asbestos control professional shall be allowed. <u>Removal shall not be allowed.</u>
-------------------------------	---

Funding: State that DOE funds are being used or indicate that alternate funding sources will be used to address this particular health and safety category.

DOE funds may be used.

Beyond Scope of DOE WAP: Describe how the issue will be treated if beyond the scope of DOE WAP.

If determined to be beyond the scope of the DOE WAP, follow all appropriate Deferral and Referral policies and protocols.

Standards for Remedy: Describe the standards for remedy of the health and safety category, including testing protocols. Also include when partial weatherization would be appropriate. **Note:** Some health and safety categories, like combustion gases, require testing.

Minimal standards for remedy include, but are not limited to the following:

If a home contains vermiculite insulation, assume that this material is contaminated with asbestos and do not disturb it.

To determine if the insulation is made from vermiculite refer to the photographs posted at http://www.epa.gov/asbestos/pubs/verm_questions.html. Compare the photos on the website to the undisturbed insulation in the home. Vermiculite insulation is a pebble-like, pour-in product and is usually gray-brown or silver-gold in color.

Asbestos Hazard Emergency Response Act of 1986 (AHERA) certified prescriptive sampling is allowed by a certified tester. However, it is recommended to assume that vermiculite insulation contains asbestos and proceed accordingly.

Do not open any walls to check for vermiculite. Only check for vermiculite in the attic, and if found, leave it undisturbed, when possible.

If it is absolutely necessary to go into the attic containing vermiculite insulation, limit the number of trips and shorten the length of those trips in order to limit any potential exposure and to avoid disturbing the product as any disturbance could potentially release asbestos fibers into the air.

Wear protective equipment when entering an attic area that may contain vermiculite insulation.

Do not track vermiculite insulation or associated dust into the living spaces of the home.

Follow EPA and OSHA regulations regarding the safe handling of asbestos to ensure worker and client safety. OSHA Fact Sheet No. 92-06 "Better Protection Against Asbestos in the Workplace" is posted on the Department's website under Health and Safety. Follow State and Local codes pertaining to asbestos.

For additional information and guidance regarding asbestos, reference:

Texas Asbestos Health Protection Rules (TAHPR)

TEXAS ADMINISTRATIVE CODE - TITLE 25 - PART 1

[CHAPTER 295.31 - CHAPTER 295.73](#)

'Texas (TX) Asbestos Removal & Abatement Resources' Sources:

- "Texas Administrative Code." Health Services, Texas Asbestos Health Protection. 23 May 2006. 27 Jan 2008. <http://www.dshs.state.tx.us/asbestos/rules.shtm>

"Asbestos Program." Texas Department of State Health Services. 12 Dec 2005. 9 Feb 2008.

<http://www.dshs.state.tx.us/asbestos/about.shtm>

Standards for Deferral: Describe when deferral should take place for the specific health and safety category.

Deferral may be exercised if it is determined that the vermiculite insulation material and/or associated dust is seeping into the home living spaces to an extent that cannot be resolved with typical weatherization sealing measures. Deferral of attic portion of the work may be exercised if it is determined that the attic already contains vermiculite insulation and it would be best to leave it undisturbed and encapsulated in its original form. Encapsulation of vermiculite should be performed by an AHERA asbestos control professional only.

Standards for Referral: Describe when referral should take place for the specific health and safety category. If possible, include associated referral agencies.

Referral shall be made at the State level at:
Environmental and Sanitation Licensing Group MC 2835
Texas Department of State Health Services
<http://www.dshs.state.tx.us/asbestos/default.shtm>

MAILING ADDRESS

P. O. Box 149347
Austin, Texas 78714-9347

PHYSICAL ADDRESS

The Exchange Building
8407 Wall Street
Austin, Texas 78754

MAIN PHONE:

(512) 834-6787 Ext. 2198 or (800) 572-5548 Ext. 2198

MAIN FAX:

(512) 834-6707

Asbestos Program Coordinator

Phone: (512) 834-6787, Extension 2198

Another source of vermiculite insulation information may be found at:

http://www.epa.gov/asbestos/pubs/vermiculite_message_to_the_public.pdf

Training Provision: Discuss how training will be provided for the specific health and safety category. **Note:** Some health and safety categories, like OSHA, require training.

OSHA Fact Sheet No. 92-06 “Better Protection Against Asbestos in the Workplace” is posted on the Department’s website under Health and Safety.

On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>.

The updated Health and Safety Presentation (updated for PY 2014) is posted on the Department’s website under Webinars and Workshops at <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>.

Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.

Client Education: Discuss what specific steps will be taken to educate the client, if any, on the specific health and safety category if this is not explained elsewhere in the State Plan. **Note:** Some health and safety categories, like mold and moisture, require client education.

In every instance, clients shall be informed both verbally and in writing that suspected asbestos is present. Clients shall also be informed as to the precautions that will be taken. Client written materials shall include information about the potential health risks associated with asbestos. When it is determined that vermiculite insulation is present in a client’s home, the EPA Fact Sheet, “Protect Your Family from Asbestos-Contaminated Vermiculite Insulation” shall be provided to the client. It can be found at http://www.epa.gov/asbestos/pubs/vermiculite_message_to_the_public.pdf

Disposal Procedures: Provide disposal procedures or indicate where these procedures can be found in the Plan or Field Standards.

Removal and/or disposal are not allowed for vermiculite insulation.

Referral shall be made at the State level at:

Environmental and Sanitation Licensing Group MC 2835

Texas Department of State Health Services

<http://www.dshs.state.tx.us/asbestos/default.shtm>

MAILING ADDRESS

P. O. Box 149347
Austin, Texas 78714-9347

PHYSICAL ADDRESS

The Exchange Building
8407 Wall Street
Austin, Texas 78754

MAIN PHONE:

(512) 834-6787 Ext. 2198 or (800) 572-5548 Ext. 2198

MAIN FAX:

(512) 834-6707

Asbestos Program Coordinator

Phone: (512) 834-6787, Extension 2198
DOE guidance does not allow for the removal of asbestos, unless on small covered surfaces. This guidance must always be followed.

Asbestos - on pipes, furnaces, other small covered surfaces

Concurrence or Alteration: Check if you concur with existing guidance from WPN 11-6 or if you are using an alternative action/allowability. Include the guidance action/allowability from WPN 11-6 or alternative guidance in the space provided. Alternatives must be explained and comply with DOE guidance. **Note:** Where an Action/Allowability or Testing is “required” or “not allowed” through WPN 11-6, the grantee must concur or choose to defer all units where the specific issue is encountered. Allowable items under WPN 11-6 leave room for determining if the issue or testing will be addressed and in what circumstances.

X-Concur with WPN 11-6	Assume asbestos is present in covering materials. Encapsulation is allowed by an AHERA asbestos control professional and should be conducted prior to any blower door testing. Removal may also be allowed by an AHERA asbestos control professional based on the situation as determined by the inspector or Agency Representative.
-------------------------------	--

Funding: State that DOE funds are being used or indicate that alternate funding sources will be used to address this particular health and safety category.

DOE funds may be used.

Beyond Scope of DOE WAP: Describe how the issue will be treated if beyond the scope of DOE WAP.

If determined to be beyond the scope of the DOE WAP, follow all appropriate Deferral and Referral policies and protocols.

Standards for Remedy: Describe the standards for remedy of the health and safety category, including testing protocols. Also include when partial weatherization would be appropriate. **Note:** Some health and safety categories, like combustion gases, require testing.

Inspect pipe and other coverings for asbestos. Testing is allowed only by a certified Tester. Check local codes prior to removal and replacement of asbestos containing materials. Removal and replacement of asbestos containing materials may be allowable by an AHERA asbestos control professional if local codes allow.

Keep activities to a minimum in any areas having damaged material that may contain asbestos. Document and inform the client regarding the damaged material and suspected asbestos. Do not further disturb the material.

Do not dust, sweep, or vacuum debris that may contain asbestos.

Never saw, sand, scrape, or drill holes in asbestos materials.

Do not track material that could contain asbestos through the house.

Follow EPA and OSHA regulations regarding the safe handling of asbestos to ensure worker and client safety. Follow State and Local codes pertaining to asbestos.

Texas Asbestos Health Protection Rules (TAHPR)

TEXAS ADMINISTRATIVE CODE - TITLE 25 - PART 1

CHAPTER 295.31 - CHAPTER 295.73

'Texas (TX) Asbestos Removal & Abatement Resources' Sources:

- "Texas Administrative Code." Health Services, Texas Asbestos Health Protection. 23 May 2006. 27 Jan 2008. <http://www.dshs.state.tx.us/asbestos/rules.shtm>
- "Asbestos Program." Texas Department of State Health Services. 12 Dec 2005. 9 Feb 2008. <http://www.dshs.state.tx.us/asbestos/about.shtm>.

Standards for Deferral: Describe when deferral should take place for the specific health and safety category.

Deferral should be exercised when the cost of an AHERA asbestos control professional to remove the asbestos, exceeds the total cost of all Weatherization Measures. For additional deferral criteria, see deferral section above.

Standards for Referral: Describe when referral should take place for the specific health and safety category. If possible, include associated referral agencies.

Referral shall be made at the State level at:
Environmental and Sanitation Licensing Group MC 2835
Texas Department of State Health Services
<http://www.dshs.state.tx.us/asbestos/default.shtm>

MAILING ADDRESS

P. O. Box 149347
Austin, Texas 78714-9347

PHYSICAL ADDRESS

The Exchange Building
8407 Wall Street
Austin, Texas 78754

MAIN PHONE:

(512) 834-6787 Ext. 2198 or (800) 572-5548 Ext. 2198

MAIN FAX:

(512) 834-6707

Asbestos Program Coordinator

Phone: (512) 834-6787, Extension 2198

Training Provision: Discuss how training will be provided for the specific health and safety category. **Note:** Some health and safety categories, like OSHA, require training.

OSHA Fact Sheet No. 92-06 "Better Protection Against Asbestos in the Workplace" is posted on the Department's website under Health and Safety.

On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>.

Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.

Client Education: Discuss what specific steps will be taken to educate the client, if any, on the specific health and safety category if this is not explained elsewhere in the State Plan. **Note:** Some health and safety categories, like mold and moisture, require client education.

In every instance, clients shall be informed both verbally and in writing that suspected asbestos is present. Clients shall also be informed as to the precautions that will be taken. Client written materials shall include information about the potential health risks associated with asbestos.

Disposal Procedures: Provide disposal procedures or indicate where these procedures can be found in the Plan or Field Standards.

All local, state and federal requirements and regulations shall be followed by Texas Subgrantees. At the State level, asbestos related referral and/or disposal questions, as well as other asbestos related questions/issues, may be referred to DOE guidance does not allow for the removal of asbestos, unless on small covered surfaces. This guidance must always be followed.

Biologicals and Unsanitary Conditions - odors, mustiness, bacteria, viruses, raw sewage, rotting wood, etc.

Concurrence or Alteration: Check if you concur with existing guidance from WPN 11-6 or if you are using an alternative action/allowability. Include the guidance action/allowability from WPN 11-6 or alternative guidance in the space provided. Alternatives must be explained and comply with DOE guidance. **Note:** Where an Action/Allowability or Testing is “required” or “not allowed” through WPN 11-6, the grantee must concur or choose to defer all units where the specific issue is encountered. Allowable items under WPN 11-6 leave room for determining if the issue or testing will be addressed and in what circumstances.

X-Concur with WPN 11-6	Remediation of conditions that may lead to or promote biological concerns and unsanitary conditions is allowed. Addressing bacteria and viruses is not an allowable cost. Deferral may be necessary in cases where a known agent is present in the home that may create a serious risk to occupants or weatherization workers. More information is available under the Mold and Moisture guidance below.
-------------------------------	--

Funding: State that DOE funds are being used or indicate that alternate funding sources will be used to address this particular health and safety category.

DOE funds may be used.

Beyond Scope of DOE WAP: Describe how the issue will be treated if beyond the scope of DOE WAP.

If the issue is determined to be beyond the scope of DOE WAP, crews/contractors shall follow all Texas Referral and Deferral policies and protocols.

Standards for Remedy: Describe the standards for remedy of the health and safety category, including testing protocols. Also include when partial weatherization would be appropriate. **Note:** Some health and safety categories, like combustion gases, require testing.

This health and safety category shall require sensory inspection for the purpose of detection.

Types of health and safety hazards that may be included under this category include, but are not limited to:

- Odors;
- Mustiness;
- Bacteria;
- Viruses;
- Raw sewage;
- Rotting wood;
- Garbage;
- Etc.

Addressing bacteria and viruses shall not be allowed. Deferral may be necessary in cases where a known agent is present in the home that may create a serious risk to occupants or weatherization crews/contractors.

The use of personal protective equipment shall be strictly enforced. Respirators, protective eyewear, and protective clothing will be worn when there is suspicion or knowledge that biological agents may be present in order to eliminate or minimize crew exposure.

In the past, remediation of conditions listed under this health and safety category was not allowed. It is allowable under WPN 11-6, except for the removal of known bacteria and viruses, and Texas will train crews/contractors regarding specific remediation activities that may be allowable. Remediation requires prior

approval from the Department. Texas will assess the cost-effectiveness and necessity of remediation of these conditions on a case by case basis.

See Mold and Moisture guidance below for additional standards for remedy.

Standards for Deferral: Describe when deferral should take place for the specific health and safety category.

Visual and sensory inspection must be performed for the purpose of detection of health and safety hazards such as, but are not limited to:

- Odors;
- Mustiness;
- Bacteria;
- Viruses;
- Raw sewage;
- Rotting wood;
- Garbage;
- Etc.

The use of personal protective equipment (Respirators, protective eyewear), and protective clothing will be worn when there is suspicion or knowledge that biological agents may be present in order to eliminate or minimize crew exposure.

Deferral may be necessary in cases where a known agent is present in the home that may create a serious risk to occupants or weatherization crews/contractors. For additional deferral criteria, see deferral section above.

Standards for Referral: Describe when referral should take place for the specific health and safety category. If possible, include associated referral agencies.

Referral should be made when problems are identified that are beyond the scope of the DOE WAP, such as the presence of raw sewage or other known agents. Examples of referral agencies include, but are not limited to, LIHEAP-WAP, CEAP, CSBG, HPG, Utility Companies, and other state or local resources. When biological or virus agents are suspected, referral to the Texas Health and Human Services Commission may be warranted. Information is available at <http://www.hhsc.state.tx.us>

Training Provision: Discuss how training will be provided for the specific health and safety category. **Note:** Some health and safety categories, like OSHA, require training.

On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>.

The updated Health and Safety Presentation (updated for PY 2014) is posted on the Department's website under Webinars and Workshops at <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>.

Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.

Client Education: Discuss what specific steps will be taken to educate the client, if any, on the specific health and safety category if this is not explained elsewhere in the State Plan. **Note:** Some health and safety categories, like mold and moisture, require client education.

Clients shall be given information on the appropriate clean-up and removal of biological hazards identified during the initial inspection performed by the Assessor.

Disposal Procedures: Provide disposal procedures or indicate where these procedures can be found in the Plan or Field Standards.

All Federal, State, and local regulations shall be followed regarding the disposal procedures as they pertain to this health and safety category.

Building Structure and Roofing

Concurrence or Alteration: Check if you concur with existing guidance from WPN 11-6 or if you are using an alternative action/allowability. Include the guidance action/allowability from WPN 11-6 or alternative guidance in the space provided. Alternatives must be explained and comply with DOE guidance. **Note:** Where an Action/Allowability or Testing is “required” or “not allowed” through WPN 11-6, the grantee must concur or choose to defer all units where the specific issue is encountered. Allowable items under WPN 11-6 leave room for determining if the issue or testing will be addressed and in what circumstances.

X-Concur with WPN 11-6	Building rehabilitation is beyond the scope of the WAP. Homes with conditions that require more than incidental repair should be deferred. More information is available under the Mold and Moisture guidance below.
-------------------------------	--

Funding: State that DOE funds are being used or indicate that alternate funding sources will be used to address this particular health and safety category.

DOE funds may not be used for building rehabilitation work that goes beyond the scope of the WAP and requires more than incidental repairs.

Beyond Scope of DOE WAP: Describe how the issue will be treated if beyond the scope of DOE WAP.

Structurally compromised areas requiring more than incidental repairs shall be deemed beyond the scope of the WAP and shall be deferred.

Standards for Remedy: Describe the standards for remedy of the health and safety category, including testing protocols. Also include when partial weatherization would be appropriate. **Note:** Some health and safety categories, like combustion gases, require testing.

Minimal standards for remedy include, but are not limited to the following:

Visual inspection.

Ensure that access to areas necessary for weatherization is safe for entry and performance of assessment, work, and inspection.

Notify client of structurally compromised areas; defer weatherization work to those areas.

Basic guidance for WAP crews/contractors:

While conducting the initial audit, the building structure shall be inspected for structural integrity. Minor repairs to protect the DOE materials installed may be performed to protect the energy saving investment. However, building rehabilitation is beyond the scope of the WAP. Dwellings whose structural integrity is in question should be referred to agencies that deliver HUD funds or other appropriate local and state agencies. Weatherization services may need to be delayed or deferred until the dwelling can be made safe for crews/contractors and occupants. Incidental (minor) repairs necessary to effectively perform or preserve weatherization materials/measures are allowed. Examples of these include sealing minor roof leaks to preserve new attic insulation and repairing water-damaged flooring as part of replacing a water heater. Incidental structural repairs shall not include cosmetic applications, such as replacing a floor covering such as a carpet or linoleum. Only the structural part shall be replaced/repaired.

Standards for Deferral: Describe when deferral should take place for the specific health and safety category.

Homes that require more than incidental (minor) repair should be deferred.

Standards for Referral: Describe when referral should take place for the specific health and safety category. If possible, include associated referral agencies.

Dwellings whose structural integrity is in question should be referred to local code enforcement authorities or agencies such as Habitat for Humanity, United Way, and other state or local resources.

Training Provision: Discuss how training will be provided for the specific health and safety category. **Note:** Some health and safety categories, like OSHA, require training.

On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>.

The updated Health and Safety Presentation (updated for PY 2014) is posted on the Department’s website under Webinars and Workshops at <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>.

Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.

Client Education: Discuss what specific steps will be taken to educate the client, if any, on the specific health and safety category if this is not explained elsewhere in the State Plan. **Note:** Some health and safety categories, like mold and moisture, require client education.

Clients shall be notified verbally and in writing regarding any structurally compromised areas. Appropriate referral resources shall also be provided to the client.

Disposal Procedures: Provide disposal procedures or indicate where these procedures can be found in the Plan or Field Standards.

All Federal, state and local regulations regarding disposal of construction waste shall be followed.

Code Compliance

Concurrence or Alteration: Check if you concur with existing guidance from WPN 11-6 or if you are using an alternative action/allowability. Include the guidance action/allowability from WPN 11-6 or alternative guidance in the space provided. Alternatives must be explained and comply with DOE guidance. **Note:** Where an Action/Allowability or Testing is “required” or “not allowed” through WPN 11-6, the grantee must concur or choose to defer all units where the specific issue is encountered. Allowable items under WPN 11-6 leave room for determining if the issue or testing will be addressed and in what circumstances.

X-Concur with WPN 11-6	Correction of pre-existing code compliance issues is not an allowable cost other than where weatherization measures are being conducted. State and local (or jurisdiction having authority) codes must be followed while installing weatherization measures. Condemned properties and properties where “red tagged” health and safety conditions exist that cannot be corrected under this guidance should be deferred.
-------------------------------	--

Funding: State that DOE funds are being used or indicate that alternate funding sources will be used to address this particular health and safety category.

DOE funds may be used when weatherization measures are being conducted. They may not be used simply to correct pre-existing code compliance issues.

Beyond Scope of DOE WAP: Describe how the issue will be treated if beyond the scope of DOE WAP.

If the issue is determined to be beyond the scope of DOE WAP, crews/contractors shall follow all Texas Referral and Deferral policies and protocols.

Standards for Remedy: Describe the standards for remedy of the health and safety category, including testing protocols. Also include when partial weatherization would be appropriate. **Note:** Some health and safety categories, like combustion gases, require testing.

Minimal standards for remedy include, but are not limited to the following:

Visual inspection as well as local code enforcement inspections shall be necessary to comply with WPN 11-6 guidance.

Follow all State and Local codes when installing weatherization measures.

Acquire all required permits and licenses pertinent to installing weatherization measures. These vary by jurisdiction and it is the responsibility of each Subgrantee agency to know what the codes are in each of the areas

they work, as well as what permits and licenses are required in each of the areas they work.
Standards for Deferral: Describe when deferral should take place for the specific health and safety category.
Condemned properties shall be deferred. Properties where “red-tagged” health and safety conditions exist that cannot be addressed with DOE H&S funding, should be deferred.
Standards for Referral: Describe when referral should take place for the specific health and safety category. If possible, include associated referral agencies.
Where code compliance issues are identified and cannot be corrected under WPN 11-6 guidance, or program guidance, appropriate referrals should be made. Examples of referral agencies include, but are not limited to Habitat for Humanity, United Way, CEAP, CSBG, HPG, Utility Companies, and other state or local resources.
Training Provision: Discuss how training will be provided for the specific health and safety category. Note: Some health and safety categories, like OSHA, require training.
The Department is working with the State Energy Conservation Office (DOE State Energy Program Subgrantee and the state authority to adopt code) on a collaborative effort to address code compliance issues. The collaborative will address code education throughout the State of Texas. Classes will be available to all Subgrantees to attend at a nominal fee set by the collaborative to cover costs. Once finalized, information regarding this will be communicated to Subgrantees.
Client Education: Discuss what specific steps will be taken to educate the client, if any, on the specific health and safety category if this is not explained elsewhere in the State Plan. Note: Some health and safety categories, like mold and moisture, require client education.
Inform client of observed code compliance issues. Make appropriate referrals as necessary.
Disposal Procedures: Provide disposal procedures or indicate where these procedures can be found in the Plan or Field Standards.
All Federal, state and local regulations regarding disposal of construction waste shall be followed.

Combustion Gases

Concurrence or Alteration: Check if you concur with existing guidance from WPN 11-6 or if you are using an alternative action/allowability. Include the guidance action/allowability from WPN 11-6 or alternative guidance in the space provided. Alternatives must be explained and comply with DOE guidance. Note: Where an Action/Allowability or Testing is “required” or “not allowed” through WPN 11-6, the grantee must concur or choose to defer all units where the specific issue is encountered. Allowable items under WPN 11-6 leave room for determining if the issue or testing will be addressed and in what circumstances.	
X-Concur with WPN 11-6	Proper venting to the outside for combustion appliances, including gas dryers, is required. Correction of venting is allowed when testing indicates a problem.
Funding: State that DOE funds are being used or indicate that alternate funding sources will be used to address this particular health and safety category.	
DOE funds may be used in accordance with guidance in WPN 11-6.	
Beyond Scope of DOE WAP: Describe how the issue will be treated if beyond the scope of DOE WAP.	
If the issue is determined to be beyond the scope of DOE WAP, crews/contractors shall follow all Texas Referral and Deferral policies and protocols.	
Standards for Remedy: Describe the standards for remedy of the health and safety category, including testing protocols. Also include when partial weatherization would be appropriate. Note: Some health and safety categories, like combustion gases, require testing.	
A complete mechanical systems assessment is required to be completed on every home. All relevant information must be recorded on the Heating/cooling systems and Appliance Worksheet. The procedure includes collecting general information; collecting and recording mechanical systems information; visual and diagnostic inspection of the venting and distribution system; and, combustion analysis and diagnostic testing of gas/propane fired equipment, and post-installation safety tests for CO.	

Combustion safety testing is required when combustion appliances are present. Combustion appliances include any appliance using combustible fuels, including gas water heaters, wood stoves, gas or oil fueled furnace/heat system, including free standing space heaters fueled by kerosene, natural gas, or propane.

The combustion appliance safety inspection includes all of the following: carbon monoxide testing, draft measurement, spillage evaluation, and worst case depressurization of the combustion appliance zone (CAZ). Combustion safety test results must be acted upon appropriately according to the combustion safety tables. Testing protocols can be found in Chapter 2 and 3 of the Texas Mechanical Systems Field Guide which has been distributed to the entire weatherization network and is located on the Department's website <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>

As applicable, every combustion appliance will be checked for a safe flue pipe, chimney or vent, adequate combustion air, and gas leakage. DOE will not permit any DOE-funded weatherization work where the dwelling unit is heated with an unvented gas- and/or liquid-fueled space heater as the primary heat source. In such cases the primary space heater must be removed and a vented, code compliant heat source must be installed prior to the installation of weatherization measures. DOE will allow unvented gas- or liquid-fueled space heaters to remain as secondary heat sources provided they comply with ANSI Z21.11.2, the IRC, and the IFGC. LIHEAP-WAP may replace non-compliant secondary unvented gas- or liquid-fueled space heaters.

Weatherization Assessors and Final Inspectors must test naturally drafting appliances for draft and spillage under worst case conditions before and after air tightening is performed.

Weatherization Assessors and Final Inspectors must also test cooking burners for operability, and flame quality.

Subgrantees must test for high carbon monoxide (CO) levels and bring CO levels to acceptable levels before weatherization work can start. The Department has defined maximum acceptable CO readings as follows: (1) 25 parts per million for cook stove burners and unvented space heaters; (2) 100 parts per million for vented combustion appliance; and (3) 150 parts per million for cook stove ovens.

Investigate and correct a steady state CO reading >100 ppm in the following appliances: water heater, furnace or space heater.

CO detectors should be installed in all homes when fuel-fired (combustion) appliances exist. This includes: cook stoves, furnaces, water heaters, wood and coal burning stoves.

Combustion appliances must be installed to the IRC or local code regulations.

TDHCA Subgrantee Guidance:

Oven replacements are Not allowed. If CO readings are above the limits above follow these steps:

1. Clean or repair
2. If still has high CO levels, then see if another funding source is able to pay for the stove replacement.
3. If no other source, the house must be deferred until the occupant can address the stove.
4. Document all steps.

REFERENCE: "Combustion Safety & Efficiency Testing" in the Texas Mechanical Systems Field Guide

Standards for Deferral: Describe when deferral should take place for the specific health and safety category.

Deferral should be exercised when existing code violations are present and correcting them would be beyond the scope of the DOE WAP, and/or when there are problems affecting the combustion appliance that are beyond the

scope of the DOE WAP, such as certain electrical problems. For additional deferral criteria, see deferral section above.
Standards for Referral: Describe when referral should take place for the specific health and safety category. If possible, include associated referral agencies.
Referrals should be made when problems are identified that are beyond the scope of the DOE WAP, such as electrical or other code violations. Examples of referral agencies include, but are not limited to, LIHEAP-WAP, CEAP, CSBG, HPG, Utility Companies, and other state or local resources.
Training Provision: Discuss how training will be provided for the specific health and safety category. Note: Some health and safety categories, like OSHA, require training.
On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm .
The updated Health and Safety Presentation (updated for PY 2014) is posted on the Department's website under Webinars and Workshops at http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm .
The Department implemented ASHRAE 62.2-2013 in its 2014 program year. Training for Subgrantees was provided via webinar on October 29, 2014 and included a refresher on ventilation requirements and instruction on changes from ASHRAE 2010 to 2013, including but not limited to: <ol style="list-style-type: none"> 1. Local exhaust exceptions 2. Flow measurement 3. Different air flow calculation: The Department will use the updated calculator provided by Residential Energy Dynamics at http://www.residentialenergydynamics.com/REDCalcFree/Tools/ASHRAE6222013.aspx . This tool has been updated to apply the changes in the air flow calculation from 2010 to 2013. 4. Infiltration credit 5. Newly added carbon monoxide alarm and pressure drop requirements 6. Use with Multifamily units
In addition, the new ASHRAE standards are incorporated into the Standard Work Specifications published by NREL, which the Department is currently incorporating. Additional training for Subgrantees will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees, etc. Training for program monitors so that they can monitor for compliance with all requirements will be handled via the webinar and in-house on an as-needed basis. Training and Technical Assistance staff will ensure compliance with ASHRAE 62.2-2013 during technical assistance visits to Subgrantees, and Monitors will ensure compliance with ASHRAE 62.2-2013 when they review completed units.
Client Education: Discuss what specific steps will be taken to educate the client, if any, on the specific health and safety category if this is not explained elsewhere in the State Plan. Note: Some health and safety categories, like mold and moisture, require client education.
Client shall be provided with combustion safety and hazards information, including the importance of using exhaust ventilation when cooking and the importance of keeping burners clean to limit the production of CO.
Disposal Procedures: Provide disposal procedures or indicate where these procedures can be found in the Plan or Field Standards.
Weatherization agencies shall require subcontractors to dispose of old Heating/cooling systems as part of the repair/installation job. All weatherization agencies and subcontractors must follow local and state regulations when disposing of old Heating/cooling systems components and /or fuels.
Combustion Gas Problem Discovery: Provide a narrative describing the process to be followed when combustion gas testing reveals health and safety concerns.
All homes with combustion appliances shall be tested to determine if carbon monoxide levels exceed those recommended by the Texas Weatherization Technical Standards, EPA, OSHA, and gas utilities. The existing

primary standards for Ambient Air Quality, per EPA, are 9 parts per million (ppm) measured over 8 hours, and 35 ppm measured over 1 hour. OSHA standards for CO exposure: The OSHA PEL is 50 ppm. OSHA standards prohibit worker exposure to more than 50 parts of the gas per million part of air averaged during an 8-hour time period.

