

# **AUDIT COMMITTEE MEETING**

**October 13, 2016**

**Leslie Bingham-Escareño, Chair**



**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
AUDIT COMMITTEE MEETING**

**AGENDA  
8:00 AM  
OCTOBER 13, 2016**

**JOHN H. REAGAN BUILDING  
ROOM JHR 140, 105 W. 15<sup>TH</sup> STREET  
AUSTIN, TEXAS**

**CALL TO ORDER, ROLL CALL,  
CERTIFICATION OF QUORUM**

Leslie Bingham-Escareño, **Chair**  
Leslie Bingham-Escareño, **Chair**

The Audit Committee of the Governing Board of the Texas Department of Housing and Community Affairs will meet to consider and may act on any of the following:

**ITEM 1: Presentation, Discussion, and Possible Action to Approve the Audit Committee Minutes Summary for July 28, 2016**

Mark Scott  
Director of Internal Audit

**ITEM 2: Presentation, Discussion and Possible Action to Approve the Fiscal Year 2017 Internal Audit Work Plan**

Mark Scott  
Director of Internal Audit

**REPORT ITEMS:**

Mark Scott  
Director of Internal Audit

1. PRESENTATION AND DISCUSSION OF THE INTERNAL AUDIT: REVIEW OF FAIR HOUSING ACTIVITIES
2. DISCUSSION OF RECENT INTERNAL AUDIT AND CONSULTING ACTIVITY
3. DISCUSSION OF RECENT EXTERNAL AUDIT ACTIVITY

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

**EXECUTIVE SESSION**

The Committee may go into Executive Session (close its meeting to the public) on any agenda item if appropriate and authorized by the Open Meetings Act, Tex. Gov't Code, Chapter 551 and under Tex. Gov't Code, §2306.039.

1. Pursuant to Tex. Gov't Code, §551.074 the Audit Committee may go into Executive Session 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) the Committee may go into executive session to seek the advice of its attorney about pending or contemplated litigation or a settlement offer.
3. Pursuant to Tex. Gov't Code, §551.071(2) the Committee may go into executive session 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.
4. Pursuant to Tex. Gov't Code, §2306.039(c) the Committee may go into executive session to receive reports from the Department's internal auditor, fraud prevention coordinator, or ethics

advisor regarding issues related to fraud, waste or abuse.

## **OPEN SESSION**

If there is an Executive Session, the Committee will reconvene in Open Session and may take action on any items taken up in Executive Session. Except as specifically authorized by applicable law, the Audit Committee may not take any actions in Executive Session.

## **ADJOURN**

To access this agenda and details on each agenda item in the board book, please visit our website at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us) or contact Mark Scott, TDHCA Internal Audit Director, 221 East 11th Street Austin, Texas 78701-2410, 512.475-3813 and request the information.

Individuals who require the auxiliary aids, services or sign language interpreters for this meeting should contact Gina Esteves, ADA Responsible Employee, at 512-475-3943 or Relay Texas at 1-800-735-2989 at least two (2) 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

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

Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun.

De acuerdo con la sección 30.06 del código penal (ingreso sin autorización de un titular de una licencia con una pistola oculta), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola oculta.

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

De acuerdo con la sección 30.07 del código penal (ingreso sin autorización de un titular de una licencia con una pistola a la vista), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola a la vista.

**NONE OF THESE RESTRICTIONS EXTEND BEYOND THIS ROOM ON THIS DATE AND DURING THE MEETING OF THE AUDIT COMMITTEE OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS.**

1

**AUDIT COMMITTEE ACTION REQUEST**

**INTERNAL AUDIT DIVISION**

**October 13, 2016**

Presentation, Discussion and Possible Action on Audit Committee Meeting Minutes Summary for July 28, 2016.

**RECOMMENDED ACTION**

**RESOLVED**, that the Audit Committee Meeting Minutes Summary for July 28, 2016 are hereby approved as presented.

**MINUTES OF THE AUDIT COMMITTEE  
OF THE GOVERNING BOARD OF THE  
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

On Thursday, July 28, 2016, at 8:00 a.m. the meeting of the Audit Committee (the “Committee”) of the Governing Board (the “Board”) of the Texas Department of Housing and Community Affairs (the “Department”) was held in the John H. Reagan Building Room JHR 140 at 105 W. 15<sup>th</sup> Street, Austin, Texas. Leslie Bingham Escareño presided over the meeting and Mark Scott served as secretary. All three members of the Committee were in attendance: Leslie Bingham-Escareño, Tom Gann, and Tolbert Chisum.

The minutes of the April 28, 2016, meeting of the Committee were adopted as presented.

Mr. Scott presented the internal audit of the Sources and Uses of funds at TDHCA, which is an overview, once per biennium, to show and analyze how the Agency’s money is received and spent. This is the first time this review has been done at TDHCA, and with each go around it should become more informative.

