TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEETING

Capitol Extension
Hearing Room E2.030
1100 Congress Avenue
Austin, Texas 78701

December 8, 2022
10:00 a.m.

MEMBERS:

LEO VASQUEZ, III, Chair
ANNA MARIA FARIAS, Member
BRANDON BATCH, Member
HOLLAND HARPER, Member
KENNY MARCHANT, Member
AJAY THOMAS, Member

BOBBY WILKINSON, Executive Director

I N D E X

The Board may go into Executive Session
Pursuant to Tex. Gov't Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee;
Pursuant to Tex. Gov't Code §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer;
Pursuant to Tex. Gov't Code §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Tex. Gov't Code Chapter 551; including seeking legal advice in connection with a posted agenda item;
Pursuant to Tex. Gov't Code §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person; and/or
Pursuant to Tex. Gov't Code §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

P R O C E E D I N G S

(10:03 a.m.)

MR. VASQUEZ: Good morning, everyone. I would like to call to order the meeting of the Governing Board of the Texas Department of Housing and Community Affairs. It is 10:04 a.m. on December 8, 2022.

As you may notice, we have a new face on the dais here. So, I would like to take this opportunity to introduce our newest Board member, Holland Harper, who was appointed to the Board by Governor Abbott on December 1 of this year.

For your interest, some of his vital includes, Mr. Harper is the Chief Development officer or person at Walker and Harper, LLC, which is a project management, construction and engineering company established in Paris, Texas, with roots going back to 1887.

He is a graduate of Austin College in Sherman, and received his MBA from Texas A&M Commerce and served ten years in the U.S. Army Reserve. He is on the Regional Mobility Authority and been active, active in this community and throughout Texas, so we are pleased to have him on board.

And with that, I would like to ask Mr. Harper a direct question. Is it my understanding that you have been provided TDHCA's statutory required training program and that you have completed it prior to today. Is that correct?

MR. HARPER: Yes, Chairman. I have.

MR. VASQUEZ: Correct. So Mr. Holland is therefore qualified to be counted for purposes of a quorum and to deliberate and vote on the Board. Welcome.

MR. HARPER: Thank you.

MR. VASQUEZ: You started -- this as a first meeting is a good one to start at. Just ease yourself in. Easy meeting. It gets more exciting later on. Trust me. Okay. We will -- so roll call.

Mr. Batch.

MR. BATCH: Here.

MR. VASQUEZ: Ms. Farias.

MS. FARIAS: Here.

MR. VASQUEZ: Mr. MARCHANT.

MR. MARCHANT: I am here.

MR. VASQUEZ: Mr. Thomas.

MR. THOMAS: Present.

MR. VASQUEZ: And Mr. Holland.

MR. HARPER: Here.

MR. VASQUEZ: We have a full complement of the Board members. Yes. We will start out with Mr. Wilkinson leading us with the pledges.

(Whereupon, the Pledge of Allegiance was recited.)

(Whereupon, a pledge to the Texas flag was recited.)

MR. VASQUEZ: Before we get to the main meat of the agenda, Mr. Lyttle, if you could read a resolution recognizing -- for TDHCA recognizing December 21, 2022, as National Homeless Persons' Memorial Day.

MR. LYTTLE: Okay. Thank you, Mr. Chairman. The resolution reads as follows.

"Whereas, more than 27,000 persons experiencing homelessness were counted in Texas on one day during the last two weeks of January 2020, including more than 1,400 unaccompanied homeless youth, as measured by the previous Annual Homeless Assessment Report;

"Whereas, the 2021 Annual Homeless Assessment Report focused only on persons experiencing homelessness in sheltered environments due to ongoing impacts of the COVID-19 pandemic;

"Whereas, the Texas Department of Housing and Community Affairs awards state and federal funds to assist nonprofits and local governments in aiding persons affected by homelessness;

"Whereas, the Department's homeless programs assisted more than 107,000 persons in state fiscal year 2022;

"Whereas, the Department expended approximately $100.6 million in state funded Homeless Housing and Services Program funds, federally funded Emergency Solutions Grants, annual and CARES Act funds, federally funded Housing Stability Services funds under the Emergency Rental Assistance program, and the donation-based Ending Homelessness Fund in state fiscal year 2022;

"Whereas, the Department recognizes the perseverance of persons volunteering or working to alleviate homelessness;

"Whereas, the Department recognizes the struggle of persons striving to end their homelessness and those who have lost their lives while experiencing homelessness;

"And whereas, December 21, 2022, is National Homeless Persons' Memorial Day, which annually falls on the first day of winter and the longest night of the year;

"Now, therefore, it is hereby resolved that the Governing Board of the Texas Department of Housing and Community Affairs does hereby commemorate December 21, 2022, as Homeless Persons' Memorial Day in Texas."

Signed this 8th day of December 2022.

MR. VASQUEZ: Thank you, Mr. Lyttle. I also trust you deleted your TikTok accounts?

MR. LYTTLE: Yes, sir. I did. It's all gone. No more dancing Board members.

MR. VASQUEZ: Okay. We have a couple of adjustments to the consent agenda and then the order of the meeting. I believe we are moving items 1(d) and 1(h) from consent; we're moving those to action. Are there any other items listed on the consent agenda a Board member or a member of the public wants to move to action?

(No response.)

MR. VASQUEZ: Okay. So we will move 1(d) and 1(h). And then we are going to do a little bit of moving around in order, because Ms. Morales is double-booked for meetings.

So I will entertain a motion to accept the consent agenda with the exceptions of items 1(d) and 1(h).

MR. THOMAS: Mr. Chairman, I move the Board approve Items 1 and 2, except for Agenda Items 1(b) and 1(h), which will move to the action agenda, as described and presented in the respective board action request.

MS. FARIAS: Second.

MR. VASQUEZ: Thank you. Motion made by Mr. Thomas, seconded by Ms. Farias. All those in favor, say aye.

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, the motion carries.

So, Ms. Morales, we are going to start with 1(h) or 1(d). Okay. Well, come on up.

And we will again, start -- address 1(d) that was moved to the action items, regarding presentation, discussion, and possible action regarding the issuance of Multifamily Housing Revenue Bonds, Series 2022, Resolution No. 23-012, and a determination notice of housing tax credits. Ms. Morales.

MS. MORALES: Good morning. Teresa Morales, Director of Multifamily Bonds. Item 1(d) involves the adoption of a final bond resolution for Palladium Oak Grove.

This transaction was previously approved by the Board at the October meeting, and the final bond resolution that was adopted was based on parameters or terms that were not to be exceeded, based on the financing involved.

Specifically, the applicant was working with HUD to secure a 221(d)(4) loan. At the beginning of November, it was determined that HUD was not going to be able to meet the closing deadline under the current bond reservation.

As a result, the Applicant quickly pivoted to a different lender and subsequently a different financing structure.

The new financing structure, as well as state law, requires the Board to consider a new bond resolution, not with parameters around the terms, but the actual terms must be approved. So we are back.

Aspects of the development itself have not changed. The design, the number of units, the buildings, et cetera have remained the same.

As part of the new financing and to help absorb the difference in interest rates from the two lending platforms, the Applicant proposed funding from the local municipality, in this case, the City of Fort Worth.

As is our practice, we underwrite based on a term sheet but then condition the issuance of the determination notice on actual confirmation that the local funds were approved and that the terms associated with it are consistent with what we underwrote.

In the case of Oak Grove, there is a condition that requires approval of at least $3.5 million from the City of Fort Worth. After the Board posting, staff received confirmation that only $1.2 million was actually approved.

Moreover, there have been other aspects of the financing that have changed since Board posting that would have an impact on our underwriting.

In an effort to be transparent with the changes that are under review by staff, we wanted to bring these to the Board's attention, since it differs from what is in the published underwriting report. Specifically, there has been an increase to the taxable loan amount, from $126,000 to $1.6 million, along with a lower interest rate, and a decrease in total costs by $1.2 million; as well as a decrease to the anticipated perm interest rate on the tax-exempt piece, from about 6.04 percent to about 5-1/2.

Given the late notice of these changes, staff still needs to finalize the actual report but has plugged in the numbers and believes that the transaction remains feasible under our rules.

Staff recommends that the Board approve the Bond Resolution Number 23-012 in the amount of $25,600,000, and a determination notice for 4 percent housing tax credits in the amount of $2,607,449.

Additionally -- and part of why we wanted this item pulled off of consent -- is to request that you extend flexibility to staff to clear the first condition of the underwriting report associated with the determination notice, specifically relating to the amount of funding from the City of Fort Worth, based on other documentation that has been provided, including but not limited to changes in construction pricing, lower interest rate, and additional taxable financing.

MR. VASQUEZ: So staff hasn't completed the revised calculations?

MS. MORALES: We have plugged in numbers. But we haven't actually finalized the actual report to repost.

MR. VASQUEZ: And you said they decreased the overall cost of the project by over a million dollars?

MS. MORALES: $1.2 million.

MR. VASQUEZ: Do we know how that was achieved?

MS. MORALES: Part of that was with financing-related costs. The others were related to just the pricing.

MR. VASQUEZ: Is there any timeline that we have to get this approved at this meeting today versus tabling it until January?

MS. MORALES: Yes. We are tentatively -- not tentatively. We are scheduling closing for December 21, which is really the last day of this calendar year to get something closed through the AG's Office, and the rate lock is planned for Monday. So the longer we wait, there is a risk, potentially with interest rates.

MR. WILKINSON: We do a lot subject to underwriting, you know. Some of the action awards and such.

MS. MORALES: I think part of the key was taking the numbers that they gave us earlier this week, talking with underwriting staff, making sure that this is what these numbers are, that it still hits on all of our feasibility indicators as it relates to the debt coverage ratio, repaying developer fee, all of those things. And the indication is that it does.

MR. VASQUEZ: Okay. And we will get final -- not just indication but confirmation prior to --

MS. MORALES: Correct. And if for some reason it doesn't work out, then we are not authorized to issue the determination notice, which means the transaction won't close.

MR. VASQUEZ: Okay. Do any Board members have questions of Ms. Morales?

(No response.)

MR. VASQUEZ: So I will entertain a motion on Item 1(d). And let's make sure it is approval subject to final underwriting confirmation. Would anyone like to make it?

MS. FARIAS: Mr. Chairman, I'll make that motion. Make a motion to extend the flexibility to staff as presented to us by Ms. Morales. And if they decide on the funds, it's approved. If not, this is no good.

MR. VASQUEZ: Is that an acceptable motion? Okay. Is there a second?

MR. BATCH: Second.

MR. VASQUEZ: Second by Mr. Batch.

MS. FARIAS: And include a paragraph that she issued us.

MR. VASQUEZ: Okay. Motion made by Ms. Farias, seconded by Mr. Batch. All those in favor, say aye.

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, the motion carries. Now we will jump to Item 8 on the agenda.

A quarterly report related to staff-issued determination notices for 2022 for noncompetitive 4 percent housing tax credit applications.

Ms. Morales.

MS. MORALES: This is the report item that speaks to 4 percent housing tax credit activity over the last quarter, so from September through November; specifically those applications where the determination notice was issued administratively by staff.

Exhibit A included in this agenda item reflects that activity. Over the last quarter, staff has reviewed six determination notices which represent approximately 1,000 total units and $10.6 million in annual 4 percent credits.

Exhibit B in your materials highlights the 4 percent activity for the 2022 calendar year. A couple of highlights: 37 transactions have closed. We have issued determination notices on six applications that are pending closing, and we have 23 applications that are currently under review.

