Sunset Advisory Commission

Final Report

Texas Department of Housing and Community Affairs

July 2011

Sunset Advisory Commission

In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 12-member Commission is a legislative body that reviews the policies and programs of more than 130 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency’s operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them.

Texas Department of Housing and Community Affairs

Sunset Final Report

July 2011

This document is intended to compile all recommendations and action taken by the Sunset Advisory Commission for an agency under Sunset review. The following explains how the document is expanded and reissued to include responses from agency staff and the public.

- *Sunset Staff Report, September 2010* – Contains all Sunset staff recommendations on an agency, including both statutory and management changes, developed after extensive evaluation of the agency.

- *Hearing Material, November 2010* – Summarizes all responses from agency staff and the public to Sunset staff recommendations, as well as new policy issues raised for consideration by the Sunset Commission at its public hearing.

- *Decision Material, December 2010* – Includes additional responses, testimony, or new policy issues raised during and after the public hearing for consideration by the Sunset Commission at its decision meeting.

- *Commission Decisions, December 2010* – Contains the decisions of the Sunset Commission on staff recommendations and new policy issues. Statutory changes adopted by the Commission are presented to the Legislature in the agency's Sunset bill.

- *Final Report, July 2011* – Summarizes action taken by the Legislature on Sunset Commission recommendations and new provisions added by the Legislature to the agency's Sunset bill.

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Summary

Summary

For the last several years, the Texas Department of Housing and Community Affairs (TDHCA) has undergone a prolonged stress test as the federal government funneled billions of dollars through the agency to help Texas recover from hurricanes and the economic downturn. The agency has experienced a tremendous increase in workload, developed numerous new programs, and temporarily increased its staff by about 30 percent. This test has highlighted how well some parts of TDHCA function and where there is room for improvement. The agency has successfully met many of these new challenges, but the extra workload has taxed the Department's overall capacity, and taken a toll on the agency's ability to deliver its regular programs.

TDHCA has met new federal funding challenges, but could improve its management of key areas.

Since most of these disaster and economic recovery funds are temporary and will be gone within a few years, Sunset staff focused on programs that have historically resided in the Department. Sunset staff found that TDHCA administers its single- and multifamily housing programs well, but could benefit from certain statutory and management changes. For example, specific tax credit laws impede TDHCA's ability to efficiently manage the program, and current community support requirements may not reflect local interests. In addition, the Department's processing of single-family loans is inefficient, causing families to have to wait unnecessarily for needed assistance.

While not a longstanding program, Sunset staff also carefully examined TDHCA's disaster recovery program, recognizing that the program could again receive federal funds following a future storm. Texas has yet to take action to ensure against a repeat of the major funding delays associated with Hurricanes Rita, Dolly, and Ike. In recent years the State has dramatically improved its emergency response to storms, but neither state agencies nor local communities have appropriately planned or trained for long-term housing and infrastructure recovery.

In contrast to the majority of the agency's activities involving the distribution of federal funds, TDHCA houses, in a separate division, the regulation of manufactured housing. These two functions operate largely independently but appear to gain efficiencies from being housed together. Sunset staff identified elements of the Manufactured Housing Division's education, licensing, and enforcement practices that do not conform to common licensing standards. Sunset staff also found problems with the State's approach to, and the Division's implementation of, manufactured housing installation inspections.

The following material summarizes Sunset staff recommendations on the Texas Department of Housing and Community Affairs, including the Manufactured Housing Division.

Issues and Recommendations

Issue 1

Lack of State Planning Delays Funding to Hard Hit Texas Communities Recovering From Major Disasters.

Texas has faced major hurricanes in recent years and will face them again. The federal government has responded to recent storms with about $3.5 billion in long-term disaster recovery funding to help rebuild infrastructure and housing on the Texas Coast. The State has jointly administered these disaster recovery programs through the Texas Department of Housing and Community Affairs and Texas Department of Rural Affairs, under the guidance of the Office of the Governor. To date, the State has not effectively planned for long-term recovery or the use of these funds, increasing the amount of time it takes to rebuild Texas communities, and increasing the harms suffered by communities. Requiring the Department, in consultation with the Texas Department of Rural Affairs and the Governor's Office, to develop a long-term recovery plan, and train local administrators on its implementation, would help ensure that communities and state agencies are well positioned to more efficiently administer any future federal recovery funds.

Key Recommendations

- Require TDHCA, in consultation with the Texas Department of Rural Affairs and the Governor's Office, to develop a comprehensive long-term disaster recovery plan.
- Require the Governor to designate the State's lead agency for administration of any potential long-term disaster recovery funding by May 1 of every even-numbered year.
- Require communities to add a long-term recovery component to existing emergency management plans.

Issue 2

Certain Statutory Requirements Impede Texas' Administration of the Housing Tax Credit Program.

The TDHCA-administered federal tax credit program provides incentives for private investment in affordable multifamily rental housing, creating more affordable housing in Texas than any other program. Sunset staff examined the program and found several statutory requirements that were impeding the effective administration of this key housing program. First, state law requires TDHCA to measure community support for tax credit developments based on neighborhood organization letters, but these letters do not always reflect local interests and are regularly contested. Second, fixed deadlines in statute can restrict the State's ability to distribute federal tax credit assistance in emergency circumstances. Finally, the statutory requirement to annually update the State's tax credit allocation plan is unnecessary and burdensome to program participants and agency staff.

Making changes to address the mechanisms for measuring community support, and providing more flexibility on tax credit cycles and plan updates, would remove unnecessary restrictions from law while ensuring more accurate representation of community support for tax credit projects.

Key Recommendations

- Change the basis for quantifying a community's participation in a proposed tax credit development to the receipt of a written statement from the local city council or county commissioners court.
- Allow TDHCA to create additional tax credit allocation cycles to take advantage of non-standard federal assistance opportunities.
- Allow TDHCA's Board to update the qualified allocation plan biennially instead of annually.

Issue 3

The Department's Processing of Single-Family Loans is Slow and Inefficient, Causing Families to Wait for Needed Assistance.

Many of TDHCA's single-family housing assistance programs require the Department to provide loans directly to families for the rehabilitation of existing homes, or the purchase or construction of new homes. Sunset staff found that the Department's internal procedures for processing loans are inefficient and cause critical delays for families in need. The agency has not taken adequate steps to ensure that loans are processed quickly, that key tasks are prioritized to avoid unnecessary delays, or that program participants can easily find information on an application's status. Redesigning the Department's internal processes for loan applications would make single-family programs more responsive to the needs of low-income Texans.

Key Recommendation

- Direct the Department to overhaul its single-family loan review processes to create a faster and more efficient system.

Issue 4

The Department Has Not Used Funds Designated by the Legislature to Address Contract for Deed Problems.

A contract for deed is a vehicle through which property is purchased without the transfer of legal title until full payment of the purchase price. Over the past 15 years, the Legislature has made substantial efforts to curb consumer harms caused by contracts for deed in colonias, particularly along the Texas-Mexico border. Specifically, the Legislature has tasked TDHCA with assisting colonia residents in converting contracts for deed into traditional mortgages, allowing residents to gain legal title to the property. However, Sunset staff found that the Department has consistently failed to make the required number of conversions, instead diverting these funds to other statewide housing programs. Sunset staff also found that the Department's choice of HOME as a funding source was not a good fit for contract for deed conversions and related activities. Using a more flexible source of funding for contract for deed conversions would allow TDHCA to assist more Texans living in colonias to obtain legal title to their homes.

Key Recommendation

- Direct the Department to identify, through the legislative appropriations process, a more flexible source of funds for the contract for deed conversion program.

Issue 5

Inconsistencies in the Department's Enforcement Process Waste Resources and Contribute to Lingering Compliance Problems.

The Department monitors TDHCA-sponsored affordable multifamily developments to ensure properties are suitable for tenants, perform well, and comply with contract terms for the 30- to 40-year life of most TDHCA rental housing contracts. Properties that do not comply with requirements can face fines and can appeal those fines. The Department's current appeals process is not consistent with most state agencies and wastes agency resources. In addition, statute unnecessarily limits the agency's ability to prevent bad actors from applying to TDHCA programs to just one program. The agency does not have a clear process to ensure that all noncompliant properties are referred for additional enforcement action in a timely manner.

Transferring appeals cases to the State Office of Administrative Hearings and extending the agency's existing debarment authority to all programs would improve efficiency, reduce cost, and help ensure that applicants with significant performance failures cannot apply to any TDHCA-funded program. Setting clear deadlines for properties to come into compliance, and automating the referral for properties that remain noncompliant would help better protect tenants from poor living conditions and preserve Texas' investment in affordable housing.

Key Recommendations

- Transfer the Department's penalty appeals hearings to the State Office of Administrative Hearings.
- Require judicial review of appeals of the Department's decisions to be based on the substantial evidence rule.
- Authorize the Department to use debarment as a sanction and protection in all its programs.
- The Department should track and timely refer properties that fail to come into compliance for additional enforcement action.

Issue 6

Using State Employees to Inspect Manufactured Housing Installations Is Inefficient and Does Not Provide Adequate Statewide Coverage.

Faulty installations account for many of the problems associated with manufactured housing, particularly in the event of a hurricane or tornado. The Division of Manufactured Housing licenses manufactured housing installers in Texas and is required by law to inspect at least 25 percent of installations. Sunset staff found many inefficiencies in the Division's approach to conducting these inspections. On average, inspections do not occur until more than nine months after installation; and inspectors fail to complete more than half of all attempted inspections.

In contrast, other state agencies that administer home inspection programs rely on local third-party inspectors, in lieu of using state employees. Sunset staff concluded that using third-party inspectors to inspect manufactured housing installations would not only be more efficient, it would enable Texas to better protect consumers by inspecting all installations. Inspections could be done much faster, and the State would no longer accumulate significant travel expenses for incomplete inspections tied to attempting to cover all of Texas with only 18 state inspectors.

Key Recommendations

- Require the Division's Board, by rule, to establish guidelines for the inspection of all manufactured housing installations using third-party inspectors.
- Require the Division to register all third-party manufactured-housing installation inspectors.

Issue 7

Key Elements of the Manufactured Housing Division's Functions Do Not Conform to Common Licensing Standards.

Over the past 32 years, Sunset staff has reviewed more than 98 occupational licensing agencies. In doing so, the staff has identified standards that are common practices throughout the agencies' statutes, rules, and procedures. In reviewing licensing functions at the Manufactured Housing Division, Sunset staff found that certain education, licensing, and enforcement processes in the agency's statute do not match these model standards. The Sunset review compared the statute, rules, and practices to the model licensing standards to identify variations. Based on these variations, staff identified the changes needed to bring the Division in line with model standards to better protect owners of manufactured homes and the public.

Key Recommendations

- Reduce initial core education requirements for all licensees from 20 to eight hours but require an additional eight hours of specialized training for installers and retailers.
- Require a management official at each licensed retailer location to fulfill appropriate education requirements.
- Require the Division to conduct a fingerprint-based criminal background check of all manufactured housing licensees.
- Grant cease-and-desist authority to the Division for unlicensed construction, sale, and installation of manufactured homes.

Issue 8

The State Has a Continuing Need for the Texas Department of Housing and Community Affairs.

Texas faces a shortage of affordable housing that will continue for the foreseeable future. The federal government and the Texas Legislature have established numerous programs to help communities increase housing and community-based services options for low- and moderate-income people. The Texas Department of Housing and Community Affairs acts as a partner in these programs, disbursing hundreds of millions of dollars annually. Continuing the Department for 12 years would ensure that Texas can continue to partner with the federal government to provide affordable housing and community-based services to Texans.

Key Recommendation

- Continue the Texas Department of Housing and Community Affairs for 12 years.

Fiscal Implication Summary

Two issues in the report would have a positive fiscal impact on the State, as summarized below. In combination, these changes would eliminate 15.5 full-time equivalents (FTE) and result in a total savings of $522,834 to the General Revenue Fund in the next biennium, and $982,936 in future biennia.

- ***Issue 2*** – Measuring community support for tax credit developments based on letters from local city councils or county commissioners in lieu of neighborhood organizations would reduce the administrative work for TDHCA staff related to this scoring provision. Sunset staff estimates savings of $31,366 per year from the reduction of 0.5 FTE.

- ***Issue 6*** – Transferring inspection responsibilities from the Manufactured Housing Division to local third-party inspectors would provide significant savings to the General Revenue Fund by eliminating 15 FTEs and Sunset staff estimates net savings of $460,102 per year, beginning in 2013, from these changes. The savings primarily result from transitioning the role of the Division from conducting inspections to overseeing third-party inspections. Savings to the State will begin in 2013 following the Division's one-year transition from state-performed to third-party inspections.

Texas Department of Housing and Community Affairs

Fiscal Year	Savings to the General Revenue Fund	Change in the Number of FTEs From FY 2009
2012	$31,366	-0.5
2013	$491,468	-15.5
2014	$491,468	-15.5
2015	$491,468	-15.5
2016	$491,468	-15.5

Summary of Legislative Action

H.B. 2608 Harper-Brown (Hinojosa), Regular Session

S. B. 1 Duncan (Pitts), 1st Called Session

House Bill 2608, as passed by the 82nd Legislature, Regular Session, included most of the Sunset Commission's recommendations, including continuing TDHCA for 12 years; however, the Governor vetoed this bill. During the 1st Called Session, the Legislature continued TDHCA for two years and adopted several other Sunset provisions related to the agency as part of Senate Bill 1. In addition, a provision in Senate Bill 652, Regular Session focused the upcoming Sunset review on evaluating the ongoing appropriateness of the Sunset Commission's recommendations to the 82nd Legislature. The list below summarizes the major provisions, and more detailed discussion is located in each issue.

Sunset Provisions Adopted in Other Legislation

1. Continue the Texas Department of Housing and Community Affairs for two years.
2. Remove statutory impediments to the effective awarding of Texas' low-income housing tax credits.
3. Clarify application of the regional allocation formula to activities funded by the State's Housing Trust Fund.
4. Improve the State's oversight of manufactured home installations.
5. Conform two elements of the Manufactured Housing Division's education requirements to commonly applied licensing practices.

Fiscal Implication Summary

These provisions will not have any significant fiscal impact to the State.

Agency at a Glance

(September 2010)

Agency at a Glance

The Texas Department of Housing and Community Affairs (TDHCA) works to ensure the availability of affordable housing, provides funding for community assistance, and regulates the manufactured housing industry. The Department's mission is to help Texans achieve an improved quality of life through the development of better communities. The Legislature created the Department in 1991 by merging the Texas Department of Community Affairs and the Texas Housing Agency. The Department's functions include the following activities.

- Assisting low-income individuals and families to obtain affordable rental housing by awarding federal funds and tax credits, as well as state funds, to nonprofit and for-profit organizations and local governments.
- Assisting low- and moderate-income families with home rehabilitation, reconstruction, or first-time home purchase.
- Assisting low-income individuals and families through a network of public and private service providers to obtain community-based support services, including services to address homelessness, foreclosure, high utility costs, home weatherization, and other concerns.
- Acting as an information clearinghouse on affordable housing resources in Texas.
- Regulating the manufactured housing industry and maintaining official records of manufactured home ownership, location, and status, including liens.

Key Facts

- **Policy Board**. The Department is governed by a board of seven public members, and the Manufactured Housing Division is governed by a separate board of five public members. The Governor appoints the members to both boards and designates the presiding officers. Members serve staggered six-year terms. The Department's board is assisted by three advisory committees including the Executive Award and Review, Colonia Resident, and Colonia Initiative Advisory Committees. The Manufactured Housing Board has one advisory committee that occasionally provides advice on changes to agency rules.
- **Staffing**. The agency has a full-time equivalent cap of 314, but currently employs 383 staff. The 81st Legislature authorized the Department to temporarily exceed that cap to fulfill duties related to emergency disaster recovery and American Recovery and Reinvestment Act (ARRA) funds.[1] The Department employs 319 staff to fulfill housing and community services functions, and 64 staff in the Manufactured Housing Division. Most staff work in one of the agency's two Austin locations. The Department has three Office of Colonia Initiatives field offices, one disaster recovery field office, and eight Manufactured Housing Division field offices.
- **Funding**. In fiscal year 2009, the Department expended or encumbered about $653 million in funds for activities that predominantly benefit low- and moderate-income Texans. About 99 percent of housing and community services funds came directly from the federal government as grants and payments. Manufactured housing funds come from licensing fees, documentation fees, and some federal funds.

The Department received $152.8 million in state-appropriated funds in fiscal year 2009; however, the majority of the funds that flow through the Department do not go through the standard legislative appropriations process. Long-standing federal programs, including housing tax credits and single- and multifamily bonds, provide federal authorization rather than direct funding, and only administrative funds for these programs are included in the legislative appropriations process. TDHCA receives these administrative funds as appropriated receipts. One-time emergency funding, such as disaster recovery and ARRA funding, is not included in typical base appropriations to the Department, but is appropriated to the Department via other articles of the General Appropriations Act.[2]

In the housing tax credit program and the single- and multifamily bond programs, the federal government authorizes the State to issue tax credits or bonds to raise capital for developments or homeownership activities. The federal government uses a formula based on population to determine the amount of credits and bonds each state can issue. The chart, *Recurring Revenue Sources and Funding Authority*, details the fiscal year 2009 state-appropriated and federally authorized funding for all typical funding streams.

Recurring Revenue Sources and Funding Authority
FY 2009

State-Appropriated Funds	
General Revenue	$7.3 million
Federal Funds	$128.7 million
Appropriated Receipts	$16.8 million
Interagency Contracts	$68,255
Subtotal	$152.8 million
Federally Authorized Funds	
Single-Family Mortgage Revenue Bond Program*	$98.4 million
Multifamily Mortgage Revenue Bond Program*	$28.7 million
Housing Tax Credits	$51 million
Subtotal	$178.1 million
Total Appropriated and Authorized Funds	**$330.9 million**

* In 2009, the economic recession and the downturn in the bond market resulted in TDHCA using less than half of its single- and multifamily bond authority.

In fiscal year 2009 the State's general revenue contribution was $7.3 million. In fiscal years 2010 and 2011 general revenue funds increased to $22.6 million per year following additional appropriations to the Department's Housing Trust Fund, and the creation of a new homelessness initiative for Texas' eight largest cities.

Since 2005, Texas has received a steady influx of emergency federal dollars related to hurricane and economic recovery activities. Appendix A provides a brief description of the types of funding the Department has received, the periods in which that funding is available, and information on current expenditure levels.

In fiscal year 2009, TDHCA actually expended or encumbered $653 million. This amount includes typical grants and funds, emergency disaster recovery funds, and administrative costs associated with all department activities. The chart, *Expenditures and Encumbrances by Strategy*, shows the Department's expenditures by type.

Expenditures and Encumbrances by Strategy
FY 2009

Affordable Housing		
Single Family	HOME Program	$32,193,519
	Housing Trust Fund	$17,465,004
	Mortgage Revenue Bond Program	$1,205,896
Multifamily	HOME Program	$6,939,749
	Section 8 Rental Assistance	$6,378,968
	Housing Tax Credits	$1,357,348
	Mortgage Revenue Bond Program	$176,680
	Housing Trust Fund	$60,329
Information and Assistance		
Housing Resource Center		$1,185,272
Colonia Service Centers		$287,470
Poor and Homeless Programs		
Energy Assistance Programs		$95,253,864
Poverty Related Funds		$38,177,790
Ensure Compliance		
Monitor Contract Requirements		$439,757,702*
Monitor Housing Requirements		$1,870,385
Manufactured Housing		
Inspections		$1,832,367
Enforcement		$1,288,411
Titling and Licensing		$1,156,665
Texas Online		$19,120
Indirect Administration and Support		
Central Administration		$4,639,315
Information Resources and Technology		$1,257,770
Operating Support		$417,116
Total		**$652,974,740**

* For fiscal year 2009, this strategy includes one-time expenditures of more than $400 million related to disaster recovery. In a year without significant funding for disaster recovery, monitoring expenditures are closer to $1 million.