TDHCA has a complex financial structure which is necessary to promote a wide variety of activities; and this report is for the purpose of internal analysis and information. The General Appropriations Act (GAA) and information available through the Legislative Budget Board uses the term “funds available” with respect to TDHCA’s finances. The GAA bill pattern includes a statement that the appropriated amount represents 27 percent of what is available to TDHCA. This note refers to amounts that are in the Housing Trust Fund (HTF) that will be expended over a much longer period. This is pointed out so someone won’t think the Agency spends four times what is appropriated. The majority of the appropriated funds are federal funds but the amount from the state’s general revenue fund is about \$13 million. Also, about \$19.5 million is appropriated receipts, which includes items like monitoring fees.

Section B of the report includes a reconciliation of the amounts referenced in the Agency’s bill pattern and the information in the Agency’s Legislative Appropriations Request (LAR). The bulk of the money kept outside the state treasury, HTF, is in mortgage-backed securities. Section C describes the HTF as being placed with the Texas Treasury Safekeeping Trust Company.

Section D of the Audit Report shows the Agency’s administration is funded by a direct line item in the appropriations and by charges of an indirect rate to federal agencies. The approved indirect cost rate is 44.4 percent, and the total charged to federal sources is around \$1.7 million per year. Also, some salaries are appropriately charged as direct costs to federal programs. We tested the indirect cost allocations and they were correctly calculated.

Section F of the report is the Lower Income Housing Tax Credits (LIHTC). LIHTCs are used by developers to offset their tax liability. TDHCA receives fee income to defray the administrative costs of handling the tax credit program.

Section G is on reconciliation and we had minor observations on budget information related to interagency contract with the Agriculture Department and to the payroll-related costs.

Exhibit A provides more detail on the Agency's goals and strategies. The information is from the LAR and the Agency's bill pattern.

Ms. Bingham Escareño reiterated that other than just the minor observations under reconciliations, there weren't any other really material internal findings, of which Mr. Scott agreed. Ms. Bingham Escareño made the observation that as a candidate for the director position, one of the things that really appealed to us was the recommendation to do a Sources and Uses Audit. Now we have this well-thought-out explanation of what is really a complicated kind of funding process in our Agency, and have it thoroughly explained and assessed. She said "I think it's everything that we thought it would be and definitely a good thing to have. At some point in our talking, we talked about it's something that you'd like to do biennially?" Mr. Scott agreed.

Mr. Irvine stated that he thinks it's a phenomenally important audit. There are 15 to 20 different sources of state and federal funds that are used in an extremely interwoven and interconnected way to serve eligible Texans, and that's a very hard story to tell. And Mr. Irvin thinks an audit like this really helps to tell that in an objective and transparent manner.

Mr. Scott discussed Item 3, Recent Internal Audit and Consulting Activities. He is in the process of hiring a new auditor to fill a vacancy. Also, we have two audits in progress that will be presented at the October Audit Committee meeting; those are the Fair Housing Audit and the Compliance Division Audit. The Federal Tax Credit Audit and the Audit of Multifamily Finance Division may be carried over into 2017. Also, at the upcoming October Audit Committee meeting, I'll present a 2017 Audit Plan for approval.

The last peer review of internal audit was completed in January of 2013 and not only do we do Red Book audits, we also in the past have received Red Book peer reviews. The Red Book standards apply to internal audits, while the Yellow Book standards apply to external audits. We are in compliance with the 5 year timeline. Mr. Scott talked to Mr. Irvine about this. We're going to put the peer review on the Audit Plan in October and also budget for it. Prior to the peer review I will also write up a self-assessment of compliance with Internal Audit Standards 1000 through 2600, which will map to everything in the peer review reports.

On consulting, Mr. Scott continues to meet regularly with compliance staff to consult on the A-133 audits.

Ms. Bingham Escareño stated that you've got a tiny but Herculean staff. You guys are going to try to knock out everything on the plan this year. But you're letting the committee know that you're short on manpower a little bit and you guys will do the best you can and keep us posted on status? Mr. Scott said yes.

Mr. Irvine reminded the Committee Members that a letter from someone outside the Agency raising concerns about whether we were in compliance with our peer review requirements. He said he

wanted to be crystal clear and completely transparent. The instant I learned of that issue, Mr. Scott, general counsel and I immediately went over and sat down with our audit manager at SAO. I don't think there were any specific concerns raised, and the general observation was, well, the best way to address that is get a peer review. From a pure let's get the maximum benefit from the peer review process, we would be well served to engage somebody that's not in the state auditing world to just come in and see what they think. Mr. Scott said he is always open for input and whatever the peer review says, he'll be open to it.

Mr. Chisum stated that our staff is doing a fabulous job and thank you Mr. Scott. To get what you want done in this year, would it be a consideration to go outside and find the expertise that we need to help do what you need to get done this year, if that's what you want to do? Mr. Scott states he is open to anything. I don't think that that would necessarily expedite the situation because of the procurement process and we'd have to get them up to speed on things and we are learning as we do other audits. I appreciate the offer, but I don't know if it would necessarily speed things up.