The Texas TAC requires that crews/contractors investigate and correct steady state CO readings > 150 ppm from gas ovens and >25ppm for cook-top burners. Crews/contractors must also investigate and correct steady-state CO readings > 100 ppm for gas water heaters, and furnaces/space heaters. Combustion air requirements and availability must be calculated for all combustion appliances. When combustion gas testing reveals health and safety concerns, clients shall be notified of the health and safety concern, and the concern shall be remedied to remove the health and safety risk if it can be remedied within the scope of the DOE WAP. If it cannot be satisfactorily remedied within the scope of the DOE WAP, the work may have to be deferred. Clients shall be notified both in writing and verbally, and crews/contractors shall make every reasonable effort to refer the client to other resources.

Should crew members or occupants show any signs of CO poisoning, proper first aid protocols should be followed, including getting them to fresh air right away and seeking immediate medical attention. Common symptoms of CO exposure include: headaches, dizziness and drowsiness. More severe symptoms include: nausea, vomiting, tightness across the chest. Severe carbon monoxide poisoning can cause neurological damage, illness, coma and death.

Drainage - gutters, down spouts, extensions, flashing, sump pumps, landscape, etc.

Concurrence or Alteration: Check if you concur with existing guidance from WPN 11-6 or if you are using an alternative action/allowability. Include the guidance action/allowability from WPN 11-6 or alternative guidance in the space provided. Alternatives must be explained and comply with DOE guidance. **Note:** Where an Action/Allowability or Testing is “required” or “not allowed” through WPN 11-6, the grantee must concur or choose to defer all units where the specific issue is encountered. Allowable items under WPN 11-6 leave room for determining if the issue or testing will be addressed and in what circumstances.

X-Concur with WPN 11-6	Major drainage issues are beyond the scope of the WAP. Homes with conditions that may create a serious health concern that requires more than incidental repairs should be deferred. See Mold and Moisture guidance below.
-------------------------------	--

Funding: State that DOE funds are being used or indicate that alternate funding sources will be used to address this particular health and safety category.

DOE funds may not be used to address major drainage issues. The cost to address the drainage issues must not exceed the total cost of all weatherization measures.

Beyond Scope of DOE WAP: Describe how the issue will be treated if beyond the scope of DOE WAP.

If the issue is determined to be beyond the scope of DOE WAP, crews/contractors shall follow all Texas Referral and Deferral policies and protocols.

Standards for Remedy: Describe the standards for remedy of the health and safety category, including testing protocols. Also include when partial weatherization would be appropriate. **Note:** Some health and safety categories, like combustion gases, require testing.

Major drainage issues are beyond the scope of the WAP. Homes with conditions that may create a serious health concern that require more than incidental repair shall be deferred. Visual inspection and observation shall be the primary mechanism for detecting drainage issues.

Standards for Deferral: Describe when deferral should take place for the specific health and safety category.

Deferral should be exercised when major drainage issues are present and could present a serious health risk and correcting them would be beyond the scope of the DOE WAP. For additional deferral criteria, see deferral section above.

Standards for Referral: Describe when referral should take place for the specific health and safety category. If possible, include associated referral agencies.
Referral should be made when problems are identified that are beyond the scope of the DOE WAP, such as code violations, structural issues or serious drainage issues. Examples of referral agencies include, but are not limited to, LIHEAP-WAP, CEAP, CSBG, HPG, Utility Companies, and other state or local resources.
Training Provision: Discuss how training will be provided for the specific health and safety category. Note: Some health and safety categories, like OSHA, require training.
On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm .
The updated Health and Safety Presentation (updated for PY 2014) is posted on the Department’s website under Webinars and Workshops at http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm .
Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.
Client Education: Discuss what specific steps will be taken to educate the client, if any, on the specific health and safety category if this is not explained elsewhere in the State Plan. Note: Some health and safety categories, like mold and moisture, require client education.
Client education shall include, but not be limited to, the importance of cleaning and maintaining drainage systems.
Disposal Procedures: Provide disposal procedures or indicate where these procedures can be found in the Plan or Field Standards.
State and local codes and regulations shall always be adhered to for proper disposal procedures.

Electrical, other than Knob-and-Tube Wiring

Concurrence or Alteration: Check if you concur with existing guidance from WPN 11-6 or if you are using an alternative action/allowability. Include the guidance action/allowability from WPN 11-6 or alternative guidance in the space provided. Alternatives must be explained and comply with DOE guidance. Note: Where an Action/Allowability or Testing is “required” or “not allowed” through WPN 11-6, the grantee must concur or choose to defer all units where the specific issue is encountered. Allowable items under WPN 11-6 leave room for determining if the issue or testing will be addressed and in what circumstances.
X-Concur with WPN 11-6 Minor electrical repairs are allowed where health or safety of the occupant(s) may be at risk. Upgrades and repairs are allowed when necessary to perform specific weatherization measures.
Funding: State that DOE funds are being used or indicate that alternate funding sources will be used to address this particular health and safety category.
DOE funds may be used.
Beyond Scope of DOE WAP: Describe how the issue will be treated if beyond the scope of DOE WAP.
If the issue is determined to be beyond the scope of DOE WAP, crews/contractors shall follow all Texas Referral and Deferral policies and protocols.
Standards for Remedy: Describe the standards for remedy of the health and safety category, including testing protocols. Also include when partial weatherization would be appropriate. Note: Some health and safety categories, like combustion gases, require testing.
Aluminum wiring should be thoroughly inspected before any insulation work is done. If aluminum wiring is found to be active and in the areas to be insulated, no insulation should be added.
When electrical repairs within the scope of the DOE WAP are required, the typical standard of remedy shall be to sub-contract the repair work to a licensed electrician. All appropriate procurement procedures shall be followed when sub-contracting.

Testing shall include visual inspection, as well as voltage drop and voltage detection testing.
Standards for Deferral: Describe when deferral should take place for the specific health and safety category.
Deferral should be exercised when existing code violations are present and correcting them would be beyond the scope of the DOE WAP, and/or when there are problems affecting the Heating/cooling systems that are beyond the scope of the DOE WAP, such as certain electrical problems which fall outside of the scope of the DOE WAP because they require more than incidental minor repair. For additional deferral criteria, see deferral section above. If electrical wiring and circuitry is found to be in such a condition as to be a serious safety risk, work should be deferred until the electrical safety issue has been satisfactorily corrected. Client and/or building owner must be informed of the safety risk.
Standards for Referral: Describe when referral should take place for the specific health and safety category. If possible, include associated referral agencies.
Referral should be made when problems are identified that go beyond the scope of the DOE WAP, such as electrical or other code violations. Examples of referral agencies include, but are not limited to, LIHEAP-WAP, CEAP, CSBG, HPG, Utility Companies, and other state or local resources.
Training Provision: Discuss how training will be provided for the specific health and safety category. Note: Some health and safety categories, like OSHA, require training.
On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm .
The updated Health and Safety Presentation (updated for PY 2014) is posted on the Department’s website under Webinars and Workshops at http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm .
Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.
Client Education: Discuss what specific steps will be taken to educate the client, if any, on the specific health and safety category if this is not explained elsewhere in the State Plan. Note: Some health and safety categories, like mold and moisture, require client education.
Provide information on overloading circuits and electrical safety and risks.
Disposal Procedures: Provide disposal procedures or indicate where these procedures can be found in the Plan or Field Standards.
State and local codes and regulations shall always be adhered to for proper disposal procedures and protocols.

Electrical, Knob-and-Tube Wiring

Concurrence or Alteration: Check if you concur with existing guidance from WPN 11-6 or if you are using an alternative action/allowability. Include the guidance action/allowability from WPN 11-6 or alternative guidance in the space provided. Alternatives must be explained and comply with DOE guidance. Note: Where an Action/Allowability or Testing is “required” or “not allowed” through WPN 11-6, the grantee must concur or choose to defer all units where the specific issue is encountered. Allowable items under WPN 11-6 leave room for determining if the issue or testing will be addressed and in what circumstances.	
X-Concur with WPN 11-6	Minor upgrades and repairs necessary for weatherization measures and where the health or safety of the occupant(s) is at risk may be allowed.
TDHCA concurs with refined guidance	However, TDHCA prohibits installing insulation over knob-and-tube wiring. Thus, insulating over knob-and-tube wiring is not allowable under Texas WAP field standards.
Funding: State that DOE funds are being used or indicate that alternate funding sources will be used to address this particular health and safety category.	

DOE funds may be used except to install insulation over knob-and-tube wiring which is not allowable. Funds may be used only for minor repairs and upgrades as stipulated above.
Beyond Scope of DOE WAP: Describe how the issue will be treated if beyond the scope of DOE WAP.
If the issue is determined to be beyond the scope of DOE WAP, crews/contractors shall follow all Texas Referral and Deferral policies and protocols.
Standards for Remedy: Describe the standards for remedy of the health and safety category, including testing protocols. Also include when partial weatherization would be appropriate. Note: Some health and safety categories, like combustion gases, require testing.
Prior to insulating around Knob and Tube wiring, barriers must be installed to keep insulation at least three inches from the K&T. Subgrantees must follow the Best Practice on K&T wiring as well as the Weatherization Field Guides http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm
Standards for Deferral: Describe when deferral should take place for the specific health and safety category.
Deferral should be exercised when existing code violations are present and correcting them would be beyond the scope of the DOE WAP, such as certain electrical problems. In the specific instance where active knob-and-tube wiring is present and it presents a safety risk, weatherization work may have to be deferred until the electrical safety issue has been adequately addressed. If the cost of repairs to knob and tube wiring exceeds 15% of the health and safety costs of weatherizing the unit, then a detailed documented review must be conducted by a minimum of program coordinator, assessor, and executive director (or someone appointed by the executive director).
Standards for Referral: Describe when referral should take place for the specific health and safety category. If possible, include associated referral agencies.
Referral should be made when problems are identified that are beyond the scope of the DOE WAP, such as electrical or other code violations. Examples of referral agencies include, but are not limited to, LIHEAP-WAP, CEAP, CSBG, HPG, Utility Companies, and other state or local resources.
Training Provision: Discuss how training will be provided for the specific health and safety category. Note: Some health and safety categories, like OSHA, require training.
On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm .
The updated Health and Safety Presentation (updated for PY 2014) is posted on the Department's website under Webinars and Workshops at http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm .
Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.
Client Education: Discuss what specific steps will be taken to educate the client, if any, on the specific health and safety category if this is not explained elsewhere in the State Plan. Note: Some health and safety categories, like mold and moisture, require client education.
Provide information to client on over-current protection, overloading circuits, and basic electrical safety/risks.
Disposal Procedures: Provide disposal procedures or indicate where these procedures can be found in the Plan or Field Standards.
State and local codes shall be adhered to for proper disposal procedures and protocols.

Fire Hazards

Concurrence or Alteration: Check if you concur with existing guidance from WPN 11-6 or if you are using an alternative action/allowability. Include the guidance action/allowability from WPN 11-6 or alternative guidance in the space provided. Alternatives must be explained and comply with DOE guidance. Note: Where an Action/Allowability or Testing is "required" or "not allowed" through WPN 11-6, the grantee must concur or choose to defer all units where the specific issue is encountered. Allowable items under WPN 11-6 leave room for determining if the issue or testing will be addressed and in what circumstances.
--

X-Concur with WPN 11-6	Correction of fire hazards is allowed when necessary to safely perform weatherization.
Funding:	State that DOE funds are being used or indicate that alternate funding sources will be used to address this particular health and safety category.
	DOE funds may be used.
Beyond Scope of DOE WAP:	Describe how the issue will be treated if beyond the scope of DOE WAP.
	If the issue is determined to be beyond the scope of DOE WAP, crews/contractors shall follow all Texas Referral and Deferral policies and protocols.
Standards for Remedy:	Describe the standards for remedy of the health and safety category, including testing protocols. Also include when partial weatherization would be appropriate. Note: Some health and safety categories, like combustion gases, require testing.
	At all times, crews/contractors are to look for potential fire hazards.
	Crews/contractors and auditors shall check for potential fire hazards in the home during the audit and while performing the weatherization work.
	Fire hazards must be remedied. If the remedy falls within the scope of the DOE WAP, the crew shall remedy the situation to eliminate the fire hazard they identified.
	If the remedy required to remove the fire hazard goes beyond the scope of the DOE WAP, weatherization work may have to be deferred until the fire hazard has been eliminated. Proper referral and deferral protocols shall be followed.
	Clients must be notified of any identified fire hazards and noted in client file.
Standards for Deferral:	Describe when deferral should take place for the specific health and safety category.
	When the crew or a sub-contractor working within the scope of the DOE WAP is unable to rectify the fire hazard, deferral protocols should be exercised.
Standards for Referral:	Describe when referral should take place for the specific health and safety category. If possible, include associated referral agencies.
	A referral should be made when problems are identified that are beyond the scope of the DOE WAP, such as electrical or other code violations. Examples of referral agencies include, but are not limited to, LIHEAP-WAP, CEAP, CSBG, HPG, Utility Companies, and other state or local resources. In some instances, it is recommended to have the local fire authority inspect the home to ensure that the fire hazard has been fully remedied. If there are elderly persons, persons with disabilities, or small children in the home and the fire hazard that was identified poses a serious risk to their safety, the agency might consider contacting the local fire marshal.
Training Provision:	Discuss how training will be provided for the specific health and safety category. Note: Some health and safety categories, like OSHA, require training.
	State-wide training specific to OSHA 10 & 30 were conducted during the ARRA WAP. Those certifications will expire in 2015 and certification courses will be built into our plan for ongoing regional training.
	“Potential Fire Hazards in a Home” is posted on the Department Website under Health and Safety: http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm
	Subgrantees are encouraged to have the local fire department conduct trainings for staff.
	Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.
Client Education:	Discuss what specific steps will be taken to educate the client, if any, on the specific health and safety category if this [issue of fire hazards] is not explained elsewhere in the State Plan. Note: Some health and

safety categories, like mold and moisture, require client education.

Clients, occupants, and building owners/landlords will be notified in writing of potential fire hazards identified during the initial inspection performed by the Assessor. "Potential Fire Hazards in a Home" is posted on the Department Website under Health and Safety: <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>

Disposal Procedures: Provide disposal procedures or indicate where these procedures can be found in the Plan or Field Standards.

State and local codes shall always be adhered to for proper disposal procedures and protocols.

Formaldehyde, Volatile Organic Compounds (VOCs), and other Air Pollutants

Concurrence or Alteration: Check if you concur with existing guidance from WPN 11-6 or if you are using an alternative action/allowability. Include the guidance action/allowability from WPN 11-6 or alternative guidance in the space provided. Alternatives must be explained and comply with DOE guidance. **Note:** Where an Action/Allowability or Testing is "required" or "not allowed" through WPN 11-6, the grantee must concur or choose to defer all units where the specific issue is encountered. Allowable items under WPN 11-6 leave room for determining if the issue or testing will be addressed and in what circumstances.

Concur with WPN 11-6
X-Non-Concurrence:
TDHCA guidance

Removal of pollutants is not allowed by WAP workers without Department approval. If pollutants pose a risk to workers and removal cannot be performed or the client refuses to remove the pollutants, the unit must be deferred.

Funding: State that DOE funds are being used or indicate that alternate funding sources will be used to address this particular health and safety category.

DOE funds may not be used to remove pollutants without Department approval.

Beyond Scope of DOE WAP: Describe how the issue will be treated if beyond the scope of DOE WAP.

If the identified pollutants pose a risk to workers and removal cannot be performed because it goes beyond the scope of the DOE WAP, or if the client will not allow the removal of the pollutants, the unit will be deferred.

Standards for Remedy: Describe the standards for remedy of the health and safety category, including testing protocols. Also include when partial weatherization would be appropriate. **Note:** Some health and safety categories, like combustion gases, require testing.

Sensory inspection shall be the primary detection method.

Formaldehyde is a naturally occurring substance in the environment and is made of carbon, hydrogen and oxygen. Formaldehyde is also a by-product of combustion: cars and trucks emit formaldehyde, as does burning wood. Formaldehyde does not accumulate in the environment because it is broken down within a few hours by sunlight or by bacteria present in soil or water. Neither does it accumulate in the body, as humans metabolize formaldehyde quickly.

One of the most important uses of formaldehyde is in adhesives, which are used in the production of wood composite products that are extensively used in furniture, kitchen cabinets, counters and flooring. While small quantities of formaldehyde gas can be emitted from various wood composite products, very little formaldehyde is present in a form that can be released. These low-level emissions diminish over time.

Formaldehyde is an extensively regulated material. Mandatory government regulations set standards to protect human health and the environment. The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) has standards for workplace exposures to formaldehyde. Texas WAP agencies shall follow the OSHA standards regarding workplace exposures to formaldehyde to ensure worker safety.

Volatile organic compounds (VOCs) are organic chemical compounds that have high enough vapor pressures

under normal conditions to significantly vaporize and enter the earth's atmosphere. VOCs include a variety of chemicals, some of which may have short- and long-term adverse health effects. Concentrations of many VOCs are consistently higher indoors (up to ten times higher) than outdoors. VOCs are emitted by a wide array of products numbering in the thousands. Examples include: paints and lacquers, paint strippers, cleaning supplies, pesticides, building materials and furnishings, office equipment such as copiers and printers, correction fluids and carbonless copy paper, graphics and craft materials including glues and adhesives, permanent markers, and photographic solutions.

Organic chemicals are widely used as ingredients in household products. Paints, varnishes, and wax all contain organic solvents, as do many cleaning, disinfecting, cosmetic, degreasing, and hobby products. Fuels are made up of organic chemicals. All of these products can release organic compounds while you are using them, and, to some degree, when they are stored.

EPA's Office of Research and Development's "Total Exposure Assessment Methodology (TEAM) Study" found levels of about a dozen common organic pollutants to be 2 to 5 times higher inside homes than outside, regardless of whether the homes were located in rural or highly industrial areas. Some of the more common household sources of VOCs include: paints, paint strippers, and other solvents; wood preservatives; aerosol sprays; cleansers and disinfectants; moth repellants and air fresheners; stored fuels and automotive products; hobby supplies; dry-cleaned clothing.

Health effects of exposure to VOCs include: eye, nose, and throat irritation; headaches, loss of coordination, nausea; damage to liver, kidney, and central nervous system. Key signs or symptoms associated with exposure to VOCs include conjunctival irritation, nose and throat discomfort, headache, allergic skin reaction, dyspnea, declines in serum cholinesterase levels, nausea, emesis, epistaxis, fatigue, dizziness.

The ability of organic chemicals to cause health effects varies greatly from those that are highly toxic, to those with no known health effect. As with other pollutants, the extent and nature of the health effect will depend on many factors including level of exposure and length of time exposed. Eye and respiratory tract irritation, headaches, dizziness, visual disorders, and memory impairment are among the immediate symptoms that some people have experienced soon after exposure to some organics. At present, not much is known about what health effects occur from the levels of organics usually found in homes.

All reasonable steps shall be taken to limit worker exposure to VOCs. When using products known to emit VOCs, increase ventilation. Meet or exceed any label precautions. Identify, and if possible, remove the source. If not possible to remove, reduce exposure by using a sealant on all exposed surfaces of paneling and other furnishings. Educate clients regarding the use of integrated pest management techniques to reduce the need for continued use of pesticides. Properly dispose of partially full containers of old or unneeded chemicals. Because gases can leak even from closed containers, this single step could help lower concentrations of organic chemicals in the home and/or workplace. Do not simply toss these unwanted products in the garbage can. State and local codes and regulations regarding disposal of toxic household wastes must be followed.

There are certain specific VOCs that require limited exposure guidelines:

Keep exposure to emissions from products containing **methylene chloride** to a minimum. Consumer products that contain methylene chloride include paint strippers, adhesive removers, and aerosol spray paints. Methylene chloride is converted to carbon monoxide in the body and can cause symptoms associated with exposure to carbon monoxide. Carefully read the labels containing health hazard information and cautions on the proper use of these products. Use products that contain methylene chloride outdoors when possible; use indoors only if the area is well ventilated.

Keep exposure to **benzene** to a minimum. Benzene is a known human carcinogen. The main indoor sources of this chemical are environmental tobacco smoke, stored fuels and paint supplies, and automobile emissions in attached garages. Actions that will reduce benzene exposure include eliminating smoking within the home/workplace, providing for maximum ventilation during painting, and discarding paint supplies and special fuels that will not be used immediately.

Keep exposure to **perchloroethylene** emissions from newly dry-cleaned materials to a minimum. Perchloroethylene is the chemical most widely used in dry cleaning. Recent studies indicate that people breathe low levels of this chemical both in homes where dry-cleaned goods are stored and as they wear dry-cleaned clothing. Taking steps to minimize exposure to this chemical is prudent.

No standards have been set for VOCs in non-industrial settings. OSHA regulates formaldehyde, a specific VOC, as a carcinogen. OSHA has adopted a Permissible Exposure Level (PEL) of .75 ppm, and an action level of 0.5 ppm. HUD has established a level of .4 ppm for mobile homes. Based on current information, it is advisable to mitigate formaldehyde that is present at levels higher than 0.1 ppm.

TEXAS WAP crews/contractors shall take every precaution necessary to minimize exposure to air pollutants. When using chemicals and products that may contain any of the pollutants within this category, strict adherence to label instructions and precautions shall be required. Known pollutants must be removed by the client or a contracted professional prior to performance of weatherization work.

For additional information regarding indoor air pollutants, the EPA booklet, "Indoor Air Pollution: An Introduction for Health Professionals," is available at: <http://www.epa.gov/iaq/pubs/hpguide.html> .

Additional resources are available at <http://www.epa.gov/iaq/index.html>

Standards for Deferral: Describe when deferral should take place for the specific health and safety category.

If the issue is determined to be beyond the scope of DOE WAP, crews/contractors shall follow all Texas Referral and Deferral policies and protocols. If the pollutant cannot be removed because the client is unwilling to remove it, or exposure cannot be safely and adequately minimized, weatherization work may have to be deferred to ensure the safety of the crew. Clients must always be informed of potential pollutant hazards.

Standards for Referral: Describe when referral should take place for the specific health and safety category. If possible, include associated referral agencies.

A referral should be made when problems are identified that are beyond the scope of the DOE WAP, such as electrical or other code violations, or the presence of hazards that may pose a health risk to workers and occupants. Examples of referral agencies include, but are not limited to, LIHEAP-WAP, CEAP, CSBG, HPG, Utility Companies, and other state or local resources.

Training Provision: Discuss how training will be provided for the specific health and safety category. **Note:** Some health and safety categories, like OSHA, require training.

Guidance on how to recognize potential hazards and when removal is necessary is posted to the Department Website: <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>

On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>.

The updated Health and Safety Presentation (updated for PY 2014) is posted on the Department's website under Webinars and Workshops at <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>.

Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.

Client Education: Discuss what specific steps will be taken to educate the client, if any, on the specific health and

safety category if this is not explained elsewhere in the State Plan. Note: Some health and safety categories, like mold and moisture, require client education.
Always inform the client/occupant/building owner of observed condition and associated health risks. Provide written materials on safety and proper disposal of household pollutants. Such material is often located on the product label. There are additional written materials at the EPA website listed above.
Disposal Procedures: Provide disposal procedures or indicate where these procedures can be found in the Plan or Field Standards.
State and local codes and regulations must always be adhered to when disposing of toxic household wastes.

Injury Prevention of Occupants and Weatherization Workers – Measures such as repairing stairs and replacing handrails.	
Concurrence or Alteration: Check if you concur with existing guidance from WPN 11-6 or if you are using an alternative action/allowability. Include the guidance action/allowability from WPN 11-6 or alternative guidance in the space provided. Alternatives must be explained and comply with DOE guidance. Note: Where an Action/Allowability or Testing is “required” or “not allowed” through WPN 11-6, the grantee must concur or choose to defer all units where the specific issue is encountered. Allowable items under WPN 11-6 leave room for determining if the issue or testing will be addressed and in what circumstances.	
Concur with WPN11-6 X-TDHCA refined guidance	Workers must take all reasonable precautions against performing work on homes that will subject workers or occupants to health and safety risks. Porch or stair repairs that would be required to make a home safe for weatherization workers are not an allowable measure in the program. Such situations are considered to be beyond the scope of Texas WAP.
Funding: State that DOE funds are being used or indicate that alternate funding sources will be used to address this particular health and safety category.	
DOE funds may not be used, as stipulated above.	
Beyond Scope of DOE WAP: Describe how the issue will be treated if beyond the scope of DOE WAP.	
If the issue is determined to be beyond the scope of DOE WAP, crews/contractors shall follow all Texas Referral and Deferral policies and protocols.	
Standards for Remedy: Describe the standards for remedy of the health and safety category, including testing protocols. Also include when partial weatherization would be appropriate. Note: Some health and safety categories, like combustion gases, require testing.	
If the crew encounters a situation where a stair case or porch is deemed unsafe and the stair case or porch is necessary to reach the area where the crews/contractors need to perform the weatherization work, and no other access is available, then weatherization work shall be deferred until the home owner has satisfactorily installed the required repair(s).	
As part of health and safety, crews and assessors will identify health and safety hazards according the OSHA method “Focus Four”, which includes, electrical, fall protection, caught in and between, and stuck-by hazards. The client will be informed in writing of any hazards and the associated risks that may have been observed.	
Standards for Deferral: Describe when deferral should take place for the specific health and safety category.	
See above.	
Standards for Referral: Describe when referral should take place for the specific health and safety category. If possible, include associated referral agencies.	
Referral should be made when problems are identified that are beyond the scope of the DOE WAP, such code violations or safety issues requiring repairs that go beyond the scope of the DOE WAP. Examples of referral agencies include, but are not limited to, LIHEAP-WAP, CEAP, CSBG, HPG, Utility Companies, and other state or local resources.	
Training Provision: Discuss how training will be provided for the specific health and safety category. Note: Some health and safety categories, like OSHA, require training.	

During the ARRA WAP, OSHA Training was provided by AEHS Inc. of San Antonio Texas. AEHS holds OSHA Construction Outreach Trainer Certificates, issued US Department of Labor. AEHS is authorized to conduct OSHA 10 and 30 Curricula. The Department required all weatherization crew members to obtain OSHA 10 certificates and supervisors to obtain OSHA 30 certificates. The training included the OSHA method of “Focus Four,” which includes Electrical, Fall Protection, Struck By, and Caught In and Between. The Curricula and attendance sheets are available upon request. The regional training plan includes certification training for new staff.

On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>.

The updated Health and Safety Presentation (updated for PY 2014) is posted on the Department’s website under Webinars and Workshops at <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>.

Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.

Client Education: Discuss what specific steps will be taken to educate the client, if any, on the specific health and safety category if this is not explained elsewhere in the State Plan. **Note:** Some health and safety categories, like mold and moisture, require client education.

Inform client/building owner of observed hazards and their associated risks.

Disposal Procedures: Provide disposal procedures or indicate where these procedures can be found in the Plan or Field Standards.

State and local codes and regulations shall always be followed regarding the proper disposal procedures and protocols.

Lead Based Paint

Concurrence or Alteration: Check if you concur with existing guidance from WPN 11-6 or if you are using an alternative action/allowability. Include the guidance action/allowability from WPN 11-6 or alternative guidance in the space provided. Alternatives must be explained and comply with DOE guidance. **Note:** Where an Action/Allowability or Testing is “required” or “not allowed” through WPN 11-6, the grantee must concur or choose to defer all units where the specific issue is encountered. Allowable items under WPN 11-6 leave room for determining if the issue or testing will be addressed and in what circumstances.

X-Concur with WPN 11-6	Follow EPA’s Lead; Renovation, Repair and Painting Program (RRP) rule which was implemented April 21, 2010. In addition to RRP, Weatherization requires all weatherization crews/contractors working in pre-1978 housing to be trained in Lead Safe Weatherization (LSW). Deferral is required when the extent and condition of lead-based paint in the house would potentially create further health and safety hazards.
-------------------------------	---

Funding: State that DOE funds are being used or indicate that alternate funding sources will be used to address this particular health and safety category.

DOE funds may be used.

Beyond Scope of DOE WAP: Describe how the issue will be treated if beyond the scope of DOE WAP.

If the issue is determined to be beyond the scope of DOE WAP, crews/contractors shall follow all Texas Referral and Deferral policies and protocols.

Standards for Remedy: Describe the standards for remedy of the health and safety category, including testing protocols. Also include when partial weatherization would be appropriate. **Note:** Some health and safety categories, like combustion gases, require testing.

In April 2008, EPA published the “Lead; Renovation, Repair, and Painting Program” (RRP) final rule. This rule specifically cites Weatherization activities (in the context of “renovation”) in several places and has a direct impact on how the WAP proceeds in implementing LSW. **Note: the EPA Final Rule with an effective date of April**

21, 2010, requires Certified Renovators to be onboard with Subgrantee crews/contractors or contractors, and performing all the EPA required functions on all pre-1978 housing that has not been determined as exempt by approved protocols.

DOE further requires all Grantee Monitors/Inspectors be Certified Renovators in order to effectively monitor against the EPA requirements and trained in LSW in order to effectively monitor against LSW minimum requirements. These requirements are outlined in WPN 11-1. Texas is currently in compliance with the Final RRP rule with most crew members having achieved Certified Renovator status. The Texas WAP training staff members are Certified Renovators. This certification will expire in 2015, and the regional training plan includes recertification.