- **Affordable Housing**. The Department administers many federal and some state programs to assist the State's low-income residents with finding and maintaining affordable housing. The Department's programs serve the homeless, finance multifamily development, subsidize rents, provide homebuyer assistance, rehabilitate homes, and assist families with disaster recovery. The Department accomplishes these objectives through loans, grants, vouchers, down payment assistance, and tax credits. Department programs serve the entire state, though some programs target specific areas such as the colonias near the Texas-Mexico border or specific groups such as Texans with disabilities. In fiscal year 2009, the Department assisted 12,784 households with housing needs through additional funding.

- **Community Services**. The Department administers several programs to help local agencies provide services to very low-income and homeless Texans. Community services may vary widely across the state and depending on the TDHCA program, but include activities like education, health, and employment services; self-sufficiency programs; transportation, rental and utility assistance; and emergency and other shelter services. The Department also provides home weatherization and utility payment assistance in all 254 counties. In fiscal year 2009, approximately 120,767 individuals or households received homeless services; 137,854 received utility bill support or weatherization assistance; and 391,617 received other supportive services. Appendix B provides additional detail on the Department's housing and community services programs and the number of people they serve.

- **Compliance and Asset Management**. The Department ensures that entities that administer federal and state multifamily housing programs adhere to established guidelines by monitoring the contracting and construction phases of projects and ensuring that projects meet physical and contractual standards after they are in service. As of May 2010, the Department was overseeing approximately 450 active contracts totaling about $1 billion in federal and state funds, and monitoring the ongoing compliance of a growing portfolio of 1,800 properties, totaling approximately 195,000 units.

- **Manufactured Housing Regulation**. Governed by a separate board, the Manufactured Housing Division regulates manufactured housing activities in Texas to ensure units are well built and correctly installed, and that ownership is properly documented for financing and taxing purposes. The Division's major functions include issuing titles that are referred to as Statements of Ownership and Location for manufactured housing; licensing manufacturers, retailers, brokers, salespersons, and installers of manufactured housing; inspecting manufactured housing installations; and responding to consumer complaints. In fiscal year 2009, the Division issued 63,767 Statements of Ownership and Location, inspected 5,200 manufactured home installations, and issued 2,318 licenses.

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1 Texas Senate Bill 1, General Appropriations Act, 81st Legislature (2009) Article IX, Section 6.10(g).

2 Texas Senate Bill 1, General Appropriations Act, 81st Legislature (2009) Articles IX and XII.

Issues

Issue 1

Lack of State Planning Delays Funding to Hard Hit Texas Communities Recovering From Major Disasters.

Background

Since 2005, six major storms have impacted Texas including Hurricanes Katrina and Rita in 2005, Hurricanes Gustav, Dolly, and Ike in 2008, and Hurricane Alex in 2010. These storms caused loss of life, and extensive damage to housing and infrastructure along the Texas Coast. In response to each of the storms, the federal government provided both emergency and short-term assistance though the Federal Emergency Management Agency (FEMA). For the 2005 and 2008 storms, Congress authorized specific longer-term rebuilding assistance through the U.S. Department of Housing and Urban Development's (HUD) Community Development Block Grant (CDBG) program.

Disaster response occurs in three phases: emergency response, short-term recovery, and long-term recovery, as detailed in the textbox, *Disaster Response Stages*. In Texas, state administration of this three-phase process is split among several agencies and coordinated through the Office of the Governor. The Texas Division of Emergency Management (TDEM) at the Department of Public Safety coordinates the State's emergency response and short-term recovery efforts. The State's two community development agencies, the Texas Department of Housing and Community Affairs (TDHCA) and the Texas Department of Rural Affairs (TDRA), oversee longer-term recovery efforts related to replacement of housing and infrastructure in impacted communities. These longer-term federal recovery funds must be used to address the needs of low- to moderate-income families, urgent needs, or slum and blight conditions.

Disaster Response Stages

Emergency Response: includes activities like evacuation, mobilization of core emergency services, and search and rescue.

Short-Term Recovery: includes temporary housing assistance, debris removal, and repairs.

Long-Term Recovery: includes rebuilding housing and infrastructure to return the community to where it was before the storm.

In response to recent storms, the federal government has provided four rounds of CDBG funding to Texas, and the State elected to use a variety of local subrecipients to administer the funds, complete infrastructure projects, and rebuild or rehabilitate damaged homes. The chart on the following page, *Texas Long-Term Recovery Funds*, provides additional information on the rounds of funding and local entities that administer these funds.

Texas Long-Term Recovery Funds (millions)

<table>
<tr><th>Funding Rounds</th><th>Local Administrators</th><th>Housing*</th><th>Infrastructure*</th><th>Total</th></tr>
<tr><td>Rita Round I</td><td>• Deep East Texas Council of Governments (DETCOG)
• East Texas Council of Governments (ETCOG)
• Houston-Galveston Area Council (HGAC)
• South East Texas Regional Planning Commission (SETRPC)</td><td>$42.4</td><td>$32.1</td><td>$74.5</td></tr>
<tr><td>Rita Round II</td><td>• Infrastructure recipients including cities, counties, and COGs
• Private Contractor: ACS Solutions, Inc.
• County: Harris
• City: Houston</td><td>$384.5</td><td>$44.1</td><td>$428.6</td></tr>
<tr><td>Dolly and Ike Round I</td><td rowspan="2">• COGS: DETCOG, ETCOG, HGAC, SETRPC
• Counties: Cameron, Chambers, Fort Bend, Galveston, Harris, Hidalgo, Liberty, Montgomery, Willacy
• Cities: Brownsville, Galveston, Houston, Mission
• Other: Brazos Valley Affordable Housing Corporation</td><td>$654.2</td><td>$660.8</td><td>$1,315</td></tr>
<tr><td>Dolly and Ike Round II</td><td>$1,054.2</td><td>$688.7</td><td>$1,743</td></tr>
</table>

* Includes funding for state and local administration and planning, as well as housing or infrastructure activities.

Five years after Hurricane Rita, the vast majority of TDHCA's Rita Round I work is completed, however, for each round of funding that Texas has received so far, local and state partners will likely take more than five years to finish recovery work. Appendix C specifies timelines for each round of funding Texas has received to date. In general, no matter the method of distribution of funds, it takes Texas at least two years from the date of the storm to completion of the first house. Though individual home repair and reconstruction may only take one to two months to complete, recovery work continues for several years because of difficulty locating and qualifying applicants. The chart on the following page, *Status of CDBG Housing Funds*, provides additional detail on expenditure rates and production.

Status of CDBG Housing Funds – July 2010

Hurricane (Landfall)	Funds Released to Texas*	Expenditures and Production
Hurricane Rita September 2005	Round I Funding June 2006	**Housing: 94.1% expended** • 519 single-family homes completed
		Infrastructure: 96.8% expended • 94 contracts awarded • 85.1% of contracts completed
	Round II Funding May 2007	**Housing: 70.9% expended** • 1,678 single-family homes completed • 1,180 rental units completed
		Infrastructure: 69.2% expended • 8 contracts awarded, all in process of being completed
Hurricanes Dolly and Ike July & September 2008	Round I Funding March 2009	**Housing: 2.6% expended** • 235 households served through down payment assistance • No construction completed
		Infrastructure: 6% expended • 12 sites completed • 132 projects under construction
	Round II Funding Not yet released	Funds not yet allocated to Texas

* Funds are considered released to Texas when HUD approves the State's Action Plan, though funding is not available for use at the local level for some time following this point due to the State's need to make awards and contract with local subrecipients.

Findings

The State has not effectively planned for the long-term recovery from major disasters.

State law does not require state agencies or communities to plan for long-term recovery. Over the five years since Hurricanes Katrina and Rita, TDHCA and TDRA have each learned many lessons about administering these programs but have not coordinated to thoroughly evaluate their individual and collective experiences. The Department and TDRA have not undertaken comprehensive planning activities voluntarily and have been slow to respond to legislative pressure to plan.

- **Nonexistent long-term plans**. Texas has numerous state and local plans and strategies to address emergency management and short-term recovery, but the plans do not extend into the long-term phase of disaster recovery. Texas law requires state and local emergency management plans. In addition, FEMA and Governor Perry have directed TDHCA to develop a Texas Disaster Housing Strategy in conjunction with FEMA.

These existing manuals, plans, and strategies, created by FEMA, TDEM, TDHCA, and local communities, outline the state and local emergency response activities, identify short-term recovery activities, and delineate responsible parties. However, emergency plans do not generally address what happens in communities six to 18 months after a disaster, nor do they provide much detail on program operation.[1] Specifically, local plans may provide some guidance on administering FEMA assistance programs, but do not include details on how a locality might administer CDBG funding. Likewise, TDEM's training courses provide guidance on individual and public assistance available through FEMA, as well as agricultural disaster assistance, but do not cover local roles and responsibilities associated with CDBG programs.

Despite clear legislative direction, the Department has yet to undertake more comprehensive disaster recovery planning.

- **Inadequate planning activity**. Both the Texas legislature and HUD require TDHCA to coordinate with stakeholders to do additional planning in advance of Ike-Dolly Round II expenditures. To date, the Department has failed to comply with a recent legislative requirement to develop a more efficient housing reconstruction plan. In 2009 the Legislature required the Department to establish a Natural Disaster Housing Reconstruction Advisory Committee. The Committee was charged with evaluating existing systems of providing housing to victims of natural disasters, and developing alternative systems to increase efficiency and cost-effectiveness while improving sustainability, affordability, desirability, and quality.[2] The Committee was required to make recommendations to the TDHCA Board by January 1, 2010.[3] The Department chose to delay the work of the Committee pending additional funding information from the federal government; however, many elements of the plan are not contingent on this funding information and the plan, as laid out in statute, is intended to encourage the agency to undertake more comprehensive disaster recovery planning, which, to date, has not happened. The Department now aims to complete the required report in October 2010.

In response to a complaint, HUD is requiring Texas to develop better guidelines for distributing recovery funds.

Recognizing the need for consistent guidance on housing programs, HUD has recently required TDHCA to convene a housing task force to develop guidelines to govern recovery housing programs funded through Ike-Dolly Round II. This requirement is part of a Conciliation Agreement signed by TDHCA, TDRA, HUD, and two Texas-based nonprofits, and it resolves a complaint filed with HUD over concerns about Texas' distribution of recovery funds. These guidelines will more clearly define how localities should conduct program outreach, determine eligibility, and administer programs.[4] The Conciliation Agreement was finalized in May 2010. The Department recently had its first stakeholder meeting and anticipates that guidelines will be finalized by November 2010.

Failure to plan slows the pace of recovery, increasing the harms suffered by communities and individuals.

- **Delayed community revitalization**. The slow pace of recovery inhibits communities' ability to return to normal following a storm. Families who cannot locate temporary housing or rebuild homes face dislocation from jobs and schools, creating numerous difficulties for the families and the local industries and economies that rely on those families. Reduced economic activity further inhibits recovery as communities have fewer jobs and funds to pay for essential services. City officials in Galveston, as well as other areas impacted by recent storms, have expressed concern that the slow pace of federal disaster recovery funds is preventing people from returning and further delaying those communities' full recovery.[5] Approximately two years after Hurricane Ike, Texas A&M researchers estimate that Galveston's population has dropped 9 percent.[6]

Without adequate housing, families face dislocation from jobs and schools.

- **Deteriorating living conditions**. Delays in recovery can also increase costs to individuals and families who remain in deteriorating homes, or trailers outside of those homes, facing additional health and safety burdens. Numerous local providers reported to Sunset staff that they believe the poor conditions following the storm, and the stresses and delays associated with the recovery process, exacerbated health conditions for many people, especially elderly people awaiting assistance.

- **Higher costs, fewer people served**. The longer recovery takes, the greater the potential for increased financial cost, and the fewer families that can be served. Subrecipients initially anticipated performing a combination of repairs and reconstructions but found, ultimately, that the majority of houses required complete reconstruction. Subrecipients listed two main reasons for an increase in reconstruction over repair: over time, water and other damage compromised structures such that repairs turned into demolitions; or that worsening damage, combined with existing substandard electrical or other systems, meant that a simple repair would still leave the house in substandard condition. As a result of the need to demolish and rebuild more homes, per applicant costs increased, resulting in fewer low-income Texans being served through these programs.

The longer assistance takes the more homes deteriorate, adding to the cost of recovery.

To be successful in recovery efforts, Texas needs to take action to address structural and administrative roadblocks to recovery before the next storm hits.

Sunset staff found problems at all levels contributed to the delays experienced by communities. As this report reflects the Sunset staff review of TDHCA, the discussion below focuses more on the challenges encountered in constructing housing following disasters, though TDRA and communities face similar challenges in administering money for infrastructure projects.

- **Lengthy recovery pipeline**. Slowing down the use of funds from the initial federal legislation authorizing help, through to the construction of homes, is the sheer number of entities and steps involved. Different layers of federal, state, and local approval impact the amount of time it takes to expend funds and complete homes. While different storms result in different timelines, the stages for allocating funding are similar, as detailed in the chart, *Timing of Recovery Stages*, below.

Timing of Recovery Stages

	Stage	Description	Time to Stage Completion (months)
Federal	Presidential and Congressional Response	Time required from landfall, to disaster declaration, to federal legislation authorizing long-term funds	1-3
Federal	HUD Allocation	Time that elapses between signing of legislation and allocation from HUD	1-4
Federal	State Action Plan Approval	Time required for HUD to approve Texas' State Action Plan for use of federal funds	1.5-5
State	State Action Plan	Period to develop State Action Plan	1-6
State	State Contracting	Execution of contracts with local subrecipients including COGS, cities, counties, or private administrators	3-7
Local	Completed Application	Average time to receive all application materials from applicant	1-18*
Local	Eligibility Determination	Average time to determine eligibility for participants based on a complete application package	1-6*
Local	Local Procurement	Period for subrecipients to contract with builders, engineers, project managers, eligibility workers, and other parties involved in local efforts	1-3
Local	Home Construction	Average time to rehabilitate or reconstruct a home, or replace a manufactured home	1-3**

*Reflects average times reported by Rita I recipients including SETRPC, HGAC, and DETCOG.
**Reflects average time reported by Rita I COG recipients and ACS, the State's private contractor for Rita Round II funds.

For money to flow to communities in Texas, and for homes and infrastructure to be built, the federal government, state agencies, and local partners must complete a number of sequential steps. Appendix D provides a more detailed account of the activities federal, state, and local partners undertake to expend housing funds and complete homes.

- **Inconsistent methods of administration**. While each round of funding came through the same federal mechanism – the CDBG program – Texas has chosen to distribute the funding in different ways, and with different rules and regulations, for each round, as detailed in the textbox, *Distribution of Recovery Funds*.

Distribution of Recovery Funds

In an effort to strike a balance between efficiency through centralization and local control of funds, the State used separate models to distribute each round of funding.

Rita Round I: The State determined that Councils of Government should administer $74.5 million in funds for infrastructure and housing recovery.

Rita Round II: The Governor appointed TDHCA as lead agency to administer $428.7 million. TDHCA contracted with a state-level contractor to complete housing work. TDRA worked directly with local administrators to complete infrastructure projects.

Ike-Dolly Round I: The Governor appointed TDRA as the lead agency with $3 billion in funds administered locally by a combination of COGs, counties, and cities, according to federal rules and local priorities.

Ike-Dolly Round II: Round II relies on TDRA and the same local administrators as Round I; however, following the Conciliation Agreement, local administrators will have to use funding for specific purposes, such as one-for-one replacement of public housing units and a single-family rental program, in addition to local priorities.

Without a clear administrative model, potential local administrators do not know what to expect and cannot prepare accordingly. With each new model, new and experienced participants alike face a learning curve and a need to ramp up services. In addition, changes in designation of local administrators can cause confusion for applicants. For citizens seeking assistance for damages related to Hurricane Rita, the round of funding, not the storm, dictated the administrative office they should contact for help and the type of help they might receive.

Locals faced a new administrative system with each storm and round of funding.

In addition, though TDHCA has consistently administered housing funds and TDRA has administered infrastructure funds, both TDHCA and TDRA have acted as lead agency at different times, requiring subrecipients to adjust processes to meet each agency's requirements and timelines.

- **Complicated federal and state regulations**. While CDBG is widely considered to be a flexible housing program, and therefore more amenable to use in emergency situations like natural disasters, it is still a complex program to operate. Numerous federal regulations, intended to ensure accountability and prevent fraud, slow down use of funds. To expedite use of funds, Texas requests waivers of some program provisions and often requests more favorable interpretations of rules. HUD typically grants standard disaster waivers to Texas, but frequently denies leniency on program regulations. TDHCA must comply with all regulations or the State could face repayment to HUD.

Disaster recovery subrecipients detailed many specific state and federal requirements, which could often take individual intake case managers weeks to complete. For example, to qualify for a home through CDBG, the subrecipient must verify that the applicant is not duplicating any previous federal benefits from FEMA or other entities. If staff determines CDBG would be a duplication of benefits, the applicant must repay the benefit or make up the gap to qualify for housing.

Having lost their homes, applicants often cannot easily produce documents needed to qualify for help.

Subrecipients uniformly reported that obtaining the documentation or other evidence required to certify that the applicant had not previously received a benefit, or, if they had, that CDBG was not a duplication, could take months. Having lived in temporary housing for several years and having lost their homes, many applicants do not have the paperwork to verify that they are not duplicating benefits. For those who did receive previous federal assistance from FEMA, they are often unable to repay funds and cannot qualify for assistance.

- **Changing regulations and inadequate guidance**. CDBG funds are difficult to administer at the local level because many federal and state rules, or interpretations of rules, have continued to change throughout the four rounds of funding. Sunset staff heard examples of both subrecipients and state staff who believed they were doing something correctly, based on a prior understanding of a regulation, but found out weeks or months later that they were not in compliance. In some cases this resulted in hundreds of applicants having to requalify for support. For example, in Rita Rounds I and II applicants were not required to verify applicant child support status. TDHCA recently determined that child support status was an important state requirement, and all Dolly and Ike applicants will be reviewed to ensure they are current, or have an active plan to pay child support. While this may serve an important state goal, subrecipients were not notified of this requirement until after many applicants were well into, or through, certification, causing subrecipients to have to re-review applications and request documentation, potentially delaying housing for months or disqualifying already-approved applicants.

TDHCA's ad hoc approach to training does not adequately prepare local administrators.

- **Insufficient training resources**. The Department has not developed a uniform or timely training program to ensure applicants receive all necessary information when they need it. TDHCA developed a guidance manual for the administration of Rita funds, though as rules changed it rapidly became outdated. The Department has relied on one-on-one assistance and weekly webinars to distribute guidance for Ike and Dolly, though the Department hopes to finish a manual in the next few months. While response to webinars and manuals has been positive, many subrecipients report it would have been better to have the information at the beginning of the program, and some report it came too late to be useful.

- **Changing guidelines and forms**. While TDHCA posts numerous forms on their website, subrecipients report the Department required local administrators to develop new program guidelines and forms for each round of recovery funding. While communities may benefit from local solutions, many subrecipients have received three or more rounds of funding and have had to update and recreate programs and forms for each new round. In some cases this is the result of the different methods of distribution chosen by the State that put local administrators in differing roles for different rounds of funding; however, local administrators reported to Sunset staff that at times TDHCA required them to make very minor changes that would trigger lengthy local and state approval processes. Form and guideline development by local administrators, local approval, and TDHCA approval can take weeks or months to complete.

Each new round of funding triggered new forms and guidelines.

- **Lack of experience and capacity.** Before Rita Round I, Texas state agencies and local administrators had little to no experience managing long-term recovery programs. Since that time state and local administrators have hired staff and done extensive on-the-job training.