Mr. Chisum asked that once we get those things done, will there be responsibilities remaining for that new employee to continue? Mr. Scott responds that yes, we'll have to have another audit plan next year. Mr. Chisum continues that really we're shorthanded right now. Mr. Scott agrees, but we'll work through that.

Ms. Bingham Escareño said that we'll probably get together as a committee again in October, or around there, and maybe Mr. Scott, you will give us an update at that time on how we're looking for the completion of our plan and whether or not you think anything will carry over into the coming year? Mr. Scott agreed and stated that carrying over an audit is never looked at negatively by the oversight agencies.

The final and third report item is Discussion of Recent External Audit Activity. Mr. Scott stated that the SAO is getting ready to start their Financial Statement Audit of TDHCA, which they do every year. And, KPMG has finished the field work on their audit of the Energy Assistance Program, and thus far, they've not notified us of any findings. Also, the federal agency monitoring by HUD of the Community Development Grant Program issued a very favorable report.

There being no further business to come before the Committee, the meeting was adjourned at 8:23 a.m.

\_\_\_\_\_ Leslie Bingham Escareño, Chairman

\_\_\_\_\_ Mark Scott, Audit Committee Secretary



2

**AUDIT COMMITTEE ACTION REQUEST**

**INTERNAL AUDIT DIVISION**

**October 13, 2016**

Presentation, Discussion, and Possible Approval of the Fiscal Year 2017 Internal Audit Work Plan

**RECOMMENDED ACTION**

**WHEREAS**, the Tex. Gov't Code §2306.073 (b), the Internal Auditing Act and audit standards require the Department's Governing Board to approve an annual audit work plan that outlines the internal audit projects planned for the fiscal year;

**WHEREAS**, Staff has presented a Fiscal Year 2017 Internal Audit Work Plan that is acceptable to the Audit Committee; and

**NOW**, therefore, it is hereby

**RESOLVED**, the Audit Committee of the Board recommends approval of the Internal Audit Work Plan for Fiscal Year 2017 by the Governing Board as presented.

**BACKGROUND**

The annual internal audit work plan is required by the Tex. Gov't Code §2306.073 (b), the Texas Internal Auditing Act (Tex. Gov't Code Chapter 2102) and by the International Standards for the Professional Practice of Internal Auditing (Standards). The plan is prepared by the internal auditor based on an agency-wide risk assessment as well as input from the Department's Governing Board and executive management. The plan identifies the individual audits to be conducted during Fiscal Year 2017. The plan also outlines other planned activities that will be performed by the Internal Audit Division.



## TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

[www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

Greg Abbott  
GOVERNOR

### BOARD MEMBERS

J. Paul Ozer, *Chair*  
Juan S. Muñoz, PhD, *Vice Chair*  
Leslie Bingham-Escareño  
T. Tolbert Chisum  
Tom H. Gann  
J.B. Goodwin

### Texas Department of Housing and Community Affairs Office of Internal Audit Audit Plan for Fiscal Year 2017

#### Statutory and Professional Standards Requirement

The Texas Internal Auditing Act (Texas Government Code, §2102.005) requires state agencies to conduct a program of internal auditing. The *International Standards for the Professional Practice of Internal Auditing (IA Standards)* define Internal Auditing as an “independent, objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.”

The Texas Government Code and the *IA Standards* require internal auditors to develop an annual audit plan, using risk assessment techniques, that identifies individual audits to be conducted during the year. The Code requires that the plan be approved by the state agency's governing board or by its administrator, if the agency has no governing board.

The program of internal auditing is carried out by the Office of Internal Audit (OIA) which serves at the direction of the Governing Board. The OIA has prepared this audit plan for consideration and approval by the Governing Board.

#### Development of the Annual Audit Plan

The Fiscal Year 2017 plan is designed to cover areas of highest risk to the State and the agency; however, it does not cover all risks. TDHCA management should utilize internal controls and other appropriate methodologies to mitigate residual risks not covered by the audit plan.

The annual audit plan was developed using a risk based methodology which included:

- Obtaining management's and the Governing Board's perspectives through surveys and discussions.
- Consulting with the State Auditor's Office and other oversight bodies.



- Reviewing prior TDHCA meeting minutes, audit report findings and recommendations, and budgetary information.
- Evaluating information about key agency business areas, processes, and systems.
- Considering input from internal audit staff.
- Utilizing a matrix whereby identified auditable units were ranked according to standard risk factors.

The auditor hours available for projects in this plan were computed based on 2088 total hours per staff member in the 2017 fiscal work year. These hours were reduced by allowances for vacation, holiday, professional development, sick leave, a temporary vacancy, and an allocation for administrative activities required to manage the program of internal auditing.

### **Projects for Fiscal Year 2017 Annual Audit Plan**

We have identified the following projects for inclusion in the 2017 Annual Audit Plan. The project numbers are for identification purposes and may not correspond to the order in which the projects are performed. Also included below is a brief description of functions to be reviewed.