Texas recommends assuming that lead paint may be present in any house built prior to 1978 and to follow the proper DOE LSW protocols, OSHA regulations and EPA regulations in all pre-1978 homes. Unless they were remodeled and paint and varnish added to mobile homes prior to 1978, mobile homes are exempt because lead was not used in the original manufacture of mobile homes. However, crews/contractors must be alert to any remodels that could have contained lead-based paint or varnish when addressing mobile homes. Subgrantees must not assume that all mobile homes are categorically exempt. Any home built before 1978, or any mobile home remodeled using paints and varnishes prior to 1978, may contain lead-based paint. These paints should be considered "guilty until proven innocent" by way of testing.

Texas has fully implemented the EPA final RRP rule and most crew members are Certified Renovators.

In all pre-1978 homes, crews/contractors must assess the physical condition of the home prior to conducting an audit. Why is this necessary? Air movement from a blower door or duct blaster may disturb and circulate lead dust throughout the home. If the home has noticeable paint damage (flaking) or there is an appreciable amount of dust, the blower door and/or duct blaster tests must not be run until after lead testing per EPA RRP rules has shown that no lead is present in the painted surfaces of the home. If the paint is confirmed to have lead, the blower door test should not be conducted to avoid further distribution of lead dust throughout the home.

Testing is allowed per RRP requirements. Job site set up and cleaning verification is required by a Certified Renovator.

Texas WAP crews/contractors will use LSW work practices that decrease the amount of dust generated. For example:

- Working dry will generate a lot of dust.
- Containing dust with plastic and using wet methods will generate less dust.
- Containing dust with plastic and using wet methods along with HEPA-attached equipment will generate even less dust.

Texas WAP crews/contractors shall avoid creating and spreading dust by following all DOE LSW guidance and training and by following the RRP guidelines and practices. At minimum, Texas crews/contractors will:

- Use low-dust work practices (using shrouds on power tools such as drills, misting down surfaces with water before drilling, etc.)
- Contain the work area per the RRP rules and regulations (6 mil or greater plastic is recommended)
- Keep dust contained to the immediate work area. Do not track dust out of the prepared and contained work area.
- Thoroughly clean the area after the work is completed per the RRP rules and standards. Pre- and Post-digital pictures are required as part of the LSW compliance documentation.
- All occupants must be kept away from the work areas. Warning signs as per the RRP standards must be posted.

·Workers must wear proper respiratory protection for lead dust when working in a leaded work area.

At all times, Texas WAP workers shall:

- Follow LSW and RRP and other EPA requirements
- Adhere to OSHA standards for worker safety
- Follow state and local requirements

As a minimum guideline, the following weatherization activities require lead-safe practices. (Note that this is not a complete list of weatherization activities that may create lead hazards, so it is important to train all workers to follow LSW measures whenever they disturb or could potentially disturb painted surfaces on buildings built prior to 1978.)

- Drilling holes in interior walls
- Drilling holes in and removing siding from exterior walls
- Cutting attic access into ceilings
- Removing caulk or window putty (interior)
- Removing caulk or window putty (exterior)
- Removing weatherstripping
- Modifying doors
- Planing doors in place
- Installing door shoes
- Replacing door jambs and thresholds
- Replacing windows
- Replacing thermostats
- Replacing furnace filters
- Replacing furnaces
- Replacing HEPA filters and cleaning HEPA vacuums at a weatherization facility
- Replacing HEPA filters and cleaning HEPA vacuums at the work site

Crews/contractors must follow all client notification requirements:

- Homes weatherized before December 22, 2008 – “Protect Your Family From Lead in Your Home” EPA pamphlet;
- Homes weatherized after December 22, 2008 – “Renovate Right: Important Lead Hazard Information for Families, Child care Providers, and Schools” EPA pamphlet.
- The client file must include signed documentation that the client received the Renovate Right pamphlet. No exceptions.

All Texas WAP Subgrantees shall be monitored for compliance with LSW Minimum Standards and EPA RRP requirements. When a Subgrantee is found to be out of compliance, the Subgrantee shall be given a corrective action plan that will require training crews/contractors to ensure that all requirements are being met and to ensure compliance. TDHCA provides additional guidance through Best Practices, FAQs, forms and flowcharts at: <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>

Digital photo documentation must also be included. Even when a home tests negative for lead, the test form must be completed and placed in the client file.

Standards for Deferral: Describe when deferral should take place for the specific health and safety category.

When it is determined that the level of lead present in the home is so high that it presents a hazard to workers, the weatherization work should be deferred until a licensed lead abatement professional has eliminated the health hazard. Clients will always be notified regarding lead-based paint and its potential health hazards. If the lead dust is so wide spread in the home that it would be impossible to contain, the weatherization work should be deferred until a lead abatement professional has removed the health hazard. Deferral is required when the extent and condition of lead-based paint in the house would potentially create further health and safety hazards.

<p>Standards for Referral: Describe when referral should take place for the specific health and safety category. If possible, include associated referral agencies.</p>
<p>Referral should be made when problems are identified that are beyond the scope of the DOE WAP, high levels or extensive lead content or other code violations. Examples of referral agencies include, but are not limited to, LIHEAP-WAP, CEAP, CSBG, HPG, Utility Companies, and other state or local resources. In severe lead contamination situations, it may be necessary to make a referral to a lead paint risk assessment and abatement professional through Texas Department of State Health Services at: http://www.dshs.state.tx.us/elp</p>
<p>Training Provision: Discuss how training will be provided for the specific health and safety category. Note: Some health and safety categories, like OSHA, require training.</p>
<p>Texas has trained and certified 719 crew members/staff as Lead Safe Renovators during ARRA. Texas is in compliance with the RRP stipulation that crews/contractors working on pre-1978 homes be accompanied by an EPA certified renovator. The Texas WAP training staff are all Certified Renovators. The State monitors are also certified renovators as required by the EPA RRP Rule. Each Subgrantee will have one RRP certified person and all contractors doing WAP work will have LSR available to the worksite as per RRP rules. Texas is currently in compliance with the Final RRP rule with most crew members having achieved Certified Renovator status. This certification will expire in 2015, and the regional training plan includes recertification.</p> <p>In addition, WxTV videos on Lead Safe Practices are available to all crew members and WAP staff at: http://www.tdhca.state.tx.us/community-affairs/wap/wap-training-videos.htm</p> <p>On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm.</p> <p>The updated Health and Safety Presentation (updated for PY 2014) is posted on the Department's website under Webinars and Workshops at http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm.</p> <p>Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.</p>
<p>Client Education: Discuss what specific steps will be taken to educate the client, if any, on the specific health and safety category if this is not explained elsewhere in the State Plan. Note: Some health and safety categories, like mold and moisture, require client education.</p>
<p>Texas WAP crews/contractors will follow all RRP requirements for client education.</p>
<p>Disposal Procedures: Provide disposal procedures or indicate where these procedures can be found in the Plan or Field Standards.</p>
<p>Texas WAP crews/contractors will follow all EPA RRP requirements for disposal as well as state and local code requirements.</p>
<p>Lead Based Paint Compliance: Provide a narrative describing how RRP and LSW implementation will be conducted and how the grantee will verify compliance. The explanation should clearly show an understanding that LSW and RRP are separate requirements and both are required to be met.</p>
<p>All Texas WAP Subgrantees shall be monitored for compliance with LSW Minimum Standards and EPA RRP requirements. When a Subgrantee is found to be out of compliance, the Subgrantee shall be given a corrective action plan that will require training crews/contractors to ensure that all requirements are being met and to ensure compliance. Texas created the following Lead Safe Flowchart for the purpose of ensuring that crews/contractors follow all important protocol steps.</p> <p>REFERENCE: Lead Safe Best Practice is available at: http://www.tdhca.state.tx.us/community-affairs/wap/wap-best-practices.htm</p> <p>Lead Safe Work resources are available under Lead Safe Work at: http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm</p>

The completion of all required forms and documentation for the client file are posted on-line. A Quality Control Blitz was conducted with agencies to detail all necessary positive and negative documentation required to meet EPA RRP requirements.

Compliance with LSW and RRP requirements are monitored as part of grantee monitoring of the Subgrantees. Texas has already implemented both LSW and RRP requirements. Additionally, Texas monitors compliance by requiring pre- and post- digital photos. It is required that photos be taken of all aspects of LSW and RRP protocols. This best practice provides back up evidence that a test was conducted and shows the result of the test, etc.

Mold and Moisture

Concurrence or Alteration: Check if you concur with existing guidance from WPN 11-6 or if you are using an alternative action/allowability. Include the guidance action/allowability from WPN 11-6 or alternative guidance in the space provided. Alternatives must be explained and comply with DOE guidance. **Note:** Where an Action/Allowability or Testing is “required” or “not allowed” through WPN 11-6, the grantee must concur or choose to defer all units where the specific issue is encountered. Allowable items under WPN 11-6 leave room for determining if the issue or testing will be addressed and in what circumstances.

X-Concur with WPN 11-6	Limited water damage repairs can be addressed by weatherization workers and correction of moisture and mold creating conditions are allowed when necessary in order to weatherize the home and to ensure the long term stability and durability of the measures. Where severe mold-like substance and moisture issues cannot be addressed, deferral is required.
-------------------------------	--

Funding: State that DOE funds are being used or indicate that alternate funding sources will be used to address this particular health and safety category.

DOE funds may be used as stipulated above.

Beyond Scope of DOE WAP: Describe how the issue will be treated if beyond the scope of DOE WAP.

If the issue is determined to be beyond the scope of DOE WAP, crews/contractors shall follow all Texas Referral and Deferral policies and protocols.

Standards for Remedy: Describe the standards for remedy of the health and safety category, including testing protocols. Also include when partial weatherization would be appropriate. **Note:** Some health and safety categories, like combustion gases, require testing.

Visual assessment is required and diagnostics such as moisture meters are recommended pre and prior to final inspection. Per Texas Technical Standards, all units must be inspected for problems associated with excess moisture. Identification of potential moisture problems shall be documented in the client file. Moisture can be addressed as prescribed in the Texas Weatherization Field Guides: <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>

Standards for Deferral: Describe when deferral should take place for the specific health and safety category.

When mold or mold like substances are identified deferral is required.

Standards for Referral: Describe when referral should take place for the specific health and safety category. If possible, include associated referral agencies.

Referral should be made when problems are identified that are beyond the scope of the DOE WAP. Health and safety issues such as severe mold cannot be adequately addressed within the scope of the DOE WAP. Examples of referral agencies include, but are not limited to, LIHEAP-WAP, CEAP, CSBG, HPG, Utility Companies, and other state or local resources.

Training Provision: Discuss how training will be provided for the specific health and safety category. **Note:** Some health and safety categories, like OSHA, require training.

The DOE power-point presentation training on Mold and Moisture given by Michael Vogel of MSU Weatherization Training Center is available to all Subgrantees through TDHCA’s website:

<http://www.tdhca.state.tx.us/community-affairs/wap/wap-training-videos.htm>. Other resources available: www.healthyindoorair.org, www.affordablecomfort.org, www.buildingscience.com, www.homemoisture.org

On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>.

The updated Health and Safety Presentation (updated for PY 2014) is posted on the Department's website under Webinars and Workshops at <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>.

Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees, etc.

Client Education: Discuss what specific steps will be taken to educate the client, if any, on the specific health and safety category if this is not explained elsewhere in the State Plan. **Note:** Some health and safety categories, like mold and moisture, require client education.

Provide client notification and disclaimer on mold-like substances and moisture awareness. The unified weatherization form that identifies if there are mold-like substances, must be included in the client files, regardless of whether there is mold-like substance in the home or not. A **Mold -Like Substance Notification and Release Form for Texas Weatherization Programs** must be filled out if mold or mold-like substances are found in the home. Texas Department of State Health Services, **Consumer Mold Information Sheet** is required to be given to clients who have moisture problems or mold-like substances, as part of client education.

Disposal Procedures: Provide disposal procedures or indicate where these procedures can be found in the Plan or Field Standards.

State and local codes and regulations must always be followed to ensure proper disposal procedures and protocols.

Mold Protocols: Provide a narrative describing protocols for addressing mold found in the client's homes. The protocol should include a method of identifying the presence of mold during the initial audit or assessment, notification to the client, and crew training on how to alleviate mold and moisture conditions in homes.

The primary method of detecting mold and moisture issues shall be visual assessment and diagnostics such as moisture meters, infrared imaging, etc. Visual inspection of moisture creating conditions shall be conducted as part of the whole house energy audit.

The assessment shall assure existing mold-like conditions are noted, documented and disclosed to the client; and, shall assure existing building envelope conditions do not contribute to mold-like growth when weatherization measures are applied. Mold-like substance assessment means a visual assessment combined with certain allowable diagnostics. It does not mean testing for mold. **DOE funds may not be used to test for mold-like substances.**

Texas WAP crews/contractors shall follow the Mold/Moisture Assessment Checklist when conducting the mold-like substances assessment at the time of the audit.

Assessment shall include a general examination of the building, to include:

- Examine structure, maintenance activities, occupancy patterns
- Visually look for mold-like substances and water staining
- Look for evidence of standing water
- Look for evidence of condensation
- Check basement or crawl space and attic for proper venting and exhaust

Outdoors:

- Soil grade or drainage toward foundation
- Standing water adjacent to foundation
- Wall and roof damage allowing water intrusion

- Missing or blocked rain gutters
- No downspout extensions
- Firewood stacked adjacent to house
- Excessive shrubbery around foundation

Heating/cooling systems:

- Air intakes: debris (organic) vs. clean air
- Filters: dirty, damp, poor type
- Heat exchangers: dirty & damp coils, condensate pans, drainage, stagnant water
- Ducts: contamination, moisture

Occupied Space:

- Plumbing leaks
- Water stains on walls, ceilings and around windows
- Musty odor
- Surface Condensation (especially during mild weather)
- Mold-like substances on carpeting
- Humidifiers
- Window air conditioners
- Lack of bathroom, kitchen exhaust
- Clothes dryer not vented to outside
- Firewood stored indoors
- Wet clothes drying indoors

Occupant Preexisting or Potential Health Conditions

Concurrence or Alteration: Check if you concur with existing guidance from WPN 11-6 or if you are using an alternative action/allowability. Include the guidance action/allowability from WPN 11-6 or alternative guidance in the space provided. Alternatives must be explained and comply with DOE guidance. **Note:** Where an Action/Allowability or Testing is “required” or “not allowed” through WPN 11-6, the grantee must concur or choose to defer all units where the specific issue is encountered. Allowable items under WPN 11-6 leave room for determining if the issue or testing will be addressed and in what circumstances.

Concur with WPN 11-6	When a person’s health may be at risk and/or the work activities could constitute a health or safety hazard, the occupant at risk will be required to take appropriate action based on severity of risk. When relocation of a client is needed the client shall make all reasonable attempts to relocate; if the client is unable to make such arrangements, then the agency should request authorization from the Department for relocation. Failure or the inability to take appropriate actions must result in a deferral.
X-TDHCA refined guidance	

Funding: State that DOE funds are being used or indicate that alternate funding sources will be used to address this particular health and safety category.

DOE funds may not be used as stipulated above.

Beyond Scope of DOE WAP: Describe how the issue will be treated if beyond the scope of DOE WAP.

If the issue is determined to be beyond the scope of DOE WAP, crews/contractors shall follow all Texas Referral and Deferral policies and protocols.

Standards for Remedy: Describe the standards for remedy of the health and safety category, including testing protocols. Also include when partial weatherization would be appropriate. **Note:** Some health and safety categories, like combustion gases, require testing.

Texas WAP is incorporating a brief client health survey to be taken during the application process (this may be done in person, mail, or by phone) and verified during the energy audit. That survey information shall be given to the auditor prior to the audit visit. The auditor will at the time of audit interview the client in more depth regarding any occupant pre-existing or potential health conditions or concerns (such as allergies).

Occupant pre-existing or potential health conditions shall be documented in the client file. Crews/contractors will advise client of the above policy and take the appropriate actions. If client refuses relocation, proper referral and deferral protocols shall be followed and documented.
Standards for Deferral: Describe when deferral should take place for the specific health and safety category.
The failure or inability of at-risk occupants to take appropriate actions must result in deferral.
Standards for Referral: Describe when referral should take place for the specific health and safety category. If possible, include associated referral agencies.
Referral should be made when problems are identified that are beyond the scope of the DOE WAP, such as health risks to workers, or high CO levels or exposure to VOCs or mold-like substances. Examples of referral agencies include, but are not limited to, LIHEAP-WAP, CEAP, CSBG, HPG, Utility Companies, and other state or local resources.
Training Provision: Discuss how training will be provided for the specific health and safety category. Note: Some health and safety categories, like OSHA, require training.
A Health & Safety Questionnaire/ Checklist for use by Subgrantees can be found under Client and Field Assessment Forms on the Department Website: http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm
On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm .
The updated Health and Safety Presentation (updated for PY 2014) is posted on the Department's website under Webinars and Workshops at http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm .
Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.
Client Education: Discuss what specific steps will be taken to educate the client, if any, on the specific health and safety category if this is not explained elsewhere in the State Plan. Note: Some health and safety categories, like mold and moisture, require client education.
Provide client information of any known risks. Provide worker contact information so client can inform of any issues.
Disposal Procedures: Provide disposal procedures or indicate where these procedures can be found in the Plan or Field Standards.
State and local codes and regulations shall be followed to ensure proper disposal procedures and protocols.

Occupational Safety and Health Administration (OSHA) and Crew Safety

Concurrence or Alteration: Check if you concur with existing guidance from WPN 11-6 or if you are using an alternative action/allowability. Include the guidance action/allowability from WPN 11-6 or alternative guidance in the space provided. Alternatives must be explained and comply with DOE guidance. Note: Where an Action/Allowability or Testing is "required" or "not allowed" through WPN 11-6, the grantee must concur or choose to defer all units where the specific issue is encountered. Allowable items under WPN 11-6 leave room for determining if the issue or testing will be addressed and in what circumstances.
X-Concur with WPN 11-6 Workers must follow OSHA standards and Material Safety Data Sheets (MSDS) and take precautions to ensure the health and safety of themselves and other workers. MSDS must be posted wherever workers may be exposed to hazardous materials.
Funding: State that DOE funds are being used or indicate that alternate funding sources will be used to address this particular health and safety category.
DOE funds may be used.

Beyond Scope of DOE WAP: Describe how the issue will be treated if beyond the scope of DOE WAP.
If the issue is determined to be beyond the scope of DOE WAP, crews/contractors shall follow all Texas Referral and Deferral policies and protocols.
Standards for Remedy: Describe the standards for remedy of the health and safety category, including testing protocols. Also include when partial weatherization would be appropriate. Note: Some health and safety categories, like combustion gases, require testing.
OSHA 10-hour training for all crew level WAP employees OSHA 30-hour training for all crew leaders All OSHA training shall be updated as required and kept current. MSDS must be present at the work sites.
Standards for Deferral: Describe when deferral should take place for the specific health and safety category.
Weatherization work may be deferred if doing the work would put crews/contractors at undue health and safety risk.
Standards for Referral: Describe when referral should take place for the specific health and safety category. If possible, include associated referral agencies.
Referral should be made when problems are identified that are beyond the scope of the DOE WAP, such as electrical or other code violations, or conditions that pose a health or safety risk to crews/contractors and/or clients. Examples of referral agencies include, but are not limited to, LIHEAP-WAP, CEAP, CSBG, HPG, Utility Companies, and other state or local resources.
Training Provision: Discuss how training will be provided for the specific health and safety category. Note: Some health and safety categories, like OSHA, require training.
On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm . The updated Health and Safety Presentation (updated for PY 2014) is posted on the Department's website under Webinars and Workshops at http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm . Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.
Client Education: Discuss what specific steps will be taken to educate the client, if any, on the specific health and safety category if this is not explained elsewhere in the State Plan. Note: Some health and safety categories, like mold and moisture, require client education.
N/A
Disposal Procedures: Provide disposal procedures or indicate where these procedures can be found in the Plan or Field Standards.
Follow MSDS guidelines and all state and local codes.
OSHA and MSDS Compliance: Provide a narrative describing procedures for implementation of OSHA and MSDS requirements related to crew and worker safety, how the 10 and 30 hour training requirements will be met, and what the process is for determining if crews/contractors are utilizing good safe work practices according to all requirements (EPA, OSHA, etc.).
OSHA 10-hour training for all crew level WAP employees OSHA 30-hour training for all crew leaders All OSHA training shall be updated as required and kept current Consistent posting of MSDS wherever crews/contractors may be exposed to hazardous materials Webinars will be explored as an additional training opportunity The process for determining whether crews/contractors are utilizing good safe work practices relies on visual assessment when monitoring crews/contractors on the job site. Lack of injury and incident reports is also a valuable indicator that crews/contractors are following safe work practices. Ask to see MSDS when monitoring at

the job site if hazardous materials are being used. Check for posting of MSDS in WAP facilities when monitoring.

Pests

Concurrence or Alteration: Check if you concur with existing guidance from WPN 11-6 or if you are using an alternative action/allowability. Include the guidance action/allowability from WPN 11-6 or alternative guidance in the space provided. Alternatives must be explained and comply with DOE guidance. **Note:** Where an Action/Allowability or Testing is “required” or “not allowed” through WPN 11-6, the grantee must concur or choose to defer all units where the specific issue is encountered. Allowable items under WPN 11-6 leave room for determining if the issue or testing will be addressed and in what circumstances.

Concur with WPN 11-6	Pest removal is allowed only where infestation would prevent weatherization or poses a health and safety concern for workers. Infestation of pests may be cause for deferral where it cannot be reasonably removed or poses health and safety concern for workers.
X-TDHCA refined guidance	

Funding: State that DOE funds are being used or indicate that alternate funding sources will be used to address this particular health and safety category.

DOE funds may be used as stipulated above.

Beyond Scope of DOE WAP: Describe how the issue will be treated if beyond the scope of DOE WAP.

If the issue is determined to be beyond the scope of DOE WAP, crews/contractors shall follow all Texas Referral and Deferral policies and protocols.

Standards for Remedy: Describe the standards for remedy of the health and safety category, including testing protocols. Also include when partial weatherization would be appropriate. **Note:** Some health and safety categories, like combustion gases, require testing.

Initial assessment of presence and degree of infestation and risk to workers.

Determine whether the pest infestation would prevent or hamper the weatherization work. If yes, and removal is a viable and cost-effective option, take the necessary steps to remove the pest infestation problem so that the weatherization work can proceed. If yes, and removal is not a viable and cost-effective option or significant health and safety risks exist, defer the weatherization work and provide client with appropriate referral information. If no, proceed as usual.

Inform client of observed pest condition and associated risks. Document in client file.

Standards for Deferral: Describe when deferral should take place for the specific health and safety category.

Infestation of pests may be cause for deferral where it cannot be reasonably removed or poses health and safety risks for workers.

Standards for Referral: Describe when referral should take place for the specific health and safety category. If possible, include associated referral agencies.

Referral should be made when problems are identified that are beyond the scope of the DOE WAP, such as infestations or hazardous pests (Texas has many poisonous snakes). Examples of referral agencies include, but are not limited to, LIHEAP-WAP, CEAP, CSBG, HPG, Utility Companies, and other state or local resources.

Training Provision: Discuss how training will be provided for the specific health and safety category. **Note:** Some health and safety categories, like OSHA, require training.

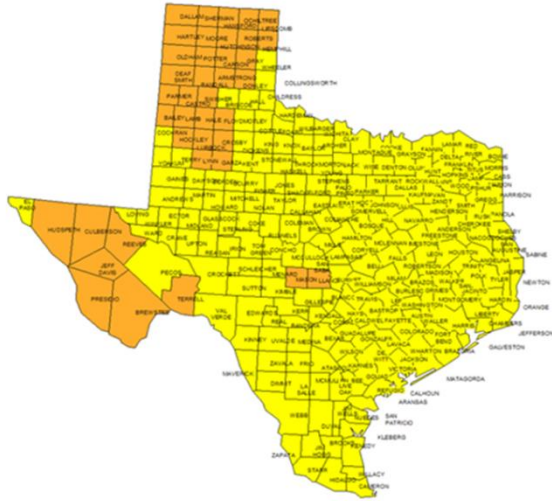
See “Pests” Best Practice posted to Department Website: <http://www.tdhca.state.tx.us/community-affairs/wap/wap-best-practices.htm>

On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>.

The updated Health and Safety Presentation (updated for PY 2014) is posted on the Department’s website under Webinars and Workshops at <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>.

Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.
Client Education: Discuss what specific steps will be taken to educate the client, if any, on the specific health and safety category if this is not explained elsewhere in the State Plan. Note: Some health and safety categories, like mold and moisture, require client education.
Inform client of observed condition and associated risks.
Disposal Procedures: Provide disposal procedures or indicate where these procedures can be found in the Plan or Field Standards.
State and local codes and regulations shall be followed to ensure proper disposal procedure and protocols.

Radon	
Concurrence or Alteration: Check if you concur with existing guidance from WPN 11-6 or if you are using an alternative action/allowability. Include the guidance action/allowability from WPN 11-6 or alternative guidance in the space provided. Alternatives must be explained and comply with DOE guidance. Note: Where an Action/Allowability or Testing is “required” or “not allowed” through WPN 11-6, the grantee must concur or choose to defer all units where the specific issue is encountered. Allowable items under WPN 11-6 leave room for determining if the issue or testing will be addressed and in what circumstances.	
X-Concur with WPN 11-6	Whenever site conditions permit, exposed dirt must be covered with a vapor barrier except for mobile homes. In homes where radon may be present, precautions should be taken to reduce the likeliness of making radon issues worse.
Funding: State that DOE funds are being used or indicate that alternate funding sources will be used to address this particular health and safety category.	
DOE funds may be used.	
Beyond Scope of DOE WAP: Describe how the issue will be treated if beyond the scope of DOE WAP.	
If the issue is determined to be beyond the scope of DOE WAP, crews/contractors shall follow all Texas Referral and Deferral policies and protocols.	
Standards for Remedy: Describe the standards for remedy of the health and safety category, including testing protocols. Also include when partial weatherization would be appropriate. Note: Some health and safety categories, like combustion gases, require testing.	
Testing may be allowed in locations with high radon potential. Texas does NOT have any “high radon potential” areas. SEE map of Radon Zones for Texas below. This information may be located at: http://www.epa.gov/radon/states/texas.html	
The purpose of this map is to assist National, State and local organizations to target their resources and to implement radon-resistant building codes.	



What do the colors mean?

Red = zone 1 = highest potential = counties have a predicted average indoor radon screening level greater than 4pCi/L (picocuries per liter). A curie is a unit quantity of any radioactive nuclide in which 3.7×10^{10} disintegrations occur per second. A Pico equals one trillionth (10^{-12}) part of; very small. Thus a picocurie is one trillionth of a curie. A picogram is one trillionth of a gram.

Orange = zone 2 = moderate potential = counties have a predicted average indoor radon screening level between 2 and 4 pCi/L.

Yellow = zone 3 = low potential = counties have a predicted average indoor radon screening level

Texas will ensure that all Subgrantee crews/contractors are trained regarding radon. The following remedies shall be followed:

In all instances where site conditions permit, exposed dirt must be covered with 6 mil plastic sheeting with seams well-taped and sealed to act as a vapor barrier against radon gases. This should not be done under mobile homes, however.

Precautions should always be taken to reduce the likeliness of making radon issues worse.

Seal cracks and other openings in the foundation. This limits the flow of radon into the home and can make other radon reduction techniques more effective and cost-efficient. This type of sealing can be done in all types of homes.

Further remedies may be added as additional guidance is provided by DOE.

Discounted test kits are available from the National Radon Program Services at Kansas State University. Go to: <http://sosradon.org/test-kits>

Some home improvement stores sell radon test kits. Follow directions on packaging for the proper placement of the device and where to send the device after the test to get the reading.

Standards for Deferral: Describe when deferral should take place for the specific health and safety category.

Deferral should be exercised when existing code violations are present and correcting them would be beyond the scope of the DOE WAP, and/or when there are problems affecting the heat system/furnace that are beyond the scope of the DOE WAP, such as certain electrical problems. For additional deferral criteria, see deferral section above.

Standards for Referral: Describe when referral should take place for the specific health and safety category. If possible, include associated referral agencies.

The EPA recommends fixing homes if the radon level is confirmed to be 4 pCi/L or higher. This is considered the action level. Radon levels less than 4 pCi/L still pose a risk, and in many cases may be reduced. Provide the EPA Consumers Guide to Radon Reduction booklet to clients living in homes with confirmed radon levels of 4 pCi/L or higher. This guide can be found at: <http://www.epa.gov/radon/pubs/consguid.html>

Texas State Radon Officer:

Kay Soper
 Texas Department of State Health Services
 P.O. Box 149347, Mail Code 1987
 Austin TX, 78714

(800) 293-0753

(512) 834-6787

kay.soper@dshs.state.tx.us

Additional referral resources: <http://www.epa.gov/radon/states/texas.html> or www.epa.gov/region8

Radon publications in print can be downloaded, most are in HTML and as PDF files. Go to:

www.epa.gov/radon/pubs

Radon Hotlines:

- National Radon Hotline at 1-800-SOS-RADON* (can purchase test kits by phone);
- National Radon Helpline 1-800-55RADON (1-800-557-2366)*;
- National Radon Fix-It Line 1-800-644-6999* (general information on fixing or reducing the radon level in a home;
- Safe Drinking Water Hotline 1-800-426-4791 (operated under contract with EPA.

Visit www.epa.gov/iaqtribal for information specifically presented for Tribal Partners.

* = Operated by Kansas State University in partnership with EPA.