  At the local level, many Rita, Dolly, and Ike subrecipients did not have housing programs, or even administer housing funds at all, before they received disaster recovery funding. Many of these communities now have millions or even hundreds of millions of dollars to disburse. These entities have had to create programs, hire and train staff, procure and monitor consultants or outside administrators, and learn state and federal regulations. Those larger subrecipients that had housing programs have also faced a steep learning curve resulting from large increases in money and numerous new federal and state requirements. Since many of the subrecipients had not previously received funds from TDHCA, they had to learn TDHCA rules and how to interact with the State's housing contract system, which is unlike local systems or HUD's.

Many communities with little or no housing experience were suddenly responsible for millions in disaster recovery funds.

  The disaster recovery process has also resulted in TDHCA entering into several large-scale contracts, which highlight capacity limitations that place Texas at risk of losing federal funds. In addition to CDBG funds, in 2007, TDHCA received $16.5 million from FEMA to run an alternative housing pilot program. Texas is in the process of returning about $9.5 million to FEMA following the failure of TDHCA's contract to build the housing. TDHCA contracted with a private entity to build 250 units, but the contractor was unable to secure local permits or install more than a handful of homes, so TDHCA terminated the contract. The Department's other partner, the City of Houston, was not able to acquire a site for the housing, and withdrew from the process. With neither a contractor nor a housing site, Texas must return about 58 percent of the funds it received.

- **Inadequate coordination with other state agencies**. While long-term recovery falls mainly under the jurisdiction of TDHCA and TDRA, other state agencies can play a role. Failure to coordinate with those agencies has caused delays in use of funds and may cause additional problems in the recovery process. For example, federal rules require insurance for reconstructed homes; however, many homes may only be eligible for insurance through the State's Texas Windstorm Insurance Association (TWIA). The Texas Department of Insurance requires all TWIA homes to be built to a specific windstorm code.

  The Texas Department of Insurance reports that they were not aware of hundreds of homes being built until many months after construction began. At least some of the homes will not qualify for insurance, potentially leaving those homes uninsured and in violation of federal requirements. The two agencies, TDHCA and TDI, have improved coordination in recent months, which TDHCA believes has reduced delays. However, TDHCA acknowledges that some homes will have to be retrofitted to meet windstorm code. While more communication between the agencies should improve future outcomes, delays and the additional expenses associated with retrofitting homes could have been avoided with better up-front coordination.

  The Department encountered a similar problem with the age of some damaged homes. Federal law requires the Texas Historical Commission to review older homes to help ensure recovery work will not negatively impact historic homes or districts. Historical reviews initially delayed work in early rounds of funding, but both the Department and the Historical Commission report construction delays have largely been eliminated.

Lack of coordination causes delays and increased costs.

The State has an opportunity to better meet the long-term needs of communities in the wake of disasters by planning for a better organized and efficient distribution of funds and services.

The State has yet to fully absorb lessons from previous CDBG disaster recovery funding or develop a clear model for allocation and administration of federal funds. Texas averages one Presidential disaster declaration per year. Clearly, additional hurricanes, tornados, wild fires, or other natural disasters will significantly impact parts of the state in the future. Taking the opportunity, in advance of another disaster, to develop a master recovery plan that details roles and regulations for all relevant state and local entities, would help to guide state and federal funding and provide a roadmap for future long-term disaster recovery efforts.

Recommendations

Change in Statute

1.1 Require TDHCA, in consultation with the Texas Department of Rural Affairs and the Governor's Office, to develop a comprehensive long-term disaster recovery plan.

This recommendation would require TDHCA, in consultation with TDRA and the Office of the Governor, to develop a clear and consistent long-term disaster recovery plan based on the knowledge gained administering four rounds of CDBG funding. This recommendation would designate the Department as the agency responsible for ensuring development of the plan. Consistent with current responsibilities, TDHCA would develop housing components of the plan and TDRA would be responsible for developing plan components related to infrastructure. The agencies should seek stakeholder input from past local administrators, contractors, community advocates, businesses, and nonprofits. To the extent possible, THDCA should work with HUD to ensure elements of the plan comply with federal rules and requirements.

This recommendation would require TDHCA and TDRA to develop the plan and update it biennially, and obtain the approval of the Governor. The agencies should develop the initial plan by March 1, 2012, and obtain the approval of the Governor by May 1, 2012, in advance of hurricane season, which begins June 1.

The plan should establish the following.

- **Unambiguous methods of program administration**. While different storms may require different responses, the plan should outline how the State intends to distribute funding to local areas. The Governor would still have discretion to change the model if circumstances require it, but outlining the State's approach would provide better information to localities and assist them in preparing for future disasters.

- **Clear outreach, eligibility, and program guidelines**. TDHCA and TDRA should list all guidelines for outreach to applicants, eligible housing and infrastructure activities, benefit and eligibility criteria, housing quality standards, and priorities for serving local populations. The plan should outline procedures to comply with duplication of benefits requirements, and other complicated federal requirements, which should reduce the time for applicants to establish eligibility. The plan should rely on efforts already underway through the Housing Program Guidelines Task Force established through the Conciliation Agreement. Clear guidelines would provide consistent direction on how local administrators could run programs and interpret rules and regulations, while still allowing local governments the choice of which programs they wish to operate.

- **Clear-cut lines of communication**. TDHCA and TDRA should detail lines of communication between federal, state, and local entities so that local administrators are clear about where to get the most up-to-date information and have reasonable expectations about when they will receive guidance from state partners.

- **Timely training programs**. The plan should establish a pre-event and a post-event training plan. Pre-event training will help ensure essential expertise is not lost if Texas does not experience a major storm for several years. Post-event training, designed to ensure local administrators receive information in a timely manner, could include manuals, trainings, webinars, and regular local-administrator roundtables, once funds are released to Texas.

- **Standard forms and checklists**. Similar to material provided by the Division of Emergency Management, the agencies would compile and update all standard forms required to perform eligible activities as much as is possible in advance of hurricane season, and post the materials online. Having appropriate forms developed in advance of a storm helps ensure that materials are ready in a timely manner, and reduces the amount of work local administrators must perform as they establish recovery programs.

- **Explicit monitoring and reporting requirements**. The agencies should clearly outline federal and state monitoring and reporting requirements. To the extent possible, the plan should provide a comprehensive list of the types of data local administrators would be required to collect, analyze, and report. The plan should also detail state information technology systems and processes that would be used to administer federal funds. This would help ensure local administrators clearly understand reporting and data requirements, and that local, state, and federal information systems can work well together.

- **Up-front coordination with other state agencies**. The plan would identify elements of disaster recovery where coordination with other state agencies is required and implement memoranda of understanding as appropriate. Initially this would include agreements with the Texas Historical Commission and Texas Department of Insurance, and could expand to include other agencies as necessary.

The master plan would coordinate or dovetail with the existing *State of Texas Emergency Management Plan* and *Texas Recovery Manual*, administered or provided by DPS' Division of Emergency Management that primarily deals with the immediate and short-term response to disasters.

While the structure of federal programs could change in the future, this plan would help ensure Texas is well positioned to efficiently administer future federal funds.

1.2 Require the Governor to designate the State's lead agency for administration of any potential long-term disaster recovery funding by May 1 of every even-numbered year.

This recommendation would require the Governor to designate one lead agency to administer long-term disaster recovery funds, in accordance with federal requirements, by May 1, consistent with approval of the long-term disaster recovery plan. The Governor would make the first designation in 2012 and every two years thereafter. Both TDHCA and TDRA could continue to oversee their respective areas of recovery, but they would know, going into hurricane season, which agency would be responsible for overseeing the State's program. By designating the lead agency in advance of a possible storm, the Governor would lay the groundwork for better preparation within the agencies, and potentially eliminate delays associated with neither agency knowing who is in charge immediately after the storm.

1.3 Require communities to add a long-term recovery component to existing emergency management plans.

This recommendation would require communities to identify local resources and assets needed for long-term recovery activity as part of their existing local emergency plans. Current plans focus on emergency response and short-term recovery, and this would expand planning to encompass possible receipt of CDBG or other long-term recovery funds.

Local communities would be required to identify key staff, agencies, and processes required for long-term recovery and administration of CDBG funds in their local emergency plans. Since these communities also receive FEMA and other short-term assistance, incorporating all funding sources into the local plan would allow for more efficient use of FEMA, as well as CDBG, funds.

Fiscal Implication Summary

A long-term disaster recovery plan would facilitate faster allocation of funds, potentially reducing the per person cost of the program, and allowing the program to serve more people. However, the plan would require ongoing funding and staff to maintain the plan and provide training. Both agencies' disaster recovery divisions are currently funded from administrative CDBG funds. Development of the initial plan and on-going training could be accomplished using existing staff. Given the current rate of expenditure of funds, both agencies will have CDBG administrative funds and disaster recovery employees for many years and could use those employees to maintain the plan and provide training.

....

[1] Texas Government Code, sec. 418.102 – sec. 418.106; Texas Department of Public Safety, Division of Emergency Management, *State of Texas Emergency Management Plan, Annex J, Recovery* (Austin, Texas, May 2005), p. J-8; Texas Department of Public Safety, Division of Emergency Management, *Sample Plan* (Austin, Texas, May 2005), p. BP-20. Online. Available: www.txdps.state.tx.us/dem/pages/downloadableforms.htm#annexindex. Accessed: August 16, 2010; and Texas Department of Housing and Community Affairs, *Draft Texas Disaster Housing Strategy* (Austin, Texas, August 2010).

[2] Texas House Bill 2450, 81st Legislature (2009).

[3] Ibid.

[4] Texas Department of Rural Affairs, *State of Texas Plan for Disaster Recovery – Revised Amendment 1* (Austin, Texas, June 1, 2010), pp. 186-187. Online. Available: www.tdra.state.tx.us/pdfs/Action_Plan_Amendment_No_1_Final_6_1_2010.pdf. Accessed: July 28, 2010.

[5] Sunset staff meetings with various city, county, and council of government staff (Galveston, Beaumont, Houston, Texas, June 8-10, 2010).

[6] Rhiannon Meyers, "Researchers: Galveston's population dropped 9 percent after Hurricane Ike." *The Daily News* (June 1, 2010). Online. Available: www.khou.com/news/local/Researchers-Galvestons-population-dropped-9-percent-after-Hurricane-Ike-95320254.html. Accessed: July 22, 2010.

Responses to Issue 1

Recommendation 1.1

Require TDHCA, in consultation with the Texas Department of Rural Affairs and the Governor's Office, to develop a comprehensive long-term disaster recovery plan.

Agency Response to 1.1

The Texas Department of Housing and Community Affairs concurs with recommendations contained in Issue 1, but has some differences of opinion regarding points within the background information used to reach the recommendations. The Department believes that the changing Disaster Recovery Community Development Block Grant federal guidance impacts the long term planning process. (C. Kent Conine, Board Chairman and Michael Gerber, Executive Director – Texas Department of Housing and Community Affairs)

For 1.1

Kevin Jewell, Consultant – on behalf of the following 11 organizations: Advocacy Inc., Association of Rural Communities in Texas, Center on Disability and Development – Texas A&M University, Easter Seals Central Texas, Habitat for Humanity of Texas, Motivation Education & Training, Inc., Texas Association of Community Development Corporations, Texas Association of Local Housing Finance Agencies, Texas Council for Developmental Disabilities, Texas Center for Disability Studies – UT, and Texas Low Income Housing Information Service

Noel Poyo, Executive Director – National Association of Latino Community Asset Builders, San Antonio

Madison Sloan, Staff Attorney – Texas Appleseed and John Henneberger, Co-Director – Texas Low Income Housing Information Service

Chuck Wemple, Economic Development Program Manager – Houston-Galveston Area Council of Governments, Houston

Against 1.1

None received.

Modification

1. Require the State to establish an objective and data-based funding allocation formula for the distribution of disaster recovery funds as part of its disaster recovery plan. (Madison Sloan, Staff Attorney – Texas Appleseed and John Henneberger, Co-Director – Texas Low Income Housing Information Service)

Recommendation 1.2

Require the Governor to designate the State's lead agency for administration of any potential long-term disaster recovery funding by May 1 of every even-numbered year.

Agency Response to 1.2

The Texas Department of Housing and Community Affairs concurs with recommendation 1.2. (C. Kent Conine, Board Chairman and Michael Gerber, Executive Director – Texas Department of Housing and Community Affairs)

For 1.2

Noel Poyo, Executive Director – National Association of Latino Community Asset Builders, San Antonio

Madison Sloan, Staff Attorney – Texas Appleseed and John Henneberger, Co-Director – Texas Low Income Housing Information Service

Chuck Wemple, Economic Development Program Manager – Houston-Galveston Area Council of Governments, Houston

Against 1.2

None received.

Recommendation 1.3

Require communities to add a long-term recovery component to existing emergency management plans.

Agency Response to 1.3

The Texas Department of Housing and Community Affairs concurs with recommendation 1.3. (C. Kent Conine, Board Chairman and Michael Gerber, Executive Director – Texas Department of Housing and Community Affairs)

For 1.3

Noel Poyo, Executive Director – National Association of Latino Community Asset Builders, San Antonio

Madison Sloan, Staff Attorney – Texas Appleseed and John Henneberger, Co-Director – Texas Low Income Housing Information Service

Chuck Wemple, Economic Development Program Manager – Houston-Galveston Area Council of Governments, Houston

Against 1.3

None received.

Commission Decision

Adopted Recommendations 1.1 through 1.3.

Legislative Action

None of the Sunset recommendations regarding long-term disaster recovery made it into law. The Legislature adopted Recommendations 1.1 through 1.3 in House Bill 2608, with modifications to allow the Governor to designate another agency other than TDHCA or TDRA to plan for and coordinate disaster recovery efforts; however, the Governor vetoed the bill. The Legislature did not revisit these provisions during the 1st Called Session.

Issue 2

Certain Statutory Requirements Impede Texas' Administration of the Housing Tax Credit Program.

Background

In Texas, prior to the current economic downturn, the Housing Tax Credit Program created about 10,000 affordable rental housing units per year, more than any other housing program in the state. The U.S. Department of the Treasury administers the program through a public-private partnership that provides federal tax incentives to encourage private investment in affordable housing. The Department of the Treasury allocates credits to each state based on population, and the Texas Department of Housing and Community Affairs (TDHCA) allocates Texas' credits to proposed affordable multifamily housing developments statewide. In return for a ten-year, dollar-for-dollar tax credit, property owners agree to set aside a portion of a property's units for rent to persons and families of low income, and restrict the rent on these units. Investors purchase the credits, providing partial equity for construction, and then claim the credits over time. In 2010, Texas received $65 million in housing tax credits, including $15 million in credits specifically designated for areas affected by Hurricane Ike.

Beginning in 2008, like many economic sectors, the tax credit market declined dramatically. Through the American Recovery and Reinvestment Act (ARRA), the federal government created the Tax Credit Exchange Program and the Tax Credit Assistance Program to help to keep previously awarded tax credit developments viable. The federal government will probably have to act to ensure the tax credit program's future once temporary ARRA programs expire; however, the program's historical success will most likely result in its continuation in some form.

To set the priorities and requirements for the allocation of tax credits, the federal government requires states to adopt a Qualified Allocation Plan (QAP). The QAP provides information on how to apply, how the Department assesses eligibility and scores applications, and what awardees must do to remain in program compliance. The QAP also details how the Department allocates credits regionally and how some credits are set aside for certain purposes, such as encouraging housing development by nonprofits and preserving existing affordable housing. The textbox, *Texas' 2010 QAP*, outlines each of the key components of the plan for 2010. The Department publishes the QAP in rules and updates these rules annually, including soliciting public comment.

Texas' 2010 QAP

The Qualified Allocation Plan for tax credits in Texas includes information on each of the following areas.

- Allocation goals
- Eligibility standards
- Site restrictions
- Regional allocation formula
- Pre-application process
- Threshold and selection criteria
- Credit underwriting and allocation processes
- Appeals and amendment processes
- Compliance monitoring
- Program fees

In addition to federal requirements, state law prescribes many specific requirements for when and how the Department can award tax credits in Texas. For example, key application cycle dates are laid out in statute, including a requirement for developers to submit applications by March 1, and for the Board to issue final awards by July 31.[1] State law spells out and prioritizes the top-ten criteria the Department must use in evaluating applications, as detailed in the chart, *Tax Credit Scoring*.[2] In addition to these ten items, the Department has added another 20 lower-priority, lower-scoring criteria. The tax credit program is very competitive, with successful and unsuccessful applications often separated by a single point.

Tax Credit Scoring*

Priority	Criterion	Maximum Points
1	Financial feasibility of the development	28
2	Quantifiable community participation based on letters from neighborhood organizations	24
3	Income levels of tenants	22
4	Size and quality of units	20
5	Commitment of local funding	18
6	Level of community support based on letters from state legislators	14
7	Rent levels of units	12
8	Cost of development by square foot	10
9	Services to be provided to tenants	8
10	Whether the development is located in a declared disaster area	7
11-30	20 criteria added by the Department, with scores ranging from 1 to 6 points each	77
Total Maximum Points		**240**

* Detailed in Texas Administrative Code, Title 10, part 1, rule 50.9.

Findings

Statute requires the awarding of significant points for letters from neighborhood organizations that are often inaccurate and outweigh other important criteria for a tax credit project.

Neighborhood organizations vary significantly in size and composition, and in some areas they do not exist at all. For example, at the TDHCA Board meeting on July 8, 2010, a tax credit applicant was allowed to include a letter from a neighborhood organization made up of two persons in a single household. Conversely, another applicant's neighborhood organization was made up of 18,000 households. Despite these variations in size, the scoring process values these letters equally – 24 points for support, 12 if neutral, and zero for opposition. Letters in support and opposition cancel each other out. For areas of the state that do not have neighborhood associations and receive no letters, applicants get 12 points despite having no input at all. The chart, *Tax Credit Scoring*, shows the different scoring items and their point values.

Agency staff must devote a lot of time to research the legitimacy of these groups to ensure they meet all the requirements for inclusion. In 2010, staff disqualified 26 percent of the letters received. Most often, the development site was not located within the boundaries of the group, the group consisted of only one person, or the group did not exist before the application cycle. In 2010, verifying and scoring neighborhood letters required more than five months of work by a full-time staff person dedicated solely to this purpose. To verify the eligibility of organizations for participation, the QAP requires the Department to locate groups, verify whether they are appropriately recorded, ensure groups have provided notice to persons eligible to join, and investigate the developer's involvement in the group's formation, among other items.

Staff must spend months verifying the eligibility of various neighborhood groups.

Neighborhood group scores can constitute 10 to 15 percent of an application's total score in a program where a single point can make the difference between winning or losing an award. Thus, staff's conclusions about groups are regularly contested. In 2009, eight of the 11 appeals of scoring received by the Department related to letters from neighborhood organizations.

In examining other states' approaches, Sunset staff found that neighborhood organization letters are considered, but rarely given this level of importance. More commonly, states rely on letters from locally elected officials and governing bodies, including town councils, mayors, and county commissioners. In fact, none of the five largest states, except for Texas, specifically require letters from neighborhood organizations to get points for community support, and none of them weigh neighborhood association input as heavily as Texas.[3]

Fixed statutory dates for the tax credit program prevent the State from distributing federal tax credit assistance awarded for special circumstances such as disasters.

Having key dates and deadlines for the tax credit application cycle set in state law prevents adjustments to accommodate emergency circumstances, such as natural disasters or economic downturns. For example, when the Department received $594 million in Tax Credit Exchange assistance under federal ARRA legislation in 2009, state law did not, at that time, allow the Department to accept tax credit applications outside of the application cycle outlined in law. Fortunately, the Legislature was in session and able to add a provision allowing the Department to create a separate application procedure for these specific funds. However, this provision expires on August 31, 2011.[4] Should Texas receive future assistance outside the set cycle, the Department could be unable to use federal tax credits until the regular cycle begins, or potentially lose them altogether, blunting Texas' ability to maximize the impact of federal assistance.

Without a change in law, Texas could be unable to use future emergency federal funding.

The statutory requirement to annually update the QAP is time consuming and unnecessary as the criteria and procedures do not change significantly from year to year.