#### **New Audit Projects:**

##### **1. Information Services**

The Internal Auditing Act requires periodic audits of an agency's information systems. The audit will cover such areas as technical infrastructure, Applications, external connections, and the division of I.T. responsibilities between the agency and DIR. The audit will be organized according to the ISACA "domains".

This particular type of audit has not been done at TDHCA, although an external contracted firm has performed consulting work related to I.T.

##### **2. Bond Finance**

The Bond Finance Division is primarily responsible for administering the Department's Mortgage Revenue Bond (MRB) program. MRB programs provide below-market interest rate funds for single family homebuyers and multifamily mortgage loans made to qualifying recipients.

The Bond Finance unit rated high on the risk assessment due to its level of complexity of transactions and processes. Additionally, the Bond Finance unit has not been audited within the last three years.

##### **3. HOME Contract for Deed Conversion (CFDC)**

The HOME Investment Partnerships Program (HOME Program or HOME) is funded by the U.S. Department of Housing and Urban Development (HUD). Authorized under the Cranston – Gonzalez National Affordable Housing Act, the purpose of the program is to expand the supply of decent, safe, affordable housing and strengthen public-private housing partnerships between units of general local government, public housing authorities, nonprofits, and for profit entities.

The Contract for Deed (CFD) initiative funds units of general local government, public housing authorities, local mental health authorities, and nonprofits wishing to assist colonia residents earning not more than 60% of the Area Median Family Income (AMFI), with converting contracts for deed into traditional mortgages.

HOME Contract for Deed Conversion (CFDC) rated high on the risk assessment and was selected for audit due to its susceptibility to fraud and concerns expressed by TDHCA management.

### **Carry Over Projects:**

#### **Multifamily Finance Division and Housing Tax Credit**

The Multifamily Finance Division and Housing Tax Credit (HTC) audit will be performed in FY17. This audit was carried over from the 2016 audit plan. It will review the division as an organizational unit, and the HTC as an agency program / activity.

#### **Compliance Monitoring**

The Compliance Monitoring audit will be completed in November 2016. The fieldwork for this audit has been completed; and the report will be issued shortly.

### **Administrative and Statutory Projects:**

- Internal Audit Self-Assessment
- Review of TDHCA compliance with appropriation riders and other requirements of the Government Code
- Annual Audit Plan and reporting
- Annual tracking of the implementation status of prior audit recommendations
- Procurement of External Peer Review
- Completion of Peer Review

### **Consulting Projects and External Audit Coordination**

Pursuant to the TDHCA internal audit charter, the OIA performs consulting activities for the agency. For fiscal year 2017, OIA is providing consulting services related to the new Grant Guidance in 2 CFR 200, as well as subrecipient monitoring.

OIA also coordinates and advises on external audit activities.

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Mark Scott, CPA, CIA, CISA, CFE, MBA  
Internal Audit Director, TDHCA

# REPORT ITEMS

R1

**BOARD REPORT ITEM**  
**INTERNAL AUDIT DIVISION**  
**October 13, 2016**

Report on the Internal Audit “Review of Fair Housing Activities”





TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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October 13, 2016

*Writer's direct phone # 512.475.3813*  
*Email: mark.scott@tdhca.state.tx.us*

**RE:** An Internal Audit of the Fair Housing Division

**To:** Chairman J. Paul Ozer and the Board Members of the Texas Department of Housing and Community Affairs

Dear Chairman Ozer and Board Members,

This report presents the results of the Office of Internal Audit's (OIA) "Review of Fair Housing." The review was included in the Fiscal Year 2016 Annual Audit Plan. Based on OIA's evaluation of risks and controls, the following audit objectives were developed:

- to examine and verify that TDHCA only provides housing program assistance to organizations that certify their compliance with State and Federal Fair Housing (FH) Laws; and
- to determine if the Fair Housing, Data Management and Reporting Division collects and manages the information necessary to evaluate the requirement imposed by HUD regulation to Affirmatively Further Fair Housing through HUD Community Planning and Development ("CPD") programs.

The audit scope included the 2015, and beginning 2016, applications received, and the resulting contracts for HOME Single-Family and Multifamily, as well as the Housing Trust Fund Amy Young Barrier Removal Program.

The audit methodology included gaining an understanding of FH, its activities and processes by interviewing employees of the TDHCA Fair Housing, Data Management, and Reporting division (FHDMR) and other staff, and by reviewing TDHCA, State, and Federal documentation. OIA identified relevant criteria for evaluating the FH process. OIA tested a random sample of applications and the resulting contracts as contained in the TDHCA Housing Contract System.

TDHCA, in addition to funding affordable housing and homeownership opportunities has a Fair Housing, Data Management, and Reporting division, which focuses on data collection and analysis along with reporting, and tracking fair housing work. This is important because the Fair Housing Act, in conjunction with periodic legislative and judicial updates/determinations, seeks not only to prevent discrimination, but also to actively promote equal access to housing, aka, Affirmatively Furthering Fair Housing (AFFH) as required by HUD regulations.