Training Provision: Discuss how training will be provided for the specific health and safety category. **Note:** Some health and safety categories, like OSHA, require training.

On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>.

The updated Health and Safety Presentation (updated for PY 2014) is posted on the Department's website under Webinars and Workshops at <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>.

Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.

Client Education: Discuss what specific steps will be taken to educate the client, if any, on the specific health and safety category if this is not explained elsewhere in the State Plan. **Note:** Some health and safety categories, like mold and moisture, require client education.

Provide client with EPA consumer's guide to radon, at minimum.

Disposal Procedures: Provide disposal procedures or indicate where these procedures can be found in the Plan or Field Standards.

State and local codes and regulations shall be followed to ensure proper disposal procedures and protocols.

Refrigerant

Concurrence or Alteration: Check if you concur with existing guidance from WPN 11-6 or if you are using an alternative action/allowability. Include the guidance action/allowability from WPN 11-6 or alternative guidance in the space provided. Alternatives must be explained and comply with DOE guidance. **Note:** Where an Action/Allowability or Testing is "required" or "not allowed" through WPN 11-6, the grantee must concur or choose to defer all units where the specific issue is encountered. Allowable items under WPN 11-6 leave room for determining if the issue or testing will be addressed and in what circumstances.

X-Concur with WPN 11-6	Reclaim refrigerant per Clean Air Act of 1990, section 608, as amended by 40 CFR 82, 5/14/93
-------------------------------	--

Funding: State that DOE funds are being used or indicate that alternate funding sources will be used to address this particular health and safety category.

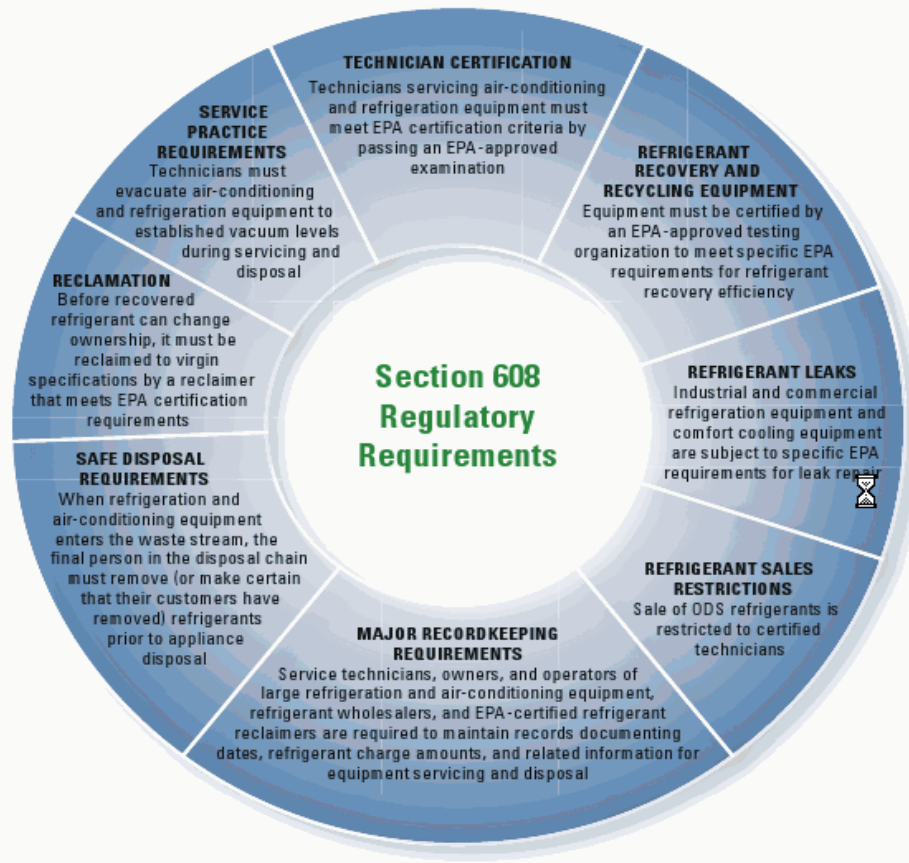
DOE funds may be used.

Beyond Scope of DOE WAP: Describe how the issue will be treated if beyond the scope of DOE WAP.

If the issue is determined to be beyond the scope of DOE WAP, crews/contractors shall follow all Texas Referral and Deferral policies and protocols.

<p>Standards for Remedy: Describe the standards for remedy of the health and safety category, including testing protocols. Also include when partial weatherization would be appropriate. Note: Some health and safety categories, like combustion gases, require testing.</p>
<p>Texas WAP Subgrantees shall ensure that sub-contractors who would be charged with refrigerant reclamation (e.g. removal of old refrigerators or air conditioning units) follow all EPA testing protocols; in accordance with the Clean Air Act of 1990, section 608, as amended by 10 CFR 21. Refrigerants shall be pumped into a recovery tank and disposed at an EPA approved site. Go to www.epa.gov for details.</p>
<p>Clients should not disturb refrigerant.</p>
<p>Standards for Deferral: Describe when deferral should take place for the specific health and safety category.</p>
<p>N/A</p>
<p>Standards for Referral: Describe when referral should take place for the specific health and safety category. If possible, include associated referral agencies.</p>
<p>www.epa.gov Clean Air Act of 1990, section 608, as amended by 40 CFR 82.</p>
<p>Training Provision: Discuss how training will be provided for the specific health and safety category. Note: Some health and safety categories, like OSHA, require training.</p>
<p>On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm.</p>
<p>The updated Health and Safety Presentation (updated for PY 2014) is posted on the Department's website under Webinars and Workshops at http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm.</p>
<p>Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.</p>
<p>Client Education: Discuss what specific steps will be taken to educate the client, if any, on the specific health and safety category if this is not explained elsewhere in the State Plan. Note: Some health and safety categories, like mold and moisture, require client education.</p>
<p>Clients should not disturb refrigerant.</p>
<p>Disposal Procedures: Provide disposal procedures or indicate where these procedures can be found in the Plan or Field Standards.</p>
<p>Follow all EPA, state and local regulations, including but not limited to the Clean Air Act of 1990 section 608, as amended by 10 CFR 21.</p>

Section 608 Regulatory Requirements: Stationary Refrigeration and Air Conditioning



Smoke, Carbon Monoxide Detectors, and Fire Extinguishers

Concurrence or Alteration: Check if you concur with existing guidance from WPN 11-6 or if you are using an alternative action/allowability. Include the guidance action/allowability from WPN 11-6 or alternative guidance in the space provided. Alternatives must be explained and comply with DOE guidance. **Note:** Where an Action/Allowability or Testing is “required” or “not allowed” through WPN 11-6, the grantee must concur or choose to defer all units where the specific issue is encountered. Allowable items under WPN 11-6 leave room for determining if the issue or testing will be addressed and in what circumstances.

X-Concur with WPN 11-6	Installation of smoke/CO detectors is allowed where detectors are not present or are inoperable. Replacement of operable smoke/CO detectors is not an allowable cost. Providing fire extinguishers is allowed only when solid fuel (such as wood) is present
-------------------------------	--

Funding: State that DOE funds are being used or indicate that alternate funding sources will be used to address this particular health and safety category.

DOE funds may be used as stipulated above.

Beyond Scope of DOE WAP: Describe how the issue will be treated if beyond the scope of DOE WAP.

If the issue is determined to be beyond the scope of DOE WAP, crews/contractors shall follow all Texas Referral and Deferral policies and protocols.

Standards for Remedy: Describe the standards for remedy of the health and safety category, including testing protocols. Also include when partial weatherization would be appropriate. **Note:** Some health and safety categories, like combustion gases, require testing.

Check any existing smoke/CO detectors for functional/accurate operation.

Install smoke/CO detectors when accurately operating units do not already exist. Must follow all local codes

when installing smoke/CO detectors.

At minimum, all homes should have at least one smoke alarm on each level, including one near the combustion zone and at least one near the bedrooms. Ceiling-mounted smoke alarms must be mounted at least 6 inches from any wall. Wall-mounted smoke alarms must be installed at least 6 but less than 18 inches from the ceilings. They should always be installed according to applicable local codes or ordinances.

Don't install smoke alarms in these cases:

- In a home that already has a functioning smoke alarm
- Within 12 inches of exterior doors and windows
- With an electrical connection to a switched circuit
- With a connection to a ground-fault interrupter circuit (GFCI)

A CO alarm should also be installed near any combustion appliances. CO alarms should be installed in all homes with unvented space heaters (all unvented space heaters must comply with ANSI Z21.11.2) and in all homes where backdrafting could occur in a furnace, space heater, wood stove, fireplace, or water heater. Always install CO alarms according to the manufacturer's instructions. Don't install CO alarms in these cases:

- In a room that may get too hot or cold for alarm to function properly
- Within 5 feet of a combustion appliance, vent, or chimney
- Within 5 feet of a storage area for vapor-producing chemicals
- Within 12 inches of exterior doors and windows
- Within a furnace closet or room
- With an electrical connection to a switched circuit
- With a connection to a ground-fault interrupter circuit (GFCI)

A fire extinguisher may be provided in homes whose primary heat source is wood. The fire extinguisher must be installed according to manufactures standards and local code in vicinity of the primary heating source.

Standards for Deferral: Describe when deferral should take place for the specific health and safety category.

Deferral should be exercised when existing code violations are present and correcting them would be beyond the scope of the DOE WAP, and/or when there are problems affecting the heat system/furnace that are beyond the scope of the DOE WAP, such as certain electrical problems. For additional deferral criteria, see deferral section above.

Standards for Referral: Describe when referral should take place for the specific health and safety category. If possible, include associated referral agencies.

Referrals should be made when problems are identified that are beyond the scope of the DOE WAP, such as electrical or other code violations. Examples of referral agencies include, but are not limited to, LIHEAP-WAP, CEAP, CSBG, HPG, Utility Companies, and other state or local resources.

Training Provision: Discuss how training will be provided for the specific health and safety category. **Note:** Some health and safety categories, like OSHA, require training.

On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>.

The updated Health and Safety Presentation (updated for PY 2014) is posted on the Department's website under Webinars and Workshops at <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>.

Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.

Client Education: Discuss what specific steps will be taken to educate the client, if any, on the specific health and safety category if this is not explained elsewhere in the State Plan. **Note:** Some health and safety categories, like mold and moisture, require client education.

The client will be provided with the manufacturer's information sheet on use of smoke/CO detectors.

Disposal Procedures: Provide disposal procedures or indicate where these procedures can be found in the Plan or Field Standards.

State and local codes and regulations shall be followed to ensure proper disposal procedures and protocols.

Smoke/CO Detector Installation: Provide a narrative describing smoke/CO Detector installation parameters and procedures.

Check any existing smoke/CO detectors for functional/accurate operation.

Install smoke/CO detectors when accurately operating units do not already exist.

All homes should have at least one smoke alarm on each level, including one near the combustion zone and at least one near the bedrooms. Ceiling-mounted smoke alarms must be mounted at least 6 inches from any wall. Wall-mounted smoke alarms must be installed at least 6 but less than 18 inches from the ceilings. They should always be installed according to applicable local codes or ordinances.

Don't install smoke alarms in these cases:

- In a home that already has a functioning smoke alarm
- Within 12 inches of exterior doors and windows
- With an electrical connection to a switched circuit
- With a connection to a ground-fault interrupter circuit (GFCI)

A CO alarm should also be installed near any combustion appliances. CO alarms should be installed in all homes with unvented space heaters and in all homes where backdrafting could occur in a furnace, space heater, wood stove, fireplace, or water heater. Always install CO alarms according to the manufacturer's instructions. Don't install CO alarms in these cases:

- In a room that may get too hot or cold for alarm to function properly
- Within 5 feet of a combustion appliance, vent, or chimney
- Within 5 feet of a storage area for vapor-producing chemicals
- Within 12 inches of exterior doors and windows
- Within a furnace closet or room
- With an electrical connection to a switched circuit
- With a connection to a ground-fault interrupter circuit (GFCI)

Crews/contractors are required to provide the client with the manufacturer instructions.

CO detectors must be installed in all homes when fuel-fired equipment or an attached garage exists (if functional CO detectors do not already exist). This includes: cook stoves, furnaces, water heaters, wood and coal burning stoves. Crew members must demonstrate to the client how the CO detectors work and what actions to take if the CO detector alarm sounds. The CO detector must be installed per manufacturers recommendation and be compliant with local codes.

Solid Fuel Heating (Wood Stoves, etc.)

Concurrence or Alteration: Check if you concur with existing guidance from WPN 11-6 or if you are using an alternative action/allowability. Include the guidance action/allowability from WPN 11-6 or alternative guidance in the space provided. Alternatives must be explained and comply with DOE guidance. **Note:** Where an Action/Allowability or Testing is "required" or "not allowed" through WPN 11-6, the grantee must concur or choose to defer all units where the specific issue is encountered. Allowable items under WPN 11-6 leave room for determining if the issue or testing will be addressed and in what circumstances.

X-Concur with WPN 11-6	Maintenance, repair, and replacement of primary indoor heating units is allowed where occupant health and safety is a concern. Maintenance and repair of secondary heating units is allowed.
-------------------------------	--

Funding: State that DOE funds are being used or indicate that alternate funding sources will be used to address this particular health and safety category.

DOE funds may be used as stipulated above.
Beyond Scope of DOE WAP: Describe how the issue will be treated if beyond the scope of DOE WAP.
If the issue is determined to be beyond the scope of DOE WAP, crews/contractors shall follow all Texas Referral and Deferral policies and protocols.
Standards for Remedy: Describe the standards for remedy of the health and safety category, including testing protocols. Also include when partial weatherization would be appropriate. Note: Some health and safety categories, like combustion gases, require testing.
When a fireplace inspection is required, Texas WAP crews/contractors shall in most instances, sub-contract chimney inspection, repair and/or replacement work to a qualified solid fuel heating system vendor. Crews/contractors may conduct minor maintenance activities where warranted as allowed.
Any judgments should be performed by a licensed professional. A cursory visual inspection by an assessor should be able to determine if a professional is needed. If a formal assessment is warranted, this would be a health and safety issue requiring photo documentation and receipt of services by the professional with a description of what services were performed.
If there is a traditional open masonry fireplace in the unit verify that it is operating safely. If so, then assess if a cleaning would increase efficiency. If it is not operating safely (as evidenced by backdrafting of smoke or complaints of itchy eyes or respiratory issues by the client) it should be first assessed for repair before considering replacement with a vented code-compliant heating system. An assessment by a licensed professional may be billed under <i>Health and Safety</i> , since it is being inspected for Health and Safety concerns. If maintenance or repair is determined then the maintenance or repair measures would fall under <i>Repairs</i> . If a replacement is determined then this would fall under <i>Health and Safety</i> reasons. Unless a wood burning stove/pellet stove has been maintained on a regular basis, along with annual chimney cleanings, it is unlikely that it is efficient and safety must be evaluated.
An unsafe, unrepairable open masonry fireplace would be treated similarly to that of an unvented space heater if it is the primary source of heat, it must be replaced with a vented heating unit. The type of existing fuel will dictate the replacement. If the client has a combustion fuel source (i.e. - gas, propane, etc) than seal up the fireplace and add a vented gas heater. Assess if an electric furnace would rank as a replacement for the wood burning stove by entering all the information and seeing if it ranks in MHEA/NEAT. If the furnace does not rank and the client only has electric, this may be a deferral situation since we cannot install electric space heaters as a replacement for the existing fireplace/stove. A vented stove would be handled the same as an unsafely operating furnace—you would need to assess for CO or replace, if it ranks, as an energy efficiency measure.
When replacing a wood stove in a mobile/manufactured home the new unit must be listed for use with manufactured homes and must be installed in accordance with their listings. Units that are not manufacturer approved, discovered during an initial assessment, should be replaced with an approved manufactured home appliance, under H&S.
All state and local codes must be followed.
Standards for Deferral: Describe when deferral should take place for the specific health and safety category.
Deferral should be exercised when existing code violations are present and correcting them would be beyond the scope of the DOE WAP, and/or when there are problems affecting the Heating/cooling systems that are beyond the scope of the DOE WAP, such as certain electrical problems. For additional deferral criteria, see deferral section above.

Standards for Referral: Describe when referral should take place for the specific health and safety category. If possible, include associated referral agencies.
Referrals should be made when problems are identified that are beyond the scope of the DOE WAP, such as electrical or other code violations. Examples of referral agencies include, but are not limited to, LIHEAP-WAP, CEAP, CSBG, HPG, Utility Companies, and other state or local resources.
Training Provision: Discuss how training will be provided for the specific health and safety category. Note: Some health and safety categories, like OSHA, require training.
CAZ Testing: worst case depressurization testing is outlined in the Texas Weatherization Field Guide Chapters 2 and 3, located under the Weatherization Tools and Guides section on the Department's Website http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm .
In addition the Texas Mechanical Systems Field Guides have been distributed to all Subgrantees and posted on the Department's website.
Best Practices addressing worst case depressurization testing are posted on the website. http://www.tdhca.state.tx.us/community-affairs/wap/wap-best-practices.htm
On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm .
The updated Health and Safety Presentation (updated for PY 2014) is posted on the Department's website under Webinars and Workshops at http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm .
Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.
Client Education: Discuss what specific steps will be taken to educate the client, if any, on the specific health and safety category if this is not explained elsewhere in the State Plan. Note: Some health and safety categories, like mold and moisture, require client education.
Provide safety information including how to recognize depressurization.
Disposal Procedures: Provide disposal procedures or indicate where these procedures can be found in the Plan or Field Standards.
State and local codes and regulations shall be followed to ensure proper disposal procedures and protocols.

Space Heaters, Stand Alone Electric

Concurrence or Alteration: Check if you concur with existing guidance from WPN 11-6 or if you are using an alternative action/allowability. Include the guidance action/allowability from WPN 11-6 or alternative guidance in the space provided. Alternatives must be explained and comply with DOE guidance. Note: Where an Action/Allowability or Testing is "required" or "not allowed" through WPN 11-6, the grantee must concur or choose to defer all units where the specific issue is encountered. Allowable items under WPN 11-6 leave room for determining if the issue or testing will be addressed and in what circumstances.
X-Concur with WPN 11-6 Repair, replacement, or installation is not allowed. Removal is recommended.
Funding: State that DOE funds are being used or indicate that alternate funding sources will be used to address this particular health and safety category.
DOE funds may not be used for repair, replacement or installation of these types of space heaters.
Beyond Scope of DOE WAP: Describe how the issue will be treated if beyond the scope of DOE WAP.
If the issue is determined to be beyond the scope of DOE WAP, crews/contractors shall follow all Texas Referral and Deferral policies and protocols.
Standards for Remedy: Describe the standards for remedy of the health and safety category, including testing protocols. Also include when partial weatherization would be appropriate. Note: Some health and safety

categories, like combustion gases, require testing.
Removal is strongly recommended.
Inform client of hazards and collect a signed waiver if removal is not allowed.
Standards for Deferral: Describe when deferral should take place for the specific health and safety category.
Deferral should be exercised when existing code violations are present and correcting them would be beyond the scope of the DOE WAP, and/or when there are problems affecting the heating systems that are beyond the scope of the DOE WAP, such as certain electrical problems. For additional deferral criteria, see deferral section above.
Standards for Referral: Describe when referral should take place for the specific health and safety category. If possible, include associated referral agencies.
Referrals should be made when problems are identified that are beyond the scope of the DOE WAP, such as electrical or other code violations. Examples of referral agencies include, but are not limited to, LIHEAP-WAP, CEAP, CSBG, HPG, Utility Companies, and other state or local resources.
Training Provision: Discuss how training will be provided for the specific health and safety category. Note: Some health and safety categories, like OSHA, require training.
Testing will be required to assure adequate supply of electricity is available for existing stand alone electric space heaters. This will be accomplished through the use of 3 wire circuit testers, GFI electrical outlet testers, and line voltage testers.
On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm .
The updated Health and Safety Presentation (updated for PY 2014) is posted on the Department's website under Webinars and Workshops at http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm .
Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.
Client Education: Discuss what specific steps will be taken to educate the client, if any, on the specific health and safety category if this is not explained elsewhere in the State Plan. Note: Some health and safety categories, like mold and moisture, require client education.
Inform client of hazards and collect a signed waiver if removal is not allowed.
Disposal Procedures: Provide disposal procedures or indicate where these procedures can be found in the Plan or Field Standards.
State and local codes and regulations shall be followed to ensure proper disposal procedures and protocols.

Space Heaters, Unvented Combustion

Concurrence or Alteration: Check if you concur with existing guidance from WPN 11-6 or if you are using an alternative action/allowability. Include the guidance action/allowability from WPN 11-6 or alternative guidance in the space provided. Alternatives must be explained and comply with DOE guidance. Note: Where an Action/Allowability or Testing is "required" or "not allowed" through WPN 11-6, the grantee must concur or choose to defer all units where the specific issue is encountered. Allowable items under WPN 11-6 leave room for determining if the issue or testing will be addressed and in what circumstances.	
X-Concur with WPN 11-6	Removal is required, except as secondary heat where the unit conforms to ANSI Z21.11.2. Units that do not meet ANSI Z21.11.2 must be removed prior to weatherization but may remain until a replacement heating system is in place.
Funding: State that DOE funds are being used or indicate that alternate funding sources will be used to address this particular health and safety category.	
DOE funds may be used.	
Beyond Scope of DOE WAP: Describe how the issue will be treated if beyond the scope of DOE WAP.	

If the issue is determined to be beyond the scope of DOE WAP, crews/contractors shall follow all Texas Referral and Deferral policies and protocols.

Standards for Remedy: Describe the standards for remedy of the health and safety category, including testing protocols. Also include when partial weatherization would be appropriate. **Note:** Some health and safety categories, like combustion gases, require testing.

Check units for ANSI Z21.11.2 label

Inform client of dangers of unvented space heaters – CO, moisture, NO², CO can be dangerous even if the CO detection alarm does not sound.

Removal is required if unit does not meet ANSI Z21.11.2. This must be done prior to weatherization work or in conjunction with weatherization work, however the old unit may be left in place until a replacement heating system has been installed.

If client will not allow removal, provide client education, document client refusal, and defer the weatherization work to the home.

Standards for Deferral: Describe when deferral should take place for the specific health and safety category.

If client will not allow removal Subgrantee must defer the weatherization work to the home.

Standards for Referral: Describe when referral should take place for the specific health and safety category. If possible, include associated referral agencies.

Referrals should be made when problems are identified that are beyond the scope of the DOE WAP, such as electrical or other code violations. Examples of referral agencies include, but are not limited to, LIHEAP-WAP, CEAP, CSBG, HPG, Utility Companies, and other state or local resources.

Training Provision: Discuss how training will be provided for the specific health and safety category. **Note:** Some health and safety categories, like OSHA, require training.

Units that do not meet ANSI Z21.11.2 must be removed prior to weatherization but may remain until a replacement heating system is in place. Testing for air-free carbon monoxide (CO) is to be performed. All units must have an ANSI Z21.11.1 label. The client must be informed of the dangers of unvented space heaters – CO, Moisture, NO₂, CO can be dangerous even if CO alarm does not sound.

Assessors must calibrate the CO tester outside the home and test the ambient air in the home; following the standards in the Texas Mechanical Systems Field Guide:

Perform an inspection of the heater. Any of the following conditions are grounds for repair or replacement.

- Carbon monoxide (CO) test in the ambient air indicates CO levels above 25 PPM
- Bad burners (missing, broken, or otherwise un-repair-able)
- Crossfueled (between NG and LPG) and the orifices and/or pressure regulator have not been changed
- Missing radiants
- Open flame burners
- Rubber supply lines
- Charring or scorching

If cause cannot be determined, calibrate equipment and re-test. If still indeterminable, refer to local gas company.

Any time replacement is deemed necessary, first consider performing the replacement as an EMC (energy saving measure) before replacing as a Health & Safety measure.

On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>.

The updated Health and Safety Presentation (updated for PY 2014) is posted on the Department's website under Webinars and Workshops at <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>.

Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.

Client Education: Discuss what specific steps will be taken to educate the client, if any, on the specific health and safety category if this is not explained elsewhere in the State Plan. **Note:** Some health and safety categories, like mold and moisture, require client education.

Inform client of removal requirement prior to completing any weatherization work.

Disposal Procedures: Provide disposal procedures or indicate where these procedures can be found in the Plan or Field Standards.

State and local codes and regulations shall be followed to ensure proper disposal procedures and protocols.

Space Heaters, Vented Combustion

Concurrence or Alteration: Check if you concur with existing guidance from WPN 11-6 or if you are using an alternative action/allowability. Include the guidance action/allowability from WPN 11-6 or alternative guidance in the space provided. Alternatives must be explained and comply with DOE guidance. **Note:** Where an Action/Allowability or Testing is "required" or "not allowed" through WPN 11-6, the grantee must concur or choose to defer all units where the specific issue is encountered. Allowable items under WPN 11-6 leave room for determining if the issue or testing will be addressed and in what circumstances.

X-Concur with WPN 11-6 | Shall be treated as furnaces.

Funding: State that DOE funds are being used or indicate that alternate funding sources will be used to address this particular health and safety category.

DOE funds may be used.

Beyond Scope of DOE WAP: Describe how the issue will be treated if beyond the scope of DOE WAP.

If the issue is determined to be beyond the scope of DOE WAP, crews/contractors shall follow all Texas Referral and Deferral policies and protocols.

Standards for Remedy: Describe the standards for remedy of the health and safety category, including testing protocols. Also include when partial weatherization would be appropriate. **Note:** Some health and safety categories, like combustion gases, require testing.

A complete mechanical systems audit is required to be completed on every home. All relevant information must be recorded on the Heating/cooling systems and Appliance Worksheet. The procedure includes collecting general information; collecting and recording mechanical systems information; visual and diagnostic inspection of the venting and distribution system; and, combustion analysis and diagnostic testing of gas/propane fired equipment, and post-installation safety tests for CO.

Combustion safety testing is required when combustion appliances are present. The combustion appliance safety inspection includes all of the following: carbon monoxide testing, draft measurement, spillage evaluation, and worst case depressurization of the combustion appliance zone (CAZ). Combustion safety test results must be acted upon appropriately according to the combustion safety tables. Testing protocols can be found in Chapter 2 and 3 of the Texas Mechanical Systems Field Guide which has been distributed to the entire weatherization network and is located on the Department's website <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>

As applicable, every combustion appliance will be checked for a safe flue pipe, chimney or vent, adequate combustion air, and gas leakage.

Weatherization Assessors and Final Inspectors must test naturally drafting appliances for draft and spillage under

worst case conditions before and after air tightening is performed.

Weatherization Assessors and Final Inspectors must conduct CO testing and check flame quality.

Subgrantees must test for high carbon monoxide (CO) levels and bring CO levels to acceptable levels before weatherization work can start. The Department has defined maximum acceptable CO readings as 100 parts per million for vented combustion appliance

Investigate and correct a steady state CO reading >100 ppm in the following appliances: vented space heater.

CO detectors should be installed in all homes when fuel-fired (combustion) appliances exist.

REFERENCE: "Combustion Safety & Efficiency Testing" in the Texas Mechanical Systems Field Guide

Standards for Deferral: Describe when deferral should take place for the specific health and safety category.

Deferral should be exercised when existing code violations are present and correcting them would be beyond the scope of the DOE WAP, and/or when there are problems affecting the furnace system that are beyond the scope of the DOE WAP, such as certain electrical problems. For additional deferral criteria, see deferral section above.

Standards for Referral: Describe when referral should take place for the specific health and safety category. If possible, include associated referral agencies.

Referrals should be made when problems are identified that are beyond the scope of the DOE WAP, such as electrical or other code violations. Examples of referral agencies include, but are not limited to, LIHEAP-WAP, CEAP, CSBG, HPG, Utility Companies, and other state or local resources.

Training Provision: Discuss how training will be provided for the specific health and safety category. **Note:** Some health and safety categories, like OSHA, require training.

On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>.

The updated Health and Safety Presentation (updated for PY 2014) is posted on the Department's website under Webinars and Workshops at <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>.

Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.

Client Education: Discuss what specific steps will be taken to educate the client, if any, on the specific health and safety category if this is not explained elsewhere in the State Plan. **Note:** Some health and safety categories, like mold and moisture, require client education.

N/A

Disposal Procedures: Provide disposal procedures or indicate where these procedures can be found in the Plan or Field Standards.

State and local codes and regulations shall be followed to ensure proper disposal procedures and protocols.

Spray Polyurethane Foam (SPF)

Concurrence or Alteration: Check if you concur with existing guidance from WPN 11-6 or if you are using an alternative action/allowability. Include the guidance action/allowability from WPN 11-6 or alternative guidance in the space provided. Alternatives must be explained and comply with DOE guidance. **Note:** Where an Action/Allowability or Testing is "required" or "not allowed" through WPN 11-6, the grantee must concur or choose to defer all units where the specific issue is encountered. Allowable items under WPN 11-6 leave room for determining if the issue or testing will be addressed and in what circumstances.

X-Concur with WPN 11-6	Use EPA recommendations available online at: http://www.epa.gov/dfe/pubs/projects/spf/spray_polyurethane_foam.html when working within the conditioned space or when SPF fumes become evident within conditioned space. When working outside the building envelope, isolate the area where foam will be applied, take precautions so that fumes will not transfer to inside conditioned space, and exhaust fumes outside the home.
-------------------------------	--

Funding: State that DOE funds are being used or indicate that alternate funding sources will be used to address this particular health and safety category.