While federal law requires states to adopt a Qualified Allocation Plan (QAP), it does not stipulate how often it must be updated. However, state law requires the Department to undertake a lengthy process to readopt the State's QAP for tax credits every year. In general, Sunset staff found that the QAP does not require such frequent revisiting, because the criteria for evaluating and awarding tax credits do not change from year to year. In a typical QAP update, the Department may make small-scale changes to application requirements or other administrative elements. However, potential applicants must spend significant time and effort, or hire tax credit consultants, to follow the QAP-development process, to ensure they know about possible changes that could affect project plans. Many of these projects involve significant amounts of time to develop and unexpected changes in the criteria can trigger project adjustments.

Annually updating the QAP diverts staff from other important tasks.

In addition, department staff spend about six months of each year republishing these rules and compiling public input to ensure the revised QAP is ready in time for the Board to release a draft in September, adopt a final plan in November, and provide to the Governor to sign by December. This process diverts staff from assisting applicants that have received awards in previous cycles with ongoing needs. As projects move from planning to actual construction, many questions arise and developers need staff assistance with the post-award amendments that require Board approval for any key changes in design. Annually updating the QAP impedes staff's ability to quickly process amendments, an aspect of the tax credit program that developers routinely claim takes too long due to limited agency resources.

Recommendations

Change in Statute

2.1 Change the basis for quantifying a community's participation in a proposed tax credit development to the receipt of a written statement from the local city council or county commissioners court.

Under this recommendation, the Department could continue to award points for the second highest criteria in statute, quantifiable community participation, but would base scoring on letters from the city council, or if none exists, the county commissioners court in the area of the proposed development. City or county letters would take the place of letters from neighborhood organizations. This change would not preclude TDHCA from awarding points for letters from neighborhood organizations as a discretionary scoring item, but the agency would no longer be statutorily required to use them as the basis for the second-highest criteria of the scoring process. The Department would continue to award or subtract points for community support on the basis of letters from state legislators, as the sixth scoring criteria in statute.

Letters from elected bodies would ensure that the basis for evaluating community participation is more representative of the community as a whole. Elected officials have been entrusted with making decisions for the community and have the responsibility and accountability inherent in representation, which neighborhood associations do not have. Local officials are typically more accessible through open, public means than groups based on voluntary membership, which would afford more equal opportunity for community residents to provide input.

2.2 Allow TDHCA to create additional tax credit allocation cycles to take advantage of non-standard federal assistance opportunities.

In the event the State receives emergency credits or related funding, this recommendation would allow the Department to release credits or associated funds for development outside of the regular application cycle by creating a new application cycle as needed. The recommendation would essentially make the temporary statutory authorization, which expires in 2011, permanent, and would also clarify the emergency authority applies to any federal programs related to tax credits.

2.3 Allow TDHCA's Board to update the qualified allocation plan biennially instead of annually.

This recommendation would allow the agency to update the qualified allocation plan every two years. The Board would continue to approve, and the Governor sign, each revised QAP. Awards would still be made annually. The recommendation would not restrict the Department's ability to update the QAP more frequently if the Board felt it was necessary.

Management Action

2.4 Direct TDHCA to include letters from neighborhood organizations in the scoring criterion for letters from community or civic organizations that serve the community in which the development is located.

Under this recommendation, the Department would continue to accept and score letters from neighborhood associations, but would do so under the scoring item designed to reflect community input from other, similar groups, like community or civic organizations. The Department has historically assigned up to six points for these letters. Adding neighborhood organization letters to this discretionary scoring item would allow the Department to continue to receiving valuable input from neighborhood associations, but would not require the letters to be the second-highest scoring item, as statute currently mandates.

Fiscal Implication Summary

Overall, these recommendations would save $31,366 in General Revenue, eliminate half an FTE, and result in a potential increase in federal funds. Changes to the scoring process would allow staff to refocus efforts on more appropriate criteria, and would save an estimated $31,366 per year based on the reduction of 0.5 FTE. While neighborhood organization letters would still receive points, the Department would no longer have to go to such great lengths to verify their eligibility. Giving the agency the flexibility to create additional tax credit cycles should result in a positive fiscal impact to the State, but the amount could not be estimated as it would depend on the future federal funding. Updating the QAP every two years should free up approximately 300 hours of staff time. However, many employees, including executive staff, are involved in updating the QAP while also performing a variety of different functions, making it difficult to identify any specific positions that could be eliminated.

Texas Department of Housing and Community Affairs

Fiscal Year	Savings to the General Revenue Fund	Change in the Number of FTEs From FY 2009
2012	$31,366	-0.5
2013	$31,366	-0.5
2014	$31,366	-0.5
2015	$31,366	-0.5
2016	$31,366	-0.5

1 Texas Government Code, sec. 2306.6724.

2 Texas Government Code, sec. 2306.6710.

3 California State Treasurer, *Low Income Housing Tax Credit Programs Qualified Allocation Plan*. Online. Available: www.treasurer.ca.gov/ctcac/qap.pdf. Accessed: July 29, 2010; Florida Housing Finance Corporation, *2009 Universal Application Multifamily Mortgage Revenue Bonds Program, HOME Investment Partnerships Rental Program, Housing Credit Program*. Online. Available: www.floridahousing.org/FHImageWebDocs/UniversalApps/2009/InstructionsAndApplication/2009_Universal_Application.pdf. Accessed: July 29, 2010; Illinois Housing Development Authority, *Low Income Housing Tax Credit Qualified Allocation Plan Calendar Year 2010*. Online. Available: www.ihda.org/admin/Upload/Files//4c15b43f-d10f-4775-ba8e-1e15f35787ff.pdf. Accessed: July 29, 2010; New York Division of Housing and Community Renewal, *Low-Income Housing Credit Qualified Allocation Plan*. Online. Available: www.dhcr.state.ny.us/Publications/QAP/QAP.pdf. Accessed: June 9, 2010; and Texas Department of Housing and Community Affairs, *Multifamily Finance Division, 2010 Housing Tax Credit Program, Qualified Allocation Plan and Rules*. Online. Available: www.tdhca.state.tx.us/multifamily/htc/docs/10-QAP.pdf. Accessed: June 9, 2010.

4 Texas Government Code, sec. 2306.6736.

Responses to Issue 2

Recommendation 2.1

Change the basis for quantifying a community's participation in a proposed tax credit development to the receipt of a written statement from the local city council or county commissioners court.

Agency Response to 2.1

The Texas Department of Housing and Community Affairs concurs with recommendations contained in Issue 2, and would defer to Sunset and the Legislature as to how to best reach a balance between community input and locating affordable housing where it can best serve the population it is intended to serve. (C. Kent Conine, Board Chairman and Michael Gerber, Executive Director – Texas Department of Housing and Community Affairs)

For 2.1

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin

Kevin Jewell, Consultant – on behalf of the following 11 organizations: Advocacy Inc., Association of Rural Communities in Texas, Center on Disability and Development – Texas A&M University, Easter Seals Central Texas, Habitat for Humanity of Texas, Motivation Education & Training, Inc., Texas Association of Community Development Corporations, Texas Association of Local Housing Finance Agencies, Texas Council for Developmental Disabilities, Texas Center for Disability Studies – UT, and Texas Low Income Housing Information Service

Against 2.1

None received.

Modifications

1. Require TDHCA to award points to any civic club or homeowners association if any part of the neighborhood it represents is within one-half mile of any boundary with an applicant's property. (Chris Hajovsky on behalf of Spring Branch Central Superneighborhood, Houston)

2. Require TDHCA to award 24 points to support letters, zero points to neutral letters, and negative 24 points to letters of opposition. (Chris Hajovsky on behalf of Spring Branch Central Superneighborhood, Houston)

3. Permit neighborhood letters to extend for up to five years, at the option of the neighborhood organization at the time of filing, unless the organization affirmatively withdraws the letter during the five year period. (Chris Hajovsky on behalf of Spring Branch Central Superneighborhood, Houston)

4. Permit neighborhood organizations to file a position letter 30 days after the submittal of an application, whether or not the developer filed a pre-application. (Chris Hajovsky on behalf of Spring Central Superneighborhood, Houston)

   Staff Comment: As written, modifications 1 through 4 are intended to modify the existing quantified community participation process outlined in statute and would not work with the proposed Sunset staff recommendation.

5. Require the written statement from the local city council or county commissioners court to be a resolution that is voted on by the elected body. (Senator Robert Nichols, Member – Sunset Advisory Commission)

Recommendation 2.2

Allow TDHCA to create additional tax credit allocation cycles to take advantage of non-standard federal assistance opportunities.

Agency Response to 2.2

The Texas Department of Housing and Community affairs concurs with the recommendation and believes the flexibility to create additional allocation cycles would be helpful in administering the program. (C. Kent Conine, Board Chairman and Michael Gerber, Executive Director – Texas Department of Housing and Community Affairs)

For 2.2

None received.

Against 2.2

None received.

Recommendation 2.3

Allow TDHCA's Board to update the qualified allocation plan biennially instead of annually.

Agency Response to 2.3

The Texas Department of Housing and Community affairs concurs with the recommendation and believes the flexibility to release a Qualified Allocation Plan on a biennial basis would be helpful in administering the program. (C. Kent Conine, Board Chairman and Michael Gerber, Executive Director – Texas Department of Housing and Community Affairs)

For 2.3

None received.

Against 2.3

None received.

Recommendation 2.4

Direct TDHCA to include letters from neighborhood organizations in the scoring criterion for letters from community or civic organizations that serve the community in which the development is located.

Agency Response to 2.4

The Texas Department of Housing and Community Affairs concurs with recommendations contained in Issue 2, and would defer to Sunset and the Legislature as to how to best reach a balance between community input and locating affordable housing where it can best serve the population it is intended to serve. (C. Kent Conine, Board Chairman and Michael Gerber, Executive Director – Texas Department of Housing and Community Affairs)

For 2.4

None received.

Against 2.4

None received.

Commission Decision

Adopted Recommendation 2.1 with Modification 5 to require the written statement from the local city council or county commissioners court to be a resolution that is voted on by the elected body.

Adopted Recommendations 2.2 and 2.3.

Adopted a modification as an alternative to Recommendation 2.4 to maintain letters from neighborhood organizations as statutorily required, but move neighborhood letters from second to last on the list of criteria used to score and rank tax credit applicants under Government Code 2306.6710 (b)(1).

Legislative Action

The Legislature adopted Recommendations 2.1 through 2.3, as modified by the Sunset Commission, in H.B. 2608. However, the Governor vetoed the bill. Later, the Legislature adopted Recommendation 2.3 as part of S.B. 1 of the 1st Called Session, but did not revisit the other recommendations in Issue 2. As a management action not needing statutory change, Recommendation 2.4 as modified did not result in legislative action.

Issue 3

The Department's Processing of Single-Family Loans is Slow and Inefficient, Causing Families to Wait for Needed Assistance.

Background

The Texas Department of Housing and Community Affairs (TDHCA) distributes many single-family homeownership products through federal and state funding for low- and moderate-income families. The Department raises funds by issuing mortgage revenue bonds and uses them to offer below-market-interest loans and down payment assistance to first-time homebuyers making less than 115 percent of area median family income. The Department does not administer these loans, but provides funding to participating private-sector lenders who make loans to families needing assistance. In fiscal year 2009, the Department funded 476 loans totaling $52 million, although these numbers are much lower than in previous years due to recent economic difficulties in bond markets. In 2008, for example, the Department funded 2,016 loans totaling $229 million.

In contrast to the typically high volume of private lender loans, the Department directly administers a number of repayable loans, deferred or forgivable loans, and grants. For families making less than 80 percent of area median family income, the Department offers loans to assist with the purchase or construction of a home or the rehabilitation or reconstruction of an existing home. These single-family programs target low- or very low-income Texans, including elderly homeowners, veterans, people affected by natural disasters, and Texans with disabilities, who may not be able to obtain financing through private markets. The textbox, *TDHCA-Administered Single-Family Loan Programs*, identifies the funding sources for these programs. In fiscal year 2009, the Department directly made 598 loans and grants, totaling $20.5 million.

TDHCA-Administered Single-Family Loan Programs

The Department's single-family loans and grants are funded through the:

- federal HOME Investment Partnerships Program;
- federal Community Development Block Grant; and
- state Housing Trust Fund.

To administer these programs, the Department uses local service providers who locate eligible program participants and perform the work or subcontract for it. The Department acts as lender and loan servicer, reviewing applications for compliance with federal and state requirements, providing loan documents, and ultimately collecting loan repayments or granting forebearance, where applicable. The textbox, *TDHCA-Administered Single-Family Loan Requirements*, shows the types of documents that program participants must provide to the service provider, and ultimately, to the Department. The Department's loan processes have evolved over recent years in response to increased federal and state regulations, and a desire to assure the accuracy of loan documents.

TDHCA-Administered Single-Family Loan Requirements

To qualify for the Department's single-family loans, participants must provide various documents, such as proof of:

- income eligibility;
- homeownership documentation;
- clear title; and
- changes in marital status.

Findings

The Department's single-family loan processes are inefficient, unnecessarily delaying assistance to families in need.

The Department's internal guidelines suggest that loan processing should take about a month. However, actual processing appears to be considerably slower. Based on the limited and incomplete data available to Sunset staff, the Department actually takes, on average, about two and a half months, and can take up to five months to process loans. Most loan applications move through three levels of review at the Department, as shown in the textbox, *Loan Review Stages*. Before a loan application arrives at the Department, the local service provider may already have spent one or more months qualifying the family for program participation.

> ***Loan Review Stages***
>
> Most single-family loan applications go through three levels of review at the Department.
>
> **Individual Programs** – Various programs, such as HOME or Housing Trust Fund, are responsible for the initial review of loan applications in their areas.
>
> **Program Services** – A single group provides a second check or quality control over loan applications.
>
> **Legal Division** – Attorneys provide final review of applications, focusing on ensuring proof of homeownership through clear title. Legal staff create final loan documents.

Cumbersome loan processes cause people to wait months to move into new homes or for needed rehabilitation to begin, which can cause further deterioration of the home. Often department funds are one of several public and private funding sources used to make assistance possible, and prolonged loan closings can put applicants in jeopardy of losing other pledged funds. Department delays also cause local service providers difficulties in accurately budgeting projects and the necessary staff and financial resources. Sunset staff interviews with service providers found that many providers are frustrated with the slow pace, lack of transparency, and inconsistent requirements of the Department's loan processes.

Many providers are frustrated with the Department's loan processes.

The Department has no consistent approach to processing single-family loans.

Although the Department has developed a uniform loan processing system, only some programs use it, while others opt not to, reporting that it slows applications down unnecessarily. Sunset staff identified several problems.

- **Inconsistent application of targets**. While some staff involved in loan processing have internal targets for the timing of application review, others do not. Even those levels of review that have targets do not consistently meet them.
- **Unclear expectations**. Management has not clearly communicated to reviewing staff the necessary criteria for review. Interviews show that different staff have varying priorities, and use different checklists,

resulting in a large portion of applications being sent back to previous stages of review. For example, legal staff report sending at least one in four applications back to previous reviewing stages for correction or additional information.

- **Failure to prioritize**. The Department does not prioritize loan processing tasks to ensure that the most time-intensive components are started earlier than other, less time-sensitive elements. Reconstruction and rehabilitation projects require that a homeowner have clear land title, which can be difficult and time consuming to prove, but applications do not receive a full title review until they reach the third stage of department review. This structure results in families finding out, after months of waiting for assistance, that they are not eligible for participation after all, or must start the application process over.

Often families find out, after months of waiting, that they are not eligible.

- **Inefficient use of technology**. The Department does not consistently or effectively use available computer technology in its single-family loan processes. While some staff use a centralized database, others rely on hardcopy files, or have created separate databases to track their own pieces of the review process, which duplicate the central system and are less accessible to other staff working on loan applications.

- **No single point of accountability**. Loan applications move through the three levels of review sequentially, with no single person or entity responsible for ensuring they keep moving quickly through the process. In contrast, many loan closings in private financial companies and other agencies have a "loan closer" responsible for keeping it on schedule across different reviewing stages. Although the Department's loan processing requires a team approach, staff do not view it that way, and simply pass the application from one step to the next. Agency staff report that applications often get stuck on someone's desk for days while other priorities intervene.

- **Failure to track timeframes**. The Department has not taken steps to ensure timely loan processing by tracking times across divisions to get an overall picture of performance. The Department was not able to provide Sunset staff with complete data on the timing of its single-family loan processing, because reviewing staff track timing differently, if at all.

- **Poor customer service**. Service providers and applicants report difficulty finding out an application's status as it moves along the process, often not knowing who to call or being unable to reach the right person. Sometimes more experienced service providers resort to calling executive staff on an ad-hoc basis to get information on slow-moving loan applications. Unlike some of the Department's other programs, participants cannot check one comprehensive online source for application status, because the online single-family loan system does not have information on all phases of review and is not available to applicants.

Recommendation

Management Action

3.1 Direct the Department to overhaul its single-family loan review processes to create a faster and more efficient system.

This recommendation would direct the Department to redesign its loan processes, creating policies and procedures to ensure consistency, efficiency, and transparency, including:

- setting and meeting performance targets for loan processing times;
- clearly communicating application review criteria across reviewing divisions, including creating a uniform checklist;
- prioritizing loan processes, such as beginning with title review and other time-consuming elements early, to minimize delays;
- taking better advantage of existing technology to automate loan processes, and looking for additional opportunities to provide clear, real-time information online to program participants;
- assigning one clear owner to each single-family loan who would be accountable for making sure that the application moves efficiently through department review;
- tracking loan processing times by program and review stage and reporting the results, at least quarterly, to the Board to make sure the Department is meeting its targets; and
- assigning a single point of contact for service providers and loan applicants seeking information on an application's status.

The Board should adopt the policies to implement these changes no later than September 1, 2011.

Fiscal Implication Summary

This recommendation would not have a fiscal impact to the State. Overhauling the single-family loan processes will temporarily require some staff resources to focus on the needed revisions, and may require the reorganization of staff duties. However, Sunset staff expects that a more efficient process will eventually reduce the amount of staff time and resources required to process loans.

Responses to Issue 3

Recommendation 3.1

Direct the Department to overhaul its single-family loan review processes to create a faster and more efficient system.

Agency Response to 3.1

The Texas Department of Housing and Community Affairs concurs with the recommendation contained in Issue 3, and had already identified several of the same areas for improvement prior to and during the Sunset review process. A review of how to improve its loan processing activities, including an overhaul of the process with a goal of a faster and more uniform and efficient system, is already underway. The Department anticipates having significant procedural changes made by January 2011, and as recommended by Sunset, new policies adopted by our Board well before September 2011. (C. Kent Conine, Board Chairman and Michael Gerber, Executive Director – Texas Department of Housing and Community Affairs)

For 3.1

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin

Kevin Jewell, Consultant – on behalf of the following 11 organizations: Advocacy Inc., Association of Rural Communities in Texas, Center on Disability and Development – Texas A&M University, Easter Seals Central Texas, Habitat for Humanity of Texas, Motivation Education & Training, Inc., Texas Association of Community Development Corporations, Texas Association of Local Housing Finance Agencies, Texas Council for Developmental Disabilities, Texas Center for Disability Studies – UT, and Texas Low Income Housing Information Service

Noel Poyo, Executive Director – National Association of Latino Community Asset Builders, San Antonio

Against 3.1

None received.

Commission Decision

Adopted Recommendation 3.1.

Legislative Action

As a management recommendation not needing statutory change, Recommendation 3.1 did not result in legislative action.

Issue 4

The Department Has Not Used Funds Designated by the Legislature to Address Contract for Deed Problems.

Background

A historically common arrangement in colonias, families often "purchased" their properties through a vehicle called contract for deed; however, in this arrangement legal title did not transfer until the buyer paid the entire purchase price. Without legal title, buyers cannot sell the property, refinance their mortgage, or take out a loan against their home, and often face undue risk of eviction. While contracts for deed may be a reasonable arrangement for some families who cannot obtain traditional mortgage financing, they offer few consumer protections and have been widely abused. In areas along the Texas-Mexico border and elsewhere, many families faced eviction on technicalities after years of payments, or found themselves trapped in contracts with such high interest rates they could never actually own their land.