What this means is we are sitting at a little over 14,000 affordable units anticipated for 2022. While 2021 activity produced a little over 16,000 units, this year we have seen about a handful more applications that were withdrawn with interest rates and construction costs being the primary culprit.

So while we may be down a few thousand, 14,000 units is still worth bragging about, and I am happy to brag. Staff recommends that you accept the report.

MR. VASQUEZ: Okay. Thank you. Do any Board members have questions for Ms. Morales on this report item?

Mr. MARCHANT?

MR. MARCHANT: Yes. Do you have any idea how to track the number of affordable units that are rolling off the books each year?

MS. MORALES: In terms of coming out of their compliance period?

MR. MARCHANT: Just being torn down, redeveloped, paid off. The 16,000, the 14,000, is that a net? Those are new units. What is the net new affordable units?

MS. MORALES: Those are new units that also include rehab, so properties that are currently in our portfolio but that use -- that extended use period starting over. We don't really have a way to track what the new net is but do track deals that fall off of the monitors.

MR. MARCHANT: They fall off your spectrum.

MS. MORALES: Yes.

MR. VASQUEZ: And that 14,000 figure is only for the 4 percent program.

MS. MORALES: Correct.

MR. VASQUEZ: And so we have additional 9 percent and all that.

MR. MARCHANT: Yes.

MR. WILKINSON: Well, we could do an analysis, at least for tax credit properties. You know, we wouldn't necessarily be able to see everything every housing authority has going on. But just --

MR. MARCHANT: Right.

MR. WILKINSON: -- you know, how many LURA-protected units, net, are created each year. Yes. Because you build them, they deteriorate.

So it is not like we are just adding to the pile each time. Something is rolling off, so it is important that we get that.

MS. MORALES: We do have a property inventory that is on our website that includes all of the properties that have been awarded. So we continue with Tab 2, so we can just net out.

MR. MARCHANT: And do we ever -- and this is informational. Do we ever as a Board see the actual applicants and recipients of the 4 percent programs?

MS. MORALES: What do you mean by see?

MR. WILKINSON: Like attendance?

MR. MARCHANT: Like just seeing a piece of paper, like XYZ Development Corporation, this location, this commitment.

MS. MORALES: Yes. It's part of the application, the 4 percent application that's reviewed by staff.

MR. MARCHANT: But I meant the Board members.

MR. VASQUEZ: We receive notice via that spreadsheet. There's a spreadsheet attached to our monthly report.

MR. MARCHANT: Okay.

MS. MORALES: Within each quarterly report, it identifies the actual projects and the location. It does not include the actual developer names. If you would like for us to include that going forward, we certainly can.

MR. MARCHANT: Okay. Well, I don't want to make a special -- I don't want you to recreate the wheel. But if you can do the computer some way -- y'all have been very accommodating in producing reports that just give general information.

MS. MORALES: It is not a problem to add that to the existing.

MR. MARCHANT: Okay. Well, I would request that.

MS. MORALES: Sure.

MR. MARCHANT: Thank you.

MR. VASQUEZ: Great. Any other questions for Ms. Morales?

(No response.)

MR. VASQUEZ: If not, we will accept your report. Carry on with your next meeting.

Okay. Moving back to regular order on the agenda, so Item 3 is the Executive Director's report.

Mr. Wilkinson.

MR. WILKINSON: Thank you, Chairman. I will begin with talking about the Homeowners Assistance Fund. It is moving along great. It is texashomeownerassistance.com. We call it HAF. It has funded or approved funding for more than 25,000 households so far. We have about 259-1/2 million out the door. There's another $836,000 in process of being paid.

We still have a few hundred million available, even accounting for, you know, all the applicants that are in. Our average assistance amount per household is now up to $10,371. It was lower at the beginning, because one of the pilots was a South Texas county with emphasis on overdue property charges.

And once we started launching statewide and paying more on mortgages, we saw that number shoot up. Of course now we have added utility assistance to it, which those smaller payments, but overall, I expect that average assistance amount to trend up a little bit more.

We now have 15 physical intake centers in operation around the state. And several more are about to launch their operations. This was not something we were able to do with rent relief, and you know, it is nice for people that aren't computer savvy to have someone to help them apply in person.

We continue to see the greatest number of applications coming in from, you know, DFW, Houston, and San Antonio.

Our utility assistance program, Texas Utility Help, separate from the utilities that we run through HAF, has been up and running strong for about six weeks. To date, we've received more than 10,000 applications for assistance.

The energy assistance portion of that is closed again, but we are still accepting applications for water and wastewater bill payment.

Texas Rent Relief, we have about $112 million still remaining, based on the latest reallocations received from the Treasury. And we continue to contact individuals who have already applied and are next in line for the application to be reviewed. And we'll process applications until all program funds run out.

Since we opened in February 2021, the program has disbursed over $2 billion in rental and utility assistance to more than 314,000 households; probably going to touch about a million Texans.

There are some more reallocations coming. You know, I tease it every month. We will see what happens, you know, late this year, early next year.

Eventually, we will have to reopen the portal for a short period of time to spend the remaining funds. This is because other states couldn't spend their money, so we are going to do it for them.

Housing Stability Services, which is like a subset of Rent Relief dollars, is going strong. Last May we funded a small portion of state's emergency rental assistance award, has served more than 55,000 eligible households facing instability during or due to the pandemic.

That includes 18,000 households that received legal services, including advocacy or advice on housing matters, eviction prevention, and delayed eviction, providing time to seek alternative housing.

For that first round of Housing Stability Services subrecipients, all but one completed their contracts. And when the Texas Access to Justice Foundation -- it's legal aid -- when they complete their contract later this month, we will be 100 percent expended on that first round. With subrecipients with that second round of funding continue to serve eligible households through March of 2024.

The Housing Stability Services staff has been hosting virtual office hours each month for subrecipients and encourages all funded partners to attend. It has been a great way to highlight best practices and lessons learned so far.

For Compliance, of note for the multifamily industry folks, our Compliance Division recently rolled out another new training, this one covering entrance interview questions and how to properly update a unit status report.

If you are wondering what are entrance interview questions, they are required to be completed and submitted electronically prior to an onsite or desk monitoring review.

Our information systems team made substantial updates to this feature online, and thanks to their hard work, the new feature will customize for each property, allowing individual properties to respond to their specific program and to the requirements. We believe this will result in receiving more accurate information from a property and will also eliminate unnecessary steps for our partners, allowing the process to be more efficient for them as well.

This webinar along with all the compliance trainings webinars can be found on our YouTube channel, if you missed it the first time. No TikTok.

Staff note: Finally, welcome back Homer Cabello and David Cervantes. Would you both give a wave, gentlemen?

(Applause.)

MR. WILKINSON: They had a few months off in the sun, fishing, drinking, what not. But they couldn't live without TDHCA, so they have rejoined our staff, in the same roles that they left.

Homer is Deputy Executive Director, and David is our Director of Administration. Glad to have them back. And I really want to think Rosalio Banuelos and Joe Guevara. Rosalio, you are here. Wave. Joe?

(Applause.)

MR. WILKINSON: So they were good enough to do their own jobs, plus the jobs of their supervisors for the 90 days that we needed to pass before they could come back. So thank you so much, Rosalio and Joe. You did great work, and we really appreciate it.

That is the end of my prepared remarks. Are there any other questions about the department?

Yes, sir.

MR. MARCHANT: What is this kerfuffle about the $37 million in unused rental assistance?

MR. WILKINSON: Locals. So Congress was nice enough to not only appropriate rent relief to states but to any local government above 200,000 population.

MR. MARCHANT: Okay.

MR. WILKINSON: And so for instance, South Dakota, they talked to the one city. They figured out -- you know, so I had 38 local programs to compete with, including, you know, cities, counties, and I think a few tribes.

And you know, some of them did a great job. Houston, Harris County really knocked it out, as far as getting money out. San Antonio did well. Hays County, not so much.

And it wasn't that it just automatically upticked to state. It would get swept federally. We did get some reallocated dollars. I don't know that I can say every Texas dollar we received necessarily. But on the net, we gained more than the cities have lost, I think, at this point.

You know, it was a brand new program. Some people were a little more strict on their criteria than they had to be probably.

MR. MARCHANT: Yes. But it had nothing to do with us.

MR. WILKINSON: No. We did -- things were a little tricky right at that February, March, April, of '21 when we launched -- or '20. Whenever Snowmaggedon was.

(Simultaneous discussion.)

MR. WILKINSON: '21, that's right. Because we waited a year eviction moratorium before we decided to pay people's rent. Not criticizing the federal government, you know.

So, yeah, after the initial kind of hiccups, we really started rolling the money out; $20 million a day at the height. And so we have been a net taker. Other people that have lost money, we have gained.

And you know, we try to work with cities and some of them did a great job. And it was difficult, you know, for some to get the money out the door.

MR. MARCHANT: The essence of the article that I read, we did a great job. These other independent programs just weren't up to speed; didn't tell anyone what they were doing, so they weren't able to get all the money out.

MR. WILKINSON: Right. And so it was a mixed bag with the local programs. Some did great, and then some got a lot swept.

MR. MARCHANT: Thank you.

MR. VASQUEZ: Any other questions for the executive director report?

(No response.)

MR. VASQUEZ: Hearing none, thank you for the report, Mr. Wilkinson.

Moving on to Item 4, the Internal Audit report, on the meeting of the Audit and Finance Committee and action on recommendations of that committee.

Mr. Thomas, you're on.

MR. THOMAS: Thank you, Mr. Chairman, and good morning everybody. The Audit and Finance Committee met this morning at 9:30 a.m.

The Director of Internal Audit, Mark Scott, presented the fiscal year 2023 annual Internal Audit plan. The committee voted to recommend full approval by the Board. Mark will present that as the next action item for the full Board's approval.

During the committee meeting, Mr. Scott then presented three report items, including first the report on the internal audit self-assessment; second, the Internal Audit annual report; and finally, the status of current internal and external audit activities.

Mr. Scott is here to answer any questions on the report items and then to present the action item on the annual internal audit work plan for fiscal year 2023.

MR. VASQUEZ: Thank you for that report on the Audit and Finance Committee meeting, which was held earlier this morning. I assume there's no questions.

(No response.)

MR. VASQUEZ: Let's move on to -- officially to Item 4(b). Presentation, discussion, and possible approval of the Annual Internal Audit Plan for fiscal year 2023.

And, Mr. Scott, you are on.

MR. SCOTT: Good morning, Mr. Vasquez, Board members. Welcome again, Mr. Harper.

I am Mark Scott, the Director of Internal Audit. As Mr. Thomas noted, this item is fiscal year 2023 Internal Audit Plan. The Internal Auditing Act states that the plan must be approved by the agency's full governing board.

The Internal Audit Plan for 2023 was prepared by utilizing a standard risk assessment matrix. We gathered input from management, the State Auditor's Office, and others.

We discussed the plan in committee this morning, and the committee voted to recommend approval to the full Board. So I am here to answer any questions you may have about the audit plan and to ask the Board to approve the fiscal year 2023 Internal Audit Plan.

MR. VASQUEZ: Again, just a question, just to repeat. I mean, do you feel you are going to have enough resources to complete the plan?

MR. SCOTT: Yes, sir. We will always muddle through and get things done efficiently and effectively.

MR. THOMAS: Mr. Chairman, one question.

Mr. Scott, so we talked about this in committee and the different various programs that are going to show up on the Audit Plan. How does the fiscal year 2023 agenda for the audit plan compare to previous years? Were there more audits, less audits, same amount?