DOE funds may be used.

Beyond Scope of DOE WAP: Describe how the issue will be treated if beyond the scope of DOE WAP.

If the issue is determined to be beyond the scope of DOE WAP, crews/contractors shall follow all Texas Referral and Deferral policies and protocols.

Standards for Remedy: Describe the standards for remedy of the health and safety category, including testing protocols. Also include when partial weatherization would be appropriate. **Note:** Some health and safety categories, like combustion gases, require testing.

Check for penetrations in the building envelope.

Sensory inspection inside the home for fumes during foam application.

Follow guidelines on MSDS and post MSDS during use.

Spray polyurethane foam (SPF) is a highly-effective and widely used insulation and air sealant material. However, exposures to its key ingredient, isocyanates, and other SPF chemicals in vapors, aerosols, and dust during and after installation can cause:

- Asthma, a potentially life-threatening disease
- Sensitization, which can lead to asthma attacks if exposed again
- Lung damage
- Other respiratory and breathing problems
- Skin and eye irritation

Whether an applicator, helper, or building occupant where this product is applied, the following tips should be followed:

- Review label and product information for ingredients, hazards, directions, safe work practices, and precautions
- Ensure health and safety training is completed and safe work practices are followed to prevent eye, skin, and inhalation exposures during and after SPF installation
- Exercise caution when determining a safe re-entry time for unprotected occupants and workers based on the manufacturer recommendation

If a crew member experiences breathing problems or other adverse health effects from weatherizing with SPF, seek immediate medical attention.

Use the appropriate protection and best practices suited for each type of SPF product.

Only workers wearing appropriate personal protective equipment should be present during SPF application.

SPF is made by mixing and reacting chemicals to create foam. The mixing and reacting materials react very quickly, expanding on contact to create foam that insulates air seals and provides a moisture barrier. SPF insulation is known to resist heat transfer extremely well, and it offers a highly effective solution in reducing unwanted air infiltration through cracks, seams, and joints. There are different types of SPF. The two main types

that are typically installed by professional contractors, such as weatherization workers, include either high pressure foam and/or low pressure foam.

Refer to the MSDS for both the “A” and “B” side chemicals used in SPF. These should be posted whenever working with this product.

SPF is Temperature sensitive. Cold temperatures affect the chemistry that causes the foaming action. It's critical to keep spray foam cans or (with two-part foam) canisters within a specific temperature range for successful application. Review the manufacturer's directions for storage.

Wear appropriate protective equipment.

Discuss project scope and safety measures with occupants. A checklist is available at <http://www.spraypolyurethane.org/checklist>

Provide notification to the client of plans to use two-part foam and the precautions that may be necessary.

Consult with the product manufacturer to determine appropriate re-occupancy times for the particular job and SPF in use.

Employ EPA recommendations when working within the conditioned space or when SPF fumes become evident within conditioned space. When working outside the building envelope, isolate the area where foam will be applied, take precautions so that fumes will not transfer to inside conditioned space, and exhaust fumes outside the home.

The Department conducted 17 workshops across the state of Texas.

Review and understanding of how to read MSDS was provided by AEHS Inc. of San Antonio Texas License # 000068 issued by the Texas Department of State Health Service. The course covered the following MSDS information :

1. Chemical Product and Company Information
2. Composition and Information on Ingredients
3. Hazard Identification
4. First Aid Measures
5. Fire Fighting Measures
6. Accidental Release Measures
7. Exposure Controls and Personal Protection
8. Physical and Chemical Properties
9. Stability and Reactivity Data
10. Toxicological Information
11. Ecological Information
12. Disposal Considerations
13. Transport Information
14. Other Regularity Information and Pictograms

Standards for Deferral: Describe when deferral should take place for the specific health and safety category.

Deferral should be exercised when existing code violations are present and correcting them would be beyond the scope of the DOE WAP, and/or when there are problems affecting the Heating/cooling systems that are beyond the scope of the DOE WAP, such as cost prohibitive electrical problems. For additional deferral criteria, see deferral section above.

Standards for Referral: Describe when referral should take place for the specific health and safety category. If possible, include associated referral agencies.
Referrals should be made when problems are identified that are beyond the scope of the DOE WAP, such as electrical or other code violations. Examples of referral agencies include, but are not limited to, LIHEAP-WAP, CEAP, CSBG, HPG, Utility Companies, and other state or local resources.
Training Provision: Discuss how training will be provided for the specific health and safety category. Note: Some health and safety categories, like OSHA, require training.
On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm .
The updated Health and Safety Presentation (updated for PY 2014) is posted on the Department’s website under Webinars and Workshops at http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm .
Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.
Client Education: Discuss what specific steps will be taken to educate the client, if any, on the specific health and safety category if this is not explained elsewhere in the State Plan. Note: Some health and safety categories, like mold and moisture, require client education.
Provide notification to the client of plans to use two-part foam and the precautions that may be necessary.
Disposal Procedures: Provide disposal procedures or indicate where these procedures can be found in the Plan or Field Standards.
State and local codes as well as manufacturer and EPA guidelines shall be followed.

Ventilation

Concurrence or Alteration: Check if you concur with existing guidance from WPN 11-6 or if you are using an alternative action/allowability. Include the guidance action/allowability from WPN 11-6 or alternative guidance in the space provided. Alternatives must be explained and comply with DOE guidance. Note: Where an Action/Allowability or Testing is “required” or “not allowed” through WPN 11-6, the grantee must concur or choose to defer all units where the specific issue is encountered. Allowable items under WPN 11-6 leave room for determining if the issue or testing will be addressed and in what circumstances.	
Concur with WPN11-6	ASHRAE 62.2-2013 is required to be met to the fullest extent possible, when performing weatherization activity. Implementing ASHRAE 62.2-2013 is not required where acceptable indoor air quality already exists as defined by ASHRAE 62.2-2013.
TDHCA refined guidance	Existing fans and blower systems should be updated if not adequate.
Funding: State that DOE funds are being used or indicate that alternate funding sources will be used to address this particular health and safety category.	
DOE funds may be used.	
Beyond Scope of DOE WAP: Describe how the issue will be treated if beyond the scope of DOE WAP.	
If the issue is determined to be beyond the scope of DOE WAP, crews/contractors shall follow all Texas Referral and Deferral policies and protocols.	
Standards for Remedy: Describe the standards for remedy of the health and safety category, including testing protocols. Also include when partial weatherization would be appropriate. Note: Some health and safety categories, like combustion gases, require testing.	
The Department will implement ASHRAE 62.2-2013 for Program Year 2014. As of November 1, 2014 the State of Texas adopted WAP Memorandum 007, where additional mechanical ventilation is not required for existing buildings that require 15 CFM or less per the mechanical ventilation rate.	
Subgrantees are required to use the Alternative Compliance Path for Existing homes and obtaining and	

infiltration credit using the blower door. Subgrantees must use the blower door data captured on the Department's Blower Door data sheet item number 11 to perform an ASHRAE calculation through certified software such as RedCalc. Both the output of the software and a copy of the blower door data sheet must be placed in the client file. The Blower Door Data sheet is posted on the Department's website under Client and Field Assessment Forms at <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>

The protocol for Measuring Ventilation Performance is as follows:

1. Identify the local inventory of existing exhaust fans (measure flow using a Exhaust fan flow meter device and a pressure gauge)
 - a. Requirement for local fans
 - i. Bathrooms (50 CFM on-demand, or 20 CFM continuous).
 - ii. Kitchen (100 CFM on-demand, or 5 ACH, based on kitchen volume).
2. Determine the maximum ventilation amount required
 - a. From simple equation or corresponding chart, plus
 - b. Alternative Compliance Supplement based on post-weatherization conditions.
3. Conduct as-is blower door test to find CFM₅₀ of dwelling.
4. Post-weatherization modeling
 - a. Estimate post-weatherization CFM₅₀.
 - i. 10% of volume is ~ 6 ACH₅₀.
 - ii. 15% of volume is ~ 10 ACH₅₀.
 - b. Estimate post-weatherization depressurization.
 - i. Are existing combustion appliances affected under continuous operation? Intermittent operation? (Depressurization will be greater under intermittent operation.)
5. After weatherization is completed, measure actual CFM₅₀ and set required CFM of whole-building ventilation fan with variable-speed control to meet ASHRAE 62.2-2013.
6. Perform combustion safety testing.
7. Verify proper operation of all local and whole building ventilation equipment and controls (commissioning).
8. Job completed.
9. Measure airflows for all installed ventilation equipment.

Selection of Equipment

1. Select equipment with performance certified by AMCA or HVI

Very quiet: 1 sone or less

Standards for Deferral: Describe when deferral should take place for the specific health and safety category.

Deferral should be exercised when existing code violations are present and correcting them would be beyond the scope of the DOE WAP, and/or when there are problems affecting the heating and cooling systems that are beyond the scope of the DOE WAP, such as certain cost prohibitive electrical problems. For additional deferral criteria, see deferral section above.

Standards for Referral: Describe when referral should take place for the specific health and safety category. If possible, include associated referral agencies.

Referrals should be made when problems are identified that are beyond the scope of the DOE WAP, such as electrical or other code violations. Examples of referral agencies include, but are not limited to, LIHEAP-WAP, CEAP, CSBG, HPG, Utility Companies, and other state or local resources.

Training Provision: Discuss how training will be provided for the specific health and safety category. **Note:** Some health and safety categories, like OSHA, require training.

On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>.

The updated Health and Safety Presentation (updated for PY 2014) is posted on the Department's website under Webinars and Workshops at <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>.

The Department will implement ASHRAE 62.2-2013 in its 2014 program year. Training for Subgrantees was provided via webinar on October 29, 2014 and included a refresher on ventilation requirements and instruction on changes from ASHRAE 2010 to 2013, including but not limited to:

1. Local exhaust exceptions
2. Flow measurement
3. Different air flow calculation: The Department will use the updated calculator provided by Residential Energy Dynamics at <http://www.residentialenergydynamics.com/REDCalcFree/Tools/ASHRAE6222013.aspx> . This tool has been updated to apply the changes in the air flow calculation from 2010 to 2013.
4. Infiltration credit
5. Newly added carbon monoxide alarm and pressure drop requirements
6. Use with Multifamily units

In addition, the new ASHRAE standards are incorporated into the Standard Work Specifications published by NREL, which the Department is currently incorporating. Additional training for Subgrantees will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc. Training for program monitors so that they can monitor for compliance with all requirements will be handled via the webinar and in-house on an as-needed basis. Training and Technical Assistance staff will ensure compliance with ASHRAE 62.2-2013 during technical assistance visits to Subgrantees, and Monitors will ensure compliance with ASHRAE 62.2-2013 when they review completed units.

Client Education: Discuss what specific steps will be taken to educate the client, if any, on the specific health and safety category if this is not explained elsewhere in the State Plan. **Note:** Some health and safety categories, like mold and moisture, require client education.

Subgrantees who install ventilation must educate the clients on effective use of the exhaust ventilation equipment by:

1. Leaving owner's manual with client
2. Demonstrating how to use the exhaust fans.
3. Providing client education information on ventilation systems installed.
4. Providing client education on proper operation and maintenance.

Disposal Procedures: Provide disposal procedures or indicate where these procedures can be found in the Plan or Field Standards.

State and local codes and regulations shall be followed to ensure proper disposal procedures and protocols.

ASHRAE 62.2 Compliance: Provide a narrative describing implementation of ASHRAE 62.2, which will be required during the 2014 program year. Grantees must provide justification if making changes to ASHRAE 62.2 specific to their housing stock and local considerations.

Texas has updated technical standards to meet ASHRAE 62.2-2013 requirements.

Window and Door Replacement, Window Guards

Concurrence or Alteration: Check if you concur with existing guidance from WPN 11-6 or if you are using an alternative action/allowability. Include the guidance action/allowability from WPN 11-6 or alternative guidance in the space provided. Alternatives must be explained and comply with DOE guidance. **Note:** Where an Action/Allowability or Testing is "required" or "not allowed" through WPN 11-6, the grantee must concur or choose to defer all units where the specific issue is encountered. Allowable items under WPN 11-6 leave room for determining if the issue or testing will be addressed and in what circumstances.

X Concur with WPN 11-6	Replacement, repair, or installation is not an allowable health and safety cost but may be allowed as an incidental repair or an efficiency measure if cost justified.
-------------------------------	---

<p>Funding: State that DOE funds are being used or indicate that alternate funding sources will be used to address this particular health and safety category.</p>
<p>DOE funds may be used per the above stipulations.</p>
<p>Beyond Scope of DOE WAP: Describe how the issue will be treated if beyond the scope of DOE WAP.</p>
<p>If the issue is determined to be beyond the scope of DOE WAP, crews/contractors shall follow all Texas Referral and Deferral policies and protocols.</p>
<p>Standards for Remedy: Describe the standards for remedy of the health and safety category, including testing protocols. Also include when partial weatherization would be appropriate. Note: Some health and safety categories, like combustion gases, require testing.</p>
<p>Windows may only be performed as an incidental repair or ECM. When working on windows follow lead safe work practice requirements for pre-1978 homes.</p>
<p>Standards for Deferral: Describe when deferral should take place for the specific health and safety category.</p>
<p>Deferral should be exercised when existing code violations are present and correcting them would be beyond the scope of the DOE WAP. For additional deferral criteria, see deferral section above.</p>
<p>Standards for Referral: Describe when referral should take place for the specific health and safety category. If possible, include associated referral agencies.</p>
<p>Referral should be made when problems are identified that are beyond the scope of the DOE WAP, such as code violations. Examples of referral agencies include, but are not limited to, LIHEAP-WAP, CEAP, CSBG, HPG, Utility Companies, and other state or local resources.</p>
<p>Training Provision: Discuss how training will be provided for the specific health and safety category. Note: Some health and safety categories, like OSHA, require training.</p>
<p>On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm.</p> <p>The updated Health and Safety Presentation (updated for PY 2014) is posted on the Department’s website under Webinars and Workshops at http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm.</p> <p>Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.</p>
<p>Client Education: Discuss what specific steps will be taken to educate the client, if any, on the specific health and safety category if this is not explained elsewhere in the State Plan. Note: Some health and safety categories, like mold and moisture, require client education.</p>
<p>Provide information on lead risks.</p>
<p>Disposal Procedures: Provide disposal procedures or indicate where these procedures can be found in the Plan or Field Standards.</p>
<p>State and local codes and regulations shall be followed to ensure proper disposal procedures and protocols.</p>

Notice of Public Hearing for the Draft Program Year (“PY”) 2015 Department of Energy Weatherization Assistance Program State Plan

The Texas Department of Housing and Community Affairs (“the Department”) will hold a public hearing to receive comments on the Draft PY 2015 Department of Energy (“DOE”) Weatherization Assistance Program (“WAP”) State Plan. The hearing will take place at the following time and location:

Monday, April 6, 2015
11:00 a.m.
TDHCA Headquarters
221 East 11th Street
Conference Room 116
Austin, TX 78701

At the hearing, a representative from the Department will accept comments regarding Draft PY 2015 DOE WAP State Plan.

Local officials and citizens are encouraged to participate in the hearing process. Written and oral comments received will be used to finalize the Draft PY 2015 DOE WAP State Plan. Written comments from those who cannot attend the hearing in person may be provided by noon on Monday, April 6, 2015, to Ms. Laura Saintey, Community Affairs Division, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711 or by electronic mail to laura.saintey@tdhca.state.tx.us. A copy of the Draft PY 2015 DOE WAP State Plan may be obtained through TDHCA's web site, <http://www.tdhca.state.tx.us/community-affairs/wap/index.htm> or by calling Ms. Saintey at (512) 475-3854, or by writing to Ms. Saintey at the TDHCA address given above.

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 three (3) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Annette Cornier, 512-475-3803 at least three (3) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Annette Cornier al siguiente número (512) 475-3803 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

**Weatherization Assistance Program
Policy Advisory Council Meeting**

April 6, 2015
2:30 p.m. Central

Conference call in number: 877-226-9790
Access code: 8871392

AGENDA

1. Call to Order
2. Member Introductions:

<i>Organization</i>	<i>Member Name</i>
Combined Community Action	Kelly Franke
Greater East Texas Community Action Program	Karen Swenson
Railroad Commission of Texas	Heather Ball
Texas Department of Aging and Disability Services	Toni Packard
Ysleta del Sur Pueblo Housing Department	Al Joseph

3. Purpose
4. Review of the Draft PY 2015 DOE WAP State Plan
5. Discussion of Comments Received from Public Hearing on Draft PY 2015 DOE Weatherization Assistance Program (WAP) State Plan/Application
6. Open Discussion
7. Adjourn

Sharon Gamble: My name is Sharon Gamble and I am the Programs Manager at the Texas Department of Housing and Community Affairs the Community Affairs Division. And this is the April 6, 2015 conference call meeting of the Weatherization Assistance Program Policy Advisory Council. As stated I am Sharon Gamble, I have with me here in the room Marco Cruz who is one of our lead weatherization staff members; he's one of our trainers and one of our technical assistance providers. If each of you would please introduce yourselves and we can just go by the order of the names on the agenda so Kelly if you would start.

Kelly Franke: Kelly Franke, Executive Director Combined Community Action Giddings, Texas.

Karen Swenson: Karen Swenson, Executive Director, Greater East Texas Community Action Program based in Nacogdoches.

Heather Ball: Heather Ball, Railroad Commission of Texas.

Toni Packard: Toni Packard Texas Department of Aging and Disability Services.

Al Joseph: Al Joseph, Housing Director for the Ysleta del Sur Pueblo in El Paso, Texas. If I may, I'd like to say I am retiring very shortly here and my replacement is already here sitting beside me Jonathon Robertson and he is willing to take over this responsibility if you need him.

SG: Absolutely; we will discuss that with the committee here in just a bit. So with the member introductions done, the purpose of this meeting here today is to discuss the Program Year 2015 Department of Energy Weatherization Assistance Program Plan. I trust that you've all had a chance to review that plan. I can report that the Department

received no public comment on the plan, our public comment period closed today at noon. We did not receive any comment on the plan so the plan that you saw posted is the plan that is up for discussion here today. Before we start well actually I guess we will do discussions and then we can discuss the committee assignments after we do our discussion here, and AI if you would please as one of your last duties here be the participant in the discussion today and then we can talk about Jonathan's membership afterwards. So the DOE plan as posted on the website is not very different from the plan from last year. Different is the amount of funds awarded that did go up about \$400,000 this year. We have of course the same Subgrantee network that we've had in the past. One thing that I would point out is that you will notice on Section 4.1 Subgrantees which is the list of the Subgrantees for the program, we do have a space where the award recipient is to be determined and that's in Cameron and Willacy counties and that service area is in the Rio Grande Valley area the state. Cameron and Willacy Counties Community Projects Incorporated was not recommended for an award by our executive award committee here at the department and as a result of that we have released a Request for Applications for a provider to provide weatherization services in Cameron and Willacy counties. The applications for that RFA were due on Friday, April 3. We did receive two responses; we have not reviewed those responses yet. We expect to have those responses reviewed tomorrow and a recommendation for a replacement provider provided to our board for the board meeting of April 16, 2015 here in Austin. So that's one thing that I would point out to you in the plan. Other than that it's very much an update of what we've done in the past. There has been some updating of the monitoring and training sections of the plan in response to further DOE

guidance on training and monitoring. And the Health and Safety Plan has been updated to include more of the training and technical assistance and postings that we have on the website and some other date specific and program specific updates to that. The program itself though has not changed, so very little to report as far as the difference in the plan. With that I'd like to sort of open up the discussion of the plan if anybody has any questions or any comments that they would like to bring please do so at this time. Just identify yourself when you speak, thank you.

TP: I do. Toni Packard with DADS, I have several of them so. You mention that the awards were not granted to those particular counties. Are these awards reviewed every year? Is there a particular time period for each one of these Subgrantees?

SG: Yes, Toni, the funds are awarded every year.

TP: I'm talking about the determination of who receives the funds.

SG: That is not determined every year. The weatherization program is a highly technical program and it's not very easy to change the Subgrantees. And so we do generally use the same collection of Subgrantees every year. That coupled with federal requirements in this program and other programs, that are related to the act that ties all these funds together. Organizations that operate program such as the Community Services Block Grant and the Low Income Home Energy Assistance Program, the weatherization program, by federal guidance, is supposed to operate in line with those. And so organizations that operate CSBG that operate our LIHEAP programs are sort of the first choice to run the program and sort of take over when a service area comes open.

TP: And how does a service area come open?

SG: In this instance we have a provider that's been a provider for a very long time but they've had some difficulties in the last year to where they have some outstanding compliance findings that they haven't been able to clear up in time for this award cycle. So they were not recommended for an award which would have left Cameron and Willacy counties without a provider for DOE weatherization. And so in that instance we release request for applications and it states very clearly in the request for applications that preference is given to organizations that are already running those programs, CSBG, LIHEAP, and other poverty related programs that we operate here at the Department.

TP: Are all the counties in Texas covered?

SG: Yes they are and I should point out that the funds are allocated to the counties and not necessarily for the organization. That's why I can say that it says "TBD reserved for Cameron and Willacy counties" because the allocation is actually for the counties and then the service provider receives the contract. So all 254 counties are covered.

Do you get any funding from the state?

For weatherization we the state do not. There is however some of the utility providers are required by the PUC to provide funds to help their own customers get some sort of relief from their utilities and they do that through weatherization. That funding does not come to the state it's operated through another organization. A lot of the same organizations that operate our weatherization program though also operate those

weatherization programs. At this time though, other than that the state does not have set aside a fund for weatherization. They used to but not anymore.

TP: On page 12 it talks about Tier 1 training, that you had reached out to DOE for some technical assistance. Have you received any comment back from DOE on that?

SG: the plan is obviously a way for us to communicate with DOE in writing the things that we has a state need. And so while we have made that request and several different states have made that request. We have not yet received any specific technical assistance regarding that issue. Having it in our plan also reiterates that request from us and so just basically we put it there to keep it in the front of their minds that it is something that we are looking for you know. Sort of a little prompt.

TP: Then one last kind of multilevel one. It had to do with page 14 under Program Evaluation. I was reading about the online contracting but you are talking about capturing unit-level data. Do you collect that data now?

SG: We don't collect it on the statewide level. We don't have a statewide database that allows us to collect unit level data. Each individual Subgrantee however does have the ability to collect that kind of data and they do. So we have access to it we just don't have the ability to collect it on a on a statewide level yet.

TP: So if they collect at the Subgrantee level do they report it back up to you?

SG: They report to us in aggregate. If we have a need for it and we asked for it then they do report it up to us.

TP: And the online contract system; is that done in house or is it by a vendor?

SG: Its in-house, this is the system that was built by our internal IT division.

TP: And if you could educate me a little bit, given this unit level data, how does that improve the program.

SG; Well, here's the thing. It's one of the things that is sort of new with DOE where they are starting to ask more about unit level data. We are actually in talks with our national partners, not just DOE but also with the Department of Health and Human Services, about ways that we as such a large state (we are one of the larger states) and we have more sub grantees I think than most of the other states as well. We are at the point now where we are starting to feel the need for such a system. Right now we don't receive a lot of requests for the information. We don't do as much program evaluation as we could I think if we had a statewide system. And so it's not optimal right now, admittedly.

TP. Okay, thank you.

SG. You're welcome, thank you for your questions

KF: Sharon this is Kelly. I wanted to ask if there was a way that TDHCA could explore some options when it comes to the procurement for the QCI training. Specifically, is there any way that TDHCA can actually do the procurement and go with one group that does the training so we are all being trained the same way? The reason I ask is after talking with several agencies about some of the issues they have had getting their people passing the test and qualified that most of them that go to Santa Fe seem to get through it, whereas I've heard that in the other areas are not. So is there any way that the Department could procure just with Santa Fe so that everybody would go to the same place to do the QCI training?

KS: This is Karen Swenson. That's a good point, Kelly. My gentlemen went to Santa Fe and both of them passed. I don't know about the others but I have heard because of my association with Region Six we are not the only state that is having problems going to training in other places and their attendees not being successful. So that's my two cents. Thanks for bringing that up.

SG: We can certainly look into that. We thought about doing that at the beginning. The reason that we didn't do that quite frankly was that we wanted to sort of leave it open for people to be able to go where they could get in. I think that maybe at this point it won't be such a problem. But if we if we say that it's just Santa Fe then it also depends on does Santa Fe have room for them. And then if we say just Santa Fe, then they can't go somewhere else that might have room for them. So we can certainly look into that. We can poll the network and see if anyone would be interested in that route. Of course that would require a procurement for us. Since it's all out-of-state providers it would be an extensive process to get that kind of a procurement done. We could certainly do it. It would not be done in a couple of months though and we are looking at July 1 of hopefully having everyone have a QCI on board.

KF: I have a new person. He's not new to weatherization he is new to my agency. He has met with Doug and he has talked to Laura Saintey so we are working on getting his. Just from hearing everybody talking around the state, they seem to be the one that's getting them through it. And they seem to be better prepared for the testing.

TP: This is Toni. Could y'all work the procurement to where it is a requirement of that company to have an office here in Texas? We do customer satisfaction surveys with

DSHS as a part of that the company that was chosen had to have an office here in Texas. And they opened up one.

SG: We certainly could require that. That's certainly something we could put in there. There wouldn't be anything limiting us from that ability. Kelly in your comment you are just talking about the QCI training?

KF: Yes. That is my main thing right now is getting my person done.

KS: Overall I really thought the plan was a good plan. It covers all of the counties. Of course there is not enough money but, such as it is.

AJ: This is Al Joseph. All of my concerns have been addressed already. I think it's a good plan.

SG: Thank you Joseph. Okay, is there any more discussion about the state plan that we need to have before we talk about whether or not the committee would like to accept the plan for submittal to DOE? (silence) If not, if someone would like to make that motion.

TP: This is Toni. I move that we accept the plan to send to DOE.

KS: This is Karen in Nacogdoches and I will second that.

SG: Okay is there any discussion about the motion before we take a vote? (pause)

Okay I don't hear a discussion so will do a voice vote so that I can have a record of who voted. As I call your name if you would indicate aye or nay. Kelly: aye Karen: aye

Heather: aye Toni: aye and Al: aye. Okay and surveying the membership we have all ayes with no opposition so that the DOE WAP state plan as published will be submitted to DOE for the State of Texas. Thank so very much.

(at which point the committee discussed the selection of new member and the meeting was adjourned.)

1j

BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION

APRIL 16, 2015

Presentation, Discussion, and Possible Action Regarding the Possible Absorption of the Alamo Area Council of Government's Section 8 Housing Choice Voucher Program ("HCVP")

RECOMMENDED ACTION

WHEREAS, the Department is a Public Housing Authority ("PHA") as designated by the U. S. Department of Housing and Urban Development ("HUD") and administers the Section 8 Housing Choice Voucher Program (the "Section 8 Program");

WHEREAS, HUD supports the Alamo Area Council of Government relinquishing its HCVP as a way to promote efficiency and Alamo Area Council of Government ("AACOG") has requested that the Department absorb that program;

WHEREAS, the Board considered the issue of absorbing vouchers from other Public Housing Authority at its September 12, 2013, Board meeting, and staff was authorized to pursue such absorptions and perform further research prior to making a subsequent recommendation to the Board, and that research has occurred; and

WHEREAS, the initial research and file review of the AACOG HCVP by staff supports a positive recommendation by staff to absorb the vouchers;

Now, therefore, it is hereby

RESOLVED, that the Department is authorized to proceed with the absorption of AACOG's Section 8 HCVP, thereby assuming approximately 80 active vouchers and accepting and integrating AACOG HCVP's waiting list with the Department's current waiting lists, including if possible any VASH voucher authority currently provided by HUD to AACOG and

FURTHER RESOLVED, that the Department is authorized to collaborate with HUD on the formal and permanent transfer process of accepting the vouchers from the AACOG.

BACKGROUND

As discussed at the Board meeting on September 13, 2013, in which the Board supported staff pursuit of absorption of vouchers from other PHAs, staff researched and reviewed AACOG's HCVP vouchers at the request of AACOG and as desired by HUD. Approximately, 24% of AACOG's active vouchers are leased in the Department's HCVP jurisdiction. To date, staff does not identify any major concerns, but a future Department on-site technical visit will be conducted. Items that will be assessed are the following:

- 1) Payment standards are used when calculating Housing Assistance Payment ("HAP"); a family's rent is the lower of the payment standard amount for the family unit size or the payment standard for the actual number of bedrooms of the unit leased by the family. It was originally a concern of Department staff that the payment standards in use by AACOG may not be properly calculated or properly applied to households. However, AACOG has adopted a payment standard of 100% of HUDs Fair Market Rent. The payment standards AACOG adopted are within the 90–110% range as required and are consistent with the standards in use by the Department.
- 2) Utility Allowances are required by HUD to be reviewed every year. If there is a change of 10% or more, the PHA must update its allowance schedule. Staff will review AACOG's utility allowances and validate if the utility allowances have been updated as required.
- 3) Third-Party verification must be obtained for household eligibility. Staff will determine if AACOG's third-party verification is within the guidelines set by HUD. Verification must be within sixty days of date of certification.
- 4) Net Restricted Assets ("NRA") is the amount of Housing Assistance Payments ("HAP") unspent for the HCV program through the PHA's fiscal year end. Staff will verify if AACOG's financial advisor at HUD has accumulated unspent HAP. This NRA would be absorbed by the Department as well.