Recognizing the harm associated with contract for deed homeownership arrangements, the Legislature, over the past 15 years, has made many efforts to increase consumer protections, enhance enforcement against bad actors, and facilitate the conversion of contracts for deed into traditional mortgages with legal title. Since 1997 the Legislature has directed the Department, via appropriations rider, to use $4 million each biennium to convert at least 400 contracts for deed in colonias to traditional mortgages.[1] To meet this requirement, the Department has used a combination of bond proceeds and federal funds, allocated through the Department of Housing and Urban Development's (HUD) Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) programs. The Department becomes the mortgagee to the loan and distributes the funds through local service providers who pay the remainder of the purchase price to the seller and convert the contract for deed into legal title.

In 2005, the Legislature passed legislation designed to ensure that individuals and families in contract for deed arrangements could get legal title to their property before paying off the purchase price in full.[2] This law allows colonia residents to convert contracts and obtain legal title while the seller retains the loan. While it can sometimes be beneficial to pay off the property and end the owner-finance structure altogether through a process like TDHCA's conversion program, current law requires sellers to provide title if the borrower requests it, increasing basic consumer protections to colonia residents.

Findings

Despite continuing pressure from the Legislature, the Department has failed to complete the required number of contract for deed conversions, and instead diverted these funds to other housing activities.

Over the 12-year life of the conversion program, the Department has converted only 774 contracts for deed, compared to the Legislature's expectation of at least 2,400 conversions. Of the $24 million designated for this purpose the Department has only spent $11.4 million. The Legislature has shown continued interest in the contract for deed conversion program and the Department's ability to administer it. In 2007, the Legislature reduced the number of conversions required in rider from 400 to 200 per biennium, required the agency to make a "good-faith effort" to complete the conversions, and required the Department to report the number and cost of conversions to the Legislative Budget Board (LBB) quarterly. Despite the reduced target, in 2008 and 2009, the Department converted only 36 contracts for deed, and the Department did not submit its first quarterly report to LBB until August 30, 2010. Funds not spent on contract for deed conversions in colonias are reprogrammed by the Department to other HOME activities statewide, such as the acquisition, rehabilitation, or new construction of single-family housing.

In 2008 and 2009, TDHCA converted only 36 contracts for deed.

The Department's decision to use HOME funds for the conversion program makes it largely unworkable.

Since 2004, the Department has used only HOME funds to convert contracts for deed. Local service providers report that the HOME Program's many requirements, in combination with the Department's benchmarks for expending funds, make an already cumbersome process nearly impossible. The federal government designed HOME to assist with housing purchase and rehabilitation needs, not the kinds of services associated with contract conversion. Locating contracts for deed can require funds for outreach and education, which HOME funds are not designed for. Establishing title often requires legal expertise that is also not an easily allowable HOME expense. Once families with the contracts are found, conversion typically takes a year or more due to the difficulty of proving ownership through clear title to the property. These lengthy timeframes often make meeting state and federal deadlines for use of HOME funds difficult.

In its Self-Evaluation Report to Sunset, the Department identified that the use of HOME funds has been challenging for local service providers who have trouble meeting federal requirements.[3] Former TDHCA contract for deed conversion service providers relate that they no longer participate in the program because expenditure benchmarks were impossible to meet.

Contracts for deed are still a popular financing vehicle in colonias.

The Department attributes its failure to use these funds to a lack of contracts for deed; however, research indicates the problem persists.

In a legislative hearing, TDHCA stated that the agency was challenged to expend funds because staff did not believe contracts for deed were as prevalent as they once were, and that many existing contracts had already been converted.[4] Sunset staff reviewed certain county clerk records and found that hundreds of contracts continue to be recorded up to and including in 2010.[5] County clerk records likely undercount the actual volume of contracts because these contracts were not always a recorded instrument, and many still may not be recorded, as required by law. Contracts for deed may not be as common as they once were, but Sunset staff interviews with local governmental entities and nonprofits doing contract for deed related work in colonias indicated they are still a popular financing vehicle in colonias. In fact, they may well become even more popular as tight credit market conditions continue, underscoring the need for a workable conversion program.

The Department's Colonia Self-Help Centers may be uniquely positioned to help administer the contract for deed conversion program.

In 1995 the Legislature created Colonia Self-Help Centers through the Department to serve low-income families by providing housing assistance, financial and construction skills training, and other services.[6] The Department operates seven Self-Help Centers in border counties, and each Center targets services to five colonias in its local area. Self-Help Centers educate individuals and families on their rights and responsibilities as homeowners, which can be helpful for buyers converting their contracts. State law also specifically authorizes the Centers to assist individuals and families with surveying or platting residential property purchased without a legal recording, and acquiring title to property that was originally purchased under a contract for deed. Thus, while Self-Help Centers are well situated to assist with contract for deed conversions in the colonias they serve, the Department has not used the Centers for this purpose since 2002.

The Self-Help Centers are funded through a flexible source of federal funds. Legislative rider requires that the Texas Department of Rural Affairs annually transfer 2.5 percent, or about $1.8 million, of the State's Community Development Block Grant (CDBG) funds to the Department to run the Self-Help Centers.[7] Federal CDBG funds are generally more flexible than HOME funds and can be used to address more varied community needs, including education, outreach, and legal assistance. In fact, a 2003 HUD memorandum states that CDBG funds would be a good fit for conversion of contracts and activities required for conversion, such as surveying, re-platting, or legal services.[8] Conversions may be delayed when the property is within an unplatted colonia, making surveys difficult to obtain. Legal services, which are often necessary to convert contracts with more complicated title histories, can be paid for with CDBG funds.

Recommendations

Management Action

4.1 Direct the Department to identify, through the legislative appropriations process, a more flexible source of funds for the contract for deed conversion program.

Under this recommendation the Department would analyze, in collaboration with the legislative appropriations committees, which available funding sources, other than HOME, would best fit the program. The funding source should allow for both actual conversions and related activities including outreach, education, surveying, re-platting, and legal services. The Department should consider federal and state funds, including federal CDBG funds, state housing trust funds, and other sources of income including appropriated receipts.

4.2 Direct the Department to consider using its existing Colonia Self-Help Centers to help administer the contract for deed conversion program.

The Department should consider using its existing Colonia Self-Help Centers in Cameron/Willacy, Hidalgo, Starr, Webb, El Paso, Maverick, and Val Verde Counties to help administer the contract for deed conversion program. Using these Centers would allow the Department to take advantage of its existing infrastructure in counties with colonias and to target its efforts in the areas in which the Department already has a presence to achieve the intent of the Legislature to convert contracts for deed.

4.3 Direct the Department to study the prevalence of contracts for deed in colonias, and report the results to the Legislature.

This recommendation would direct the Department to conduct a one-time study of the current prevalence of contracts for deed in Texas colonias and to report the results to the Legislature by December 1, 2012, just prior to the legislative session in 2013. This reporting requirement would add to, and not eliminate, the quarterly reporting requirement on the number and cost of completed conversions.

Fiscal Implication Summary

These recommendations would not have a fiscal impact to the State. The Department is already expending the funds intended for contract for deed conversion through other HOME programs. The one-time study of the prevalence of contracts for deed would have a limited cost but could be done with existing resources.

....

[1] Rider 6, pp. VII-5 - VII-6, Chapter 1424, (S.B. 1), Acts of the 81st Legislature, Regular Session, 2009, General Appropriations Act. Text: "a. Out of the funds appropriated above, the department shall spend not less than $4,000,000 for the biennium for the sole purpose of contract for deed conversions for families that reside in a colonia and earn 60 percent or less of the applicable area median family income. It is the intent of the Legislature that the department shall make a good-faith effort to complete at least 200 contracts for deed conversions by August 31, 2011. b. The Department of Housing and Community Affairs shall provide a quarterly report to the Legislative Budget Board detailing the number of, and cost for each, contract for deed conversions completed."

[2] Texas Property Code, sec. 5.081.

[3] Texas Department of Housing and Community Affairs, *Self-Evaluation Report*, submitted to the Sunset Advisory Commission (2009), p. 101. Online. Available: www.sunset.state.tx.us/82ndreports/dhca/hcaser.pdf. Accessed: March 24, 2010.

[4] Senate Committee on International Relations and Trade, public hearing (Austin, Texas, March 9, 2010).

[5] El Paso County Clerk, Official Public Records, www.epcounty.com/clerk/deedsearch.asp. Accessed: August 4, 2010; and Texas Land Records, www.texaslandrecords.com/txlr/TxlrApp/index.jsp. Accessed: August 11, 2010.

[6] Texas Government Code, secs. 2306.582, 2306.583, and 2306.586.

[7] Rider 8, p. VI-6, Chapter 1424, (S.B. 1), Acts of the 81st Legislature, Regular Session, 2009, General Appropriations Act.

[8] U.S. Department of Housing and Urban Development, Office of Community Planning and Development, *Subject: Use of HUD Resources to Assist Colonias*, notice CPD-03-10 (Washington, D.C., October 8, 2003), pp. 3-4. Online. Available: www.hud.gov/offices/cpd/lawsregs/notices/2003/03-10.pdf. Accessed: August 2, 2010.

Responses to Issue 4

Recommendation 4.1

Direct the Department to identify, through the legislative appropriations process, a more flexible source of funds for the contract for deed conversion program.

Agency Response to 4.1

The Texas Department of Housing and Community Affairs concurs with this recommendation and is committed to achieving the goals of the appropriations rider, and will look for alternative funding sources to do so. (C. Kent Conine, Board Chairman and Michael Gerber, Executive Director – Texas Department of Housing and Community Affairs)

For 4.1

Noel Poyo, Executive Director – National Association of Latino Community Asset Builders, San Antonio

Against 4.1

None received.

Recommendation 4.2

Direct the Department to consider using its existing Colonia Self-Help Centers to help administer the contract for deed conversion program.

Agency Response to 4.2

The Department concurs with the recommendation but notes the need for possible changes to statute or department appropriations. To take advantage of Community Development Block Grant funds that currently support Colonia Self-Help Centers for the purposes of Contract for Deed conversions, the Department recommends several statutory changes.

Agency Modifications

1. Change the statute governing Self-Help Centers to eliminate the current restriction that would limit use of the funds to five designated Colonias, and permit the use of Community Development Block Grant funds for conversions anywhere within the county.

   Staff Comment: If the appropriations committees decide to adjust the agency's bill pattern to allow for new funding streams for contracts for deed, Sunset staff agrees that this statutory adjustment would increase the Department's ability to complete conversions.

2. Increase the Department's current allocation of 2.5 percent of the Texas' CDBG allocation for the administration of colonia Self-Help Centers to fund conversions while ensuring existing services at Self-Help Centers are not reduced.

   Staff Comment: This modification would be accomplished through a change in agency appropriations, not a statutory change. If the appropriations committees decide to adjust the agency's bill pattern to allow for new funding streams for contracts for deed this modification should be brought to their attention.

(C. Kent Conine, Board Chairman and Michael Gerber, Executive Director – Texas Department of Housing and Community Affairs)

For 4.2

Noel Poyo, Executive Director – National Association of Latino Community Asset Builders, San Antonio

Against 4.2

None received.

Modification

3. Require TDHCA to streamline the HOME process to make it even more easily accessible in order to continue using those funds for contract for deed conversion and do not use CDBG funds to support contract for deed conversions. (Donna Chatham, Executive Director – Association of Rural Communities in Texas, Austin)

Recommendation 4.3

Direct the Department to study the prevalence of contracts for deed in colonias, and report the results to the Legislature.

Agency Response to 4.3

The Department concurs with the suggested study on the prevalence of contracts for deed in the Colonias and will proceed in having such a study performed. (C. Kent Conine, Board Chairman, and Michael Gerber, Executive Director – Texas Department of Housing and Community Affairs)

For 4.3

Noel Poyo, Executive Director – National Association of Latino Community Asset Builders, San Antonio

Against 4.3

None received.

Modification

4. Require the Department to report to the Legislature semi-annually on the use of funds designated to address contracts for deed. (Noel Poyo, Executive Director – National Association of Latino Community Asset Builders, San Antonio)

   Staff Comment: The Department is currently required, by appropriations rider, to report quarterly to the Legislative Budget Board the number and cost of each completed contract for deed conversion.

Commission Decision

Adopted Recommendations 4.1 through 4.3.

Legislative Action

As management recommendations not needing statutory change, Recommendations 4.1 through 4.3 did not result in legislative action.

Issue 5

Inconsistencies in the Department's Enforcement Process Waste Resources and Contribute to Lingering Compliance Problems.

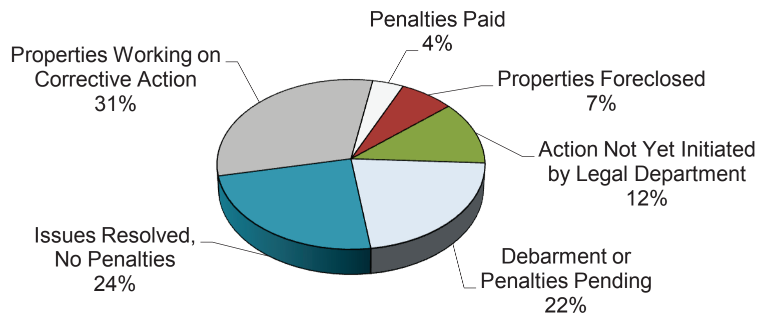
Background

The Department monitors affordable multifamily housing developments funded through its programs to ensure properties are well constructed, remain suitable for tenants, appropriately restrict rents, and generally perform well for the life of the contract, which is typically thirty to forty years. When monitors find violations, staff works with property owners and managers to return developments to full compliance. Common violations include deficiencies in physical standards of the properties, and failure to restrict rents or verify income appropriately.

The vast majority of properties are either in compliance or have only minor violations that do not materially impact the property, the services it provides, or the tenants. In fiscal year 2009, about 11 percent of the agency's portfolio of properties were in material noncompliance with agency rules and regulations. Staff rates properties as "materially noncompliant" when combined violations result in a score over a specific threshold, depending on the property's funding sources.

Most properties return to compliance voluntarily, but when the Division cannot achieve compliance, staff refers violators to an enforcement committee, made up of executive and senior staff, for settlement negotiations or assignment of penalties up to and including financial penalties and possible debarment from future projects. Parties can appeal committee decisions to the TDHCA board and ultimately to district court. The Legislature granted the Department penalty authority in 2007 and since 2008, 58 properties have been referred to the committee. The pie chart, *Enforcement Activity*, details the current status of compliance problems brought before the enforcement committee since 2008. The Department collected $12,500 from two penalty assessments in this time period.

Enforcement Activity 2008 – 2010



Total Properties: 58

Findings

The Department's nonstandard appeals process is unnecessary and could waste agency resources.

Statute authorizes an individual who has received an administrative penalty to appeal to the TDHCA board, and requires the board to hold a hearing about the violation and associated penalty.[1] Unlike most state agencies, TDHCA's penalty appeals process calls for the agency to contract, as needed, for an administrative law judge (ALJ) to hear these cases rather than use the State Office of Administrative Hearings (SOAH). The Department further defines the appeals process, in rule, to allow an appeal to the board or to a contracted ALJ, and spells out the process to procure a judge.[2] The contracted ALJ is responsible for issuing a proposal for decision to the board, who then makes the final determination. Since the Department established this process in 2008, the agency has yet to go to hearing on a contested penalty; however, the Department has planned to use a contracted ALJ in fiscal year 2010 and budgeted $100,000 to cover several cases.

Unlike most agencies, TDHCA does not use SOAH for administrative appeals.

Following the board's decision, statute authorizes a final appeal to district court; however, statute requires a *de novo* review by the court, as opposed a substantial evidence review typical of judicial review of most administrative decisions. In a *de novo* review, the court essentially begins a new trial, and does not rely on the established record, whereas the substantial evidence rule relies on the record established by the agency and its administrative process.

Almost all licensing agencies, as well as other agencies of state government, rely on SOAH to provide independent hearings of appeals. The State Office of Administrative Hearings offers a consistent standard of independence and professionalism, and SOAH's judges are well versed in the kinds of enforcement cases that TDHCA would generate. In addition, appeals of decisions based on SOAH conducted hearings typically use the substantial evidence rule, and not a *de novo* review, as SOAH has established a clear record for later use by the court.

The agency lacks appropriate sanction authority to ensure bad actors are prohibited from future participation in Department programs.

State law only allows TDHCA to debar applicants from one program.

In 2001, the Legislature authorized the Department to debar, or prohibit, applicants with bad records with the Department from application to, or participation in, future tax credit award rounds. However, the statute does not authorize debarment from any of the Department's other housing or community affairs programs.[3] Debarment ensures exclusion of people who have seriously or repeatedly violated laws, rules, or contracts. Violations that can result in debarment include misappropriation of funds, other criminal activity, poor construction quality, or repeated failure to correct issues of noncompliance. In the last three years no applicants have been debarred, though several debarments are going through the enforcement process.

Even without direct statutory authority, by practice and rule the agency has expanded the use of debarment to all programs, such as housing programs funded through HOME or the Housing Trust Fund, and service contracts funded through community affairs program. The Department has also allowed for terms of debarment rather than requiring all debarment to be permanent.[4] Since state law does not explicitly authorize debarment in all programs or provide for terms, challenges to future uses of debarment as a sanction may result.

Staff also examines the history of all applicants for housing and nonhousing funds to ensure awards are not made to developers with poor compliance histories; however, unlike debarment, this process does not explicitly prohibit applications. In fiscal year 2009, the Department terminated a total of 11 applications, or 1 percent of all reviewed applications, based on an applicants' previous records with the Department. Unlike the historical review, debarment authority permits the agency to prohibit all participation, and not waste staff resources on applications in those cases where previous violations were particularly egregious.

Long-term delays in referring violations for enforcement may contribute to lingering compliance problems and poor living conditions for tenants.

Compliance monitors regularly uncover violations related to a property owner or manager failing to maintain the physical condition of the property, changing or reducing required tenant services, or failing to maintain rent or income restrictions as required. When TDHCA determines that a property is not in compliance with a contractual requirement, staff issues a report noting violations, and the property enters into a 90-day corrective action period. For issues requiring more extensive correction, the agency may extend the corrective action period for another 90 days. While most properties return to full compliance during this period, those that have failed to come into compliance should be referred to the enforcement committee for additional enforcement action including possible administrative penalties.

Some properties have been out of compliance for many years.

As of July 2010, Sunset staff found that the agency had only referred 16 properties, or about 18 percent, of the 107 eligible noncompliant tax credit properties, and 16 properties, or about one third, of the 48 other properties eligible for additional enforcement action. The agency's staff indicated that many properties were still working with them, but about half of the properties eligible for referral to enforcement had no deadlines for compliance or their deadlines had passed. Many of these properties involved issues of noncompliance that had been outstanding for several years – some as many as 10 years. Department staff acknowledged that they do not have a standard operating procedure governing when a property should be referred for additional enforcement action, and had not been tracking referrals to ensure noncompliance issues did not stall in the enforcement pipeline.

Without a clear process in place to ensure property compliance does not stall, the agency cannot ensure tenants do not face continued unacceptable living conditions, all properties and responsible parties receive similar treatment, and that owners and managers preserve the State's investment in affordable housing.

Recommendations

Change in Statute

5.1 Transfer the Department's penalty appeals hearings to the State Office of Administrative Hearings.

This recommendation would require TDHCA to refer penalty appeals to SOAH, following the same process as TDHCA's Manufactured Housing Division. In conducting hearings, SOAH would consider the Department's applicable substantive rules or policies. Like other agencies that have hearings conducted by SOAH, the Board would maintain final authority to accept, reverse, or modify a proposal for decision made by a SOAH judge. The Board could reverse or modify the decision only if the judge did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions; the judge relied on a prior administrative decision that is incorrect or should be changed; or the Board finds a technical error in a finding of fact that should be changed.