MR. SCOTT: Actually, that is a very good question. There is actually more audits.

And the reason I put more audits on there is that, as you recall, in 2022, we had the TRR, which was a huge audit, which, based in the risk assessment I had no other option than to place it at the top.

But I was thinking that there was a high probability that the State Auditor's Office or the federal auditors or CliftonLarsonAllen would come in and do some of the audits or completely take over the audit. This year, it is kind of the same contingency, especially with the HAF.

So what I plan to do with that very large program is to start by doing background work on the audit, for the audit, betting the lay of the land and then kind of not rush into doing the testing and the actual audits, in case the State Auditor’s Office or somebody else comes along and says they want to do the audit.

So because of that contingency, that that would be taken out of our laps, I wanted to put additional audits on the plan, so that is the reason there is more this year.

MR. THOMAS: Very good. Thank you.

MR. VASQUEZ: If there is no further questions, I will entertain a motion on Item 4(b) of the agenda.

MR. THOMAS: Mr. Chairman, I move the Board approve the Annual Internal Audit work plan as presented in the Board action request on this item.

MS. FARIAS: Second.

MR. VASQUEZ: Thank you. Motion made by Mr. Thomas, seconded by Ms. Farias. All those in favor, say aye.

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, the motion carries.

MR. SCOTT: Thank you so much.

MR. VASQUEZ: Thank you, Mark.

Moving on to Item 5 of the agenda. Presentation, discussion, and possible action to authorize the issuance of the 2023-2 HOME American Rescue Plan rental development NOFA and publication in the *Texas Register*. Ms. Campbell.

MS. CANTU: Close.

(General laughter.)

MR. VASQUEZ: We'll let Mr. Cantu come up in a minute.

MS. CANTU: We do work closely together, though. Good morning, Chairman Vasquez and Board members, and welcome. I am Naomi Cantu, Director of the HOME American Rescue Plan also known as HOME-ARP.

I am requesting to release approximately $49 million for competition within the 2023-2 HOME-ARP rental development NOFA. These funds can be used for construction or capitalized operating costs and assistance with service and nonprofit capacity building and nonprofit operating costs and assistance.

A majority of the households served with this funding will be qualified populations, which includes persons experiencing homelessness and other housing unstable persons.

So thank you, Mr. Lyttle, for reading the memorial this morning. It is very fitting that we are trying to open this today.

The qualified populations will pay only 30 percent of their income toward this. HOME-ARP is a unique program, not only in the populations that are eligible, but also because of several financing options to make the projects viable. This is needed when many of the units may not have any rental income.

For example, HOME-ARP offers capitalized operating cost assistance, which is a mouthful, so we are calling it COCA. COCA pays for standard operating costs, such as a proportional amount of property management fees or a proportional amount of unit maintenance. This is available for the entire federal affordability period of 15 years.

We also offer nonprofit capacity building and nonprofit operating cost assistance. This funding is meant to help build capacity and support organizations to undertake rental development for qualified populations. It is available up to three years, and the maximum award is $75,000 per year. However, if we have more requests for construction for COCA, we will move funding from the operating capacity building into construction in COCA.

The first applications are due January 31, 2023, and the maximum request will be $15 million. The second application acceptance date will be March 1, 2023, and is limited to supportive housing developments layered with 2023 9 percent housing tax credits.

With this second application date, the maximum request will be $7 million. The total funds available under this NOFA may increase if our HOME-ARP National Housing Trust Fund set-aside has funding that becomes available after December 31, 2022, when that application period closes.

Currently there is about a $1.8 million available, and staff is asking for permission to move the additional funds into the NOFA without further Board approval. In addition, we request permission to suspend the 2023-2 HOME-ARP NOFA if there are more requests for funding than is available.

With that, I request the Board authorize release of the 2023-2 HOME-ARP Rental Development NOFA. And I am available for any questions.

MR. VASQUEZ: Thank you, Ms. Cantu. To summarize, so how much are we approving right here right now?

MS. CANTU: So it is $49 million -- the exact number --

MR. VASQUEZ: -836,160.

MS. CANTU: Right. Exactly. 49,836,116.

MR. VASQUEZ: Okay. I'm curious. You just read off the maximum size of applications.

MS. CANTU: Quite large.

MR. VASQUEZ: Those seem kind of high compared to the total amount available.

MS. CANTU: It is quite large because we are also offering the COCA, the capitalized operating costs assistance. And the use of the COCA also pairs well if we have more debt. So keep in mind that these units may have no rental income.

MR. VASQUEZ: Okay. Do any of the Board members have questions on this?

MR. MARCHANT: Describe -- is there an existing project that you can point to and say this is how this unit, this group of units uses -- would use this money or be more likely to use it?

MS. CANTU: So HOME-ARP is based on HOME annual program, but it has many different waivers and flexibilities. There is not -- as far as I know, there is not a rental development that exists that uses HOME-ARP currently.

We are one of the first states to release -- to present the NOFA. We were one of the first states to accept applications for our set-aside. I can tell you that we did pair --

MR. MARCHANT: Other states?

MS. CANTU: Well, there is no other states as far as I know that have this funding on the ground yet.

MR. MARCHANT: So a 9 percent loan can come in and get approved and everything, and then they can tap into this fund as well?

MS. CANTU: So one reason we are releasing it at this Board meeting is to partner with existing fund sources. So the 9 percent set-aside -- or not set-aside; I'm sorry -- the 9 percent second application acceptance date period, if there is any existing funding left, you mentioned, we had very high maximum amounts.

But the first application acceptance date we can use with existing tax credits, 9 percent or 4 percent. The 9 percent that are going for gap financing, that is 2022, I believe. And then 4 percent, we need to work out financing first.

MR. MARCHANT: Okay. So what pot of money is this coming out of?

MR. WILKINSON: Right. This is a unique pot of money. It is from the American Rescue Plan. And it is you know, the HOME program. But it is a special -- based on for homeless activities and deeper targeting, and so this is kind of a one-time thing. She has like a temporary division set up to spend all this money for a few years.

MR. MARCHANT: So, sure. The homeless, they are not going to be paying rent.

MS. CANTU: If they have zero income, then they will pay 30 percent of the income, which would be zero.

MR. MARCHANT: Okay.

MR. WILKINSON: So if it underwrites, I mean, it is not a 50 percent AMI unit or a 30 percent AMI unit. It is 30 percent of their income, whatever it is.

MR. MARCHANT: Oh.

MR. WILKINSON: So you have to assume maybe it's going to be close to nothing. So there is going to be another piece of HOME-ARP that is going to come out later, about the same amount for non-congregate shelter. And that is even more directly focused on homeless.

MR. MARCHANT: Thank you.

MR. HARPER: Ms. Cantu, is there a limit on the number of dollars per door? Or is it --

MS. CANTU: That's a good question. We don't have a maximum per unit subsidy limit. However, we have a lot of checks and balances in our processes to make sure it does not upset the market.

MR. HARPER: Thank you.

MS. FARIAS: Like you said, this is like a pilot program. And it is good to know that Texas wants to make sure that we do not become like other states where there are homeless everywhere, and become a threat to the children and other businesses. So pilot programs are pilot programs. Great. Give it a try.

MR. VASQUEZ: Thank you. Mr. Batch, do you have anything? Sorry.

MR. BATCH: Yes. I could --

MR. VASQUEZ: I get a long pause, I just -- okay. No. This sounds great. $50 million here or there. That is what we are all about.

And, Mr. Harper, I hope you paid close attention, because this is going to be on the exam at the end of the day. So all the details -- I will entertain a motion on Item 5 of the agenda.

MS. FARIAS: Mr. Chairman, I move the Board authorize the Executive Director and his designees to add funds to the 2023-2 HOME-ARP NOFA from the HOME-ARP NHTF set-aside, and to publish a 2023-2 HOME-ARP rental development NOFA, all subject to the conditions and as presented in the Board at the request for resolutions on the site.

MR. VASQUEZ: Good. Thank you. Motion made by

Ms. Farias. Is there a second?

MR. HARPER: I will second.

MR. VASQUEZ: Seconded by Mr. Harper, jumping in. All those in favor, say aye.

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, the motion carries.

Thank you, Ms. Cantu. Okay. Just a reminder that we put 1(h) into action items, but we are going to take that with that Item 9, because it all kind of fits together.

Ms. Yevich, Item 6. Presentation, discussion, and possible action on the draft 2023 State of Texas Low Income Housing Plan and Annual Report; proposed repeal of 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, Section 1.23 concerning State of Texas Low Income Housing Plan and Annual Report; proposed new 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, Section 1.23 concerning State of Texas Low Income Housing Plan and Annual Report and directing their publication for public comment in the *Texas Register*. Somebody could have made that a little more efficient.

Ms. Yevich, please.

MR. ECCLES: You know, the Legislature said, Make these very detailed plans and then go ahead and make them a rule.

MS. YEVICH: That would be correct. And good morning. I apologize in advance for the raspy voice. I am in the waning days of a chest cold here.

But my name is Elizabeth Yevich, and I am director of the Housing Resource Center, and, yes, that is the item before you. I am not going to repeat that. I will say this document is always referred to, not frequently, as the SLIHP, so that's S-L-I-H-P. And new member Harper, welcome. And welcome to the world of acronyms. We are loaded with acronyms here.

So the SLIHP must submitted annually to the Governor, Lieutenant Governor, Speaker of the House, the Oversight Committee not later than 30 days after you, the Board, approves it. And the final SLIHP must be presented to you no later than March 18.

So, in other words, how this works is that the draft is brought to you every December. So usually you get the QAP in November, then comes December for the SLIHP. It goes out for its required 30 days' public comment.

And as Mr. Eccles was saying, the rule is also part of that, so that is why there is the SLIHP document, and the rule; they both go out for public comment. And following that, we bring the final SLIHP back in February in order to meet that March 18 deadline.

So the SLIHP is a hefty, comprehensive document, coming in always every year at over 200 pages. And it is exactly what it says. Unlike a lot of our required federal documents, which are planned to go forward to get money, or to look back, this is state legislation, and it is a plan and a report.

So there is certain chapters or sections -- one of them is called the Annual Action Plan. Another one, the Annual Report. This other required legislation and documentation.

And this year nothing drastic has changed at all in content. It still offers a comprehensive reference on statewide housing needs, housing resources, strategies for funding allocations.

But when we come back in February, we are hoping that the final document is going to have been a little spruced up. For the Housing Resource Center we worked very closely with Michael Lyttle here and his team, frequently on a lot of projects.

And this year, we are working with one of his new staff. Her name is Annaise [phonetic] Donald, just on creative communications. And we have been working closely with her and Kevin Reardon. And he is here with me today.

MR. LYTTLE: Creative communications, excuse me.

But not TikTok.

MS. YEVICH: Thank you for that clarification.

So Kevin worked on compiling all this, and he's going to be working with Annaise on putting this into a new layout and design using Adobe and design software application.

They have been discussing plans to rework this and present it with this new layout. And as I am sure you all can relate, sometimes, they are -- Mike, when you are using new software -- of course, Annaise is used to this software -- there might be some adjustments. There is a lot of charts and graphs in SLIHP. But I am sure she is going to do a great job, and it's going to be in its new format for February.

So, the draft today -- and I also wanted to mention that we work closely with another of Michael Lyttle's staff. His name is Chris Smith, from Legislative Affairs. And we went with him over every bit of legislation in this. It had been a few years. We wanted to make sure that we were encompassing everything and that through the years, we hadn't put in too much.