The Fair Housing Act includes provisions to prevent discrimination in the allocation of housing, and provisions to affirmatively further fair housing. The Texas Workforce Commission Civil Rights Division ("TWC") is the entity responsible for the enforcement of the Fair Housing Act in Texas.



## AUDIT RESULTS

Our audit indicated that TDHCA ensured that its grantees and other organizations had appropriately included Fair Housing requirements in contracts. TDHCA performs AFFH activities, and as resources are available should continue with staff education and outreach efforts.

### FAIR HOUSING OVERVIEW

Criteria and guidance for FH include Title VIII of the Civil Rights Act of 1968<sup>1</sup> and the Texas Fair Housing Act.<sup>2</sup> These acts protect the right to rent an apartment, buy a home, obtain a mortgage, or purchase homeowners insurance free from discrimination based on: race; color; national origin; religion; sex; familial status; and disability. Cities, counties, and other municipalities may have additional housing anti-discrimination laws to protect additional groups. It is important to note that FH is a difficult audit because FH is constantly evolving, including HUD's ongoing rollout of FH tools. In August 2015 HUD released a new final rule on Affirmatively Further Fair Housing in HUD programs. Under HUD's new AFFH rule HUD CPD program participants are required to "take meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, Affirmatively Furthering Fair Housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a program participant's activities and programs relating to housing and urban development."<sup>3</sup>

Currently HUD's AFFH requirement is defined in Community Development Block Grant and Consolidated Plan (ConPlan) regulations as requiring an Analysis of Impediments to Fair Housing Choice (AI) and taking appropriate actions to overcome the effects of impediments.

AI is a document that is used when preparing TDHCA's five (5) year ConPlan, which is used to plan the activities for HUD CPD programs within the state as a whole. It is not limited to TDHCA activities only; TDHCA takes the lead to guide the preparation of the document. An impediment to FH can be an action or an inaction that restricts housing choice or that has the effect of restricting housing choice. The AI document may identify impediments; however, TDHCA's ability to address the impediment may be limited by other factors. An example is if an impediment relates to local zoning. Under HUD's new AFFH HUD has developed Assessment of Fair Housing ("AFH") tools for local jurisdictions, states, and public housing authorities. The AFH tool for states is currently out for comment and is not in effect at this time. The agency's current impediments are spelled out in the AI, Phase II. "Until a program participant (TDHCA) submits its first AFH, the program participant must continue to comply with applicable fair housing planning procedures, meaning that it should comply with the existing Analysis of Impediments (AI) to fair housing choice requirements by having an up-to-date AI, complying with the AI, and taking action to affirmatively further fair housing."<sup>4</sup>

Some TDHCA programs may have specific rules related to FH requirements, such as HUD programs. Other programs may just require that the subrecipient comply with the state and federal fair housing acts.

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<sup>1</sup> [www.justice.gov](http://www.justice.gov)

<sup>2</sup> [www.statutes.legis.state.tx.us/Docs/PR/htm/PR.301.htm](http://www.statutes.legis.state.tx.us/Docs/PR/htm/PR.301.htm)

<sup>3</sup> <https://www.hudexchange.info/programs/affh/>

<sup>4</sup> <https://www.hudexchange.info/faqs/2994/what-should-i-do-before-my-assessment-of-fair-housing-afh-due-date/>

HUD Community Planning and Development has a checklist that indicates attributes to look for when evaluating Fair Housing.

Another HUD requirement related to fair housing is to provide access to Limited English Proficient (LEP) persons. Language access plans to meet the needs of LEP persons assist with housing barriers based on national origin, a protected class.

The Texas Fair Housing Act (TFHA) is to provide for fair housing practices in Texas; create a procedure for investigating and settling complaints of discriminatory housing practices; and provide rights and remedies substantially equivalent to those granted under federal law (prohibits discrimination; promotes desegregation; and ensures availability). The powers and duties formerly exercised by the Commission on Human Rights under this act transferred to the Texas Workforce Commission (TWC) in 2003. TWC has the state role in the enforcement of FH anti-discrimination provisions.

The TFHA does not prohibit discrimination against a person because the person has been convicted under federal law or the law of any state of the illegal manufacture or distribution of a controlled substance. Also, the act does not apply to the sale or rental of a single-family house sold or rented by the owner if certain provisions apply.<sup>5</sup> The act does not prohibit: a religious organization, association, or society or a nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society from limiting the sale, rental, or occupancy of dwellings that it owns or operates for other than a commercial purpose to persons of the same religion, or giving preference to persons of the same religion, unless membership in the religion is restricted because of race, color, or national origin; a private club that is not open to the public and that, as an incident to its primary purpose, provides lodging that it owns or operates for other than a commercial purpose from limiting the rental or occupancy of the lodging to its members or from giving preference to its members; and a person engaged in the business of furnishing appraisals of real property from considering in those appraisals factors other than race, color, religion, sex, disability, familial status, or national origin.