The State Office of Administrative Hearings already receives a direct appropriation to conduct hearings for the Department's Manufactured Housing Division and this relationship could extend to cover appeals related to housing program violations and penalties. However, if the Department's caseload were to increase, SOAH would likely seek additional appropriations to cover the increased workload. Using this existing contractual relationship with SOAH would save the Department the time and additional cost associated with periodically procuring an external ALJ.

This recommendation would improve the efficiency, reduce the cost, and ensure the independence of the Department's contested case hearings involving housing programs. Although SOAH may face an initial learning curve in hearing appeals about departmental penalties, the subject areas of TDHCA cases are not generally more complex than other enforcement cases currently brought before SOAH.

5.2 Require judicial review of appeals of the Department's decisions to be based on the substantial evidence rule.

This recommendation would require use of the substantial evidence rule, instead of a *de novo* review, for judicial review of appeals of administrative decisions. Any party subject to a penalty would continue to be authorized to appeal board decisions to district court, but this recommendation would specify that appeals be made under the substantial evidence rule, consistent with the vast majority of other administrative appeals.

5.3 Authorize the Department to use debarment as a sanction and protection in all its programs.

This recommendation would clearly permit the Department to debar individuals for significant performance failures across all programs, not just the housing tax credit program. This change would also permit the agency to set terms for debarment. This recommendation would not grant any new sanction authority to the Department, but would extend use of an existing sanction across all the Department's programs, including housing programs like the HOME program and the Housing Trust Fund, as well as community affairs programs like weatherization assistance. The Department could use procedures and rules established for tax credit debarment and apply them, as necessary, to participants of other programs. Participants facing debarment would be authorized to appeal decisions to the board.

Management Action

5.4 The Department should track and timely refer properties that fail to come into compliance for additional enforcement action.

The Department should develop a process to ensure that all properties that are not in compliance with Department requirements are referred for additional enforcement action. The Department should set clear deadlines for compliance and owners that miss the deadlines without just cause should be referred to enforcement. The agency should also track the time it takes properties to come into compliance and report this information to the board. These changes would ensure that owners continue to work hard to bring properties into compliance, helping to protect tenants from unacceptable living conditions and preserving the State's investment in affordable housing. A clearer enforcement process would also ensure all properties and responsible parties receive similar treatment from agency staff.

Fiscal Implication Summary

Requiring the Department to use SOAH instead of contracting for an independent ALJ would create savings for the State. However, the exact amount could not be estimated because the number of future cases and their length is unknown. SOAH estimates that it costs $100 per hour to prepare for and hear cases. At this rate, the Department would have to exceed 1,000 hours of SOAH time in order to equal the $100,000 budgeted for contracted judges in the current fiscal year. TDHCA does not anticipate more than a few referrals to SOAH, guaranteeing some savings to the State over the current contracting process. None of the other recommendations should have any fiscal implication.

....

1 Texas Government Code, secs. 2306.044 and 2306.045.

2 Texas Administrative Code, Title 10, part 1, rule 60.307 and rule 60.308.

3 Texas Government Code, sec. 2306.6721.

4 Texas Administrative Code, Title 10, part 1, rule 1.20.

Responses to Issue 5

Recommendation 5.1

Transfer the Department's penalty appeals hearings to the State Office of Administrative Hearings.

Agency Response to 5.1

The Texas Department of Housing and Community Affairs concurs with the recommendation. (C. Kent Conine, Board Chairman and Michael Gerber, Executive Director – Texas Department of Housing and Community Affairs)

Affected Agency Response to 5.1

The State Office of Administrative Hearings (SOAH) states it will comply with any changes the Legislature makes to its jurisdiction over the Department's cases. SOAH already hears cases referred by the Department's Manufactured Housing Division and is confident that it could quickly familiarize itself with the Department's penalty appeals hearings. Based on the assumption that SOAH would only receive a few cases that would not be lengthy or complex, additional work could be absorbed into SOAH's general revenue appropriation at its current level. However, if case volume or complexity increased SOAH would need to request additional appropriations. (Cathleen Parsley, Chief Administrative Law Judge – State Office of Administrative Hearings)

For 5.1

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin

Kevin Jewell, Consultant – on behalf of the following 11 organizations: Advocacy Inc., Association of Rural Communities in Texas, Center on Disability and Development – Texas A&M University, Easter Seals Central Texas, Habitat for Humanity of Texas, Motivation Education & Training, Inc., Texas Association of Community Development Corporations, Texas Association of Local Housing Finance Agencies, Texas Council for Developmental Disabilities, Texas Center for Disability Studies – UT, and Texas Low Income Housing Information Service

Against 5.1

None received.

Recommendation 5.2

Require judicial review of appeals of the Department's decisions to be based on the substantial evidence rule.

Agency Response to 5.2

The Texas Department of Housing and Community Affairs concurs with the recommendation. (C. Kent Conine, Board Chairman and Michael Gerber, Executive Director – Texas Department of Housing and Community Affairs)

For 5.2

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin

Kevin Jewell, Consultant – on behalf of the following 11 organizations: Advocacy Inc., Association of Rural Communities in Texas, Center on Disability and Development – Texas A&M University, Easter Seals Central Texas, Habitat for Humanity of Texas, Motivation Education & Training, Inc., Texas Association of Community Development Corporations, Texas Association of Local Housing Finance Agencies, Texas Council for Developmental Disabilities, Texas Center for Disability Studies – UT, and Texas Low Income Housing Information Service

Against 5.2

None received.

Recommendation 5.3

Authorize the Department to use debarment as a sanction and protection in all its programs.

Agency Response to 5.3

The Texas Department of Housing and Community Affairs concurs with the recommendation and supports greater clarity in authorizing the use of debarment as a sanction and protection across all of its programs. (C. Kent Conine, Board Chairman and Michael Gerber, Executive Director – Texas Department of Housing and Community Affairs)

For 5.3

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin

Kevin Jewell, Consultant – on behalf of the following 11 organizations: Advocacy Inc., Association of Rural Communities in Texas, Center on Disability and Development – Texas A&M University, Easter Seals Central Texas, Habitat for Humanity of Texas, Motivation Education & Training, Inc., Texas Association of Community Development Corporations, Texas Association of Local Housing Finance Agencies, Texas Council for Developmental Disabilities, Texas Center for Disability Studies – UT, and Texas Low Income Housing Information Service

Against 5.3

None received.

Recommendation 5.4

The Department should track and timely refer properties that fail to come into compliance for additional enforcement action.

Agency Response to 5.4

The Texas Department of Housing and Community Affairs concurs with the recommendation. (C. Kent Conine, Board Chairman and Michael Gerber, Executive Director – Texas Department of Housing and Community Affairs)

For 5.4

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin

Kevin Jewell, Consultant – on behalf of the following 11 organizations: Advocacy Inc., Association of Rural Communities in Texas, Center on Disability and Development – Texas A&M University, Easter Seals Central Texas, Habitat for Humanity of Texas, Motivation Education & Training, Inc., Texas Association of Community Development Corporations, Texas Association of Local Housing Finance Agencies, Texas Council for Developmental Disabilities, Texas Center for Disability Studies – UT, and Texas Low Income Housing Information Service

Against 5.4

None received.

Commission Decision

Adopted Recommendations 5.1 through 5.4.

Legislative Action

None of the statutory Sunset recommendations regarding the Department's enforcement processes made it into law. The Legislature had adopted Recommendations 5.1 through 5.3 in H.B. 2608; however, the Governor vetoed the bill and the Legislature did not revisit these provisions during the 1st Called Session. As a management action not needing statutory change, Recommendation 5.4 did not result in legislative action.

Issue 6

Using State Employees to Inspect Manufactured Housing Installations Is Inefficient and Does Not Provide Adequate Statewide Coverage.

Background

The installation of manufactured homes includes preparing the site, anchoring the home to its foundation, and connecting the separate units together. The textbox, *Manufactured Home Installations*, provides a partial list of the activities involved in a home installation. The installer's decisions are generally guided by the manufacturer's instructions, the size of the home, the area's climate, and the type of soil.[1]

> ***Manufactured Home Installations***
>
> **Site Preparation**
> - Placing footers and piers
> - Establishing clearance from the ground
> - Connecting the drainage system
>
> **Anchoring**
> - Selecting suitable devices
> - Spacing and planting anchors
>
> **Connecting units (for multisection homes)**
> - Connecting water, electric, and natural gas lines
> - Fastening walls, roofs, and floors together

Faulty installations account for more than half of the problems associated with manufactured housing, including shifting of manufactured housing units and compromised foundation supports.[2] In light of these concerns, federal law requires all states to implement a program to inspect manufactured home installations or be subject to the federal inspections program.[3] Texas opted to set up its own program through the Manufactured Housing Division (Division) of the Texas Department of Housing and Community Affairs (TDHCA). Texas law requires the Division to conduct inspections of a minimum of 25 percent of home installations.[4] Consumers may also request an installation inspection at no charge from the Division. In 2009, Division staff inspected 5,200 homes, or 42 percent of all manufactured home installations reported in Texas, and each of the 19 inspectors averaged 274 installation inspections. Following an inspection, the Division requires installers to remedy any code violations, which inspectors verify through reinspections.

The Division currently maintains eight field offices across the State with a total staff of 22 employees, including 18 inspectors and four administrative staff. Revenue from a $75 to $125 installation filing fee, as well as overall licensing fees, provides $1.8 million to support installation inspections and other field staff operations.

Findings

Inspecting only 42 percent of manufactured home installations leaves the remaining homes at risk of serious harm from structural and weather-related damage.

Poorly installed manufactured homes are more likely to develop structural problems that can compromise a home's integrity, cause a home to lose value or shorten its life, and require homeowners to pay for expensive repairs.

During tornadoes and hurricanes, poor installations may fail to properly anchor a unit causing the home to shift off its foundation and roll. The debris from damaged manufactured housing often causes damage to neighboring homes. The National Hurricane Center and other sources have documented numerous examples of damage to Texas homes and communities resulting from the combination of heavy winds and faulty installations, beginning with Hurricane Allen in 1980 and continuing through Hurricane Ike in 2008.[5]

Poor installations can allow homes to shift and roll in high winds.

Nationwide, between 1998 and 2002, nearly half of the 348 tornado-related deaths in the United States occurred in manufactured homes.[6] Suspecting that poor installations led to 34 manufactured-home-related deaths in 1998, Florida, along with the Gulf Coast states of Mississippi and Alabama, now requires installation inspections for all manufactured homes as a condition of occupancy.[7] The U.S. Department of Housing and Urban Development (HUD) plans to launch a program in early 2011 that will mandate an inspection for all manufactured housing installations in the 22 states without their own program.[8] As a result, even states without a hurricane or tornado threat will require inspections.

In contrast, Texas inspected only 42 percent of the 12,428 manufactured housing installations in 2009. While this exceeded the statutory inspection requirement of 25 percent, 7,228 homes were still left uninspected. Of the homes inspected, field staff uncovered installation code violations in 842 homes, or 16 percent of examined installations. If this rate of violations remained constant across all installations, inspectors would have missed violations in more than 1,150 homes. While many of these violations may not be serious or difficult to correct initially, if left undetected, these homes could be vulnerable to high-wind events or other structural damage. While homeowners can request an inspection if they believe the home is poorly installed, only about two percent of homeowners do so. A homeowner generally has only two years to identify any installation problems and file a warranty claim.

The median time between an installation and an inspection is nine months.

The Division's installation inspection process is inefficient and poorly executed.

- **Slow and inefficient process**. Sample data from fiscal year 2009 suggests the median time between an installation and the inspection of a manufactured home was about 195 working days, or the equivalent of more than nine months. The fastest an inspector reached a home in this sample was 26 working days, or more than a month, after the installation.

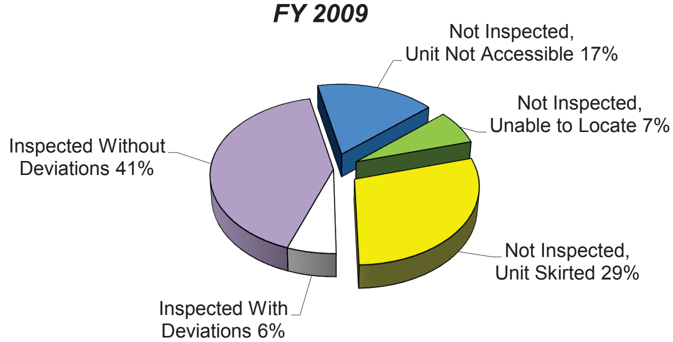
  The Division's continued reliance on regular mail, and the vast size of field office regions, delay inspections significantly. The installation notification form filed by the installer travels by mail to the central office in Austin to process payment, then to the field supervisor in Lubbock, and finally to the field office responsible for the inspection. This process alone can take weeks. In addition, the regions covered by a field office are immense, causing further inspection delays, more travel time, and higher travel costs and expenses. Staff have to plan inspection routes to ensure they review as many installations as possible while driving great distances. For example, the Lubbock field office covers 74 counties and encompasses both El Paso and Abilene.

While standards vary, installation inspections in other states occur more quickly than in Texas because those states require inspections within shorter time frames or as a condition of occupancy. For example, Alabama completes inspections within ten days of an installation.[9]

The Division completes less than half of attempted inspections.

- **Failure to complete inspections**. While the Division attempted to inspect about 80 percent of installations in fiscal year 2009, the Division failed to complete 53 percent of these inspections. The pie chart, *Installation Inspections Attempted*, shows the results of manufactured housing inspection attempts in fiscal year 2009. The Division attributes this high failure rate to an inability to access homes. Homeowners typically occupy a manufactured housing unit before any inspection occurs. Once occupied, homeowners may refuse to allow inspectors onto their property, or modify their home as they see fit. Typical modifications include skirting the manufactured housing unit, which may restrict or deny inspectors access to the areas that require inspection. Homeowners may also move a home prior to an attempted inspection, and if inspectors have outdated location information they may be unable to locate the home.

Installation Inspections Attempted
FY 2009



Failing to complete inspections is a terribly inefficient and costly practice.

The extensive lag time between installations and inspections in Texas contributes significantly to this problem. No other states contacted by Sunset staff cited problems with locating or accessing units during the inspections process.

Attempting but failing to complete this many inspections is a terribly inefficient and costly practice. The number of such incomplete inspections roughly translates to the lost productivity of almost eight inspectors each fiscal year. Thus, the State currently expends significant money to support inspector salaries, travel, and expenses that do not further the goal of protecting consumers.

- **Not prioritizing inspections**. Statute directs the Division to prioritize hurricane-prone regions of the State and multisection units, as these factors present the greatest risks to Texans.[10] However, during this review, Sunset staff discovered that the field staff were not prioritizing either of these types of inspections. For example, along the Texas Coast field staff attempted inspections of only 41 percent of installations, compared to 83 percent in non-coastal areas.[11] In addition, inspectors actually examined a greater percentage of single-unit homes than multisection homes along the Coast. Management reported that field staff may have been unaware of the priorities and focused on completing simpler single-unit inspections to help meet performance targets, or focused on some of the other non-installation inspections that are a part of their duties.

  Another concern is that the Division does not consider installer history in prioritizing installation inspections. As a result, licensed installers with a history of violations do not face any increased level of inspections. For example, even though one installer had 76 violations in fiscal year 2009, the Division did not target this licensee for an increased number of inspections. In fact, other licensees were subject to a greater rate of inspections, despite little or no indication of problems. Thus, the Division's resources were not targeted to inspecting known problem installers.

The Division failed to prioritize high-risk installations along the Coast.

The State typically does not directly administer home inspection programs.

In lieu of using state employees, several Texas agencies rely on third-party inspectors to help administer statewide or comprehensive inspection programs, including the Texas Real Estate Commission, Texas Department of Insurance, and Texas Department of Licensing and Regulation. Each of these agencies develops inspection standards, compiles a list of qualified inspectors, and maintains a core staff of inspectors to provide oversight of third-party inspections. Since homeowners are the primary beneficiaries of an inspection, consumers directly pay inspectors for their services.

The chart, *Third-Party Inspectors*, provides additional information on third-party inspectors across state agencies.

Third-Party Inspectors

Agency	Function	Number of Inspections
Texas Real Estate Commission	Licenses inspectors to perform home inspections prior to home sales.	3,533
Texas Department of Insurance	Registers licensed engineers to inspect coastal homes for compliance with state windstorm code.	825
Texas Department of Licensing and Regulation	Registers inspectors to conduct in-plant inspections of construction, and on-site installation inspections of modular housing and commercial buildings.	55

At the federal level, HUD plans to use third-party inspectors to inspect all installations in the 22 states it directly administers. Retailers will contract with independent inspectors to perform the inspections, and the inspectors will report to HUD. To perform installation inspections, HUD will permit, among others, professional engineers, registered architects, International Code Council inspectors, or any municipally employed home residential building inspectors.[12]

The State has an opportunity to better meet installation inspection needs through local third-parties that could inspect all installations.

The State could improve overall effectiveness and efficiency by transferring installation inspection functions to local third-parties. A large population of qualified home inspectors exists statewide, and with clear direction could easily perform inspections of manufactured housing installations. Local third-party inspectors can conduct inspections at a faster rate as the paperwork would no longer need to go through the State before an inspection could occur. In addition, the State would no longer be paying for failed inspection attempts. Unlike state inspectors, third-party inspectors would not accumulate significant travel expenses and could have increased communication with the homeowner, making it less likely that they would encounter problems that would prevent them from inspecting a home.

The Texas Department of Licensing and Regulation (TDLR) uses third-party inspectors to review modular housing installations, which are similar to manufactured housing installations, to enforce state regulations. Using third-party inspectors enables TDLR to ensure every modular home obtains an inspection. In addition, HUD already relies on third-party inspectors to review manufactured home construction plans, and to monitor each stage of the construction process before a manufactured home leaves the factory in Texas.[13] Relying on third-party inspectors to also check manufactured home installations would increase the pool of inspectors available statewide and help better ensure homes are properly secured.

Recommendations

Change in Statute

6.1 Require the Division's Board, by rule, to establish guidelines for the inspection of all manufactured housing installations using third-party inspectors.

This recommendation would require inspections for all manufactured housing installations, helping to protect consumers from defects and harm. Board rules would provide for retailers or brokers to contract, as part of the sale, with an independent third-party inspector to check the installation of each new or used home. In the case of a consumer-to-consumer sale where a home is reinstalled, the installer would be responsible for scheduling an inspection. Rules implementing these guidelines should be adopted no later than December 1, 2011.

The consumer would pay for the inspection and the retailer or installer would ensure the inspection occurs within 14 days of installation. The inspector would report the inspection results to the retailer, installer, and the Division, and pay a small filing fee to the Division. Replacing the installation filing fee with a smaller inspection filing fee would lessen costs already passed on to the consumer and mitigate some of the new expense of installation inspections. Requiring consumers to pay for inspections would help facilitate inspections, ensuring they happen in a timely manner.

The Division would retain some full-time field staff to provide oversight of the third-party inspection process and conduct other housing-related inspections, as currently required by law or practice. The Division also would continue to conduct no-charge complaint inspections when requested, but only after an initial installation inspection is completed. The installer would be required to remedy any violations noted in the inspection, and have the home reinspected, at the installer's cost, to certify to the Division that all deviations had been corrected. The installer, inspector, and the Division should maintain the records at least until the end of the warranty period.

6.2 Require the Division to register all third-party manufactured-housing installation inspectors.

This recommendation would require the Division to register all eligible inspectors seeking to participate in the program, and make the list of inspectors available to the public on its website. The Board should develop rules by December 1, 2011 detailing inspector qualifications, registration processes and fees, and procedures to revoke the registration of inspectors who fail to comply with regulations. If the Board revokes a registration based on a violation that impacts a license the inspector maintains with another state agency, the Division should notify the relevant state agency of the revocation. Registered third-party inspectors would apply for renewal on a biennial basis. The Board should begin registration of inspectors January 1, 2012 and phase out the State's inspection process by August 31, 2012.