So Chris assured us all legislation is met. There is no superfluous information, even though it is a hefty document. And with that, staff recommends approval of the draft 2023 State Low Income Housing Plan and Annual

Report, the SLIHP.

MR. VASQUEZ: Great. Thank you. Do any Board members have questions on this item?

(No response.)

MR. VASQUEZ: I would actually like to just encourage everyone. This is actually a really detailed comprehensive report that if you are curious about almost everything that we do --

MS. YEVICH: This was it, last year.

MR. VASQUEZ: -- it's worth spending a little time scanning it. It is really good background.

So are there any members of the public that wish to speak on this item?

(No response.)

MR. VASQUEZ: Okay. Hearing no other questions, seeing no one comment, I will entertain a motion on Item 6 of the agenda.

MR. BATCH: Mr. Chairman, I move that the Board approve and publish for public comment the draft 2023 State of Texas Low Income Housing Plan and Annual Report, which by statute, requires publication for public comment and repeal and replacement of the earlier version of this plan, and report at 10 TAC Section 1.23, all subject to the conditions and as expressed in the Board action request on this item.

MS. FARIAS: Second.

MR. VASQUEZ: Made by Mr. Batch, seconded by Ms. Farias. All those in favor, say aye.

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, the motion carries.

Thank you, Ms. Yevich. Feel better.

MS. YEVICH: I feel good, I just sound awful.

MR. VASQUEZ: In the Chair's enthusiasm for running fast and efficient meetings, on the prior item, Item 5, I neglected to ask if there were any public -- anyone who wanted to make public comments. And we will -- I will use some discretion to open it back up for comments.

And just as a reminder to everyone, when an item comes up on the agenda and you want to talk about it, please come up to these front two rows, so that kind of triggers me to know that there is going to be some comments.

So before doing that, we will do my Eccles rule and say let's make a motion to accept public comment.

MR. THOMAS: Mr. Chairman, I move the Board to open up Item number 5 for public comment.

MS. FARIAS: Second.

MR. VASQUEZ: Okay. Motion made by Mr. Farias, seconded --

MR. THOMAS: Mr. Thomas.

MR. VASQUEZ: Mr. Thomas, seconded by Ms. Farias. I am having problems today.

All those in favor, say aye.

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, the motion carries. We will accept comments on Item 5.

Ma'am, would you like to speak?

MS. GASCON: Thank you. And I also apologize, because I wasn't aware of the protocol.

My name is Sally Gascon. I am the president of SCI Ventures. And I just -- I want to, on the Item number 5, raise an issue that it creates a major problem for supportive housing developments to use that very important source of funds.

And that is the loan structure. The way that I believe the rules read right now in the RFP, the loan has to be made to the partnership. If the loan is made to the partnership, it is on the supportive housing development; the loan is deferred forgivable. And a deferred forgivable loan, according to the tax attorneys, becomes income on the day that you sign the note, so it creates a really a cliff issue with investors. So a tax credit investor will not be interested in a development with a deferred forgivable loan.

And so the workaround on that is to use the conduit loan structure, which is very common, where the loan is made to a nonprofit affiliate and then the nonprofit affiliate loans it back to the partnership, and that eliminates the issue.

And so what I would like to ask today is if perhaps we could open this issue up with staff and talk about, you know, the workaround and not to delay anything but to kind of work through that issue and make sure, you know, that there may be a workaround for it.

According to NCSHA, they have -- they, I guess, gave a presentation back in March, and they utilized the conduit loan structure as a viable structure, so I think that there might be a way for us to move forward on that.

So the request is just to be able to work with staff and TDHCA legal on that issue.

MR. VASQUEZ: Okay. Thank you, Ms. Gascon.

MS. GASCON: Thank you.

MR. VASQUEZ: Bringing back up staff.

Ms. Cantu.

MS. CANTU: Naomi Cantu, HOME-ARP Director. So there are two issues at play here. One is not wanting the deferred forgivable loan because of the interest implications and tax liability, and the other is the conduit structure.

So the conduit structure means that we would loan to a nonprofit who would then loan to the owner. Unfortunately, this is not available through the HOME program. This is a HUD requirement.

It might be available through other programs, like -- I am looking over my shoulder at legal counsel -- through tax credits -- but I am not an expert in tax credits -- but not in the HOME program.

And HUD did issue HOME Flier 16, Number 1, September 2021, specifically addressing that issue, that we cannot do the conduit.

However, in our NOFA, we do have that supportive housing developers can have interest-bearing We have a carve-out for supportive housing developers, that they can choose deferred forgivable, but they do not have to. And our interest rate is .25 percent, extremely low.

MR. VASQUEZ: So another solution. It just doesn't make it forgivable. They can pay it back?

MS. CANTU: Yes.

MR. VASQUEZ: I think this is getting down into the weeds for the Board at this point. But it also just seems to me that there should be an argument that it is not all recognized as immediate income but amortized over the life of the loan, or that the term of it -- you know, the loan documents are set forth.

MS. CANTU: That I cannot speak to.

MR. VASQUEZ: Okay. But let's also just get back to the -- I think, from what you just described, that these are HUD rules on this structure for this particular type of funding effort that we are discussing.

MS. CANTU: Because it is HOME funding. That is correct.

MR. VASQUEZ: That we don't have the option of using the conduit for this specific type of funding. So while we understand the public comment, there is nothing we can do about it? Or I mean, are there any other alternative -- I assume this is the first time you all have talked about this.

MR. WILKINSON: It actually is pretty recent. It was a Monday posting, and it took a few days for our partners to redo some of our Board book, a late posting.

And yes, so we have guidance from staff that we can't do it. And we have some other opinions saying we can't. So that is what we are talking about now.

If we want to get some legalese on it, maybe Megan Sylvester.

MS. SYLVESTER: Megan Sylvester, Deputy General

Counsel and Federal Compliance Counsel. So there are -- Naomi is correct that HUD has come up with a CPD notice, or it is a homebuyer -- but it is a version of their guidance documents that says you can't do this.

I know a lot of people in the industry, when that notice came out, were very unhappy about that and tried to get HUD to change their minds. HUD has thus far declined to change their mind.

We also have some statewide issues that would make conduit lending a challenge, because the 2306 says we have to lend to the development and not -- it doesn't really provide us to do this conduit lending structure.

As far as the second point, there are some tax credit developments that have used deferred forgivable financing, because they have such a surplus of excess basis that it doesn't really matter. But there are also developments out there -- this program is not just used with tax credit financing.

There could be a HOME-ARP only development or layered with maybe HOME annual funds from a local jurisdiction, or some other fund source. And in that case, the deferred forgivable structure would be not a problem, because there is no tax consequences.

And that is why this NOFA allows developers to pick which type of loan structure they would like to request from the Department within the bounds of this.

Does anybody else have a question?

(No response.)

MS. FARIAS: Mr. Chairman?

MR. VASQUEZ: Yes.

MS. FARIAS: On the HOME part of that, having spent twelve years at HUD and then at one time, HOME used to fall under my jurisdiction, once HUD says that something cannot be done, and something just came out, they aren't going to go back and give you a quick response. They are going to take a very long time, because it involves a lot of career staff, from the lawyers to their directors to everything.

And it just kind of listening, what I heard is this is a new program; this is the first time you do it. So it is not something that everyone -- it's like the pandemic, when you get all that extra money. You didn't have the inner structure.

But I can speak, unfortunately, that HUD is not going to give you a quick response in six months or ten months and say, Oh, yeah, you can do that.

And you can't do that if they said no, they will not allow you to use the money that way.

MS. CANTU: Thanks.

MR. VASQUEZ: Right. Okay. Ms. Horak-Brown, you wished to address the group? And also, please remember to identify yourself and sign in. And Ms. Gascon, I don't know if you signed in, but --

MS. GASCON: When I find a pen in just a moment. There is no pen up here.

MR. VASQUEZ: I am sure we can get that.

MS. HORAK-BROWN: I will identify myself in advance. I am Joy Horak-Brown. And I am president and the CEO of New Hope Housing in Houston, Texas.

We are the leading developer of supportive housing in the state of Texas, with 1500 units. And at least half of those units, more than half actually are chronic homeless, so the street homeless that you are all too familiar with seeing here in Austin.

My comment is general. We do not intend to request forgivable funds from the HOME-ARP program, so these are general comments. We do have a great deal of HOME money that does have a conduit loan structure. It isn't HOME-ARP, but it is HOME funds.

And these may be different, so I am not being oppositional to anything that has been said here today. The whole purpose of raising this issue is that folks don't just make up their mind hard and fast right here, right now, because there may be some other ways to work with these funds in terms of a structure that will allow more organizations in the state of Texas to put the direly needed supportive housing type on the ground. It is just a simple request.

MR. VASQUEZ: Thank you, Joy.

Okay. So let me just ask an internal question of staff. From what I am hearing, our hands are tied due to the HUD requirements. Again, recognizing that -- is that correct, or is there --

MR. WILKINSON: That's our understanding.

MR. THOMAS: Just for clarity, Mr. Chairman, so our hands are tied based on the HUD rules as it relates to the conduit alternative that is being proposed, but are there other alternatives that could be presented to staff as a workaround that maybe could engage in a discussion? Or is that the only structure that sort of works in the alternative?

MR. WILKINSON: We always talk and try to figure something out. Going forward right now, I don't know everything as far as --

MR. ECCLES: That also sets up a tax question for the developer.

MR. VASQUEZ: And then just another ball onto this, do rules as proposed state that it must be a fully forgivable loan, or is there an option to structure in some sort of repayment?

MS. CANTU: We are offering -- Naomi Cantu, HOME-ARP Director. We have -- in our current NOFA that we are working to release today, we have two structures available. One is fully amortized at .25 percent interest or higher, depending on the structure of the loan, or a deferred forgivable for supportive housing developments.

MR. VASQUEZ: Okay. So the fully amortizing wouldn't trigger this income issue.

MS. CANTU: Correct.

MR. MARCHANT: And if a nonprofit were the developer, forgivable, they would not get a 1099; there would be no tax consequence to them.

MS. CANTU: If the nonprofit were the owner.

MR. MARCHANT: Were the developer/owner, the one that is getting the forgiveness.

MS. CANTU: I don't know all the tax implications of it.

MR. VASQUEZ: Okay. Well, I think that's --

MR. MARCHANT: Yes. I think we should -- an idea to make the motion that is flexible, so if HUD changes the rules or their mind, or if there is some -- so that if HUD changes its mind or allows this, that we are flexible enough to go with HUD.

MR. VASQUEZ: Well, we can always revisit the rule. Right? I mean, if some other circumstance changes from the federal level --

MR. HARPER: Mr. Chairman, would you ask Ms. Sylvester if she wants to speak to this.

MS. SYLVESTER: Ms. Sylvester. Deputy General Counsel again. So these funds are just like our regular annual HOME funding. They have to go through our action plan.

And so if we were to make a change in loan product available, the first thing we would have to do is revise that action plan as a method of distribution.

So what our plan has is we have this NOFA, and then, you apply under that NOFA. Now, if tomorrow HUD were to say, oh, well, you can do conduit lending, well, we can suspend applications under the NOFA that is open, and then we could go and revise our action plan to allow a conduit lending structure and then we could come back and reopen up for applications.

But once people have applied, that is our method of distribution, and they can only have a product in which they -- that was available when they applied, you know, absent once it is complete and we have some sort of workout situation.

MR. VASQUEZ: Okay. So if external factors change, there is a methodology that we can do to amend the rules to reflect those outside changes.