The provisions of TFHA relating to familial status do not apply to housing that TWC determines is specifically designed and operated to assist elderly individuals under a federal or state program; intended for, and solely occupied by, individuals 62 years of age or older; or intended and operated for occupancy by at least one individual 55 years of age or older for each unit as determined by TWC rules.

TWC receives, investigates, seeks to conciliate, and act on complaints alleging violations of the TFHA.

### EVALUATION OF THE TDHCA FAIR HOUSING PROCESS

The primary product or service that the TDHCA Fair Housing Project Manager (FHPM) provides is the FH focused lens directed to the program areas on FH matters. TDHCA leadership considers how policy and program decisions impact fair housing. This can be complex because what may appear to be a straight forward opportunity or option to provide assistance to individuals needing housing may have an unintended or unexpected consequence or result.

The Fair Housing, Data Management and Reporting Team actively works on a variety of FH related projects. One role of the fair housing team is to evaluate the policies and decisions that the agency may be considering. This includes considering how potential program or policy changes may impact the demographics of the individuals to be served. The FHPM performs research and compiles data. The work group will then discuss what they think will happen, if the policy or change is put into practice. They discuss how the change may or may not impact FH activities.

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<sup>5</sup> [www.statutes.legis.state.tx.us/Docs/PR/htm/PR.301.htm](http://www.statutes.legis.state.tx.us/Docs/PR/htm/PR.301.htm) section 301.041

Through participation in HUD CPD programs TDHCA, Texas Department of Agriculture, Texas General Land Office, and Texas Department of State Health Services (DSHS) each have responsibility for affirmatively furthering fair housing. This group of agencies, and the Texas Workforce Commission, continue to meet on a regular basis to discuss fair housing issues, rules and policy changes, and brainstorm new ideas to improve agency coordination and resource sharing. The agencies are also coordinating as they prepare to comply with the new AFFH rule using the state Analysis of Fair Housing (AFH) tool. The rule includes significant changes to the Citizen Participation Plan; FHDNR staff is preparing a timeline to comply with the new plan and is identifying how it will roll out changes. Pending release of the final state tool, the AFH tool will be effective for the 2020-2025 ConPlan. A separate analysis will be completed for TDHCA's Public Housing Authority Plan. Another role of the FHPM is to serve as a liaison with other entities on FH matters.

Staff members participate in monthly Qualified Allocation Plan (QAP) planning roundtable discussions and conduct significant research on potential scoring items. Research includes analyzing the statewide impact of items and considering their alignment with fair housing through mapping and analyzing census data related to income and poverty levels, and researching and mapping changes in Texas Education Agency education standards and ratings.

Information that the Department has may not be all inclusive. TDHCA does not require applicants to disclose certain household characteristics, such as disability status, unless those characteristics are related to eligibility requirements. For example, it is possible that an applicant qualifies for a program because they are elderly. Incidentally, the applicant may also have a disability however there would be no reason for TDHCA to collect that data characteristic. Therefore, the disability characteristic would not be included in the FH data analysis reported to the Governing Board.

TDHCA conducts a number of events and outreach strategies in April to celebrate fair housing month. The TDHCA Senior Marketing and Communication Advisor lead's some of these efforts. She sent out the FH factoids during the FH month of April and is responsible for FH press releases. Also, she was instrumental in organizing the internal Brown Bag training sessions for TDHCA staff covering FH updates, the new AFFH rule, affirmative marketing, and the language access plan.

TDHCA, through its Compliance Division and Housing Resource Center, receives complaints from households, and staff is developing training protocols to more clearly identify those complaints with possible fair housing elements so that FHDNR staff can be appropriately involved. Managing Fair Housing related complaints is a lengthy process and frequently involves working across divisions with compliance and legal staff. The majority of fair housing related complaints are related to reasonable accommodations; when these arise, staff works with tenants and properties to navigate the lawful application of the reasonable accommodation process. Where appropriate and according to a Memorandum of Understanding, TDHCA makes referrals to Texas Workforce Commission, the fair housing enforcement agency in Texas.

#### EVALUATION OF FAIR HOUSING COMPLIANCE

TDHCA actively pursues compliance with FH requirements for prohibition of discrimination, promoting desegregation and funding the development of affordable housing.

The FHDNR staff serves as a resource to program areas and has been assisting in helping areas quantitatively evaluate the impact of possible program design considerations, in terms of how such possible changes would align with fair housing goals.

TDHCA makes information available to LEP persons by ensuring that the website is accessible and documents are accessible to persons with disabilities and that documents are available in other languages. Interpreters are also utilized, as needed.