Fiscal Implication Summary

These recommendations would save the State an estimated $460,102 each fiscal year and eliminate 15 full-time equivalents (FTEs) beginning in fiscal year 2013.

Transferring inspection responsibilities from the Division to third-party inspectors would result in a savings of $1,147,602 annually. This estimate includes $1,001,318 based on average salaries and fringe benefits of 15 FTEs and $128,518 in travel costs, telephone, equipment, and supply costs for field offices. These estimates are based on eliminating four field office administrative staff earning an average annual salary of $39,553, and eleven inspectors earning an average annual salary of $56,418, leaving the Division with seven inspectors. The Division should restructure the existing field offices at its discretion. These staff would assume the costs associated with third-party inspector oversight.

Eliminating the installation filing fee, which ranges from $75 to $125 depending on the number of sections installed, and replacing it with a smaller inspection fee of $25 would result in a revenue loss of $687,500. Sunset staff assume that installations will hold steady at 11,000 installations annually.

Individual consumers would pay for initial inspections by contracted inspectors through the retailer or installer. Inspector fees for consumers in other states generally range from $100 to $250 dollars.

Texas Department of Housing and Community Affairs

Fiscal Year	Savings to the General Revenue Fund	Change in the Number of FTEs From FY 2009
2012	$0	0
2013	$460,102	-15
2014	$460,102	-15
2015	$460,102	-15
2016	$460,102	-15

....

1 Texas Administrative Code, Title 10, part 1, rules 80.20 – 80.26.

2 Amy J. Schmitz, "Promoting the Promise: Manufactured Homes Provide for Affordable Housing," Journal of Affordable Housing, vol. 13, no. 3 (Spring 2004), pp. 384-415.

3 24 CFR 3286.803 (2008).

4 Texas Occupations Code, sec. 1201.303.

5 Tim Marshall, "On the Performance of Buildings In Hurricanes: A Study For The Saffir-Simpson Scale Committee," Online. Available: www.nhc.noaa.gov/pdf/SSHWS-Marshall.pdf. Accessed: August 16, 2010.

6 Consumers Union Southwest Regional Office, "Tornado Magnets? Maybe Not, But…," *Paper Tiger Missing Dragon* (November 2002), p. 16. Online. Available: www.consumersunuion.org/pdf/mh/Tornado.pdf. Accessed: August 16, 2010.

7 Ibid.

8 24 CFR 3286.501-3286.511 (2008).

9 Telephone interview with Alabama Manufactured Housing Commission staff, (Austin, Texas, July 26, 2010).

10 Texas Occupations Code, sec. 1201.303.

11 Sunset staff found that inspectors attempted to inspect 83 percent of all installations in noncoastal areas and only 41 percent of installations along the Texas Coast.

12 24 CFR 3286.511 (2008).

13 24 CFR 3282.362 (2005).

Responses to Issue 6

The response to Issue 6 is provided by the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, not the Department as a whole.

Recommendation 6.1

Require the Division's Board, by rule, to establish guidelines for the inspection of all manufactured housing installations using third-party inspectors.

Division Response to 6.1

The Manufactured Housing Division opposes the recommendation to outsource installation inspections to third-party inspectors. The Division states that the process was established to ensure that the statutory requirement to inspect 25 percent of all installations was met; leveraging the benefits of a highly knowledgeable group of state inspectors. The Division's staff, with an average of 17 years of experience per inspector, has a solid record of finding issues, reporting them, and overseeing the follow-through in the correction process. More importantly, there is no conflict of interest. While this approach has kept the inspection costs low for this most important source of affordable housing, the number of installation inspections conducted remains limited.

The Division agrees with Sunset staff's emphasis on the importance of inspections, but does not see third-party inspectors as the solution. The Division notes that it attempted to use third-party inspectors in 1998, but the program failed due to staff turnover, failure to train and educate new employees, and conflicts of interest. The Division has learned that other states have experienced similar difficulties. The Division has also solicited local jurisdictions to conduct inspections for a fee, but that effort has been unsuccessful because few local governments were interested and those that participated often required significant follow-up and correction by the Division.

The Division has recently reorganized the installation inspection program to achieve a higher number of inspections. A new website feature enables installers to enter installation reports online, print a hardcopy to submit with payment, and transmit the form electronically to the appropriate field office. This allows the Division to perform inspections within 7-10 days. The Division estimates the successful inspection rate will increase from 47 percent to 90 percent, leaving a small margin for homes which cannot be inspected due to inaccessibility.

Division Modification

1. Maintain the Division's current field operations and staff and direct the Division to attempt to inspect 100 percent of all installations.

(Joe A. Garcia, Executive Director – Manufactured Housing Division, Texas Department of Housing and Community Affairs)

For 6.1

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin

Kevin Jewell, Consultant – on behalf of the following 11 organizations: Advocacy Inc., Association of Rural Communities in Texas, Center on Disability and Development – Texas A&M University, Easter Seals Central Texas, Habitat for Humanity of Texas, Motivation Education & Training, Inc., Texas Association of Community Development Corporations, Texas Association of Local Housing Finance Agencies, Texas Council for Developmental Disabilities, Texas Center for Disability Studies – UT, and Texas Low Income Housing Information Service

Dan McBrayer

Jimmy Lee McClintock, Jr. – RCS Enterprises, Dripping Springs

M. Montgomery

Noel Poyo, Executive Director – National Association of Latino Community Asset Builders, San Antonio

Against 6.1

D.J. Pendleton, Executive Director – Texas Manufactured Housing Association, Austin

Modifications

2. Maintain inspections at the Division and mandate that the Division perform inspections on 90 percent of all installations, rather than the current 25 percent statutory mandate. (D.J. Pendleton, Executive Director – Texas Manufactured Housing Association, Austin)

3. Require the Division, through its own staff or third-party inspectors, to complete 100 percent of all installation inspections. (Belinda Carlton, Public Policy Specialist – Texas Council for Developmental Disabilities, Austin)

Recommendation 6.2

Require the Division to register all third-party manufactured-housing installation inspectors.

Division Response to 6.2

The Division opposes this recommendation. (Joe A. Garcia, Executive Director – Manufactured Housing Division, Texas Department of Housing and Community Affairs)

For 6.2

Dan McBrayer

Jimmy Lee McClintock, Jr. – RCS Enterprises, Dripping Springs

M. Montgomery

Against 6.2

D.J. Pendleton, Executive Director – Texas Manufactured Housing Association, Austin

Commission Decision

Adopted a modification as an alternative to Recommendations 6.1 and 6.2 to require the Division to inspect 75 percent of manufactured housing installations.

The modification also requires the Division, before the legislative session in 2015, to report to the Legislative Budget Board, Governor's Office of Budget, Planning, and Policy and the legislative committees of jurisdiction on meeting the 75 percent inspection goal.

If the Division cannot complete 75 percent of installation inspections by 2015, the modification requires the Division to institute a third-party inspection process to supplement existing state inspections, and requires the Division to establish maximum fees, in rule, for third-party installation inspections.

Legislative Action

The Legislature adopted the Commission's alternative to Recommendations 6.1 and 6.2 in H.B. 2608, but the Governor vetoed the bill. The Legislature later included these provisions in S.B. 1 of the 1st Called Session. Senate Bill 1 increases the Manufactured Housing Division's inspection requirement from 25 percent to 75 percent of all manufactured housing installations, and requires the Division to report to the Legislative Budget Board, Governor's Office of Budget, Planning, and Policy, and the legislative committees of jurisdiction on meeting the new inspection goal before the legislative session in 2015. If the Division cannot complete 75 percent of installation inspections by 2015, the bill requires the Division to establish a third-party inspection process to supplement existing state inspections, and requires the Division to establish maximum fees, in rule, for third-party installation inspections.

Issue 7

Key Elements of the Manufactured Housing Division's Functions Do Not Conform to Common Licensing Standards.

Background

As part of its mission to ensure manufactured housing units are well constructed, safe, and installed correctly, and consumers are provided fair and effective remedies, the Manufactured Housing Division (Division) performs several standard licensing and enforcement functions. Federal law requires states to license installers.[1] State law further requires licenses for manufacturers, rebuilders, retailers, branches, brokers, and salespersons.[2] The textbox, *Manufactured Housing License Types*, provides more information on licenses issued by the Division.

Manufactured Housing License Types*

Salesperson (1,309 licensees) – sells or lease-purchases manufactured housing units on behalf of a retailer or broker.

Installer (822 licensees) – places and secures manufactured housing units onto a foundation.

Retailer (801 licensees) – sells, resells, exchanges, or lease-purchases manufactured housing units.

Broker (563 licensees) – negotiates the sale, exchange, or lease-purchase of manufactured housing units.

Manufacturer (38 licensees) – constructs or assembles manufactured housing according to federal standards.

Rebuilder (0 licensees)** – rebuilds or repairs manufactured housing units.

Branch (0 licensees)** – operates as a satellite location for a manufactured housing retailer.

* Information current as of August 11, 2010.
** Authorized in law, but not currently in use.

The Division and its independent Board monitor more than 2,300 license holders, with many holding multiple licenses. Qualifications include education, training, and criminal background checks. The Division also enforces the Texas Manufactured Housing Act and its Board's rules by investigating complaints against license holders and taking disciplinary action when necessary.

The Sunset Advisory Commission has a historic role in evaluating licensing agencies, as the increase of occupational licensing programs served as an impetus behind the creation of the Commission in 1977. Since then, the Sunset Commission has completed more than 98 licensing agency reviews. Sunset staff has documented standards in reviewing licensing programs to guide future reviews of licensing agencies. While these standards provide a guide for evaluating a licensing program's structure, they are not intended for blanket application. The following material highlights areas where the Division's statute and rules differ from these model standards, and describes the potential benefits of conforming with standard practices.

Findings

Education and licensing provisions of the Division's statute and rules do not follow model practices, affecting the appropriate training of licensees and the Division's ability to protect consumers.

The standard survey course does not guarantee competence in each area of practice.

- **Initial education requirements**. Initial education requirements for licensure by the State should be the minimum required to ensure licensees are competent to practice. The Division's statute requires 20 hours of instruction for all licensees. In practice, the Division provides 16 hours of instruction and allots four hours for testing.[3] The curriculum is the same for all licensees, regardless of the specific activity the Division is licensing the person to perform.[4] However, the roles and responsibilities of manufactured housing licensees vary greatly, and the standard survey course does not guarantee competence in each area of practice. Thus, an installer and a retailer go through the same course, despite having different activities to perform once licensed. For example, beyond a core understanding of the industry and its law, installers need technical training to safely secure a home on its foundation. In contrast, retailers need education targeted at helping consumers make informed decisions about the purchase and financing of a home.

  Changing the Division's approach to target specific skills, but reducing hours devoted to the broad understanding of the industry, would better ensure the competence of its licensees. More specialized curricula also would bring the Division in line with practices in other states.

Many applicants must travel long distances to obtain required training.

- **Retailer education**. Proper protection of the public is dependent on licensees having working knowledge of laws, rules, and practices that govern their occupation. Statute requires every manufactured housing retail location to obtain a retailer license and surety bond, and to designate at least one person within the company to fulfill education requirements.[5] However, the law does not prohibit a single person from meeting the education requirements for multiple locations, or even residing out-of-state.[6] Requiring each retail location to have a management official educated in state law employed at that site would ensure better day-to-day operations and oversight of salespersons knowledge of manufactured housing laws and regulations.

- **Education and exam accessibility**. A licensing agency should provide reasonable access to educational and testing opportunities throughout the state. The Division offers six three-day education courses and exams per year, but all training sessions are conducted in Austin. Many applicants must travel considerable distances to obtain required training. Other comparable licensing agencies have improved access to education by rotating courses around the state or using online education and testing resources.

- **Criminal background checks**. Criminal background checks of licensees help protect the public, especially for occupations in which licensees regularly interact with the public or there is a potential risk of consumer fraud. In recent years several agencies have switched from name checks to the Department of Public Safety (DPS) fingerprint system, which provides more accurate, real-time information than a name-based criminal background check. Fingerprint-based criminal background checks match an individual with any associated criminal history, including any criminal history from other states or the Federal Bureau of Investigations. In place of the need for renewal checks, DPS issues automatic notice of subsequent arrests.

  The use of fingerprint-based checks is expanding in Texas and nationally, as the checks have become more affordable. At least 12 state agencies use fingerprint-based criminal background checks including the following: Department of Banking, Office of the Consumer Credit Commissioner, Department of Insurance, Department of Licensing and Regulation, Department of Savings and Mortgage Lending, and Funeral Service Commission. Florida also requires prospective manufactured housing retailer licensees to submit fingerprints for a state and federal criminal background check.[7]

  In contrast, the Division conducts a DPS name check upon initial licensure, and in response to an internal audit report, recently began to review criminal history during the license renewal process as well.[8] By statute, the Division may refuse to issue a license for criminal history five years preceding the application date.[9] Requiring the Division to shift to fingerprint checks would better protect the public and eliminate the need for additional checks upon renewal.

Fingerprint checks are the most reliable way to review criminal history.

Nonstandard enforcement provisions of the Division's statute, rules, and practices reduce the Division's effectiveness in protecting consumers.

- **Cease-and-desist authority**. A licensing agency should have enforcement authority not only over its licensees, but also over those who engage in unlicensed activity. However, standard sanctions against licensees do not apply to unlicensed activity. While injunctive authority through the Attorney General's Office allows agencies to seek legal action to stop unlicensed activity, cease-and-desist orders provide a more immediate step that agencies may take on their own to stop unlicensed activity.

  Although the Division has cease-and-desist authority for licensed activities, it lacks authority to address unlicensed activities. The Division's current process of issuing a warning letter to stop unlicensed practice is ineffective and lacks real enforcement authority, while seeking injunctions through the Attorney General can be cumbersome and time consuming. Cease-and-desist orders would provide for faster action, especially when violators of these orders are subject to additional sanctions, such

Issuing a warning letter to stop unlicensed practice is ineffective.

as administrative penalties. In addition, violations of cease-and-desist orders could help the agency obtain injunctive relief.

- **Refund authority**. Refunds allow a complainant to receive financial compensation for some or all of what was lost as a result of the act that prompted the complaint and resulted in a violation of state law or rules by a licensee. The Division is not authorized to allow a licensee to pay a refund directly to the aggrieved party, even if the licensee wishes to do so. Instead, the Division pays a refund to the complainant and seeks reimbursement from the licensee's surety bond.[10] Allowing the licensee to refund the consumer directly would provide a potentially faster option to compensate the consumer without risking the licensee's ability to maintain a surety bond.

- **Administrative complaint dismissal**. A licensing agency's staff should have the authority to administratively dismiss baseless and non-jurisdictional complaints against a licensee without having to involve their governing board, except to be informed of such dismissals. The Division's statute authorizes staff to handle warranty cases, but remains silent on closure of other cases. By practice, staff currently also close complaint cases when evidence is insufficient to document a violation, or when they do not have jurisdiction to take action. Providing for staff to administratively dismiss baseless complaints would save time by eliminating the need for the Board to consider each complaint while still providing the Division's Board with necessary information so that it is accountable for staff actions.

- **Complaint filing**. The public should have easy access to a licensing agency's enforcement process through reasonable complaint filing procedures. The public should be able to file a written complaint on a simple, standard form provided on the agency's website, through email, or through regular mail. The form should request enough information to start an investigation, but not be so detailed or technical as to discourage complaints.

Requesting notarization on all complaints is burdensome and unnecessary.

While the manufactured housing statute only requires sworn statements for refund claims, in practice the Division requests notarization on all complaints.[11] Notarization is burdensome and unnecessary, as it does not ensure the information is accurate, only that the person signing the document is identified correctly. Furthermore, prior to taking action on a complaint, the Division conducts an inspection of the home and corresponds with the alleged offending parties to verify the complaint. Eliminating the need for notarization would remove an unnecessary burden that only prolongs the investigative process and discourages the filing of complaints.

- **Public information on enforcement actions**. Licensing agencies should make all final enforcement information, such as final disciplinary orders and sanctions, easily available to the public. The Division posts information on recent enforcement actions on its website, but consumers cannot search for a particular licensee's record to determine what, if any, enforcement action the Division has taken against them. The Division previously posted this information, but it has not been updated in six years. Increasing ease of access to this information would help to protect consumers by assisting them in making informed decisions in selecting a reputable manufactured housing manufacturer, retailer, broker, salesperson, or installer.

Consumers cannot review a licensee's record online.

Certain licensing provisions of the Division's statute are outdated or do not provide for possible efficiencies.

- **Unnecessary license types**. An agency's licenses should play a clear role in protecting the public. The Division's statute authorizes a branch license and a rebuilder license, in addition to a standard retailer license.[12] However, the retailer license covers the functions of both branch and rebuilder licenses among other activities. The Division has never issued a branch license, has not issued a rebuilder license since 2006, and does not anticipate issuing either license in the future. Removing these licenses from law would clarify which manufactured housing licenses are needed to protect the public.

- **Reprinted licenses**. An agency should have the authority to charge for duplicate or reprinted licenses requested by the licensee. The Division's statute does not authorize such a reprint fee, so the Division reissues these licenses at no cost to the licensee. Authorizing a minimal reprint fee would ensure that the licensee bears the administrative cost associated with producing a reprinted license.

Recommendations

Change in Statute

7.1 Reduce initial core education requirements for all licensees from 20 to eight hours but require an additional eight hours of specialized training for installers and retailers.

This recommendation would reduce the core curriculum for all new licensees from 20 to eight hours. Required testing would be in addition to the eight hours of instruction. Due to the higher potential of harm to the consumer and the nature of the course work, installers and retailers would be required to obtain eight hours of specialized instruction in their specific areas, in addition to the eight hours of core curriculum required for all licensees.

7.2 Require a management official at each licensed retailer location to fulfill appropriate education requirements.

Under this recommendation, each licensed retailer location would be required to have at least one individual who has met necessary education requirements and who will have actual authority over any employees involved in the sale of manufactured homes.

7.3 Require the Division to conduct a fingerprint-based criminal background check of all manufactured housing licensees.

This recommendation would require the Division to conduct fingerprint criminal background checks, through DPS, on all licensees to review complete federal and state criminal histories of applicants. Licensees would use the State's fingerprint vendor to collect and submit fingerprints. The DPS system provides automatic updates, eliminating the need for additional background checks at the time of renewal. New prospective licensees would provide fingerprints at the time of application, and existing licensees would provide fingerprints upon renewal. Applicants would pay the one-time $45 cost.

7.4 Grant cease-and-desist authority to the Division for unlicensed construction, sale, and installation of manufactured homes.

This recommendation would allow the Division to issue cease-and-desist orders when it discovers an individual or entity operating without a license. As part of this recommendation, the Division would also be authorized to assess administrative penalties on unlicensed individuals or entities of up to $1,000 for each day of the violation, consistent with the Division's penalty authority for licensed individuals and entities. These changes would not impact the Division's authority to also seek an injunction through the Attorney General. Cease-and-desist authority would help the Division better protect consumers from unlicensed manufactured housing operations and standardize the Division's procedures with commonly applied licensing practices.

7.5 Authorize the Division to order direct refunds as part of the manufactured housing complaint settlement process.

This recommendation would authorize the Division to order refunds directly from the licensee, instead of having to use the licensee's surety bond, for any violation that caused consumer harm. This recommendation would not expand the basic authority the Division already has, but would simply increase options for payment, allowing licensees to pay refunds directly or, if they are unwilling or unable, to use their bond, as currently authorized in law.

7.6 Authorize Division staff to administratively dismiss baseless and non-jurisdictional complaints and report these actions to the Division's Board.

This recommendation would save time while promoting greater accountability of staff actions by ensuring Division staff report these actions to its Board. Dismissal information reported to the Division's Board should contain sufficient explanation indicating why complaints were dismissed.