MS. SYLVESTER: There is.

MR. VASQUEZ: It is a little cumbersome, but that's --

MR. WILKINSON: We might already have apps on the current NOFA, and the money would be out. I don't see -- besides just like not moving forward at all and waiting --

MR. VASQUEZ: Is there one more?

MR. PALMER: Yes. I've seen this issue --

MR. VASQUEZ: Who are you?

MR. PALMER: Barry Palmer with Coats Rose Law Firm. And we have seen this issue come up. This HUD ruling was pretty recent, just either earlier this year or last year. But we have seen this come up in the context of cities with their HOME funds being put into tax credit deals.

And so a workaround that we have done is to make the loan to the partnership not forgivable, so that there is no tax problem.

But then of course, at the end of the term, the money is owed back, and there is no source to pay it -- on a project like we are talking about, there is not going to be $15 million to pay you back.

So we have had an agreement up front with the jurisdiction that put the money in, an agreement between them and the nonprofit sponsor of the project, that if the nonprofit sponsor acquires the project at the end of the compliance period under its right of first refusal, which is the plan going in, that the jurisdiction would forgive the debt.

And because that agreement is with the nonprofit sponsor who doesn't own the project yet, as opposed to the project owner that has passed muster with investor's tax counsel, that it is not forgivable debt for the partnership.

MR. WILKINSON: Again, our NOFA as currently written -- would it not allow that structure.

MR. PALMER: You might just need to add a little tweak to that and it probably would.

MS. SYLVESTER: Megan Sylvester. So state law probably would not prohibit -- not allow that structure. I think we can't agree in advance to forgive a debt, otherwise it's not a debt.

When loans come due and we look over, and we look at the ability to repay and we look at compliance -- we have forgiven loans, based on the circumstances, you know, on the ground, at the end of the 15, or 20, or 30, whatever the loan period is. But we can't agree to do that in advance the way maybe the City can.

MR. WILKINSON: Because they are not limited by

2306 the same way.

MS. SYLVESTER: They are not limited by 2306 the same way we are.

MR. VASQUEZ: Okay. Unless a Board member has something pertinent to ask, and there is no new input, I recognize and understand y'all's concerns, but it to me, it sounds like our hands are tied, based on -- for this particular type of funding.

And it also sounds like there are intelligent and creative attorneys and accountants out there that, once the rules are in place, they can figure out how to work within those rules or around the rules or however you want to say it.

So with that, unless a Board member wants to revisit the vote, I don't see any change to what we have. Even with this additional information, I don't see any change to what we have already undertaken. Is that fair?

MS. FARIAS: Yes.

MR. VASQUEZ: Counsel?

MR. ECCLES: I am seeing no motion to reopen.

MR. VASQUEZ: Okay. So we are all good here. All right. Well, there you go.

Where are we? So we're going to Item 7 on the agenda. Is that right, everybody?

MR. WILKINSON: Yes.

MR. VASQUEZ: Okay. Item 7, report on the allocation of Program Year 2023 Community Services Block Grant awards. You are not Michael De Young.

MR. REID: Exactly. You noticed.

(General laughter.)

MR. REID: I will be standing in for Michael De Young this morning.

So good morning, Mr. Chairman and Board members. I am Gavin Reid, manager of Planning and Community Affairs Division. I am here to report on Item 7.

So Item 7 is a report on the annual Community Services Block Grant awards to the 39 CSBG eligible entities. We refer to the Community Services Block Grant as just CSBG for simplicity.

Every two years TDHCA submits a CSBG state plan to the U.S. Department of Health and Human Services, who reviews and approves the plan, issuing the State of Texas CSBG funds. We are in the second year of the current approved plan. And for 2023, we expect to be issued approximately $35 million.

TDHCA is designated by the governor to be the CSB administrator in Texas. Federal requirements are that 90 percent of the funds be awarded to the state's CSBG eligible entities, which is what this report is about, and then also issue our reserves at 5 percent for state administration and 5 percent for discretionary projects.

It just so happens that one of those discretionary projects approved as Item 1(f) on today's consent agenda, is funding for employment and education projects for Native American and migrant seasonal farm workers.

TDHCA allocates the fund by formula to 39 eligible entities, provides training and technical assistance for them, and coordinate the monitoring and reporting back to the federal government.

Just a little bit about CSBG. CSBG-eligible entities use funds for staff to help enroll low income Texas households in utility assistance, case management, weatherization, Head Start, Meals on Wheels, health and other programs; and also provide referrals to other resources in the community. CSBG funds are also used to provide assistance to persons working to transition out of poverty.

The list of entities to receive their proportional share of 2023 CSBG funds is provided in Attachment A of the bar, probably on your next page. With your approval, staff will prepare contracts for calendar year 2023, beginning on January 1, for the 39 CSBG eligible entities.

Staff requests your approval. I can answer any questions you might have.

MR. VASQUEZ: Gavin, did you say how much the total allocation is that we are looking at?

MR. REID: We don't know exactly for sure, but it is usually in the neighborhood of $35 million. And the reason why we don't know that is because Congress is always on a continuing resolution, and from year to year it might change somewhat. But yes, approximately $35 million.

MR. VASQUEZ: Okay. Do any Board members have questions for Mr. Reid on this item?

MR. WILKINSON: I just want to remind the Board that, you know, that 5 percent discretionary, we used some of that money in Uvalde to help some of those folks. They were mostly income eligible, so gas cards, food cards.

You know, a lot of them weren't working right in the aftermath, and so it was great to work with our partner there, Community Council of South Central Texas.

And you can see from the table they get about $752,000 annually. We came with another 7-, 800,000 just for the Uvalde incident.

And so, when we have it and the population is eligible, it is a nice tool for us. But of course, you know, most of this is the 90 percent passthrough to these eligible entities.

Those of you that have been on the Board for a while know that occasionally you might have to replace one of them, but they are mostly permanent.

What is your rank now?

MR. REID: Lieutenant Colonel.

MR. VASQUEZ: Congratulations.

MR. REID: Thank you.

MR. VASQUEZ: Okay. If there are no questions -- and I don't see any public commenters lining up. Okay. This is a report item, so we just -- we thank you for your report.

MR. REID: Thank you.

MR. VASQUEZ: Moving on Item 8 of the agenda. Quarterly report relating to staff issued -- we already did eight.

MR. WILKINSON: Yes.

MR. VASQUEZ: Now we will go to Item 9 of the agenda, but we will start out with Item 1(h), which we moved from the consent agenda.

Mr. Campbell.

MR. CAMPBELL: Good morning. Cody Campbell, Director of Multifamily Programs. And as always, it is a pleasure to be here.

This item concerns five developments that have requested treatments under the force majeure provision of our Qualified Allocation Plan or QAP. Developments that are awarded housing tax credit funding must meet a few critical deadlines in order to remain eligible for those credits.

Among these are the 10 percent test and the placement-in-service deadline. The 10 percent test is the deadline by which the development must have expended 10 percent of its reasonably expected basis.

This deadline is generally July 1 of the year following the award. However, all 10 percent tests for calendar year 2022 were extended to December 31, as a result of ongoing delays stemming from the pandemic and related economic difficulties.

The placed-in-service deadline refers to the date by which the development must be complete and ready for occupancy. This deadline is the end of the second year after the award is made. So if the award is made in 2022, they have got until the end of 2024 to place in service.

These deadlines are federal, which means that TDHCA does not have the authority to extend them. Because of this, the QAP contains a provision commonly referred to as the force majeure rule, which allows a developer to return their previously awarded credits and to have those credits automatically reallocated to them, which resets the clock on those deadlines.

Examples of qualifying events listed in the QAP are things such as fire, tornado, flooding, and material and labor shortages. This action requires Board approval, and the Board may impose shorter deadlines if they choose.

The Department has seen an unprecedented number of force majeure requests over the last year, with material and labor shortages being by far the most qualifying event. I think at the last count, we have done 46, not counting the ones in front of you today.

The five developments presented today have been determined by staff to have met requirements of the force majeure rule, and therefore, staff recommends approval of four of the five today.

The remaining development, Wells Manor contacted the Department earlier this week to ask that their request be rescinded, as they no longer needed the extension.

I do anticipate that there will likely be public comment on this item related to one of the remaining four developments, and it sounds like that is going to happen.

I am happy to take any questions that you have now, but I can also wait and answer the questions that come up as a result of those public comments. The staff requests approval of the four, not for Wells Manor.

MR. VASQUEZ: Purely for the benefit of our new member, this force majeure process, it has kind of become commonplace. Staff analyzes, like you said --

MR. CAMPBELL: Yes, sir.

MR. VASQUEZ: -- what the request is. And it is typically a --

MR. CAMPBELL: Since we're on the consent agenda, there is one development that there is some contention about whether it qualifies or not.

MR. VASQUEZ: Okay.

Mr. Harper.

MR. HARPER: Just at a high level, how do you guys review those to say go or no go.

MR. CAMPBELL: Sure. I mean this year, it has been a pretty quick review, because the material and labor shortages, as I said, is probably the most common.

MR. HARPER: So they send you a packet that says, “Hey, lumber is up 200 percent.”

MR. CAMPBELL: Sure. 50 percent construction increases; can't get anybody hired; can't get any of the supplies that we need. We just need more time to get the development built.

I would say, prior to the pandemic, it was a pretty stringent review, because the qualifying events were much rarer. But now everybody is involved in these things right now, so it's --

MR. WILKINSON: Pre-COVID, they were always in action. We talked about them. And we got instant details, you know, about how many days of rain. Rainy days were allocated.

And we usually go through because they needed it. But it would be harder and harder to get done. Just the volume of everyone needed force majeure because of COVID, and it kind of -- those are kind of all the same. And we had them on consent for the last year.

MR. CAMPBELL: About a year. Yes. I would say at this point, we have done probably half of our 2021 awards as force majeures. I mean, it's just really unprecedented what is going on right now.

MR. MARCHANT: So if you find out that the reason has been given --

MR. CAMPBELL: Yes, sir.

MR. MARCHANT: -- labor shortages, et cetera, but in fact, maybe it is increase in the interest rate on the loan or another factor that actually is the real reason for the force majeure --

MR. CAMPBELL: Yes, sir.

MR. MARCHANT: -- using the others as reasons, is there a way to ferret that out?

MR. CAMPBELL: We have received requests before today that didn't really [inaudible] of the rule. And whenever that happens, we engage with the developer to make sure that they understand the rule and understand the criteria. And in all cases, we have been able to determine that there was one of the qualifying events of the force majeure rule that they meet.

MR. VASQUEZ: I am hoping we stop this process, and it goes back to being uncommon rather than what it has.

I believe we do have some public comment. Please come up.

MS. STEND: Michelle Stend. I am here. I am on behalf of Generation Housing, because of an application in this round, Patriot Point.

And I am here to discuss the Cypress Creek, it is 21139 development that is requesting the extension. And I am here to ask you to deny that extension request.

We just don't believe -- and Cody just kind of highlighted that there are specific rules on what needs to be provided and evidence provided to show that a development does meet force majeure and request the requirements. We just don't think this development has done that.

The rule states that the developer/owner must prove that reasonable steps were taken to minimize or mitigate any delay or damages and that the development owner has substantially fulfilled all obligation not impeded by the event.

The letter that this particular developer included, it basically just says there are suffering labor shortages -- you know, they suffered delays because of labor shortages and because of cost increases. There is nothing in there that talks about, you know, proof, as required by the rule, that reasonable steps have been taken to mitigate.