Therefore, staff believes the absorption of these vouchers will pose no undue risk to the Department and recommends the Board grant authority to absorb AACOG's Housing Choice Voucher Program conditioned on no major concerns arising during the above stated review.

1k

BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
APRIL 16, 2015

Presentation, Discussion and Possible Action Authorizing the Publication of a Request for Proposal (“RFP”) for a Provider of Weatherization Training and Technical Assistance

RECOMMENDED ACTION

WHEREAS, pursuant to Texas Government Code, §§2306.053 and 2306.097, the Department is provided the authority to administer the Weatherization Assistance Program (“WAP”);

WHEREAS, the Department administers the WAP with funding from both the Department of Energy (“DOE”) and the U.S. Health and Human Services’ Low-Income Home Energy Assistance Program (“LIHEAP”);

WHEREAS, the Department develops and submits a State Plan to the DOE each year to administer the WAP, which includes a section that describes the Department’s training and technical assistance goals for program Subgrantees; and

WHEREAS, as the technical requirements for the WAP continue to expand and increase in the required credentials of staff, the Department believes that its DOE and LIHEAP WAP Subgrantees will be better served if the technical portions of the training are provided by an entity that has ongoing credentialed staff and has greater capacity to provide in-depth technical training on a state-wide and recurring basis.

NOW, therefore, it is hereby

RESOLVED, that the Executive Director be granted the authority to release and subsequently award an RFP to solicit an entity to provide training and technical assistance for the Weatherization Assistance Program; and

FURTHER RESOLVED, that staff is granted the authority to enter into negotiations with the top scoring applicant(s), with the condition that all awards made are subsequently presented to the Board for ratification.

BACKGROUND

In a separate item at this meeting, the Department has submitted PY 2015 Department of Energy (“DOE”) Weatherization Assistance Program (“WAP”) State Plan and Awards for Board approval. The Plan includes a section that describes the Department’s training and technical assistance goals for program Subgrantees. The goals include several DOE requirements associated with Quality Work Plan, as described by DOE in *Weatherization Program Notice (“WPN”) 15-4* released on October 24, 2014. The requirements include:

- Comprehensive field work standards and guides;
- Job Task Analysis (“JTA”) and Standard Work Specifications (“SWS”) to be followed by all WAP workers; and
- Guidelines and certifications for unit assessment and inspection.

WPN 15-4 requires that Training Plans must address two distinct categories:

1. **Tier 1 Training:** Comprehensive, occupation-specific training which follows a curriculum aligned with the JTA for that occupation. Tier 1 training must be administered by, or in cooperation with, a training program that is accredited by a DOE-approved accreditation organization for the JTA being taught.
2. **Tier 2 Training:** Single-issue, short-term, training to address acute deficiencies in the field

Staff proposes that the Tier 1 and Tier 2 training be provided by an entity that is accredited by a DOE-approved accreditation organization for the JTA being taught and that has the capacity to provide such training on a state-wide and recurring basis. Staff would leverage limited DOE funding with LIHEAP funding as the provider would also provide training services for the LIHEAP WAP.

The Department’s training and technical assistance staff will continue to provide training and technical assistance including but not limited to program administrative requirements, program operation, process improvement, and production management. However, the very technical portions of weatherization activity may not be provided by staff.

REPORT ITEMS

2a

TDHCA Outreach Activities, March 2015

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
Texas State Independent Living Council Quarterly Meeting & Conference	Austin	Feb 28-March 2	Housing Resource Center	Presentation, Exhibitor
Aging and Disability Resource Center Housing Navigator Training	Longview	March 5	Housing Resource Center	Presentation
Promoting Independence Advisory Committee	Austin	March 12	Housing Resource Center	Participant
Board training and Staff Technical Assistance/Panhandle Community Services	Amarillo	March 18-19	Community Affairs	Training
Quarterly Multifamily Compliance Workgroup	San Antonio	March 24	Compliance	Training
Board Training/Community Action Corporation of South Texas	Alice	March 24	Community Affairs	Training
Cities of Rio Bravo, El Cenizo/HTF & OCI Outreach	Rio Bravo/El Cenizo	March 24	Office of Colonia Initiatives	Presentation
Program Technical Assistance/Brazos Valley Community Action Agency	Bryan	March 25	Community Affairs	Training
Community Resource Coordination Group	Austin	March 25	Housing Resource Center	Participant
Housing Tax Credit Training	San Antonio	March 25	Compliance	Training
Groundbreaking Event/Freedom's Path	Kerrville	March 26	Executive, Multifamily	Remarks, Participant
Intellectual & Developmental Disability System Redesign Advisory Committee/Housing Subcommittee	Austin	March 26	Housing Resource Center	Participant
Program Assistance/Combined Community Action	Giddings	March 26	Community Affairs	Training
Administration and Program Technical Assistance/Hidalgo County Community Services Agency	Edinburg	March 30-31	Community Affairs	Training
Intellectual and Developmental Disability Community Forum	Austin	March 31	Housing Resource Center	Participant

Internet Postings of Note, March 2015

A list of new or noteworthy documents posted to the Department's website

Homeless Housing and Services Program Allocations and Contact Information — updated list of and contact information for entities currently administrating HHSP funds under this program:

www.tdhca.state.tx.us/community-affairs/hhsp/index.htm

2015 Affirmative Marketing Requirements Presentation — reflecting changes to marketing rules related to actions affirmatively furthering fair housing:

www.tdhca.state.tx.us/pmcomp/presentations.htm

2015 9% HTC Full-Application Logs by date — *reflecting applications submitted in the full application cycle, with total self score among several other items of information:*

www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm

Public Hearing Schedule for Public Comment On the 2015 Competitive Housing Tax Credit Applications — *detailing dates, times, and locations of a series of six meetings at which the Department will accept public comment on applications participating in the 2015 HTC allocation cycle:*

www.tdhca.state.tx.us/multifamily/announcements.htm

2015 9% Housing Tax Credit Program: Individually Imaged Applications — *detailing the specifics of each application seeking credits in the 2015 HTC full allocation cycle:*

www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm

Comprehensive Energy Assistance Program: Frequently Asked Questions — *providing answers to the most-often asked questions from entities providing assistance through the Department's CEAP services:*

www.tdhca.state.tx.us/community-affairs/ceap/guidance.htm

2015 State of Texas Low Income Housing Plan and Annual Report — *providing an overview of statewide housing needs as well as a report 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-plans.htm

2015 HOME Multifamily Development Program Application Log — *listing applicants seeking financing for multifamily affordable rental properties through the Department's HOME Program:*

www.tdhca.state.tx.us/multifamily/home/index.htm

Annual Weatherization Report to Texas Legislature — *meeting requirements under Rider 14 detailing weatherization efforts by the State of Texas:*

www.tdhca.state.tx.us/community-affairs/wap/index.htm

2015 Multifamily Bond Refunding Application — *for individuals applying to refund or re-structure tax-exempt bonds previously issued by the Department:*

www.tdhca.state.tx.us/multifamily/apply-for-funds.htm

2015 Project Income and Rent Tool — *identifying maximum income and rent limits for properties financed through the Department's Housing Tax Credit, Tax Exempt Bond, HOME, Neighborhood Stabilization Program, and Housing Trust Fund rental development programs:*

www.tdhca.state.tx.us/pmcomp/irl/index.htm

2015 Competitive Housing Tax Credit Application Cycle: Frequently Asked Questions — *providing answers to the most-often asked questions from applicants participating in the 2015 HTC allocation cycle:*

www.tdhca.state.tx.us/multifamily/apply-for-funds.htm

2015 Emergency Solutions Grants Program Notice of Funding Availability: Revised March 17, 2015 — *updated information regarding the availability of funds for entities seeking to apply for funds through the Department's ESG Program:*

www.tdhca.state.tx.us/community-affairs/nofas.htm

2015 Emergency Solutions Grants Program Application: Revised March 17, 2015 — *updated application for entities seeking to apply for funds through the Department's ESG Program:*

www.tdhca.state.tx.us/community-affairs/nofas.htm

Community Affairs: Request for Applications — *seeking an eligible entity to administer the Comprehensive Energy Assistance and Weatherization Assistance programs in Cameron and Willacy counties:*

www.tdhca.state.tx.us/nofa.htm; <http://www.tdhca.state.tx.us/community-affairs/nofas.htm>

Proposed 2015 Real Estate Analysis Rule Amendments — *proposing changes affecting underwriting at the time of cost certification for developments financed through the Housing Tax Credit Program:*

www.tdhca.state.tx.us/rea/index.htm

Community Needs Assessment Guide — *assisting community action agencies administering the Department's CSBG program meet federal requirements to conduct a community needs assessment every three years:*

www.tdhca.state.tx.us/community-affairs/csbg/guidance.htm

Draft 2015 DOE Weatherization Assistance Program State Plan — *submitted annually to the federal government outlining the method in which the Department will administer DOE WAP funding:*

www.tdhca.state.tx.us/community-affairs/wap/index.htm

Proposed Previous Participation Rule Amendments — *proposing amendments to the Department's rule regarding Previous Participation Reviews for applicants seeking awards through its multifamily finance programs, as well as CSBG, LIHEAP, and WAP funding sources:*

www.tdhca.state.tx.us/pmcomp/manuals-rules-htc.htm

Quantifiable Community Participation: Individually Imaged Letters — *detailing the specifics of each letter seeking or receiving QCP points in the 2015 HTC full allocation cycle:*

www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm

Invitation for Bids: Onsite Training for OMB Super Circular — *seeking a qualified vendor to provide Department staff with onsite training on the OMB Super Circular, affecting how qualified entities spend and administer federal grant funds (links to the Comptroller's Office website):*

www.tdhca.state.tx.us/

Draft 2015 State of Texas Consolidated Annual Plan and Report — *evaluating the performance of the past program year for the following HUD programs: the Community Development Block Grant Program, administered by the Texas Department of Agriculture; the Emergency Shelter Grants and HOME Investment Partnerships programs, administered by the Department; and the Housing Opportunities for Persons with AIDS Program, administered by the Texas Department of State Health Services:*

www.tdhca.state.tx.us/housing-center/pubs-drafts.htm

Environmental Review Module Training Manual — *providing guidance to housing contract administrators inputting Environmental Review data submissions and tracking in the Housing Contract System:*

<http://www.tdhca.state.tx.us/program-services/environmental/index.htm>

2b

BOARD REPORT ITEM
HOME PROGRAM DIVISION
APRIL 16, 2015

Report on Single Family HOME Program Activities

REPORT ITEM

This report is intended to update the Governing Board of the Texas Department of Housing and Community Affairs (“TDHCA” or “Department”) on planned activities to occur throughout the remainder of calendar year 2015 related to HOME Investment Partnerships Program (“HOME”) Single Family activities.

April Release of Funds

The Department will be releasing approximately \$5,100,000 for HOME Single Family activities on April 29, 2015. These are funds that have been generated from program income, and funds recaptured from contract close-outs and cancelled activities that occurred after the release of the 2014 HOME annual allocation for Single Family activities. In the interest of making these funds available to households as soon as possible, these funds will be released using the existing reservation system. Efforts to release HOME funds through a new method has been a subject of significant concern for many who administer HOME funds and could create a significant delay in the release of the funds.

Through a targeted listserv release on March 25, 2015, staff requested input from stakeholders on several issues, one of which regarded the proposed release. Staff wanted to ensure that applicants for the funds, and those who have made comment on possible changes to the method of awarding funds, would be able to provide feedback on the release of funds using the reservation system. Minimal comments were received relating to this release, and none of the comments indicated a desire for the fund release to be delayed, nor did any speak against using the reservation system for releasing these funds. The minimal input received commented only on the order of release of each activity and asking that the split of funds among activities be adjusted, in particular based on proportional historic usage by activity. The order of release of the activities should have no impact as each pot of funds is to be released separately – no one activity is competing against another activity. Relating to the proportional programming of funds based on historic usage, this would have a significantly disproportional negative impact on homebuyer assistance and tenant-based rental assistance, as has occurred with previous fund releases, and is therefore not recommended by staff.

The method to be used (reflected below) remains the same as was proposed in the listserv. The listserv had been released with the estimated release of \$3 million, so a change in the amounts is reflected as apportioned among the \$5.1 million now being released.

The Department originally scheduled the fund release to occur on April 22nd. However, the Department recognizes that some Administrators may not have entered households into the Housing Contract system prior to the release of the Environmental Review Module (“ERM”) as recommended. To ensure sufficient time for Administrators to enter households, and Department staff to process corresponding environmental reviews in the ERM, the Department is now scheduling the release to occur April 29th. The release will provide for \$750,000 under the Persons with Disabilities Set-Aside and \$4,350,000 under the General Set-Aside. To address concerns of the reservation system possibly being "crashed" by too many simultaneous submissions on April 29, 2015, different activity types will be released in staggered timeframes.

Persons With Disabilities (PWD) Set-Aside

9:00 AM CDT	\$250,000	Tenant-Based Rental Assistance (“TBRA”)
9:30 AM CDT	\$250,000	Homebuyer Assistance (“HBA”)
10:00 AM CDT	\$250,000	Homeowner Rehabilitation (“HRA”)

General Set-Aside

11:00 AM CDT	\$1,450,000	Tenant-Based Rental Assistance (“TBRA”)
11:30 AM CDT	\$1,450,000	Homebuyer Assistance (“HBA”)
12:00 PM CDT	\$1,450,000	Homeowner Rehabilitation (“HRA”)

Funds not requested for specific activities will collapse and be made available regardless of activity type on May 12, 2015; this is a minor change from the listserv which had indicated a collapse date of May 5, 2015.

Please note that the release of these funds does not reduce the amount of the 2015 HOME annual allocation funding that the HOME Single Family Division will release later this year.

HOME Rule

Staff is also making revisions to the rules under 10 Texas Administrative Code, Chapter 23, Single Family HOME Program. To further promote the degree to which staff obtains comment on rule changes and understands the issues of greatest interest, a staff draft was released on April 6, 2015, to begin to solicit feedback on proposed changes. Staff also opened an online discussion forum on the proposed Rule revisions on April 6, 2015. The online discussion forum will close on April 30, 2015. After considering feedback on the staff draft of the HOME Rule, a draft Rule is planned to be presented at the Board meeting of May 7, 2015, requesting approval to publish the Rules for official public comment. A final adoption of the HOME Rule, with public comment taken into consideration, is anticipated to be presented to the Board in July 2015.

2015 HOME Single Family Allocation

Staff is also working on the new methodology that will be used to release the 2015 HOME annual allocation for Single Family activities that incorporates contract awards as opposed to the exclusive use of the reservation system. The new methodology is proposed in response to feedback received in late 2014 from multiple HOME Single Family administrators regarding the limitations experienced when using the reservation system in 2014.

A preliminary timeline and proposed method for the allocation was introduced at two well attended roundtable discussions held on February 17, 2015 and February 25, 2015 respectively. These roundtables allowed interested parties to review and provide feedback on the proposed new method for the distribution of HOME funds. Public response was also received via e-mail.

The preliminary concept calls for HOME Single Family (“SF”) general set-aside activities including Homeowner Rehabilitation Assistance (“HRA”), Homebuyer Assistance (“HBA”), and Tenant-Based Rental Assistance (“TBRA”) to be allocated through a competitive process for contract awards, while still allowing HOME Administrators to access reservation funds as they become available. Funds for general set-aside activities are anticipated to total approximately \$10,000,000, and are subject to the Regional Allocation Formula.

As a preliminary concept, contract awards would be made based on score within each region and subregion, then based on remaining funding availability. At some point, all remaining funds will be combined into one pot of funds and awarded based on and additional scoring criteria. Applicants would compete against all other HOME SF applicants in their region and subregion, regardless of activity type, *i.e.* a HOME HRA applicant will be scored and ranked against applicants applying to administer TBRA or HBA. The Department would have benchmarks for activity submissions to ensure that funds can be redistributed to ready-to-go households through the reservation system.

At this time, staff is not proposing contract awards for the Persons with Disabilities (“PWD”), Contract-for-Deed Conversion (“CFDC”), and the Disaster Relief set-asides; however this can continue to be discussed. As further noted below, opportunities for ongoing input will continue over the next several months as it relates to the scoring criteria and other aspects of the competition prior to a Notice of Funding Availability being released.

Roundtables

The Department conducted roundtables as part of our commitment to receive input into all the planned activities. Roundtables were held on the proposed award process February 17, 2015, and February 25, 2015, with another roundtable planned for April 13, 2015. The February roundtables were most focused on how the 2015 funds might be allocated. The April roundtables will update stakeholders on finalized plans to release the \$5,100,000 of funding; will solicit input on a staff draft of revisions to 10 Texas Administrative Code, Chapter 23, Single Family HOME Program; and will update stakeholders on the timeline of activities related to the 2015 HOME annual allocation for Single Family activities. The roundtable on April 13th is not intended to address the

scoring factors and competition process of the allocation; that more detailed discussion will be addressed through further online forums and roundtables.

The availability and use of these funds are subject to state and federal regulations including, but not limited to Texas Administrative Code in Title 10 Part 1, Chapter 20, Single Family Umbrella Rule, and Chapter 23, the Single Family HOME Program, as amended (“HOME Program Rule”), and the federal regulation governing the HOME Program at 24 CFR Part 92, as amended (“HOME Final Rule”).

2c

BOARD REPORT ITEM
MULTIFAMILY FINANCE DIVISION
APRIL 16, 2015

Report on previously approved HOME award to Majors Place, Greenville.

BACKGROUND

When the Majors Place Apartments in Greenville development (#13502) was before the Texas Department of Housing and Community Affairs ("TDHCA") Governing Board for consideration of a HOME award on June 26, 2014, the Board was made aware by staff of the fact that Greenville officials had concerns, did not believe the city needed the affordable housing, and noted that they already had more than twice the state per capita average of affordable housing. However, since this award involved HOME funds rather than housing tax credits the requirement of a local resolution for the "two times" issue was not applicable. The applicant met the criteria for the award and there was no apparent basis in the law or the rules for denying the award.

State Senator Bob Deuell and Representative Dan Flynn sent a joint letter to TDHCA via FAX on June 25, 2014. The letter, which raised several questions about the matter, was received on that date by a staff person in TDHCA's HOME multifamily area. Staff was unsuccessful in contacting Senator Deuell's office to clarify understanding of the letter. Consequently, this letter was not presented to the Governing Board. As noted above, the Board was, however, aware of the issues and concerns raised in the letter and proceeded with the award. The Representative continues to have both the same concerns as it relates to the "foreseeable socioeconomic impact" and opposition as expressed previously by the City Manager. The applicant is communicating with the City Manager to see if the concerns can be addressed.

A copy of the letter from the Senator and Representative is attached.

The Senate of The State of Texas

CAPITOL OFFICE:

P.O. Box 12068
Austin, Texas 78711
(512) 463-0102
Fax: (512) 463-7202
Dial 711 For Relay Calls



ROBERT F. DEUELL, M.D.
TEXAS SENATE DISTRICT 2

DISTRICT OFFICES:

18601 LBJ Freeway, Suite 400
Mesquite, Texas 75150
(972) 279-1800
Fax: (972) 279-1065

2608 Eastland Street, Suite 205
Greenville, Texas 75402
(903) 450-9797
Fax: (903) 450-9796

June 25, 2014

TDHCA
Multi-Family Finance Division
Attention: Andrew Sinnott
PO Box 13941
Austin, TX 78711-3941

Via Facsimile: 512-475-0764

RE: Affordable Rental Housing Applications for Greenville, Tx

Dear Mr. Sinnott:

I have been contacted by the municipal leadership of the City of Greenville regarding an agenda item on the June 26, 2014 TDHCA board meeting.

We would like an explanation as to why this item is being considered despite the registered opposition of the city and their empirical data which shows that the city already has a disproportionate share of these types of units.

Thank you for your prompt attention to our concerns.

Sincerely,

Handwritten signature of Bob Deuell in black ink.

State Senator Bob Deuell, MD
Senate District Two

Handwritten signature of Dan Flynn in black ink.

State Representative Dan Flynn
House District Two

cc. Hon. Steve Reid

2d

BOARD REPORT ITEM
COMPLIANCE DIVISION
APRIL 16, 2015

Compliance Division Update

BACKGROUND

At the Board meeting of February 20, 2014, the Compliance Division presented the first report on the results of Customer Service Surveys. Since then, the Compliance Division has been providing a report to the Board on a quarterly basis regarding the results of the surveys and other relevant updates. This is the quarterly update. The information is organized by section of the Compliance Division: Community Affairs Monitoring, Contract Monitoring, and Multifamily Monitoring.

Community Affairs Monitoring: Communication with the network of community action agencies continues to need improvement. Staff held a roundtable on March 11, 2015, about the staff draft of the rule regarding previous participation; topics veered into other areas. Subrecipients continue to comment that there are inconsistencies in the findings of the monitoring staff and the guidance from the program area. Department staff has requested but not been provided specific examples. (The one example offered during the roundtable was not actually an area of inconsistency but rather indicated a need for further subrecipient training.) The Customer Service surveys are intended to obtain feedback on this type of issue; however, the response rate has been minimal. Since the last Board update only one Community Action Agency has submitted a survey. Since this is not proving to be a very effective method for soliciting feedback, staff may consider phone interviews after the monitoring visit to improve communication.

At the roundtable, subrecipients provided a list of suggestions they believe would improve the situation:

- A single point of contact at the Department for all questions and issues.
- Re-convening an annual Executive Director's conference.
- More one-on-one training.

Staff is discussing the logistics of implementing these suggestions and will continue to provide updates to the Board and the public, however, the controls of keeping monitoring staff independent of program staff will be taken into consideration.

At the January and February Board meetings of 2015 the status of one of the Department's Community Action Agencies, Cameron and Willacy County Communities Project, Inc. ("CWCCP") was discussed in depth. As agreed upon, Wipfli CPAs and Consultants visited CWCCP the week of March 25, 2015. Their work is ongoing and staff expects a report in 4 to 6 weeks.

Another Community Action Agency, the Urban League of Greater Dallas (“ULGD”), has not yet been awarded their 2015 Community Services Block Grant funds. The Executive Award Review Advisory Committee tabled consideration of their compliance history in December of 2014 because the ULGD did not have a current Single Audit. The Single Audit should have been submitted no later than June 30, 2014; it was received by the Department of March 25, 2015. Staff is reviewing the audit and working with the ULGD to form a recommendation regarding their funding.

Contract Monitoring: Things are relatively quiet and running smoothly in the contract monitoring section of the compliance division. Only one customer service survey was received for this section as well. Most notably since the last update, two Emergency Solutions Grant subrecipients have met with the Department’s Enforcement Committee and agreed to repayment plans to recover disallowed amounts. This is possible through the process outlined in the Department’s Enforcement rule which was adopted in 2014. Those agreed orders were on the February and March 2015 agendas.

Multifamily Monitoring: Staff has noted a previous inconsistency regarding implementation of IRS guidance that related to conflicts between local codes and the Uniform Physical Condition Standards (“UPCS”) specifically the requirement to have window screens. The IRS Guide for completing form 8823 instructs state housing finance agencies to defer to local codes when there is a conflict between local codes and UPCS. While local codes may not *require* window screens, unless the local code *prohibits* window screens, there is no actual conflict and the property should comply with UPCS which requires window screens (if the window is designed for a screen). An email update was sent out on April 7, 2015, notifying all owners. In addition, specific property owners that were affected have been directly notified.

Sixty five customer service surveys have been received since the last Board update. The survey results are generally positive. Staff may consider changing the questions or timing of the survey. Currently it is being sent out the month after the monitoring visit. Staff is considering sending the survey shortly after the review is closed to get feedback on the monitoring letter and close out process as well as the actual visit.

Staff turnover in the multifamily monitoring area is improving but still an issue. Two employees have resigned, one in the file monitoring area and one in the physical inspection area. Management is diligently working to staff and train these respective areas. There was a significant backlog of work due to the staff turnover. Staff turnover left 50 monitoring letters and 87 corrective action reviews that needed to be completed. Staff has worked through that backlog in addition to their regularly assigned duties.

The quarterly compliance workgroup was held in San Antonio on March 24, 2015. Staff focused on implementation of the new Affirmative Marketing and Tenant Selection Rule that were adopted in January of 2015 and effective April 1, 2015.

ACTION ITEMS

3a

BOARD REPORT ITEM
INTERNAL AUDIT DIVISION
APRIL 16, 2015

Report of the Meeting of the Audit Committee

REPORT ITEM

Verbal report.

BACKGROUND

3b

ORAL
PRESENTATION

3c

ORAL
PRESENTATION

4a

BOARD ACTION REQUEST

BOND FINANCE DIVISION

APRIL 16, 2015

Presentation, Discussion, and Possible Action regarding Resolution No. 15-016 authorizing programmatic changes to the To Be Announced ("TBA") Single Family Taxable Mortgage Program ("TMP-79").

RECOMMENDED ACTION

See attached resolution.

BACKGROUND

In October 2012, the Department implemented TMP-79, a down payment and closing cost assistance program based on a private sector mortgage banking model. Through this program, the Department sells mortgage-backed securities (backed by mortgage loans not yet originated) into the forward delivery market at a premium that is used to fund down payment and closing cost assistance for low and moderate income homebuyers.

For the TMP-79 program, the Department retained many of the requirements typically associated with more traditional, tax-exempt bond-funded programs, such as the first-time homebuyer requirement and purchase price and income limits. The program has credit and underwriting requirements such as a minimum FICO score and maximum debt-to-income ratios as required by FHA, VA, USDA-RD, Fannie Mae, and U.S. Bank (the Master Servicer for the program).

As of April 1, 2015, the Department had funded over \$25 million in down payment and closing cost assistance for first-time homebuyers through this program, assisting over 3,600 households with the purchase of their first home. This assistance is provided through 30-year non-amortizing, 0% interest, repayable second lien mortgage loans that are due upon refinance, early repayment, or maturity.

The Department currently offers the following options through TMP-79:

3 Points Net Assistance	The borrower pays 2 points(1 origination and 1 discount).
5 Points Net Assistance	The borrower pays no origination or discount points.
Up to \$8,000	The borrower pays no origination or discount points.

On January 9, 2015, through Mortgagee Letter 2015-01 (effective January 26, 2015), the U.S. Department of Housing and Urban Development announced a reduction of .50% in the cost of mortgage insurance premiums ("MIP") for Federal Housing Administration ("FHA") loans. The Mortgagee Letter is effective for loans that refinance FHA loans closed on and after June 1, 2009, and new origination loans that close after January 26, 2015. In short, borrowers that closed FHA loans between June 1, 2009, and January 25, 2015, can refinance their existing FHA loan to realize the .50% reduction in FHA MIP.

The terms of the second lien mortgage loans for down payment and closing cost assistance funded through TMP-79 require that the second lien mortgage be repaid by the borrower upon refinance, prepayment, or repayment of the related first mortgage. Absent the Department providing a refinance option through TMP-79, program borrowers with loans that closed on or before January 25, 2015, qualify for the .50% MIP reduction but would be unable to realize that reduction unless the borrower first repays the second lien mortgage funded by the Department.

The two primary advantages of a refinance through TMP-79 versus a general market refinance are:

1. The Department will (i) on a daily basis, establish the mortgage rate for the refinance option, (ii) limit lender profit on each loan (lenders will be making .75% less on the refinance option), and (iii) provide, through premium generated on the forward sale of the new first lien mortgage loan, the funds to cover almost all of the borrower's closing costs with the exception of up-front FHA MIP (which may be added to the mortgage loan) and the amount needed to fund loan escrows (existing escrows will be refunded back to the borrower after closing the refinance). If a borrower does have to come out-of-pocket to close the refinance, the dollar amount should be nominal (less than \$100 for the majority of loans) plus escrows.
2. Due to the terms of the second lien mortgage funded by the Department through TMP-79, the Department would need to resubordinate the second lien mortgage originally funded by TMP-79 to refinance a program loan. Refinancing through TMP-79 results in both the first lien and the resubordinated second lien mortgages having the same loan servicer (U.S. Bank).

Having the same servicer on both the first and second lien mortgage loans increases the likelihood that the Department will be timely informed of a payoff of the first mortgage loan, which causes the second lien mortgage to be immediately due and payable, and should decrease the amount of time between payoff and collection of amounts due to the Department. If the Department were to resubordinate program loans for third party lenders outside of TMP-79, the first mortgage and the second lien mortgage would "detach" from each other and the Department's ability to know when the second lien mortgage is due and to collect those amounts in a timely manner is diminished.

Under 10 TAC Chap. 28, the purpose of the Taxable Mortgage Program is to facilitate the origination of single-family mortgage loans and to refinance existing mortgage loans for eligible homebuyers and in both cases to provide down payment and closing cost assistance.

Staff recommends the addition of a refinance option within TMP-79 with the following terms and requirements:

Purpose. To facilitate the refinance of FHA mortgages for borrowers that financed their mortgage through TDHCA TMP-79. Borrowers will lower their monthly payments through the FHA MIP reduction and may achieve additional savings through a mortgage rate reduction.

Eligible Loans. Loans funded through TMP-79 are eligible for refinance as long as the loan was closed before January 26, 2015, and meets all requirements of the FHA Streamline Refinance Program.

Loan Type and Term. 30-year, fixed-rate FHA Streamline Refinance loans.

Limits. This a refinance of an existing TMP-79 loan for which purchase price and income limits were verified at origination; purchase price and income limits will not apply for the refinance.

Homebuyer Education. These are existing borrowers that received homebuyer education to meet the requirements of TMP-79; there is no additional homebuyer education requirement for the refinance.