TDHCA completes the Analysis of Impediments, as required by the AFFH, component of FH and is taking appropriate actions to seek to overcome the effects of impediments. The TDHCA Fair Housing Activities Summary Report, as presented to the TDHCA Governing Board, provides a summary of efforts (“Action Steps”) that the Department is currently planning, implementing, or that have already been incorporated in the rules and processes of the housing and/or community affairs programs that the Department administers. Action Steps reduce the barriers to Fair Housing Choice. Action Steps may be associated with one or more of six (6) Impediments identified in the 2013 Analysis of Impediments to Fair Housing Choice for the State of Texas. The Action Steps pertaining to TDHCA included in the report are about 97% completed or implemented. Currently staff of the FHDNR division, provide an annual report and periodic updates to the board, approximately four times a year. Also, a compilation of TDHCA outreach activities as reported to the Governing Board is designed to increase the awareness of TDHCA programs and services, and to increase the visibility of the Department among key stakeholder groups and the general public.

The *2015 TDHCA Housing Sponsor Report – Revised April 28, 2016* was uploaded to the TDHCA website and is intended to provide property and occupant profiles for multifamily (and in some cases single family) properties with 20 or more units receiving assistance from TDHCA. The information represents the status of TDHCA assisted properties on a particular date, not a cumulative total of households served within the year. Included in the report is average rents by county, and breakdown of information for each complex by county including: address; county; unit breakdown; units constructed or adapted for special needs; average rents; ethnic breakdown total; racial breakdown total; government assistance; occupants by Area Median Family Income (AMFI) total; and three answered questions which are: (1) does the property meet occupancy requirements, (2) is there a Fair Housing plan, and (3) any Fair Housing findings.

OIA randomly selected a sample of 22 contracts, through an online random sample generator,<sup>6</sup> for inclusion of FH requirements and that the corresponding applications include a signed certification of FH compliance. (See Exhibit A for a sample certification document in a HOME application and Exhibit B for a sample of Section 9.4 within a Home program contract) A random sample<sup>7</sup> is a set of items that have been drawn from a population in such a way that each time an item was selected every item in the population had an equal opportunity to appear in the sample. The population was determined through the Housing Contract System for Fiscal Year 2015. All 22 of the contracts tested included FH requirements. Of the 22 applications tested, three (3) or 13.64% did not include certification of FH compliance. These three applications were for the Amy Young Barrier Removal Program funded through the state funded Housing Trust Fund, and so the lack of certification did not result in non-compliance with HUD regulations.

## FINDINGS AND/OR RECOMMENDATIONS

### 16.003.1 Recommendation:

The training offered to TDHCA staff on Fair Housing should be offered quarterly or at some appropriate interval. This could be accomplished in the same way that information technology training is required.

### 16.003.2 Recommendation:

It is recommended that policies and procedures for Fair Housing be written and made available to all staff of TDHCA. Requirements and checklists for applications of local public housing authorities, for-profit and not-for-profit entities, multi-family, and in some cases single-family should include certification that the entity complies with federal, state, and local Fair Housing rules and regulations. Even though there are

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<sup>6</sup> [www.randomizer.org](http://www.randomizer.org)

<sup>7</sup> <http://www.animatedsoftware.com/statglos/sgrandsa.htm>

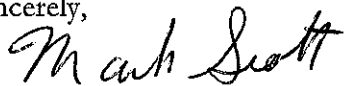
individual policies and procedures for certain processes, there is not currently a set of formal standard operating procedures for Fair Housing.

**MANAGEMENT COMMENTS – CORRECTIVE ACTION TABLE**

Item Number	Management Comments – Status Pertaining to the Recommendations and Action to be Taken, if any
16.003.1	<i>Management generally agrees with the recommendation to provide fair housing staff training, though, staff believes the appropriate interval is bi-annually. In addition to the bi-annual training staff may utilize online trainings available on the Department’s website. TDHCA has three fair housing webinars posted online, available for free 24/7. Staff may take advantage of these online trainings as needed. The Fair Housing Project Manager collaborates with program area staff on different projects as needed. These are opportunities to alert staff to possible areas of concerns and provide fair housing training and education. Therefore, bi-annual training is a more appropriate interval.</i>
16.003.2	<i>Management agrees generally with the importance of SOPs; however, specific policies and procedures to comply with HUD CPD (“Community Planning and Development”) programs and the duty to affirmatively further fair housing through these programs are best administered through program areas. Program areas are responsible for program funding applications, contracts, program rules and design, all of which may be tools to affirmatively further fair housing. FHDMR staff will work to review program area SOPs as they relate to fair housing requirements.</i>

OIA extends our sincere appreciation to management and staff of TDHCA for their cooperation and assistance during the course of this audit.

