



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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October 13, 2016

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

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

Dear Chairman Ozer and Board Members,

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

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

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

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

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

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



## AUDIT RESULTS

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

### FAIR HOUSING OVERVIEW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### EVALUATION OF THE TDHCA FAIR HOUSING PROCESS

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

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

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

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

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

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

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

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

#### EVALUATION OF FAIR HOUSING COMPLIANCE

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

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

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

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

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

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

## FINDINGS AND/OR RECOMMENDATIONS

### 16.003.1 Recommendation:

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

### 16.003.2 Recommendation:

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

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

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

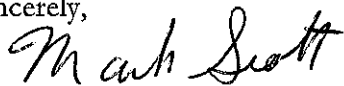
individual policies and procedures for certain processes, there is not currently a set of formal standard operating procedures for Fair Housing.

**MANAGEMENT COMMENTS – CORRECTIVE ACTION TABLE**

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

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

Sincerely,



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

MES/bke

cc:

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

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

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

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

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

...

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

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

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

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

\_\_\_\_\_  
Date

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

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

WITH

APPLICANT NAME,  
ENTITY TYPE

CFDA 14.239 HOME INVESTMENT PARTNERSHIPS PROGRAM

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

Award Number: M- -SG-48-0100

Federal Award Year: 20

Pass Through Entity: Texas Department of Housing and Community Affairs

HUD Entity Type:

TDHCA Award Year: 20

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

...

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

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

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

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



...

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

DEPARTMENT:

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

By: \_\_\_\_\_  
Its duly authorized officer or representative

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

ADMINISTRATOR:

Entity Name – all CAPS,  
Entity Type – lower case

By: \_\_\_\_\_  
Name, Title

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