Refinance Costs. The Department, using premium generated on the forward sale of the new first lien mortgage loans, will pay borrower closing costs (excluding upfront FHA MIP) up to the following maximums:

<u>Loan Amount</u>	<u>Maximum</u>
Less than \$85,000	\$2,300
Greater than or equal to \$85,000 and less than \$120,000	\$2,400
Greater than or equal to \$120,000 and less than \$150,000	\$2,500
Greater than or equal to \$150,000 and less than \$185,000	\$2,600
Greater than or equal to \$185,000	\$2,700

The only cost permitted to be added to the principal balance of the new loan is the difference between the upfront FHA MIP on the new mortgage and the upfront FHA MIP credit received from the existing mortgage.

Points. Borrowers will pay no origination or discount points related to the refinancing.

Subordination and Modification. The Department will resubordinate second lien mortgages to facilitate the refinancing and will modify the maturity date of the second lien to match the maturity date of the new loan.

Cash Back. Cash back to the borrower is not permitted except for minor adjustments at closing as permitted by FHA.

FICO. The minimum FICO requirement for this program is 660.

Seasoning. The borrower must have made at least six payments on the FHA-insured mortgage being refinanced AND at least six full months have passed since the first payment due date of the refinanced mortgage AND at least 210 days have passed from the closing date of the mortgage being refinanced.

Payment History. Delinquent mortgage loans are not eligible for streamline refinancing until the loan is brought current. In addition, there must be no 30-day late payments for the loan being refinanced in the previous 12 months (or since inception if the loan being refinanced has had less than 12 payments due) and no 30-day late payments on any other mortgage debt over the same time period.

Net Tangible Benefit. FHA requires that the lender must determine that there is a net tangible benefit to the borrower as a result of the streamline refinance transaction. In the case of TDHCA

refinances, to qualify as a net tangible benefit, the new mortgage payment (P&I plus MIP) must be at least 5% lower than the existing mortgage payment on the loan being refinanced.

Staff is seeking Governing Board authority for these programmatic changes in accordance with Resolution No. 15-016 and recommends approval. Staff continues to actively manage this program and to explore opportunities for the Department to provide benefits to the very low, low, and moderate income homebuyers in Texas.

RESOLUTION NO. 15-016

RESOLUTION APPROVING PROGRAM CHANGES AND RELATED AMENDMENTS OR SUPPLEMENTS TO PROGRAM DOCUMENTS FOR TAXABLE MORTGAGE PURCHASE PROGRAM; AUTHORIZING THE EXECUTION OF DOCUMENTS AND INSTRUMENTS RELATING TO THE FOREGOING; 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 (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; and

WHEREAS, the Act authorizes the Department (a) to purchase notes and other obligations evidencing loans or interests in loans for individuals and families of low and very low income and families of moderate income and (b) to sell, at public or private sale, with or without public bidding, a mortgage or other obligation held by the Department; and

WHEREAS, pursuant to Resolution No. 13-003 adopted September 6, 2012, the Governing Board approved: (1) a taxable mortgage purchase program (the "Program") to fund all or a portion of the Department's single family loan production, (2) the Master Mortgage Origination Agreement (the "Master Mortgage Origination Agreement") for the Department's single family mortgage purchase programs, (3) the Servicing Agreement between the Department and U.S. Bank National Association (the "Servicer"), and (4) Program Guidelines setting forth the general terms of the Program (the "Program Guidelines" and collectively with the Master Mortgage Origination Agreement and the Servicing Agreement, the "Program Documents"); and

WHEREAS, under the current guidelines only first-time homebuyers may participate in the Program and those homebuyers are not allowed to refinance their loan under the Program; and

WHEREAS, FHA has announced a reduction in costs for borrowers refinancing existing FHA loans;

WHEREAS, the Department desires to allow refinancings of loans originally financed under the Program to allow homebuyers to realize the benefit of the reduced FHA costs; and

WHEREAS, the Department desires to reimburse certain refinancing fees and closing costs (other than FHA mortgage insurance premiums), such amounts to be paid from servicing release premiums and proceeds of the sale of mortgage certificates under the Program;

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

ARTICLE 1

APPROVAL OF PROGRAM CHANGES, DOCUMENTS AND CERTAIN ACTIONS

Section 1.1 Authority to Include Refinancings in Program. The inclusion of refinancings under the Program is hereby approved.

Section 1.2 Approval of Refinancing Program Guidelines. The form and substance of the Refinancing Program Guidelines are hereby approved.

Section 1.3 Authorization to Reimburse Certain Costs. The Department is authorized to reimburse certain refinancing fees and closing costs (other than FHA mortgage insurance premiums), such amounts to be paid from servicing release premiums and proceeds of the sale of mortgage certificates under the Program.

Section 1.4 Execution and Delivery of Other Documents. The Authorized Representatives each are hereby authorized to execute and deliver all agreements, certificates, contracts, documents, instruments, releases, financing statements, letters, notices, written requests and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, including, without limitation, any amendment or supplement to any existing agreements related to the Program.

Section 1.5 Power to Revise Form of Documents. Notwithstanding any other provision of this Resolution, the Authorized Representatives are each hereby authorized to make or approve such revisions in the form of the document attached hereto as an exhibit or in other documents related to the Program as, in the judgment of such Authorized Representative, may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution or the refinancing of FHA loans under the Program, such approval to be evidenced by the delivery of such documents by the Authorized Representatives.

Section 1.6 Exhibit Incorporated Herein. All of the terms and provisions of the document listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

Exhibit A - Refinancing Program Guidelines

Section 1.7 Authorized Representatives. The following persons are hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Governing Board, the Executive Director of the Department, the Chief of Staff of the Department, the Director of Bond Finance of the Department, the Director of Texas Homeownership of the Department, the Director of Multifamily Finance of the Department, and the Secretary or any Assistant Secretary to the Governing Board. Such persons are referred to herein collectively as the "Authorized Representatives." Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

Section 1.8 Waiver of Rules. The Governing Board hereby waives the requirements of Title 10, Chapter 28 of the Texas Administrative Code relating to the applicable median family income of borrowers and the purchase price limit on residences refinanced under the authority granted by this Resolution.

ARTICLE 2

GENERAL PROVISIONS

Section 2.1 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Governing Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Governing Board.

Section 2.2 Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

(EXECUTION PAGE FOLLOWS)

PASSED AND APPROVED this 16th day of April, 2015.

Chair, Governing Board

ATTEST:

Secretary to the Governing Board

(SEAL)

4b

BOARD ACTION REQUEST
BOND FINANCE DIVISION
APRIL 16, 2015

Presentation, Discussion, and Possible Action on Resolution 15-014 regarding the annual approval of the Department's Investment Policy.

RECOMMENDED ACTION

See attached Resolution.

BACKGROUND

The Public Funds Investment Act ("PFIA") requires State Agency Boards, with investments, to develop, adopt annually and maintain an Investment Policy 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 must 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, Chief Financial Officer, and Monica Galuski, Director of Bond Finance. TDHCA staff has reviewed the current investment policy that was approved on April 10, 2014 and is recommending approval for 2015 with only minor changes.

A clean and black-line version of the proposed Investment Policy is attached for your reference.

RESOLUTION NO. 15-014

**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 "Governing Board") desires to approve the Department's Investment Policy in the form presented to the Governing Board;

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

ARTICLE 1

APPROVAL OF DOCUMENTS AND CERTAIN ACTIONS

Section 1.1 Approval of the Department's Investment Policy. The Investment Policy in the form presented to the Governing Board is hereby authorized and approved.

Section 1.2 Authorized Representatives. The following persons and each of them are hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Governing Board, the Executive Director of the Department, the Chief Financial Officer of the Department, the Director of Bond Finance of the Department, the Director of Multifamily Finance of the Department, the Director of Texas Homeownership of the Department and the Secretary or any Assistant Secretary to the Governing Board. Such persons are referred to herein collectively as the "Authorized Representatives." Any one of the Authorized Persons is authorized to act individually as set forth in this Resolution.

ARTICLE 2

GENERAL PROVISIONS

Section 2.1 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Governing Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Governing Board.

Section 2.2 Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

[EXECUTION PAGE FOLLOWS]

PASSED AND APPROVED this 16th day of April, 2015.

Chair, Governing Board

ATTEST:

Secretary to the Governing Board

(SEAL)

**TEXAS DEPARTMENT OF HOUSING
AND COMMUNITY AFFAIRS**

INVESTMENT POLICY

As presented to the Board for adoption on April 16, 2015

2015

April 16, 2015

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Table of Contents

I.	Policy	3
II.	Scope	3
III.	Prudence	3
IV.	Investment Priorities	4
V.	Strategies	4
VI.	Delegation of Authority	5
VII.	Ethics and Conflicts of Interest	6
VIII.	Authorized Financial Dealers and Institutions	7
IX.	Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers	8
X.	Authorized and Suitable Investments	10
XI.	Diversification	12
XII.	Performance Standards	12
XIII.	Effect of Loss of Required Rating	12
XIV.	Maximum Maturities	13
XV.	Collateralization	13
XVI.	Safekeeping and Custody	14
XVII.	Internal Control	14
XVIII.	Reporting	15
XIX.	Authorized List of Broker/Dealer and Financial Institutions	16
XX.	Investment Policy Adoption	16
XXI.	Acknowledgment of Receipt of Investment Policy	16
XXII.	Training	16
Attachment A	Strategy	18
Attachment B	Policy Statements and Recommended Practice	19
Attachment C	Acknowledgment of Receipt of Investment Policy	20
Attachment D	Annual Disclosure Statement For Financial Advisors And Service Providers	21
Attachment E	Comptroller's Approved List of Broker Dealers	24

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. 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").

It is further the policy of the Department to set forth in this document how all investments will be administered, providing for an all-inclusive document that will ensure consistency and thoroughness in the presentation of such investments as they affect the Department's presentation of its financial statements.

II. SCOPE

This investment policy applies to all investments, including both direct investments and investments that are subject to trust indentures created and supplemented in connection with bonds issued by the Department. All of these investments 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 investments in instruments that constitute 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 such hedges.

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. INVESTMENT PRIORITIES

Investment by the Department will be in accordance with the following priorities in order of importance:

1. Understanding the suitability of the investment to the financial requirements of the Department. Suitability is the first priority in the Department’s investment strategy, and will be evaluated on an overall basis and as a specific component of each of the remaining priorities.
2. Preservation and safety of principal;
3. Liquidity;
4. Marketability of the investment if the need arises to liquidate the investment before maturity;
5. Diversification of the investment portfolio; and
6. Yield (after taking into account the previous five priorities).

Such investment will be in accordance with all federal and state statutes, rules, and regulations.

V. STRATEGIES

The following are the primary strategies for investment activities in order of priority after taking into account the suitability of any investment:

1. Suitability. In accordance with Section 2256.005(d) of the Act, the first priority is the suitability of investment.
2. Preservation and Safety of Principal. Investments of the Department shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. 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.
3. 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 estimated or projected cash needs to meet anticipated demands. Since not all possible cash demands can be fully anticipated or projected with total accuracy, the portfolio should consist largely of securities with active secondary or resale markets, providing a reasonable level of flexibility to deal with unforeseen cash needs.
4. Marketability. The Department will evaluate investment opportunities based on the marketability of each investment if the need arises to liquidate the investment before maturity. Specifically, the Department will take into consideration the activity level of the secondary market for the investment
5. Diversification. The Department will maintain a diversified investment portfolio. Maturities will be staggered to provide cash flows based on anticipated needs. Investment risks will be reduced through diversification among authorized investments.
6. 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. A security experiencing or reasonably seen as being at risk of material decline in credit quality could be sold early to minimize the risk of loss of principal;
 - B. A security swap would improve the quality, yield, or target duration of the overall portfolio without creating other material risks or adverse features; or
 - C. Liquidity needs of the portfolio require that the security be sold and there are no preferable alternatives.

VI. 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 Chief Financial Officer 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.

VII. 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:
 - A. Texas Government Code, Section 825.211, *Certain Interests in Loans, Investments or Contracts Prohibited*
 - B. Texas Government Code, Section 572.051, *Standards of Conduct for Public Servants*
 - C. Texas Government Code, Sections 553.001-003, *Disclosure by Public Servants of Interest in Property Being Acquired by Government*
 - D. Texas Government Code, Section 552.352, *Distribution of Confidential Information*
 - E. Texas Government Code, Section 572.054, *Representation by Former Officer or Employee of Regulatory Agency Restricted*
 - F. Texas Penal Code, Chapter 36, *Bribery, Corrupt Influence and Gifts to Public Servants*
 - G. 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.
 - A. 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.
 - B. 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.

- C. Officers and employees shall refrain from undertaking personal investment transactions with the same individuals with whom business is conducted on behalf of the Department.
- D. 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.
- E. 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.

VIII. 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 has the minimum credit ratings required by rating agencies and is acceptable to 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.

IX. 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 "D".

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.

X. AUTHORIZED AND SUITABLE INVESTMENTS

Trust Indenture Funds for which the Department has control of the investment decisions, all of which are held by Treasury Safekeeping for the benefit of bondholders, will be subject to the authorized investments set-forth in the applicable Indenture of Trust and any applicable supplemental indenture(s).

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. The Department will comply with the Policy Statements and Recommended Practices for Repurchase Agreements as outlined in Attachment B. 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 XV 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:

- A. Obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal;
- B. Obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest;
- C. Collateralized mortgage obligations that have a stated final maturity date of greater than 10 years; and
- D. Collateralized mortgage obligations the interest rate of which is determined by an index that adjusts opposite to the changes in a market index.

XI. DIVERSIFICATION

The Department will diversify its investments by security type and institution. The amount of required diversification will be determined based upon:

1. The maturity date of the investment – longer maturity dates will require more diversification; and
2. The rating of the underlying investment – lower rated investments will require a greater degree of diversification.

XII. PERFORMANCE STANDARDS

The investment portfolio shall be designed and managed with the objective of preserving principal and 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.

XIII. 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.

XIV. 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.

General funds dedicated to the support of single family programs 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 or are the result of the operation of the Department's single family program so long as:

1. such investment furthers the goals of that program;
2. the Investment Officer receives Board approval prior to undertaking such investment.

XV. 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.

XVI. 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.

XVII. 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.

XVIII. REPORTING

1. **Methods.** Not less than quarterly, the Investment Officer shall prepare and submit to the Executive 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.

XIX. AUTHORIZED LIST OF BROKER/DEALERS AND FINANCIAL INSTITUTIONS

Not less than annually, 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. The current list is provided in Attachment E.

XX. 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.

XXI. 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 in Attachment "C".)

XXII. 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

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 E



COMPTROLLER OF PUBLIC ACCOUNTS
Broker Dealer List
June, 2014

Amherst Securities Group, LP	Mesirow Financial, Inc.
Barclay's Capital Inc.	Mischler Financial Group
BedRok Capital	Mitsubishi UFJ Securities *
Blaylock Beal Van LLC	Mizuho Securities USA Inc.
BMO Capital Markets	Morgan Stanley & Co., Inc.
BNP Paribas Securities Corp.	MFR Securities
BNY Mellon Capital Markets *	National Alliance Capital Markets
BOSC, Inc.	Nomura Securities International Inc.
Cantor Fitzgerald & Co.	Piper Jaffray Companies
Capital Institutional Services, Inc.	Raymond James
Citigroup Global Markets Inc.	RBC Capital Markets, LLC
Coastal Securities Inc.	RBS Securities Inc.
Credit Suisse (USA), LLC	Rice Securities, LLC
D.A. Davidson & Co.	Robert W. Baird & Co., Inc
Daiwa Capital Markets America, Inc.	SAMCO Capital Markets Inc.
Deutsche Bank Securities, Inc.	Samuel Ramirez & Company (H) *
Drexel Hamilton LLC	Scotia Capital (USA) Inc.
The Fig Group, LLC (H)	Signature Securities Group Corp.
First Southwest Company	S.G. Americas Securities LLC
Frost Capital Markets	Stifel, Nicholas & Company Inc.
FTN Financial Securities Corp.	SunTrust Robinson Humphrey Inc.
Goldman Sachs & Co.	T.D. Securities
HSBC Securities (USA), Inc.	UBS Securities
Jefferies & Company, Inc.	Vining Sparks IGB, LP
J.P. Morgan Securities LLC	Wells Fargo Securities, LLC
KCG Americas LLC	Williams Capital *
Loop Capital Markets, Inc.	Zions First Nat'l. Bank Capital Markets
Merrill Lynch Pierce Fenner & Smith	

(H) --Historically Underutilized Business

*Added June, 2014.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

INVESTMENT POLICY

As presented to the Board for adoption on April ~~4016~~, 20142015

~~2014~~2015

April ~~4016~~, 20142015

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Table of Contents

I.	Policy	<u>43</u>
II.	Scope	<u>43</u>
III.	Prudence	<u>43</u>
IV.	<u>Objectives</u> <u>Investment Priorities</u>	<u>24</u>
<u>V.</u>	<u>Strategies</u>	<u>4</u>
<u>VI.</u>	Delegation of Authority	<u>35</u>
<u>VII.</u>	Ethics and Conflicts of Interest	<u>36</u>
<u>VIII.</u>	Authorized Financial Dealers and Institutions	<u>57</u>
VIIIX.	Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers	<u>58</u>
IXX.	Authorized and Suitable Investments	<u>810</u>
<u>XI.</u>	Diversification	<u>120</u>
<u>XII.</u>	Performance Standards	<u>120</u>
<u>XIII.</u>	Effect of Loss of Required Rating	<u>120</u>
XIIIXIV.	Maximum Maturities	<u>131</u>
XIV.	Collateralization	<u>131</u>
<u>XVI.</u>	Safekeeping and Custody	<u>141</u>
<u>XVII.</u>	Internal Control	<u>142</u>
<u>XVIII.</u>	Reporting	<u>153</u>
<u>XIX.</u>	<u>Authorized List of Broker/Dealer and Financial Institutions</u>	<u>16</u>
XVIIIXX.	Investment Policy Adoption	<u>164</u>
XIXXXI.	Acknowledgment of Receipt of Investment Policy	<u>164</u>
<u>XXII.</u>	Training	<u>165</u>
Attachment A	Strategy	<u>186</u>
Attachment B	Policy Statements and Recommended Practice	<u>197</u>
Attachment C	Acknowledgment of Receipt of Investment Policy	<u>201</u> <u>8</u>
Attachment D	Certificate of Compliance with Public Funds Investment Act	<u>19</u>
Attachment <u>ED</u>	Annual Disclosure Statement For Financial Advisors And Service Providers	<u>202</u> <u>1</u>
Attachment F	Board Resolution Number 14-019	<u>23</u>
Attachment <u>GE</u>	Comptroller's Approved List of Broker Dealers	<u>245</u>

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. 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").

It is further the policy of the Department to set forth in this document how all investments will be administered, providing for an all-inclusive document that will ensure consistency and thoroughness in the presentation of such investments as they affect the Department's presentation of its financial statements.

II. SCOPE

This investment policy applies to all investments, including both direct investments and investments that are subject to trust indentures created and supplemented in connection with bonds issued ~~by~~ the Department. All of these investments 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.

~~In addition to the investment policy, additional guidelines for investment assets that are held under any trust indenture for the benefit of bondholders are addressed in this policy. In regards to the possible application of the Act and this policies on investment activity within trust indentures created in connection with Department issuance of bonds, those indentures are subject to the requirements and constraints of applicable law, and are structured and negotiated in a manner to protect the interests of bondholders. The contractual provisions pursuant to which indenture trustees make investments are set out in the applicable indentures and supplemental indentures and are not constrained by or subject to the requirements of the Act.~~

This investment policy does not apply to investments in instruments that constitute 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 such hedges.

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. INVESTMENT PRIORITIES

Investment by the Department will be in accordance with the following priorities in order of importance:

1. Understanding the suitability of the investment to the financial requirements of the Department. Suitability is the first priority in the Department’s investment strategy, and will be evaluated on an overall basis and as a specific component of each of the remaining priorities.
2. Preservation and safety of principal;
3. Liquidity;
4. Marketability of the investment if the need arises to liquidate the investment before maturity;
5. Diversification of the investment portfolio; and
6. Yield (after taking into account the previous five priorities).

Such investment will be in accordance with all federal and state statutes, rules, and regulations.

IV. OBJECTIVES/STRATEGIES

The following are the primary ~~objectives/strategies for~~ of investment activities in order of priority after taking into account the suitability of any investment:

1. Suitability. In accordance with Section 2256.005(d) of the Act, the first priority is the suitability of investment.
2. Preservation and Safety of Principal. ~~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.
3. 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 estimated or projected cash needs to meet anticipated demands. Since not all possible cash demands can be fully anticipated or projected with total accuracy, the portfolio should consist largely of securities with active secondary or resale markets, providing a reasonable level of flexibility to deal with unforeseen cash needs.
4. Marketability. The Department will evaluate investment opportunities based on the marketability of each investment if the need arises to liquidate the investment before maturity. Specifically, the Department will take into consideration the activity level of the secondary market for the investment.
5. Diversification. The Department will maintain a diversified investment portfolio. Maturities will be staggered to provide cash flows based on anticipated needs. Investment risks will be reduced through diversification among authorized investments.
36. 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~~ are 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. A security experiencing or reasonably seen as being at risk of material decline in credit quality could be sold early to minimize the risk of loss of principal;
 - B. A security swap would improve the quality, yield, or target duration of the overall portfolio without creating other material risks or adverse features; or
 - C. Liquidity needs of the portfolio require that the security be sold and there are no preferable alternatives.

VI. 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 Chief Financial Officer 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.

VII. 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:
 - A. Texas Government Code, Section 825.211, *Certain Interests in Loans, Investments or Contracts Prohibited*
 - B. Texas Government Code, Section 572.051, *Standards of Conduct for Public Servants*
 - C. Texas Government Code, Sections 553.001-003, *Disclosure by Public Servants of Interest in Property Being Acquired by Government*
 - D. Texas Government Code, Section 552.352, *Distribution of Confidential Information*
 - E. Texas Government Code, Section 572.054, *Representation by Former Officer or Employee of Regulatory Agency Restricted*
 - F. Texas Penal Code, Chapter 36, *Bribery, Corrupt Influence and Gifts to Public Servants*
 - G. 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.

- A. 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.
- B. 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.
- C. 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.~~

D. 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.

E. 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.

VIII. 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~~ has the minimum credit ratings required by rating agencies and ~~or by is acceptable to~~ 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.

IX. 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 "[ED](#)".

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

Trust Indenture Funds, ~~for which the Department has control of the investment decisions, and~~ all of which are held by Treasury Safekeeping for the benefit of bondholders, will be subject to the authorized investments set-forth in the applicable Indenture of Trust and any applicable supplemental indenture(s).

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. [The Department will comply with the Policy Statements and Recommended Practices for Repurchase Agreements as outlined in Attachment B.](#) 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~~XV 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:
- A. Obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal;
 - B. Obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest;
 - C. Collateralized mortgage obligations that have a stated final maturity date of greater than 10 years; and

- D. Collateralized mortgage obligations the interest rate of which is determined by an index that adjusts opposite to the changes in a market index.

XI. DIVERSIFICATION

The Department will diversify its investments by security type and institution. The amount of required diversification will be determined based upon:

1. The maturity date of the investment – longer maturity dates will require more diversification; and
2. The rating of the underlying investment – lower rated investments will require a greater degree of diversification.

XII. PERFORMANCE STANDARDS

The investment portfolio shall be designed and managed –with the objective of preserving principal and 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.

XIII. 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.

XIV. 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.

General funds dedicated to the support of single family programs 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 or are the result of the operation of the Department's single family program 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.

XVI. 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.

XVII. 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.

XVIII. REPORTING

1. **Methods**. Not less than quarterly, the Investment Officer shall prepare and submit to the Executive 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.

XIX. ~~Authorized list of Broker/Dealers and financial institutions.~~ AUTHORIZED LIST OF BROKER/DEALERS AND FINANCIAL INSTITUTIONS

Not less than annually, 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. [The current list is provided in Attachment E.](#)

XXVIII. 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.

XXI. 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 in Attachments "C" and "D".](#))

XXII. 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:~~

~~I have received and thoroughly reviewed the Investment Policy of the Department, as established by the Department pursuant to Texas Government Code, Chapter 2256;~~

~~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;~~

~~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~~

~~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 [“ED”](#)

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_____

[Attachment E](#)



COMPTROLLER OF PUBLIC ACCOUNTS
Broker Dealer List
June, 2014

Amherst Securities Group, LP	Mesirow Financial, Inc.
Barclay's Capital Inc.	Mischler Financial Group
BedRok Capital	Mitsubishi UFJ Securities *
Blaylock Beal Van LLC	Mizuho Securities USA Inc.
BMO Capital Markets	Morgan Stanley & Co., Inc.
BNP Paribas Securities Corp.	MFR Securities
BNY Mellon Capital Markets *	National Alliance Capital Market
BOSC, Inc.	Nomura Securities International
Cantor Fitzgerald & Co.	Piper Jaffray Companies
Capital Institutional Services, Inc.	Raymond James
Citigroup Global Markets Inc.	RBC Capital Markets, LLC
Coastal Securities Inc.	RBS Securities Inc.
Credit Suisse (USA), LLC	Rice Securities, LLC
D.A. Davidson & Co.	Robert W. Baird & Co., Inc
Daiwa Capital Markets America, Inc.	SAMCO Capital Markets Inc.
Deutsche Bank Securities, Inc.	Samuel Ramirez & Company (
Drexel Hamilton LLC	Scotia Capital (USA) Inc.
The Fig Group, LLC (H)	Signature Securities Group Corp.
First Southwest Company	S.G. Americas Securities LLC
Frost Capital Markets	Stifel, Nicholas & Company Inc
FTN Financial Securities Corp.	SunTrust Robinson Humphrey Ir
Goldman Sachs & Co.	T.D. Securities
HSBC Securities (USA), Inc.	UBS Securities
Jefferies & Company, Inc.	Vining Sparks IGB, LP
J.P. Morgan Securities LLC	Wells Fargo Securities, LLC
KCG Americas LLC	Williams Capital *
Loop Capital Markets, Inc.	Zions First Nat'l. Bank Capital M
Merrill Lynch Pierce Fenner & Smith	

~~TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS~~

~~Attachment "F"~~

~~RESOLUTION NO. 14-019~~

~~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 "Governing Board") desires to approve the Department's Investment Policy in the form presented to the Governing Board;~~

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

~~APPROVAL OF DOCUMENTS AND CERTAIN ACTIONS~~

~~Approval of the Department's Investment Policy. The Investment Policy in the form presented to the Governing Board is hereby authorized and approved.~~

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

~~GENERAL PROVISIONS~~

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

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

~~PASSED AND APPROVED~~ this ~~160th~~ day of April, 201~~54~~.

~~Chair, Governing Board~~

ATTEST:

~~Secretary to the Governing Board~~

(SEAL)

Attachment "G"
Comptroller of Public Accounts Approved Broker Dealer List
APPROVED BROKER/DEALER LIST
(Updated June 2013 NEED TO UPDATE)

~~Amherst Securities Group
Barclays Capital Inc
BedRok Capital
Blaylock Robert Van LLC
Bley Investment Group, Inc. (H)
BMO Capital Markets
BNP Paribas Securities Corp.
BOSC, Inc.*
Cantor Fitzgerald & Co.
Capital Institutional Services, Inc.
Citigroup Global Markets Inc.
Coastal Securities
Credit Suisse (USA), LLC
D.A. Davidson & Co.*
Daiwa Capital Markets America, Inc.
Deutsche Bank Securities, Inc.
Drexel Hamilton LLC
The Fig Group, LLC*
First Southwest Company
Frost National Bank
FTN Financial Services Corp.
Goldman, Sachs & Co.
HSBC Securities (USA), Inc.
Jefferies & Company, Inc.
JP Morgan Securities LLC
Knight Execution and Clearing Services LLC
Loop Capital Markets
Merrill Lynch, Pierce, Fenner & Smith
Mesirow Financial, Inc.
Mischler Financial Group
Mizuho Securities USA Inc.
Morgan Keegan & Company, Inc.
Morgan Stanley & Co., Inc.
MFR Securities
M.R. Beal & Company
National Alliance Capital Markets
Nomura Securities International, Inc.
Piper Jaffrey Companies
Raymond James
RBC Capital Markets LLC
RBS Securities Inc.
Rice Securities, LLC
Robert W. Baird & Co., Inc.
SAMCO Capital Markets Inc.~~

~~Scotia Capital (USA) Inc.*
Signature Securities Group Corp.
S.G. America Securities LLC
Southwest Securities
Sterne, Agee & Leach, Inc.
Stifel Nicolaus & Company, Inc.
SunTrust Robinson Humphrey Inc.*
T.D. Securities*
UBS Securities
Vining Sparks IGB, LP
Wells Fargo Securities LLC
Zions Investment Securities~~

~~(H) -- Historically Underutilized Business~~

~~* Added June 2013~~

4c

BOARD ACTION REQUEST
BOND FINANCE DIVISION
APRIL 16, 2015

Presentation, Discussion, and Possible Action on Resolution 15-015 regarding the annual approval of the Department's Interest Rate Swap Policy

RECOMMENDED ACTION

See attached Resolution.

BACKGROUND

The Department adopted an Interest Rate Swap Policy (the "Swap Policy") on September 9, 2004 to establish guidelines for the use and management of 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 Department's Swap Policy sets forth the manner of execution of Swaps and provides for security and payment provisions, risk considerations, and certain other relevant provisions.