There is nothing in there that talks about proof as required by the rule, that they have substantially fulfilled other aspects, basically showing you guys that there was progress; they fulfilled other aspects of the development, notwithstanding the fact that there's the construction delays and cost increase.

If you look at the other similar requests in your package today, there is a letter with exhibits showing, you know, they have spent this much money so far, and, you know, they are going through permitting. They are doing exactly what the rule requires.

So what we would ask is that rather than just grant this extension today, the concern is that if this deal isn't feasible, it is not feasible, and we need to know that now, because there are other deals in that area that are feasible.

So let's not let this deal just keep going if it is determined right now that it is not feasible, when the credits could be given back and another development --

Generation Housing in this instance -- would be given those credits in that area.

So based on what we have, and what you have in your Board book, we are not seeing any progress with this development. And we ask that you -- really, you guys just take a deeper look, a deeper dive into this development and simply ask them to provide what is required in the rule, to show that this deal is progressing and is still feasible. Thank you.

MR. VASQUEZ: Yes. Thanks, Michelle. Anyone? Mr. MARCHANT.

MR. MARCHANT: So who do you work for?

MS. STEND: I represent Generation Housing, and they have a --

MR. MARCHANT: Are they on the standby list?

MS. STEND: Yeah.

MR. MARCHANT: Okay. Thanks.

MR. VASQUEZ: Mr. Campbell.

MR. CAMPBELL: So I do need to clarify one thing that Ms. Stend just said, which is that if the Board denies this action today, the credits would come back to the agency automatically, and that we would reallocate them back into the region.

There is not a process, to my knowledge, where the Department could take these credits back until there is some kind of event that would cause the credits to come back.

So, for example, if the development did not receive this force majeure extension and then subsequently failed its 10 percent test, then there would be justification to take those credits back.

That would not be until December 31 at midnight, and at that point, our current waiting list expires. So short of the developer giving those credits back, I am not sure of the sequence of events that was just described is going to be the outcome of the Board's vote today.

MR. VASQUEZ: Okay. Mr. Eccles.

MR. ECCLES: Well, I will note that what is posted on the agenda is not any sort of action item related to termination for having the Board rescind the credit. It is merely a request for force majeure.

So the Board can either grant it or deny it or table it.

MR. VASQUEZ: Okay. Keeping that in mind, let's save time. Does staff have a reasonable level of confidence that this project will still continue?

MR. CAMPBELL: I have been in regular communication with the developer on this project, as well as the developers on the projects that is -- in my mind, the developer has represented to me that progress has been made.

I did receive an email, I believe this morning -- actually yesterday afternoon. They do still have site control. I received documentation from the title company showing that there is still site control.

You know, a lot of our developments that have done force majeure for are in kind of this same boat. There were many of them that haven't closed their financing yet. There are many that have had significant construction delays.

And so, you know, I don't know that staff can recommend to you based on a different standard than what we used for the other developments that we presented to you so far this year that this is a particular development that is in a more perilous situation than any of the other 46, because we are just seeing the same things over and over again from --

MR. VASQUEZ: Okay. Is there another public comment on this one?

MR. APPLEQUIST: Chairman, members of the Board. Thank you very much. My name is Chris Applequist, Generation Housing Partners.

So our issue is the force majeure. We use force majeure as needed. You know, COVID has had a huge impact. Costs have gone up, we have had delays, [inaudible] issues, financing. Those are all resolved issues.

Our issue with this specific development which we submitted an RFAD for, is they have a deed restriction. They can't build multifamily today. Legally they can't build it.

It is there. Nothing has changed. We submitted an RFAD. We thought that was an issue. Nonetheless, today if they had permits, they can't build multifamily on this site.

They still have a $15 million tax credit that they are holding, but they can't build multifamily today. We looked at the permit records with the City of Dallas.

Nothing has been submitted, and that makes sense, because you don't design a project if you don't have the ability to build multifamily on.

The same group, great developer. Barr Harrington, probably one of the most respected groups in Texas. They build a great product. This is nothing against them. They are good folks.

But, you know, these funds need to be used, they need to go out the door. And there are developments that are shovel ready that could move now.

And these funds are needed. I mean, affordable housing is a huge deal. And they can't legally build. They shouldn't go and just hold the credits.

They had another development in Temple that was awarded in '21. That development is closed and under construction, but yet the Dallas deal still sits here with the $15 million tax credit and a deed restriction that doesn't allow it to be built.

So we really believe the credits should come back. They should work on the deed restriction, get that fixed, and then reapply, and get these funds out the door and build some housing for some folks.

So wish we didn't have to be here, but it is a unique situation. All the other force majeure, I think it is reasonable that folks need that. This one is a little unusual. So thanks for your time.

MR. VASQUEZ: Thanks, Chris. Again, going back to counsel, recognizing everything that was just said, at this point, what is posted on the agenda is, like you said, only addressing whether we allow the force majeure that we have been doing kind of almost as a matter of course for these situations.

The other issues that are being brought up, they may be valid or not, but that is not what we can address today.

And unfortunately or fortunately, depending on your perspective, if the deal doesn't continue on, we don't have the power, or our hands are tied for being able to make a change now because of what is on the agenda and what is -- we can't just arbitrarily say we are going to take a vote to withdraw the credits.

MR. HARPER: As a new guy, here --

Mr. Campbell, will you come back?

MR. CAMPBELL: Of course. Of course.

MR. HARPER: Is it Todd McDonn's [phonetic] project?

MR. CAMPBELL: That would be a great question. Actually, Mr. Krochtengel from the development is here, the developer is with us. I do know that there is a deed restriction on the property now.

The QAP does address encumbrances, and what it says in the QAP or on the QAP that this application was awarded is that the Department acknowledges and understands that the property may have one or more encumbrances at the time of application submission.

And the Department will take into account whether any such encumbrance is reasonable within the legal and financial ability of the development owner to address without delaying development on the timeline contemplated in the application.

MR. HARPER: So let's play scenario. Say we extend the force majeure --

MR. CAMPBELL: Sure.

MR. HARPER: -- and entitlement does not go forward with the City of Dallas because they do not get the zoning changed on that parcel.

MR. CAMPBELL: Okay.

MR. HARPER: What happens to this project, at all?

MR. CAMPBELL: So, you know, if the developer really just couldn't get that removed, you know --

MR. HARPER: You know, I just set the scenario.

MR. CAMPBELL: Of course. Of course. They would eventually fail one of their federal deadlines. And at that point, they would be terminated and have those credits back.

When we receive those credits back, the method of distribution for those is pre-prescribed in the QAP. We first attempt to return them to the region from which they came, so we try to put them back in Region 3.

If there is not an available deal, then they go to what is called the statewide collapse, and they flow to the most underserved region in the state that needs those credits.

MR. ECCLES: And just as a point of clarification, this isn't a zoning issue. This is a deed restriction.

MR. CAMPBELL: Deed restriction. That is

correct. Yes, sir. Yes.

MR. HARPER: All right. Thank you.

MR. VASQUEZ: So getting back to the summary I just said, at this meeting, we can only address the force majeure issue, not anything having to do with taking back credits or canceling, or --

MR. ECCLES: That is correct. Only force majeure is on the agenda for action.

MR. VASQUEZ: And if the developer feels that they are not going to be able to get that deed change, deed restriction changed or dropped, they could voluntarily say, this deal is not going to go forward. And then we come back.

But if it is not done by December 31, it just goes back into the collapse you just described. It doesn't go to the next in line.

MR. CAMPBELL: Right. Because as of December 31, once we click over into the new year, the existing waiting list no longer exists.

MR. BATCH: Can we maybe -- I'm just going to recommend maybe we hear from the developer as to kind of where he is in the process.

MR. VASQUEZ: Sure.

Mr. Krochtengel, do you want to come up?

MR. KROCHTENGEL: Absolutely. And I am happy to talk about the deed restriction as well. Zach Krochtengel, the developer.

So actually our site is fully entitled; we can go get permits at any time we like. We are moving forward with that process through the City of Dallas.

This is a private deed restriction from the 1970s that we actually don't believe is in any way enforceable. We are looking at legal options, and we have actually found a legal pathway forward to continue to build the site without the encumbrance of those deed restrictions.

We have two legal opinions saying that this is going to be fine. There are multiple other developers that have been in this same situation. I am sure Cody has heard phone calls from people with deed restriction problems as well.

It is something that is just going to keep coming up. They are very anti-housing, but these are deed restrictions that go against public policy, and we do not believe that they are enforceable. We have been in constant communication with title companies to get affirmative coverage as well, so this isn't the reason that we have this issue.

The reason is this is -- you know, Chris talked about our other 2021 deals that we were awarded, they are cheaper construction, because they don't have structured parking, things like that. This had to do with labor shortages, increase in costs and, you know, a million other issues that I am sure everybody who has gone through 2020 application rounds says their deals are almost death by a thousand cuts in terms of how many different factors can go against your deal. But the deed restrictions are not the issue.

I was granted force majeure using the exact same documentation on another project. I am not a superfluous person; I don't feel that I need to submit a 30-page package to prove up force majeure.

I think that if Cody felt like they needed more information to describe the economic kind of circumstance of every 2021 deal, he would have called me and said this isn't sufficient information to go through force majeure. I have been in constant communication with Cody about the progress of our project as well.

On another note, the development community is a community. I share when I have problems with a project. I think there is probably people in the audience that I have helped, you know, deal with their problems.

And when you have been awarded tax credits, it is very disappointing for another developer to decide that they can wait, you know, two years after award to come after your tax credits, on something that was submitted with the application. I never received an RFAD about this deed restriction. I don't think that it was timely submitted if it was submitted, because it never came to me and we never had to answer or respond to it.

This is all in our application. Everything was above board, in front of everybody. And we are just in the same 2021 situation as everybody else.

You know, I'm sorry that they don't have their development because it didn't score high enough. But you know, that is unfortunately, not our problem, you know.

MR. VASQUEZ: Okay.

MR. KROCHTENGEL: Yeah.

MR. VASQUEZ: Thank you, Zach. And for both sides of this -- again, I didn't think that a discussion on deeds and financing and all these things -- it doesn't have anything to do with what we are able to address today.

So I would like to kind of stop that discussion and just focus on does staff reasonable feel that this meets the force majeure requirements that we have been implementing for the last year?

MR. MARCHANT: Can I ask just clarification?

MR. VASQUEZ: Please, Mr. MARCHANT.

MR. MARCHANT: You are saying that if he doesn't voluntarily withdraw between now and the 31st and just waits until the 31st and we grant force majeure but at some point, can't actually close the deal, when those credits default, they go back.

There is no real expectation -- nobody in this room has the great expectation that they are going to get those.

MR. CAMPBELL: It would take Mr. Krochtengel voluntarily returning the credits between now and December 31. Yes, sir.

MR. MARCHANT: Okay. And so I would like a representation by the developer that the title company has affirmed they are going to write a title policy that the lenders are going to accept to close the deal with that deed restriction in place, without it being litigated.

MR. KROCHTENGEL: We have given everybody their opinions from the law firms. People have affirmatively said that they are okay with the way it is going.

I mean, there is no guarantee until you get to the closing table, but, you know, we worked through this legally for quite some time, and we feel comfortable keeping on spending money.

And we spent a ton of money on this development moving forward. I could list so many reasons why this development is so important, but we don't spend money holding onto credits for fun.

MR. MARCHANT: Okay. That is superfluous to the question.

MR. KROCHTENGEL: Right. Yeah, I agree, because there's no guarantee -- we haven't -- like a lot of other 2021 deals, have not signed up a lender, have not gone -- we have gone through legal review on what we have given them.