Sincerely,



Mark Scott, CPA, CIA, CISA, CFE, MBA  
 Director of Internal Audit

MES/bke

cc:

- Tim Irvine, Executive Director
- Beau Eccles, General Counsel
- Brooke Boston, Deputy Executive Director, Fair Housing and Data Management
- Megan Sylvester, Federal Compliance Counsel
- Suzanne Hemphill, Fair Housing Project Manager

TEXAS DEPARTMENT OF HOUSING COMMUNITY AFFAIRS  
HOME INVESTMENT PARTNERSHIPS PROGRAM ("HOME")  
TAB 16. CERTIFICATION OF APPLICANT

On behalf of the Applicant and all affiliates of the Applicant (hereinafter "Applicant"), I (we) hereby certify that the Applicant is familiar with the provisions of the federal HOME Final Rule, as published in 24 CFR Part 92, the state HOME Rules, as published in 10 TAC Chapter 23, the Single Family Programs Umbrella Rule, and other related administrative rules, and regulations and court rulings issued by the Federal government or State of Texas with respect to the HOME Investment Partnerships Program and will comply with such rules during the application process and in the event of award, for the duration of the executed agreement.

This certification must be signed and filed by a person(s) who is authorized to execute the HOME Contract or a Reservation System Participation Agreement. ...

As required by Section 2306.257 of the Texas Government Code, as amended, an Applicant may not receive funds or other assistance from the Department unless the Applicant certifies that it is in compliance with the housing laws described in subparagraph (a) through (d) of this paragraph. To satisfy that requirement, I hereby certify that the developments listed in the Previous Participation Form, in which I am currently participation, are in compliance with: state and federal fair housing laws, including Chapter 301, Property Code, the Texas Fair Housing Act; Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.); and the Fair Housing Amendments of 1988 (42 U.S.C. 3601 et seq.), the Civil Rights Act of 1964 (42 U.S.C. Section 2000a et seq.), the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), and the Rehabilitation Act of 1973 (29 U.S.C. Section 701 et seq.)

...

The undersigned hereby makes application to TDHCA for financial assistance, has read and understands the application instructions, and certifies that all information herein is true and correct to the best of their knowledge and belief.

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Applicant's Signature Authority Printed Name

\_\_\_\_\_  
Applicant's Signature Authority Title

\_\_\_\_\_  
Date

TEXAS DEPARTMENT OF HOUSING COMMUNITY AFFAIRS  
HOME INVESTMENT PARTNERSHIPS PROGRAM ("HOME")  
RESERVATION SYSTEM PARTICIPANT AGREEMENT

ADMINISTRATOR AGREEMENT # \_\_\_\_\_ - \_\_\_\_\_

WITH

APPLICANT NAME,  
ENTITY TYPE

CFDA 14.239 HOME INVESTMENT PARTNERSHIPS PROGRAM

Awarding Federal Agency: U.S. Department of Housing and Urban Development

Award Number: M- -SG-48-0100

Federal Award Year: 20

Pass Through Entity: Texas Department of Housing and Community Affairs

HUD Entity Type:

TDHCA Award Year: 20

This HOME ADMINISTRATOR AGREEMENT # \_\_\_\_\_ - \_\_\_\_\_ ("**Agreement**") in connection with approval to participate in the HOME Investment Partnerships Program Reservation System is made and entered into by and between the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency of the State of Texas, hereinafter referred to as ("**Department**,"), and Applicant Name, Entity Type, hereinafter referred to as Administrator, herein collectively referred to as ("**Parties**."). For and in consideration of the promises herein made, and the mutual benefits derived and to be derived, the Parties hereto agree and by execution hereof are bound to the mutual obligations and to the performance and accomplishment of the tasks which are the substance of this Agreement.

...

**ARTICLE IX**  
**GENERAL PROVISIONS**

**Section 9.4 Nondiscrimination, Fair Housing, Equal Access and Equal Opportunity**

A. Administrator shall ensure that no person shall, on the grounds of race, color, religion, sex, disability, familial status, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds provided under this Agreement. Administrator shall follow Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) and its implementing regulations at 24 CFR Part 146, Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131-12189; 47 U.S.C. 155, 201, 218 and 255) as implemented by U. S. Department of Justice at 28 CFR Parts 35 and 36, the Equal Opportunity in Housing (Executive Order 11063 as amended by Executive Order 12259) and its implementing regulations at 24 CFR Part 107 and The Fair Housing Act (42 U.S.C. 3601 et seq.), as implemented by HUD at 24 CFR Part 100-115.

B. Administrator shall include the substance of this section in all of its subcontracts.



...

IN WITNESS WHEREOF, each of the Parties has executed this Agreement as of the dates written below.

DEPARTMENT:

TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS, a public and official agency  
of the State of Texas

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

Its duly authorized officer or representative

Date: \_\_\_\_\_

ADMINISTRATOR:

Entity Name – all CAPS,  
Entity Type – lower case

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

Name, Title

Date: \_\_\_\_\_

R2

AUDIT COMMITTEE REPORT ITEM

INTERNAL AUDIT DIVISION

October 13, 2016

DISCUSSION OF RECENT INTERNAL AUDIT AND CONSULTING ACTIVITY

# ORAL PRESENTATION

R3

AUDIT COMMITTEE REPORT ITEM

INTERNAL AUDIT DIVISION

October 13, 2016

DISCUSSION OF RECENT EXTERNAL AUDIT ACTIVITY

# ORAL PRESENTATION