The Department's Swap Policy requires an annual review of the Swap Policy by the Chief Financial Officer and the Director of Bond Finance. This review has been performed in consultation with the Department's Swap Advisor, George K. Baum & Company, to determine if modifications to the Swap Policy are recommended or necessary to conform to current market conditions.

The Swap Policy underwent substantial changes in 2009 and has had minor edits since. The attached revised policy incorporates minor changes from the previous Swap Policy.

A clean and black-line version of the proposed Interest Rate Swap Policy is also attached for your reference.

RESOLUTION NO. 15-015

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

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

ARTICLE 1

APPROVAL OF DOCUMENTS AND CERTAIN ACTIONS

Section 1.1 Approval of the Department's Interest Rate Swap Policy. The Interest Rate Swap Policy in the form presented to the Governing Board is hereby authorized and approved.

Section 1.2 ISDA Dodd-Frank Protocols. Each Authorized Representative is hereby severally authorized to take such actions as are necessary or desirable to enable the Board to adhere to any protocols promulgated by the International Swaps and Derivatives Association, Inc. ("ISDA") in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act, which adherence may (i) include the use of documents intended to address the subject matter of any such protocol but not using forms promulgated by ISDA, and (ii) be with respect to such counterparties as an Authorized Representative determines in his judgment are appropriate.

Section 1.3 Authorized Representatives. The following persons and each of them are hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Governing Board, the Executive Director of the Department, the Chief Financial Officer of the Department, the Director of Bond Finance of the Department, the Director of Multifamily Finance of the Department, the Director of Texas Homeownership of the Department and the Secretary or any Assistant Secretary to the Governing Board. Such persons are referred to herein collectively as the "Authorized Representatives." Any one of the Authorized Persons is authorized to act individually as set forth in this Resolution.

ARTICLE 2

GENERAL PROVISIONS

Section 2.1 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Governing Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Governing Board.

Section 2.2 Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

[EXECUTION PAGE FOLLOWS]

PASSED AND APPROVED this 16th day of April, 2015.

Chair, Governing Board

ATTEST:

Secretary to the Governing Board

(SEAL)

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

INTEREST RATE SWAP POLICY

As presented to the Board on April 16, 2015

2015

April 16, 2015

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 and 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 Financial Officer 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, which includes, with the approval of the Executive Director, the execution of the Department’s right to optional par termination of Swaps to avoid being overswapped (having a higher notional amount of swap outstanding than par amount of related bonds), for economic benefit to the Department, or to achieve other goals of the Department.

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 Financial Officer, 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 Financial Officer 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 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.

THIS SPACE INTENTIONALLY BLANK

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 need 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 that 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 does 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 “A2” with respect to

ratings by Moody's Investors Service or "A" with respect to ratings by Standard and Poor's Rating Services or 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 Financial Officer 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 Baa2 from Moody's; or
2. A Credit Rating of at least BBB 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 Financial Officer 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 Financial Officer 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 Financial Officer 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. Such swap advisory firm shall act as the "qualified independent representative" ("QIR") of the Department for purposes of CFTC Rule 23.450 (b) (1) to advise the Department on swaps, provided that such firm provide certification to the Department addressing why such firm meets the requirements to act as a QIR pursuant to CFTC Regulation 23.450(b)(1). 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 Bond Finance Division will monitor the performance of the QIR on an on-going basis.

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 Financial Officer and the Director of Bond Finance will review this Policy on an annual basis.

THIS SPACE INTENTIONALLY BLANK

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

INTEREST RATE SWAP POLICY

As presented to the Board on April ~~10, 2014~~16, 2015

20142015

April ~~10, 2014~~16, 2015

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 and, 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 Financial Officer 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, which includes, with the approval of the Executive Director, the execution of the Department’s right to optional par termination of Swaps to avoid being overswapped (having a higher notional amount of swap outstanding than par amount of related bonds), for economic benefit to the Department, or to achieve other goals of the Department.

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 Financial Officer, 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 Financial Officer 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.

THIS SPACE INTENTIONALLY BLANK

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 need 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 ~~thate~~ 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 does 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 “A2” with respect to

ratings by Moody's Investors Service or "A" with respect to ratings by Standard and Poor's Rating Services or Fitch Ratings. ~~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 Financial Officer 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 Baa2 from Moody's; or
2. A Credit Rating of at least BBB 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 Financial Officer 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 Financial Officer 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 Financial Officer 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. Such swap advisory firm shall act as the "qualified independent representative" ("QIR") of the Department for purposes of CFTC Rule 23.450 (b) (1) to advise the Department on swaps, provided that such firm provide certification to the Department addressing why such firm meets the requirements to act as a QIR pursuant to CFTC Regulation 23.450(b)(1). 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 Bond Finance Division will monitor the performance of the QIR on an on-going basis.

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 Financial Officer and the Director of Bond Finance will review this Policy on an annual basis.

THIS SPACE INTENTIONALLY BLANK

5

**THIS ITEM HAS BEEN PULLED
FROM THE AGENDA**

6

BOARD ACTION REQUEST
COMPLIANCE DIVISION
APRIL 16, 2015

Presentation, Discussion and Possible Action on proposed new 10 TAC, Chapter 1, Subchapter C Previous Participation and proposed repeal of 10 TAC, Chapter 1, Subchapter A, §1.5 Previous Participation

RECOMMENDED ACTION

WHEREAS, Previous Participation reviews are the process used to evaluate an applicant's compliance history before awarding new funds or entering into contracts and the Department significantly changed the process for completing Previous Participation reviews in January 2014;

WHEREAS, at the March 12, 2015 meeting of the Governing Board, the Board withdrew previously published proposed amendments to 10 TAC §1.5 based in part on comments and input received in various workshops, conference calls and online forums regarding the rule;

WHEREAS, based on the comments and input received, staff developed a new proposed 10 TAC, Chapter 1, Subchapter C, Previous Participation; and,

WHEREAS, the proposal of a new Subchapter regarding Previous Participation will require the repeal of existing 10 TAC §1.5 Previous Participation,

NOW, therefore, it is hereby

RESOLVED, that proposed new 10 TAC, Chapter 1, Subchapter C Previous Participation is hereby approved in the form presented at this meeting and that the Executive Director and his designees be and each of them are hereby authorized, empowered and directed, for and on behalf of the Department, to propose the new 10 TAC Chapter 1, Subchapter C, Previous Participation 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; and,

FURTHER RESOLVED, that the proposed repeal of 10 TAC §1.5 Previous Participation, is approved in the form presented at this meeting and that the Executive Director and his designees be and each of them are hereby authorized, empowered and directed, for and on behalf of the Department, to propose the proposed repeal of 10 TAC §1.5 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

Staff posted a draft of a new Previous Participation rule to the Department's website on March 19, 2015. A conference call was held on March 24, 2015, to review the proposal. An online forum was available from March 26, 2015, through April 3, 2015. No comment was received through the forum but some suggestions were emailed to staff.

One suggestion was to create an "extra large" portfolio category. Staff has incorporated this suggestion into the rule and created a threshold for category 3 and 4 applications for extra large portfolios in §1.301(c).

One suggestion was to add language to §1.304 to provide the ability to meet with EARAC. Although staff believes that much can be resolved without the expense and time for a face to face meeting, language has been added to provide that opportunity.

Attachment 1. Preamble and repeal of 10 TAC Chapter 1, Subchapter A, §1.5 concerning Previous Participation and proposed new 10 TAC Chapter 1, Subchapter C, Previous Participation Reviews

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 1, Administration, Subchapter C, Previous Participation and the repeal of 10 TAC, Chapter 1, Subchapter A, §1.5 concerning Previous Participation.

The purpose of this new subchapter is to replace the Department’s existing previous participation rule which is currently found in 10 TAC, Chapter 1, Subchapter A, §1.5 and which is proposed for repeal in this rule making.

Previous Participation reviews are the process used by the Department to evaluate an applicant’s compliance history prior to awarding funds or entering into contracts. The new rules are proposed to accomplish the following:

§1.301 describes the process that will be used for multifamily awards and ownership transfers. The proposed rule introduces a new concept of categorizing applications. Category 1 and 2 applications are presumed to have an acceptable compliance history. Category 3 and 4 applications are those with past compliance issues that will be reviewed by the Department’s Executive Award Review Advisory Committee (“EARAC”) prior to making recommendations to the Department’s Board. The rule provides a process for applicants to be notified of their status and offer terms and conditions to mitigate past compliance issues.

§1.302 describes the process that will be used for the Department’s formula funded Community Affairs programs. The rule provides an opportunity for subrecipients to comment on their compliance history and be notified regarding EARAC’s recommendations.

§1.303 describes the process that will be used for all other Department programs not covered in sections §§1.301 and 1.302. The process is very similar to the process outlined in §1.302 and provides an opportunity for applicants to comment on their compliance history and be notified of EARAC’s recommendations.

§1.304 provides an opportunity and process for applicants and subrecipients to appeal a recommendation made by EARAC.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new rules and the proposed repeal are in effect, enforcing or administering the proposed new rules and the proposed repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new rules and the proposed repeal are in effect, the public benefit anticipated as a result of the proposed new rules and proposed repeal will be an increased ability for potential applicants to know and understand their compliance status with the Department. There will not be any additional new economic cost to individuals required to comply with the proposed new rules or the proposed repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will not be any additional economic effect on small or micro-businesses based on the proposed rules or proposed repeal.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held May 1, 2015, through June 1, 2015 to receive input on the proposed rules and proposed repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-3359. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. JUNE 1, 2015.**

STATUTORY AUTHORITY. The rules and the repeal are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed rules and repeal affect no other code, article, or statute.

§1.5 Previous Participation

§1.301 Previous Participation Reviews for Multifamily Awards and Ownership Transfers

(a) General. Prior to awarding funds or other assistance through the Department's Multifamily Housing Programs or approving an entity to acquire an existing multifamily Development monitored by the Department a previous participation review will be performed. When conducting a previous participation review:

(1) Events of noncompliance that were corrected over three (3) years ago are not taken into consideration unless required by federal or state law or by court order or voluntary compliance agreement.

(2) Events of noncompliance with an "out of compliance date" prior to the applicant's or proposed incoming owner's period of control are not taken into consideration if the event(s) are currently corrected, regardless of whether or not they were corrected during the corrective action period.

(3) Events of noncompliance with an "out of compliance date" prior to the Applicant's or proposed incoming owner's period of control are taken into consideration if the event(s) are currently uncorrected.

(4) The following events of noncompliance will not be taken into consideration:

(A) "*Failure to provide Fair Housing Disclosure notice*" to households that have vacated if the date of noncompliance was within the first six (6) months of calendar year 2013;

(B) "*Household income above the income limit upon initial occupancy*" for units at properties participating in U.S. Department of Housing and Urban Development programs if the household resided in the unit prior to an allocation of Department funds and Federal Regulations prevent the owner from correcting the issue; and

(C) "*Casualty loss*" if the restoration period has not expired.

(5) If the applicant or any affiliate of the applicant is required to have a Single Audit, the Compliance Division will advise the Executive Award Review Advisory Committee ("EARAC") of Single Audit Findings and events of noncompliance identified by the Community Affairs Monitoring and/or Contract Monitoring Sections of the Compliance Division.

(6) Applicants or proposed incoming owners must complete the Department's Uniform Previous Participation Review Form and respond to staff inquiries regarding apparent errors or omissions. If an applicant or proposed incoming owner fails to provide this form this failure shall be reported to EARAC.

(b) Definitions. The following definitions apply only as used in this section. Other capitalized terms used in this section shall have the meaning ascribed in chapter 10 of this title.

(1) Extra Large Portfolios -- Applications in which the Applicant and its Affiliates collectively Control more than twenty (20) Developments;

(2) Large Portfolios—Applications in which the Applicant and its Affiliates collectively Control thirteen (13) to nineteen (19) Developments;

(3) Medium Portfolios -- Applications in which the Applicant and its Affiliates collectively Control six (6) to twelve (12) Developments;

(4) Monitoring Event -- means an onsite or desk monitoring review, a Uniform Physical Condition Standards inspection, the submission of the Annual Owner's Compliance Report, or any other instance when the Department's Compliance Division provides written notice to an owner requesting a response by a certain date (*e.g.*, responding to a tenant complaint);

Example 1.301(1): A Development was monitored in 2011 and 2014. During both monitoring visits, Department staff identified units that were occupied by ineligible households. At the time of the previous participation review, all identified events of noncompliance have been corrected. However, some of the units from the 2011 and some of the units from the 2014 onsite file review were not corrected during the corrective action period. Although the same finding was cited, it would be considered two events of noncompliance.

(5) Portfolio Sizes -- Refers collectively to Small Portfolios, Medium Portfolios, Large Portfolios and Extra Large Portfolios;

(6) Small Portfolios -- Applications in which the Applicant and its Affiliates collectively Control five (5) or fewer Developments.

(c) Determination of Compliance Status. Through a review of the form and the compliance history of the affiliated multifamily Developments, staff will determine the applicable category for the application or ownership transfer request using the criteria in paragraphs (1) through (4) of this subsection and EARAC will recommend appropriate remedies, actions, and/or conditions in accordance with subsection (d) of this section. The application will be classified in the highest applicable category.

Example 1.301(2): If an application is category 1 for a particular issue but meets the standard to be classified as category 4 for another issue or issues, then the application shall be considered a category 4 application under this section.

(1) Category 1. For all Portfolio Sizes, the Developments affiliated with the application have no issues that are currently uncorrected and no events of noncompliance that were not corrected during the corrective action period.

(2) Category 2.

(A) Small Portfolios. The number of events of noncompliance that are uncorrected plus the number of events of noncompliance that were not corrected during the corrective action period equals one (1).

(B) Medium Portfolios. The number of events of noncompliance that are uncorrected plus the number of events of noncompliance that were not corrected during the corrective action period is more than zero (0) but fewer than three (3).

(C) Large Portfolios. The number of events of noncompliance that are uncorrected plus the number of events of noncompliance that were not corrected during the corrective action period is more than zero (0) but five (5) or fewer.

(D) Extra Large Portfolios. The number of events of noncompliance that are uncorrected plus the number of events of noncompliance that were not corrected during the corrective action period is more than zero (0) but less than seven (7).

(3) Category 3.

(A) Small Portfolios. The number of events of noncompliance that are uncorrected plus the number of events of noncompliance that were not corrected during the corrective action period is more than one (1) but fewer than six (6).

(B) Medium Portfolios. The number of events of noncompliance that are uncorrected plus the number of events of noncompliance that were not corrected during the corrective action period is more than two (2) but fewer than eight (8).

(C) Large Portfolios. The number of events of noncompliance that are uncorrected plus the number of events of noncompliance that were not corrected during the corrective action period is more than five (5) but fewer than eleven (11).

(D) Extra Large Portfolios. The number of events of noncompliance that are uncorrected plus the number of events of noncompliance that were not corrected during the corrective action period is more than six (6) but fourteen (14) or fewer.

(E) For all Portfolio Sizes:

(i) There are three (3) or fewer events of noncompliance that are currently uncorrected at the developments affiliated with the application. If corrective action has been uploaded to the Department's Compliance Monitoring and Tracking System ("CMTS") it will be reviewed before this determination is made; however, evidence of corrective action submitted during the five day period referenced in subsection (d) of this section will not be considered;

(ii) No response was received during the corrective action period for three (3) or fewer monitoring events that occurred within the last three (3) years; or

(iii) A Development affiliated with the application that is or was controlled by the applicant or proposed incoming owner has been the subject of a final order and the terms have not been violated.

(4) Category 4.

(A) Small Portfolios: The number of events of noncompliance that are uncorrected plus the number of events of noncompliance that were not corrected during the corrective action period is six (6) or more;

(B) Medium Portfolios: The number of events of noncompliance that are uncorrected plus the number of events of noncompliance that were not corrected during the corrective action period is eight (8) or more;

(C) Large Portfolios: The number of events of noncompliance that are uncorrected plus the number of events of noncompliance that were not corrected during the corrective action period is eleven (11) or more;

(D) Extra Large Portfolios. The number of events of noncompliance that are uncorrected plus the number of events of noncompliance that were not corrected during the corrective action period is fifteen (15) or more.

(E) For all Portfolio Sizes:

(i) There are more than three events of noncompliance that are uncorrected at the Developments affiliated with the application. If corrective action has been uploaded to CMTS it will be reviewed before this determination is made, however, evidence of corrective action submitted during the five day period referenced in subsection (d) of this section will not be considered;

(ii) No response was received during the corrective action period for more than three (3) monitoring events that occurred within the last three (3) years;

(iii) A Development affiliated with the application that is or was controlled by the applicant or proposed incoming owner has been the subject of a final order and the terms have been violated;

(iv) The applicant or proposed incoming owner failed to meet the terms and conditions of a prior approval imposed by the EARAC, the Governing Board, voluntary compliance agreement, or court order;

(v) Payment of principal or interest on a loan due to the Department is past due beyond any grace period provided for in the applicable loan documents;

(vi) The Department has requested and not been provided evidence that the owner has maintained required insurance on any collateral for any loan held by the Department;

(vii) The Department has requested and not been provided evidence that property taxes have been paid or satisfactory evidence of a tax exemption on any collateral for any loan held by the Department; or

(viii) Fees or other amounts owed to the Department are thirty days or more past due.

(d) EARAC Review. After determining the appropriate category, EARAC will review the previous participation in accordance with the following paragraphs, as applicable.

(1) Category 1. The compliance history of category 1 applications will be deemed acceptable by EARAC without further review or discussion.

(2) Category 2. The compliance history of category 2 applications will be deemed acceptable by EARAC without further review or discussion and the Governing Board will be advised of category 2 applications that are recommended for award.

(3) Categories 3 and 4.

(A) Prior to EARAC review, the applicant or proposed incoming owner will be provided a five (5) business day period to review the documentation that will be provided to EARAC and provide written comment or propose conditions or mitigations;

(B) The compliance history will be reviewed by EARAC for a recommendation to award or award with conditions. In making this decision, EARAC may request any other

information from the Compliance Division that is documented in the compliance history with the exception of events of noncompliance precluded by Texas Government Code §2306.6719(e);

(C) Any award recommendations will be conditioned on the correction of any uncorrected events of noncompliance by dates agreed upon by the applicant or proposed incoming owner and EARAC. In addition, recommendation and approval may be subject to other terms and conditions related to the applicant's or incoming owner's compliance history. Failure to correct events of noncompliance by agreed upon dates and/or meet terms and conditions related to a recommendation or award will be reconsidered by EARAC and awards may be recommended for denial or recession.

(4) Category 4. Applications will be notified of their status and if they wish to pursue the award should be prepared to propose terms and conditions specific to their compliance history, along with identifying specific dates to correct uncorrected events. EARAC may accept, modify or reject the applicant's proposal. If the proposal is modified or rejected, the applicant may appeal in accordance with §1.304 of this subchapter.

§1.302 Previous Participation Reviews for CSBG, LIHEAP, and WAP

(a) Previous Participation Reviews for annual non-competitive contracts funded through the U.S. Department of Health and Human Services' Community Service Block Grant Program ("CSBG"), the Low Income Housing Energy Assistance Program ("LIHEAP") and the Department of Energy Weatherization Assistance Program ("WAP") will be conducted in connection with the preparation of the applicable State Plan to be submitted to the appropriate federal agency.

(b) Capitalized terms used in this section shall have the meaning ascribed in chapter 5 of this title.

(c) Any entity that the Department may enter into a contract with will be required to submit:

- (1) A listing of its current board of directors, council, or other governing bodies as applicable;
- (2) A list of the Subrecipient's key personnel (Executive Director, CFO, program director) and the length of time they have been in that position and employed by the Subrecipient;
- (3) Identification of the client tracking and financial management system or software used by the Subrecipient and the length of time that the entity has been utilizing these systems;
- (4) Any pending state or federal litigation (including administrative proceedings) against the Subrecipient along with any final decrees within the last three years;
- (5) A list of any multifamily Developments owned or Controlled by the Subrecipient that are monitored by the Department; and
- (6) Identification of all Department programs that the Subrecipient has participated in within the last three years.

(d) Subrecipients will be provided a reasonable period of time, but not less than five business days, to provide the requested information.

(e) The Subrecipient's financial obligations to the Department will be reviewed to determine if any of the following deficiencies exist:

- (1) Payment of principal or interest on a loan due to the Department is past due beyond any grace period provided for in the applicable loan documents;
- (2) The Department has requested and not been provided evidence that the Subrecipient has maintained required insurance on any collateral for any loan held by the Department;
- (3) The Department has requested and not been provided evidence that property taxes have been paid or satisfactory evidence of a tax exemption on any collateral for any loan held by the Department; or
- (4) Fees or other amounts owed to the Department which are thirty days or more past due.

(f) The information provided by the Subrecipient, the results of the most recent Single Audit, any deficiencies identified in subsection (d) of this section and all findings identified during any monitoring visits conducted within the last three years (whether or not the findings were corrected during the corrective action period) will be taken into consideration to:

- 1) Prepare the monitoring plan, including the identification of the contracts that will be monitored under the funds provided through the state plan;
- 2) Identify if applicable, any element that will be monitored for all contracts;
- 3) Identify any recommended special contract terms and conditions;
- 4) Identify any “Network wide” training that will be offered; and
- 5) Identify any CSBG eligible entity that will be required to prepare and submit a Quality Improvement Plan (“QIP”).

(g) If any deficiencies in subsection (d) of this section are identified, or if the most recent Single Audit contained findings or if there have been any monitoring findings identified during the last three years, the Subrecipient will be notified that EARAC will be informed of such issues (with the exception of events of noncompliance precluded by Texas Government Code §2306.6719(e)). The Subrecipient will be provided a five business day period to provide written comment or propose conditions or mitigations. Although there will be an opportunity to respond and comment within the five day period, a response is not required.

(h) The list of Subrecipients along with summary information regarding monitoring, (with the exception of events of noncompliance precluded by Texas Government Code §2306.6719(e)), Single Audit and any deficiencies identified in subsection (d) of this section will be presented to EARAC. EARAC may request any other information from the Compliance Division that is documented in the compliance history with the exception of events of noncompliance precluded by Texas Government Code §2306.6719(e).

(i) EARAC can recommend award, denial or award with conditions.

(j) Any Subrecipient who will be recommended for denial or award with conditions or any CSBG eligible entity that will be required to submit a Quality Improvement Plan will be informed in writing and will be required submit a written response or propose conditions or mitigations. An additional five business days will be provided to submit the written response or proposed conditions or mitigations. If the Subrecipient’s response does not result in EARAC recommending award with no conditions or

award with conditions that the Subrecipient agrees to, the Subrecipient will have the opportunity to appeal EARAC's recommendation in accordance with §1.304 of this subchapter.

(k) Although funds may be reserved for the Subrecipient or the Subrecipient's service area, consistent with §1.3 of subchapter A of this chapter, concerning Delinquent Audits and Related Issues, the Department will not enter into a contract or extend a contract with any Subrecipient who is delinquent in the submission of their Single Audit, unless an extension has been approved in writing by the cognizant federal agency.

(l) The Department will not enter into a contract with any Subrecipient who has a board member on the Department's debarment list or the federal debarred and suspended listing. However, other than debarment, individual board member's participation in other Department programs is not required to be disclosed and will not be taken into consideration.

(m) The Department will not enter into a contract with any Subrecipient who is on the Department's or the federal debarred and suspended listing.

(n) Previous Participation reviews will not be conducted for contract extensions. However, if the entity is delinquent in submission of its Single Audit, the contract will not be extended.

(o) Full Previous Participation reviews will not be conducted for contract amendments if the increase in funds is 15% or less. However, EARAC will be notified of any monitoring findings that have been identified since the most recent previous participation review and for which the corrective action period has elapsed. In addition, EARAC will be notified of any Single Audit findings that have been identified since the most recent previous participation review. The contract will not be amended if the entity is delinquent in submission of its Single Audit. Subsections (f) and (i) of this section shall not apply for an amendment that award funds under this subsection. Full Previous Participation reviews will be conducted for contract amendments if the increase in funds is greater than 15%.

(p) Previous Participation reviews for discretionary or competitive awards made under any of these programs will be conducted prior to the award of funds. Subrecipients will be required to submit the required information listed in subsection (b) of this section along with the application for funding.

§1.303 Previous participation reviews for Department program awards not covered by §1.301 or §1.302 of this subchapter

(a) This section applies to program awards not covered by §1.301 or §1.302 of this subchapter. With the exception of a household or project commitment contract, prior to awarding or allowing access to Department funds through a contract or through a Reservation Agreement a previous participation review will be performed.

(b) Capitalized terms used in this section shall have the meaning ascribed in the definitions section of the applicable program of this title or as required by federal or state law.

(c) When applying for an award or a new Reservation Agreement, entities will be required to submit:

(1) A listing of the members of its current board of directors, council, or other governing body as applicable;

(2) Any pending state or federal litigation (including administrative proceedings) against the entity along with any final decrees within the last three years;

(3) A list of any multifamily Developments owned or Controlled by the applicant that are monitored by the Department; and

(4) Identification of all Department programs that the entity has participated in within the last three years.

(d) The entity's financial obligations to the Department will be reviewed to determine if any of the following deficiencies exist:

(1) Payment of principal or interest on a loan due to the Department is past due beyond any grace period provided for in the applicable loan documents;

(2) The Department has requested and not been provided evidence that the owner has maintained required insurance on any collateral for any loan held by the Department;

(3) The Department has requested and not been provided evidence that property taxes have been paid or satisfactory evidence of a tax exemption on any collateral for any loan held by the Department; or

(4) Fees or other amounts owed to the Department are thirty days or more past due.

(e) If any deficiencies in subsection (c) of this section are identified, or if the most recent Single Audit contained findings or if there have been any monitoring findings identified during the last three years, the applicant will be notified that EARAC will be informed of such issues (with the exception of events of noncompliance precluded by Texas Government Code §2306.6719(e)). The entity will be provided a 5 business day period to provide written comment or propose conditions or mitigations. Although there will be an opportunity to respond and comment within the five day period, a response is not required.

(f) EARAC will review the information and may recommend approval, denial or approval with conditions. EARAC may request any other information from the Compliance Division that is documented in the compliance history with the exception of events of noncompliance precluded by Texas Government Code §2306.6719(e).

(g) Any entity which will be recommended for denial or award with conditions will be informed in writing and will be required submit a written response or propose conditions or mitigations. If the entity's response does not result in EARAC recommending award with no conditions or award with conditions that the entity agrees to, the entity will have the opportunity to appeal EARAC's recommendation in accordance with §1.304 of this subchapter.

(h) Consistent with §1.3 of subchapter A of this chapter, concerning Delinquent Audits and Related Issues, the Department will not enter into a contract or extend a contract with any entity who is delinquent in the submission of their Single Audit unless an extension has been approved in writing by the cognizant federal agency.

(i) The Department will not enter into a contract with any entity who has a Board member on the Department's debarment list or the federal debarred and suspended listing. However, individual Board

member's participation in other Department programs is not required to be disclosed and will not be taken into consideration.

(j) The Department will not enter into a contract with any entity who is on the Department's or the federal debarred and suspended listing.

(k) Previous Participation reviews will not be conducted for contract extensions. However, if the entity is delinquent in submission of its Single Audit, the contract will not be extended.

(l) For the Emergency Solutions Grant, full Previous Participation reviews will not be conducted for contract amendments unless the amendment is an increase in funds of more than 15%. However, EARAC will be notified of any monitoring findings that have been identified since the most recent previous participation review and for which the corrective action period has elapsed. In addition, EARAC will be notified of any Single Audit findings that have been identified since the most recent previous participation review. Subsections (d) and (f) of this section shall not apply to amendments that award additional funds under this subsection. Full Previous Participation reviews will be conducted for contract amendments if the increase in funds is greater than 15%.

(m) Approval of an entity's Previous Participation made for awards or Reservation System Agreements under this section is effective for 12 months unless there has been a significant change in the entity's compliance status or there are significant differences in the compliance requirements of the programs.

§1.304 Appeal of an EARAC recommendation under the previous participation review rule.

(a) An applicant or possible subrecipient of an award may appeal an EARAC recommendation by submitting to the Department (to the attention of the Chair of EARAC), as provided herein, a letter (the "Appeal") setting forth:

- (1) That the applicant or subrecipient disagrees with the EARAC recommendation;
- (2) The reason(s) why the applicant disagrees with EARAC's recommendation; and
- (3) If desired, a request for an in person meeting with EARAC.

(b) An appealing party must file a written Appeal not later than the seventh day after notice has been provided and include a hard copy and pdf version of all materials, if any, that the applicant wishes to have provided to the board in connection with its consideration of the matter.

(c) An Appeal will be included on the Governing Board agenda if received at least three business days prior to the required posting of that agenda. The agenda item will include the materials provided by the applicant and may include a staff response to the appeal and/or materials. It is within the board chair's discretion whether or not to allow an applicant to supplement its response. An applicant who wishes to provide supplemental materials must comply with the requirements of §1.10 of this Chapter regarding Public Comment Procedures. There is no assurance the board chair will permit the submission, inclusion, or consideration of such supplemental materials.

(d) The board and staff will make reasonable efforts to accommodate properly and timely filed Appeals, but there may be unanticipated circumstances in which the continuity of assistance or other exigent

circumstances dictate proceeding with an award notwithstanding the fact that an EARAC recommendation has been appealed. These situations, should they arise, will be addressed on an *ad hoc* basis.