MR. MARCHANT: I have got you.

MR. KROCHTENGEL: They say that they are comfortable with it. I can't guarantee anything at this time. And I can guarantee you that if I couldn't -- if I thought there was absolutely no way I could move forward right now today, I am not going to sit on the credits for no good reason.

MR. MARCHANT: Okay.

MR. VASQUEZ: Okay. I think we have beaten this one to death. I would entertain a motion on Item 1(h) of the agenda, relating to the force majeure application for all of the projects listed, except for 21175, Wells Manor --

MS. SYLVESTER: That is right.

MR. VASQUEZ: -- that which was withdrawn. Would anyone care to make that motion?

MS. FARIAS: Chairman.

MR. VASQUEZ: Ms. Farias.

MS. FARIAS: I move to accept the motion that Mr. Cody Campbell talked to us about accepting the four projects for the force majeure requirements, with the exception of Wells Manor. And I move that we approve Cody Campbell's recommendation.

MR. BATCH: Second.

MR. VASQUEZ: Motion made by Ms. Farias, seconded by Mr. Batch. All those in favor, say aye.

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

MR. MARCHANT: Opposed.

MR. THOMAS: Opposed.

MR. VASQUEZ: Have the record note that Mr. MARCHANT and Mr. Thomas opposed the motion. However, the motion still carries by majority vote.

Okay. Moving back to Item 9 on the agenda, so 9(a), presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 13, Multifamily Direct Loan Rule, and an order adopting the new 10 TAC Chapter 13, Multifamily Direct Loan Rule, and directing its publication in the *Texas Register* for adoption.

Mr. Campbell.

MR. CAMPBELL: Thank you. The next item on your agenda concerns 10 TAC Chapter 13, which is often referred to as the multifamily direct loan or MFDL rule.

Unlike the QAP, which is broadly applicable to all of the Departments' programs, this rule is specific to the Department's direct loan funds, which includes our National Housing Trust Fund and the HOME Fund. The rule was presented to the Board during the October meeting and then released for public comment from October 28 to November 17.

Two similar comments were received, and no changes to the rule are recommended today based on them. The two comments were substantially similar although not identical.

Both comments provided input onto the broader process of applying for MFDL funding. While these comments are important and worth discussion -- and I will go into more detail about how we are improving our process in the next agenda item -- there are no responsive changes to be made to the rules relating to them, because those processes aren't outlined in the rules.

The remaining comments request changes to the rules that staff does not recommend. For example, both requested that the scoring criteria that awards points for having a lower subsidy per unit be removed.

However, the Department has an obligation to make the most efficient use of resources possible and therefore does not recommend removal of this scoring item.

Both comments also requested removal or modification of the requirement that the owner have at least 10 percent equity in the deal when TDHCA is the only source of permanent debt. However, the rule already allows for this provision to be waived without having to meet typical requirements of the waiver, if the applicant can provide reasonable assurance to the Department that the development will be completed and stabilized timely.

Because the rule already allows this exception, staff recommends no changes. These are just a few of the examples of requested changes. This presentation does not cover both comments comprehensively, but a summary of the comments, as well as staff's response to them is available in your meeting materials.

Staff recommends approval of the rule, and I am happy to answer any questions that you may have.

MR. VASQUEZ: Do any Board members have questions for Mr. Campbell on Item 9(a), 10 TAC Chapter 13.

(No response.)

MR. VASQUEZ: And seeing no one lined up for public comment, I will entertain a motion on Item 9(a) of the agenda.

MR. THOMAS: Mr. Chairman, I move the Board approve and adopt the repeal of 10 TAC Chapter 13, multifamily direct loan rule, and adopt the new 10 TAC Chapter 13, including the preambles presented to this meeting and authorize any technical changes, all subject to the conditions and as expressed in the Board action request on this item.

MS. FARIAS: Second.

MR. VASQUEZ: Thank you. Motion made by Mr. Thomas, seconded by Ms. Farias. All those in favor, say aye.

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, the motion carries.

Moving on to Item 9(b), presentation, discussion, and possible action regarding the approval for publication in the Texas Register of the 2023-1 Multifamily Direct Loan Notice of Funding Availability.

Mr. Campbell.

MR. CAMPBELL: Thank you. And I apologize in advance; this is a little bit of a longer one.

This item concerns a Notice of Funding Availability or NOFA for funds that will be available in 2023. These funds include approximately $42.5 million in National Housing Trust Fund, and $6.1 million in HOME funding that that will be available for multifamily rental developments.

The $6.1 million in HOME funding will be made available to Community Housing Development Organizations or CHDOs. A CHDO is a private nonprofit community-based organization that has staff with the capacity to develop affordable housing in the community that it serves.

In order to qualify for designation as a CHDO, the organization must meet certain requirements pertaining to their legal status, organizational structure, and capacity and experience.

Federally, TDHCA is required to use 15 percent of our annual HOME allocation for activities undertaken by CHDOs. The $6.1 million represents that 15 percent. We propose start taking applications for this set-aside on January 2 and to continue until no funds remain.

The NOFA also includes $42.5 million in National Housing Trust Fund, or NHTF, which is equal to our 2022 allocation of this fund source, minus our allowed administrative funds.

These funds are being made available in a series of application acceptance periods, with a specific list of priorities. The Department will take applications until no funds remain and the NOFA is suspended.

The first application acceptance period will run from January 2 to January 31. This period meets funding available throughout the state following a regional distribution formula similar to the regional allocation formula used for tax credits.

During this period, the only applicants that will be eligible to apply are those that received an application acceptance statement under our 2022 NOFA, but were ultimately not awarded due to a lack of funds and that also did not withdraw or have their application terminated.

Applicants will be required to apply for a minimum of $1.5 million, or if the amount available for the regional distribution is less than that, they will be required to request the maximum amount available in that region.

The next application acceptance date will be for the same group of eligible applicants, but for this period, applications will not be limited to the amount available in the regional distribution.

Instead, applicants will be required to request at least $4 million, but no more than $8 million in funding. These numbers were set based on feedback from the industry, relating to the amount of funding realistically needed to complete the developments that are currently unfunded from our 2022 app pool.

After these application acceptance periods, there are two others: one for applications that propose to have our loan in first lien position, and after that, there is an open application acceptance period. Staff expects that the demand will exceed the supply for these funds and will suspend the NOFA once all available funds have been applied for.

This NOFA is different from previous years in a number of ways. The Department has seen a significant increase in our funding over the past few years.

For example, in 2019, we received approximately $11 million in National Housing Trust Fund. For 2022, we received over $47 million, which is an increase of over four times in just three years.

This rapid increase in funding has resulted in a significantly larger pipeline of deals that are taking longer to get to contract and closing. As I am sure you can imagine, no one, including staff, is happy about these delays.

This NOFA takes some meaningful steps to address these issues. First, the loan products available under it are significantly more standardized and streamlined than they have been in the past.

Applicants have the option of either a fully amortizing loan, made at 2 percent interest, or, for applicants that have a first lien FHA loan, there is a cash flow payment option as required by HUD's amount guide.

Limiting the number of loan products available will simplify the review, underwriting, and closing processes. And given the current demand for these funds, staff does not anticipate that these more streamlined offerings will prevent us from getting the money out the door.

Second, the NOFA prioritizes larger loan amounts over smaller ones. Proceeding this way should result in a pipeline of deals that is more realistically manageable, allowing staff to get them to the closing table in a more timely manner.

Third, this NOFA does not make available all of the Department's current funding. There is remaining HOME funding, as well as uncommitted NHTF funding from prior years that will either be programmed into this NOFA or released under a separate NOFA later in 2023.

Staff is intentionally staggering these funds to allow for a reasonable processing time after an application is submitted. And on that note, I would like to give to the Board and the industry a brief update on the status of MFDL and what we are doing internally to help make the process more smooth and efficient.

We have had some staff turnover in this section over the last year, which is always tough. But I am happy to report that we recently brought on Mr. Connor Jones as the new manager of the area.

Wave to everybody.

Connor is incredibly hard working, and has been getting up to speed as quickly as might be humanly possible. We have also had several other recent hires in this area who are with us today: Ms. Anastasia Williams and Jerriane Henry, both of whom are already helping us get work processed.

We are continuing to interview and hire and are looking forward to new staff in the near future. I would like to thank Abby in our single-family area for recently donating an extra full-time employee position to help us with our increased workload.

If you have ever worked for the State, you will know how hard FTEs are to come by. So we really are deeply appreciative to have received an extra one.

On top of that, our other areas that work on MFDL, including program services, underwriting, and legal, have either already added additional staff or are looking at doing so in the near future.

Homero Cabello, as Bobby mentioned earlier, has recently returned to TDHCA as Deputy Executive Director and has told me that helping make this process more efficient is one of his big goals while he is back.

We are getting a lot of meaningful support from across the agency, certainly not the least which comes from our Executive Director Bobby as well as from the industry, as we figure out how to scale up to our current level of business. And that support is very much appreciated.

All of this is to say that I am confident that we are headed in a very good direction and that we will soon be getting more money out the door faster, with fewer delays than we are experiencing now.

Upon Board approval of this NOFA, staff will begin taking applications on January 2, with the first actual application acceptance date being January 31. We will continue taking applications until the funds are exhausted and the NOFA is suspended.

Staff recommends approval of this NOFA, and I am happy to answer any questions that you may have.

MR. VASQUEZ: Okay. I just have sort of a question. So there are going to be multiple acceptance period dates throughout this, and for different types of loans or different types of structures?

MR. CAMPBELL: Well, so the first period is for -- so with these funds, we do a regional distribution similar to the regional allocation that we do with tax credits. And so we have to have our first application acceptance period before applicants applying for that amount under the regional distribution.

And during that period, it will be limited to the unfunded 2022 applicants. The next period after that is going to be the same group of eligible applicants, but they will not be limited to only requesting what is available through the regional distribution.

And then quite frankly, you know, obviously I don't have a list of all. But I would be surprised if we had funding remaining after that point. But if we do, we move into several other application acceptance periods.

MR. VASQUEZ: Okay. Well, just make sure we can communicate this well with industry on that.

Do any Board members have questions for Mr. Campbell?

(No response.)

MR. VASQUEZ: Do we have public comment on this item? He was first.

MR. SINNOTT: Good morning, Board. Andrew Sinnott, Zimmerman Properties.

And I just wanted to thank staff for bringing this item here. I know NHTF was delayed in getting that received from HUD. So I appreciate how quickly they were able to get that plugged into a NOFA.

And just all the work that goes into this, I know first-hand, direct loans kind of touch multiple divisions across the agency, so I just really appreciate that.

I wanted to just draw Board's attention to just some language within 3(a)(ii). There is language in here that says, you know, applications will be received in this little -- application received date for deals under the 2022-1 application that were not withdrawn or terminated.

We had a 9 percent application under the 2022-1 NOFA that was withdrawn but only as a result of staff communicating to us that there was an oversubscription issue at the time. It was not necessarily voluntary.

So I just wanted to maybe see if the Board would consider drawing a distinction between applications that were withdrawn voluntarily or terminated and applications that were not withdrawn voluntarily, so that our 2022 9 percent application could be considered in the second tranche of applications.

And I also wanted to see if the Board would consider a lower interest rate than what is in the NOFA right now. I think it's a minimum of 2 percent.

MR. CAMPBELL: It is a flat 2 percent for everybody.

MR. SINNOTT: A flat 2 percent for everybody. Perhaps 1 percent would be a little more accommodating. I know that is asking a lot.

But as you have heard today, there have been lots of circumstances that are causing deals to really have to do some pretty big financial gymnastics to make them work. So I appreciate your time.

MR. VASQUEZ: Okay. Thanks. Well, let's get the other comments, then we can address them all.

MS. MEYER: Robbye Meyer with Arx Advantage. I appreciate staff and for the Item 5, the supportive housing NOFA as well. We have been long awaiting these, and we appreciate them being out.

My comments are along the same line: that withdrawn and terminated applications, we would ask the Board to allow those to be back in. Being withdraw for one reason or another, or terminated for one reason or another, they have already been penalized once. Not allowing them to come back in and reapply is just penalizing them again. So I ask that you allow those applications to also reapply.

MR. VASQUEZ: Okay. Thanks, Robbye.

MS. MEYER: Thank you.

MR. VASQUEZ: So, Cody, can you address this voluntary withdrawal?

MR. CAMPBELL: So the non-voluntarily withdrawn applications or the terminated ones, wanting to put those back in, you know, I think when staff wrote this NOFA, we were trying to limit the universe of applicants, because it is such a limited resource, to those that do have a current active application.

I don't know if there is any hardline stance that staff would take and say, no, we absolutely can't make this happen if the Board does want us to go in this direction. We were just trying to cast as small a net as possible, because I don't know if we are going to have enough money to help all these people as it is.

But certainly, if the Board wants to go in that direction, we can make that happen.

And then similar with the interest rates. You know, any chance that we get to generate program income, we do try to capitalize on it, because then if there is a lean year in the future, you know, because NHTF funds, they are funded through payments made on Fannie and Freddie loans, so we do sometimes have kind of lean years; anything that we can do to generate program income.

If we had a lot of money, we could try to do it, but if the Board wants to lower interest rates, we can certainly make that happen.

MR. VASQUEZ: Okay. Well, regarding the interest rate, 2 percent sounds like a pretty darned good deal for anyone else, compared to the alternatives, other than that forgivable loan.

Okay. So regarding the voluntarily withdrawn items, is the universe of potential additional applications these two, or is it 20, or is it a hundred? I mean, what --

MR. CAMPBELL: So, as written, I would expect there to be about 15 applicants coming in. The non-voluntarily withdrawn, what happens is during the 9 percent round, we take applications that propose having MFDL as part of their financing stack.

And if it is oversubscribed, then we allow those applicants the opportunity to remove that funding and replace it with other type of funding. I don't know exactly off the top of my head how many those are, but I estimate it would probably be another ten or twelve that would be made eligible if the Board wanted to do that, although I will say that the only people I've heard from are Robbye and Andrew. I don't know for the others how interested they are in coming back for these funds.

MR. VASQUEZ: Yes. But it is not like there would be some huge flood that every application is going to --

MR. CAMPBELL: And I spoke to Robbye and Andrew both prior to this meeting, so people have been proactive about reaching out to me about this issue. You know, I can't guarantee that there are no others that would come in. But they are the only two that I have heard from.

MR. VASQUEZ: And right now, we have the ability to make this kind of edit, if we so choose.

MR. CAMPBELL: Yes.

MR. VASQUEZ: Okay. Do any other Board members have questions for -- here comes another one.

MS. SYLVESTER: Just a quick clarification. During the RAF period, what we talked about -- Megan Sylvester, by the way.

We talked about the action plan, and one of the things we had to do in that action plan was describe what our method of distribution was going to be throughout the jurisdiction. For us, it is statewide.

So, that one we can't change without going back to HUD, which is that first acceptance period, because that is what is currently published in our action plan.

MR. VASQUEZ: But this, we are talking about the second period.

MS. SYLVESTER: So, the second position, I just wanted to kind of make that clear for folks; that that language needs to stay the same, because that is what was represented to HUD in the action plan as to how we were going to do the RAF.

MR. VASQUEZ: The language --

MS. SYLVESTER: The eligible applicants during the RAF period.

MR. VASQUEZ: The language for the first acceptance period needs to stay the same.

MS. SYLVESTER: Correct.

MR. VASQUEZ: But we are not discussing that. We are discussing the language for the second.

MS. SYLVESTER: I just wanted to make sure everyone was on the same page.

MR. VASQUEZ: Okay. Are we able to do that without going back to the action plan?

MS. SYLVESTER: Yes. With the next priorities. But you just have to say who is an eligible applicant during the RAF period, and so that is what we did in our action plan, and that is what is reflected in the draft NOFA.

MR. VASQUEZ: But we are not talking about changing that part.

MR. CAMPBELL: Right. And I guess there would be two changes that are being contemplated right now. Do we add -- you know, we've written this NOFA to try to make this program efficient and easy to administer and to shore up some of our delays. And neither one of these things would affect that.

So from staff perspective, these two contemplated changes are great, quite frankly.

MR. VASQUEZ: So we are talking about the withdrawn applications, we can give them an opportunity in the second round.

MR. CAMPBELL: Correct.

MR. VASQUEZ: We are not talking about terminating them.

MR. CAMPBELL: Andrew, was that one talking about withdrawing.

Robbye, were you talking withdrawn or terminated?

MS. MEYER: Terminated.

MR. VASQUEZ: Okay. So the language would be allowed on prior applications --

MR. CAMPBELL: Right. That were submitted under the 2022 NOFA that were either withdrawn by the applicant or reported terminated by staff.

MR. VASQUEZ: Okay. Do any Board members have further questions on this?

Harper?

MR. HARPER: Sorry. Do you see any reason why you would not allow these people back to submit again? I mean, why did you write it that way to begin with?

MR. CAMPBELL: We were trying to -- as the funding is so limited, we were trying to limit the scope to the active applications that we have right now, and that was really the only reason.

MR. VASQUEZ: Okay. Well, again, I think you all have picked up on that, and no problem with allowing these other applications. But the interest rate change I am not in favor of.

So would anyone care to make a motion on this agenda Item 9(b)?

MS. FARIAS: Mr. Chairman, I move the Board approve and authorize the 2023-1 NOFA as described and subject to the conditions as expressed in the Board action request, including second -- acceptance of second applications that were prior applications that were withdrawn or not voluntarily withdrawn and resolutions on this item, and including any conforming changes as may be necessary to match the final new 10 TAC Chapter 13 rule.

MR. VASQUEZ: And I believe you were saying that were withdrawn or terminated.

MS. FARIAS: Right. Right.

MR. VASQUEZ: Okay. Motion made by Ms. Farias. Is there a second?

MR. BATCH: Second, Mr. Chairman.

MR. VASQUEZ: Seconded by Mr. Batch. All those in favor of the motion as stated, say aye.

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, the motion carries. Moving on to Item 9(c). Presentation, discussion, and possible action on the adoption of the 2023 Multifamily Programs Application Procedures Manual.

Mr. Campbell.

MR. CAMPBELL: Thank you. This final item is the very straightforward and will probably be very short.

This item concerns the statutory required Applications Procedures Manual. Section 2306.67022 of the Texas Government Code requires that the Board at least biennially approve a manual to provide information regarding the administration and eligibility for the housing tax credit program.

Staff updates this manual each year to reflect changes that are made to the QAP and to the application and then presents it to the Board for approval in December.

Critically, this manual is not a rule and does not go through the rulemaking or public comment process. It includes an important disclaimer that in all respects, the statutes, rules, and NOFAs governing our multifamily programs supersede it and are controlling.

So, basically this is just a manual that tells people how to get off the Excel sheet if they want to submit an application to us. Staff recommends approval of the Application Manual.

MR. VASQUEZ: Great. I still encourage us to make this an automated program process in the near future, as soon as we can.

MR. CAMPBELL: Sure.

MR. VASQUEZ: Are there any other questions on this item for Mr. Campbell?

(No response.)

MR. VASQUEZ: Hearing none, I will entertain a motion on Item 9(c) of the agenda.

MR. HARPER: I move the Board to approve the Multifamily Programs Application Procedures Manual as described and subject to provisions as expressed in the Board action and requested resolutions on this item and include any conforming changes as deemed necessary to match to the final new 10 TAC Chapter 13.

MS. FARIAS: Second.

MR. VASQUEZ: Thank you. Motion made by Mr. Harper, seconded by Ms. Farias. All those in favor, say aye.

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, the motion carries.

MR. CAMPBELL: Thank you all.

MR. VASQUEZ: Thanks, Cody and team.

So this concludes the posted agenda items. And this is the time of the meeting where we are available for public comment for items under the purview of our Board. And if anyone, from any organization, including TAAHP wants to come up and speak -- Mr. Arriaga.

MR. ARRIAGA: Mr. Chairman, Board, Mr. Wilkinson. Thank you for giving me just a minute, not to ask for any interest rate decreases or anything.

I am here to really just talk about a couple of things and hopefully wrap up 2022 in a great fashion. First --

MR. VASQUEZ: For the record, could you state your name and your organization?

MR. ARRIAGA: I'm sorry. Yes. Roger Arriaga, Executive Director for the Texas Affiliation of Affordable Housing Providers, TAAHP for short. That is how you'll hear us referenced.

Also, I want to welcome our new Board member, Mr. Harper. We certainly hope to get to know you a little more, as you spend time with the Board.

First, I want to congratulate TDHCA Board and staff for the successful 2023 QAP. Our members are very satisfied with the staff's consideration of all the input provided, and we are certainly very happy of the Board support of the QAP.

That is the first thing we will mention to you. So thank you very much for all your time and effort of staff and the Board on that.

Second, some people may be surprised to know that TAAHP is celebrating 25 years of being around. I am not sure that folks back then may have thought we would still be here, but we are, 25 years later, a quarter century into working with the Agency, and it actually happened this week, 25 years ago.

So on behalf of our organization and our Board members, past and present, I do want to express our sincere appreciation to TDHCA Board and staff for your openness, transparency, diligence, and willingness to always consider TAAHP and all stakeholders as we all work towards our common goals of providing more supply of housing for working Texas families. That is really all I wanted to say. And again, as we wrap up the year, thank you so much for your willingness to work with all stakeholders and to listen to our comments, whenever we have had them, good and bad. Thank you.

MR. VASQUEZ: Good. Thank you, Roger.

And Mr. Wilkinson has one more item.

MR. WILKINSON: Brian Thornton, if you will wave, stand up. Mr. Thornton is leaving us. We have really enjoyed having research projects, special projects.

He was a TAL staffer, Senate staffer most recently for Senator Betancourt, our Oversight Committee. Served on staff for Austin City Council, and he got a great offer coming up in this next session.

So thank you for your service. And I appreciate it. Thank you very much.

MR. THORNTON: Thank you.

MR. VASQUEZ: Great. Thanks. Okay. Seeing no other further public comment, and concluding the agenda, the next scheduled Board meeting -- the next scheduled meeting is Thursday January 12, 2023. And this will be not here, but in the Board room of the Greer Building at 125 East 11th Street. That's the TxDOT Building, so nearby and convenient. Watch for the agenda posting for further details; probably be at 10:00 as we had here.

So, no further business, it is 12:09, and the meeting is adjourned.

(Whereupon, at 12:09 p.m., the meeting was concluded.)

C E R T I F I C A T E

MEETING OF: TDHCA Board of Trustees
LOCATION: Austin, Texas
DATE: December 8, 2022

I do hereby certify that the foregoing pages, numbers 1 through 103104, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Latrice Porter before the Texas Department of Housing and Community Affairs.

DATE: December 14, 2022

____
(Transcriber)

On the Record Reporting
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