7.7 Eliminate manufactured housing branch and rebuilder licenses from statute.

This recommendation would eliminate the unnecessary branch and rebuilder licenses.

7.8 Authorize the Division to collect a fee for reprinted manufactured housing licenses.

This recommendation would permit the Division to collect a nominal fee for reprinted licenses requested by a licensee. The Division's Board would determine the appropriate fee level.

Management Action

7.9 The Division should explore offering broader access to license education courses and examination across the state.

The Division should explore offering the license initial education courses and examinations at different locations across the state, or explore opportunities to outsource courses to providers who can host trainings at multiple locations.

7.10 Direct the Division to remove the requirement that manufactured housing complaints filed with the Division be notarized.

Under this recommendation, the Division should remove any suggestion on forms or its website that notarization is necessary for simply filing a complaint. Existing provisions of the Penal Code that make falsifying a government record a crime would continue to apply to filed complaints.

7.11 Direct the Division's Board to make all disciplinary orders and sanctions available to the public on the Division's website and in an easily accessible format for consumers.

This recommendation would require the Division to provide easy access to licensee history on its website. Increasing accessibility would include allowing consumers to view information on licensees. An improved interface should ease the burden on consumers and reduce the amount of time that staff must dedicate to handling consumer inquiries.

Fiscal Implication Summary

These recommendations would not have a significant fiscal impact to the State overall. For criminal background checks, licensees, not the State, would be responsible for paying a one-time fee, currently $45. Authorizing the Division to order direct refunds as part of the complaint settlement process would have no fiscal impact because consumers, not the State, directly receive the funds. Permitting the Division to collect fees for reprinted licenses would increase revenues, but the amount cannot be estimated because the Division does not track the number of requests it receives annually for license reprints. The Division could implement the remaining recommendations within its current resources.

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[1] 24 CFR 3286.803 (2008).

[2] Texas Occupations Code, sec. 1201.101.

[3] Texas Occupations Code, sec. 1201.104.

[4] Texas Administrative Code, Title 10, part 1, rule 80.41.

[5] Texas Occupations Code, secs. 1201.104, 1201.105, and 1201.551.

[6] Texas Occupations Code, secs. 1201.003(23) and 1201.104.

[7] Florida Statutes, title XXIII, sec. 320.77(3) (2010).

[8] Texas Department of Housing and Community Affairs, *An Audit of Occupational Licensing in the Manufactured Housing Division*, report no. 10-1034 (Austin, Texas, March 2010).

[9] Texas Occupations Code, sec. 1201.551.

[10] Texas Occupations Code, sec. 1201.406.

[11] Ibid.

[12] Texas Occupations Code, sec. 1201.101.

Responses to Issue 7

The response to Issue 7 is provided by the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, not the Department as a whole.

Recommendation 7.1

Reduce initial core education requirements for all licensees from 20 to eight hours but require an additional eight hours of specialized training for installers and retailers.

Division Response to 7.1

The Manufactured Housing Division opposes this recommendation stating that the existing 20-hour education requirement for all licensees is beneficial to the industry and critical to consumer protection. Reducing the education of the industry to 8 hours may result in increased violations and additional harm to the consumer based on lack of knowledge. (Joe A. Garcia, Executive Director – Manufactured Housing Division, Texas Department of Housing and Community Affairs)

Staff Comment: Currently the Division provides 16 hours of general education and four hours of testing for licensees. Sunset staff's recommendation would reduce the general education requirement from 16 hours to eight hours for all licensees, but would require an additional eight hours specialized coursework for retailers and installers.

For 7.1

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin

Kevin Jewell, Consultant – on behalf of the following 11 organizations: Advocacy Inc., Association of Rural Communities in Texas, Center on Disability and Development – Texas A&M University, Easter Seals Central Texas, Habitat for Humanity of Texas, Motivation Education & Training, Inc., Texas Association of Community Development Corporations, Texas Association of Local Housing Finance Agencies, Texas Council for Developmental Disabilities, Texas Center for Disability Studies – UT, and Texas Low Income Housing Information Service

D.J. Pendleton, Executive Director – Texas Manufactured Housing Association, Austin

Against 7.1

None received.

Modification

1. Require eight hours of initial core education, as recommended by Sunset staff, but reduce specialized education requirements to four hours for retailers and four hours for installers. (D.J. Pendleton, Executive Director – Texas Manufactured Housing Association, Austin)

Recommendation 7.2

Require a management official at each licensed retailer location to fulfill appropriate education requirements.

Clarification of Recommendation 7.2: By law, each retail location must be licensed and bonded. This recommendation would require one management official at each retail location to fulfill the existing education requirement associated with the license of the location. It would not require the management official to obtain an additional license or to be present at the retail location during all hours of operation.

Division Response to 7.2

The Manufactured Housing Division concurs with this recommendation. (Joe A. Garcia, Executive Director – Manufactured Housing Division, Texas Department of Housing and Community Affairs)

For 7.2

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin

Kevin Jewell, Consultant – on behalf of the following 11 organizations: Advocacy Inc., Association of Rural Communities in Texas, Center on Disability and Development – Texas A&M University, Easter Seals Central Texas, Habitat for Humanity of Texas, Motivation Education & Training, Inc., Texas Association of Community Development Corporations, Texas Association of Local Housing Finance Agencies, Texas Council for Developmental Disabilities, Texas Center for Disability Studies – UT, and Texas Low Income Housing Information Service

D.J. Pendleton, Executive Director – Texas Manufactured Housing Association, Austin

Against 7.2

None received.

Recommendation 7.3

Require the Division to conduct a fingerprint-based criminal background check of all manufactured housing licensees.

Division Response to 7.3

The Manufactured Housing Division concurs with this recommendation. (Joe A. Garcia, Executive Director – Manufactured Housing Division, Texas Department of Housing and Community Affairs)

For 7.3

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin

Kevin Jewell, Consultant – on behalf of the following 11 organizations: Advocacy Inc., Association of Rural Communities in Texas, Center on Disability and Development – Texas

A&M University, Easter Seals Central Texas, Habitat for Humanity of Texas, Motivation Education & Training, Inc., Texas Association of Community Development Corporations, Texas Association of Local Housing Finance Agencies, Texas Council for Developmental Disabilities, Texas Center for Disability Studies – UT, and Texas Low Income Housing Information Service

D.J. Pendleton, Executive Director – Texas Manufactured Housing Association, Austin

Against 7.3

None received.

Recommendation 7.4

Grant cease-and-desist authority to the Division for unlicensed construction, sale, and installation of manufactured homes.

Division Response to 7.4

The Manufactured Housing Division concurs with this recommendation. (Joe A. Garcia, Executive Director – Manufactured Housing Division, Texas Department of Housing and Community Affairs)

For 7.4

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin

Kevin Jewell, Consultant – on behalf of the following 11 organizations: Advocacy Inc., Association of Rural Communities in Texas, Center on Disability and Development – Texas A&M University, Easter Seals Central Texas, Habitat for Humanity of Texas, Motivation Education & Training, Inc., Texas Association of Community Development Corporations, Texas Association of Local Housing Finance Agencies, Texas Council for Developmental Disabilities, Texas Center for Disability Studies – UT, and Texas Low Income Housing Information Service

D.J. Pendleton, Executive Director – Texas Manufactured Housing Association, Austin, Texas

Against 7.4

None received.

Recommendation 7.5

Authorize the Division to order direct refunds as part of the manufactured housing complaint settlement process.

Division Response to 7.5

The Manufactured Housing Division concurs with this recommendation. (Joe A. Garcia, Executive Director – Manufactured Housing Division, Texas Department of Housing and Community Affairs)

For 7.5

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin

Kevin Jewell, Consultant – on behalf of the following 11 organizations: Advocacy Inc., Association of Rural Communities in Texas, Center on Disability and Development – Texas A&M University, Easter Seals Central Texas, Habitat for Humanity of Texas, Motivation Education & Training, Inc., Texas Association of Community Development Corporations, Texas Association of Local Housing Finance Agencies, Texas Council for Developmental Disabilities, Texas Center for Disability Studies – UT, and Texas Low Income Housing Information Service

Against 7.5

None received.

Recommendation 7.6

Authorize Division staff to administratively dismiss baseless and non-jurisdictional complaints and report these actions to the Division's Board.

Division Response to 7.6

The Manufactured Housing Division concurs with this recommendation. (Joe A. Garcia, Executive Director – Manufactured Housing Division, Texas Department of Housing and Community Affairs)

For 7.6

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin

Kevin Jewell, Consultant – on behalf of the following 11 organizations: Advocacy Inc., Association of Rural Communities in Texas, Center on Disability and Development – Texas A&M University, Easter Seals Central Texas, Habitat for Humanity of Texas, Motivation Education & Training, Inc., Texas Association of Community Development Corporations, Texas Association of Local Housing Finance Agencies, Texas Council for Developmental Disabilities, Texas Center for Disability Studies – UT, and Texas Low Income Housing Information Service

Against 7.6

None received.

Recommendation 7.7

Eliminate manufactured housing branch and rebuilder licenses from statute.

Division Response to 7.7

The Manufactured Housing Division concurs with this recommendation. (Joe A. Garcia, Executive Director – Manufactured Housing Division, Texas Department of Housing and Community Affairs)

For 7.7

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin

Kevin Jewell, Consultant – on behalf of the following 11 organizations: Advocacy Inc., Association of Rural Communities in Texas, Center on Disability and Development – Texas A&M University, Easter Seals Central Texas, Habitat for Humanity of Texas, Motivation Education & Training, Inc., Texas Association of Community Development Corporations, Texas Association of Local Housing Finance Agencies, Texas Council for Developmental Disabilities, Texas Center for Disability Studies – UT, and Texas Low Income Housing Information Service

Against 7.7

None received.

Recommendation 7.8

Authorize the Division to collect a fee for reprinted manufactured housing licenses.

Division Response to 7.8

The Manufactured Housing Division concurs with this recommendation. (Joe A. Garcia, Executive Director – Manufactured Housing Division, Texas Department of Housing and Community Affairs)

For 7.8

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin

Kevin Jewell, Consultant – on behalf of the following 11 organizations: Advocacy Inc., Association of Rural Communities in Texas, Center on Disability and Development – Texas A&M University, Easter Seals Central Texas, Habitat for Humanity of Texas, Motivation Education & Training, Inc., Texas Association of Community Development Corporations, Texas Association of Local Housing Finance Agencies, Texas Council for Developmental Disabilities, Texas Center for Disability Studies – UT, and Texas Low Income Housing Information Service

Against 7.8

None received.

Recommendation 7.9

The Division should explore offering broader access to license education courses and examination across the state.

Division Response to 7.9

The Manufactured Housing Division concurs with this recommendation. (Joe A. Garcia, Executive Director – Manufactured Housing Division, Texas Department of Housing and Community Affairs)

For 7.9

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin

Kevin Jewell, Consultant – on behalf of the following 11 organizations: Advocacy Inc., Association of Rural Communities in Texas, Center on Disability and Development – Texas A&M University, Easter Seals Central Texas, Habitat for Humanity of Texas, Motivation Education & Training, Inc., Texas Association of Community Development Corporations, Texas Association of Local Housing Finance Agencies, Texas Council for Developmental Disabilities, Texas Center for Disability Studies – UT, and Texas Low Income Housing Information Service

Against 7.9

None received.

Recommendation 7.10

Direct the Division to remove the requirement that manufactured housing complaints filed with the Division be notarized.

Division Response to 7.10

The Manufactured Housing Division concurs with this recommendation. (Joe A. Garcia, Executive Director – Manufactured Housing Division, Texas Department of Housing and Community Affairs)

For 7.10

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin

Kevin Jewell, Consultant – on behalf of the following 11 organizations: Advocacy Inc., Association of Rural Communities in Texas, Center on Disability and Development – Texas A&M University, Easter Seals Central Texas, Habitat for Humanity of Texas, Motivation Education & Training, Inc., Texas Association of Community Development Corporations, Texas Association of Local Housing Finance Agencies, Texas Council for Developmental Disabilities, Texas Center for Disability Studies – UT, and Texas Low Income Housing Information Service

Against 7.10

None received.

Recommendation 7.11

Direct the Division's Board to make all disciplinary orders and sanctions available to the public on the Division's website and in an easily accessible format for consumers.

Division Response to 7.11

The Manufactured Housing Division concurs with this recommendation. (Joe A. Garcia, Executive Director – Manufactured Housing Division, Texas Department of Housing and Community Affairs)

For 7.11

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin

Kevin Jewell, Consultant – on behalf of the following 11 organizations: Advocacy Inc., Association of Rural Communities in Texas, Center on Disability and Development – Texas A&M University, Easter Seals Central Texas, Habitat for Humanity of Texas, Motivation Education & Training, Inc., Texas Association of Community Development Corporations, Texas Association of Local Housing Finance Agencies, Texas Council for Developmental Disabilities, Texas Center for Disability Studies – UT, and Texas Low Income Housing Information Service

Against 7.11

None received.

Modifications

2. Require the Division to notify consumers in the promulgated consumer disclosure notice about the public availability of information regarding complaint and enforcement activity against licensees. (Belinda Carlton, Public Policy Specialist – Texas Council for Developmental Disabilities, Austin; John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin; Kevin Jewell, Consultant – on behalf of the following 11 organizations: Advocacy Inc., Association of Rural Communities in Texas, Center on Disability and Development – Texas A&M University, Easter Seals Central Texas, Habitat for Humanity of Texas, Motivation Education & Training, Inc., Texas Association of Community Development Corporations, Texas Association of Local Housing Finance Agencies, Texas Council for Developmental Disabilities, Texas Center for Disability Studies – UT, and Texas Low Income Housing Information Service)

3. Require the Division to design its web interface for easier consumer reference by integrating complaint, violation, and enforcement information with the licensing database. This information should include filed complaints, not just unresolved complaints that rise to the level of enforcement actions. (Belinda Carlton, Public Policy Specialist – Texas Council for Developmental Disabilities, Austin; John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin; Kevin Jewell, Consultant – on behalf of the following 11 organizations: Advocacy Inc., Association of Rural Communities in Texas, Center on Disability and Development – Texas A&M University, Easter Seals Central Texas, Habitat for Humanity of Texas, Motivation Education & Training, Inc., Texas Association of Community Development Corporations, Texas Association of Local Housing Finance Agencies, Texas Council for Developmental Disabilities, Texas Center for Disability Studies – UT, and Texas Low Income Housing Information Service)

Commission Decision

Adopted Modification 1 as an alternative to Recommendation 7.1. The modification maintains the reduction of initial core education requirements for all licensees from 20 to eight hours, but requires an additional four hours, instead of eight hours, of specialized training for installers and retailers.

Adopted Recommendations 7.2 through 7.11.

Legislative Action

During the Regular Session, the Legislature adopted all of the provisions in Issue 7 as recommended by the Sunset Commission in H.B. 2608; however, the Governor vetoed the bill. Later, the Legislature only included the education provisions in Senate Bill 1 of the 1st Called Session.

The Legislature adopted two Sunset provisions that conform the Manufactured Housing Division's education requirements to common licensing standards. Senate Bill 1 reduces the core curriculum for all new manufactured housing licensees from 20 to eight hours, and requires installers and retailers to obtain an additional four hours of specialized instruction in their specific occupations. The bill also requires each licensed retailer location to have at least one individual who has met necessary education requirements and who will have actual authority over any employees involved in the sale of manufactured homes. (Recommendation 7.1 as modified and Recommendation 7.2)

The Legislature did not revisit the provisions on criminal background checks, cease-and-desist authority, refunds, baseless complaints, branch licenses, or fees for reprinted licenses in the 1st Called Session. (Recommendations 7.3 through 7.8)

As management actions not needing statutory change, Recommendations 7.9 through 7.11 did not result in legislative action.

Issue 8

The State Has a Continuing Need for the Texas Department of Housing and Community Affairs.

Background

Recognizing the shortage of affordable housing and the need for community-based services to assist low- and moderate-income people, the federal government has established numerous programs to help communities increase housing and community services options. The federal government requires a state partner to administer these programs and funds, and the Texas Legislature created the current Texas Department of Housing and Community Affairs (TDHCA) in 1991 for that purpose. Organizationally, the Department is responsible for affordable housing and community services activities, and statute establishes the Manufactured Housing Division as a division within TDHCA, with its own board, dedicated to the regulation of manufactured housing.

The Department performs the following key functions.

- Disburses federal and state funding, tax credits, and bond proceeds to support the development and rehabilitation of affordable housing.
- Allocates federal funds to support the provision of community services to low-income Texans.
- Regulates the manufactured housing industry and issues titles for manufactured homes.

The textbox, *TDHCA-Sponsored Activities*, provides more detail on the types of services and activities funded by the Department.

TDHCA-Sponsored Activities

TDHCA provides funding or support to local providers, including local governments, and for-profit and nonprofit providers, to perform the housing and community services activities listed below. Manufactured housing activities are performed directly by the State.

Housing

- New construction, preservation, and rehabilitation of affordable rental housing units.
- New single-family home construction, reconstruction, and repair.
- Low-interest mortgages, down payment assistance, and homebuyer education.
- Rental assistance, primarily in rural Texas counties that do not have public housing authorities.

Community Services

- Support for low-income Texans by providing funds for programs such as Headstart, Meals on Wheels, Volunteer Income Tax Assistance, education, and training.
- Home weatherization to improve a home's energy efficiency and reduce utility bills.
- Utility payment assistance.
- Support for homeless Texans, including shelters and services.

Manufactured Housing

- Licensing and regulation of entities involved in the production, sales, and installation of manufactured homes.
- Maintaining official records of manufactured home ownership and location.

Since the federal government provides funds directly to some cities in Texas, the Department serves a dual role as provider for areas not served by the federal government, and statewide administrator of several large federal programs. The agency provides funding through grants and loans, and also serves as a housing finance authority, issuing bonds and tax credits to raise capital for affordable housing projects.

In fiscal year 2009, the Department expended or encumbered $653 million to support affordable housing, community services, and manufactured housing activities. Approximately 99 percent of the Department's housing and community services budget comes from federal payments, block grants, and financing authority, while manufactured housing regulation is funded solely through a combination of federal funds and fees.

Findings

Texas has a continuing need for affordable housing, community support services, and safe manufactured housing.

Each year Texas typically receives several hundred million dollars in federal funds and financing authority, though in recent years this amount has ballooned to billions of dollars with the influx of emergency disaster relief and economic stimulus money. To continue to receive these funds Texas must have a state housing authority and an agency, like TDHCA, with the capacity to administer complicated grants programs.

Texas has a shortage of affordable housing and demographic trends indicate this shortage will persist. The U.S. Department of Housing and Urban Development (HUD) estimates that 2.6 million Texas households, or some 23 percent of owners and 43 percent of renters, have at least one significant housing need, defined as overcrowding, substandard conditions, or excessive housing costs.[1] Private sector housing development is concentrated in cities and generally targeted to higher-income households, leading to shortages for low-income and rural Texans.

The Department has financed more than 199,125 affordable rental units.

Demographic trends indicate that the number of low-income households in Texas will continue to grow, increasing the need for affordable housing. Texas continues to be one of the fastest growing states in the country, and projections show some of the highest rates of growth in minority and elderly populations. Increases in these populations are significant because historically these groups have contained a larger number of low-income families and individuals, indicating that Texas may continue to face a shortage of affordable housing.

The Department estimates it has financed the development of more than 199,125 subsidized multifamily units.[2] These units represent about 30 percent of the total number of the subsidized units in Texas financed by state and federal sources, including the HUD, public housing authorities, and the U.S. Department of Agriculture.[3] Occupancy rates and demand to finance new units remains high, despite the recent economic and housing market downturns. In fiscal year 2009, the Department assisted 12,784 households with housing needs, and 650,238 individuals or households with community services including homelessness services, energy assistance, or other supportive services.

In addition to administering its standard housing and community services programs, over the last few years the Department has developed a number of new programs in response to additional federal aid for disaster and economic recovery. Through the Community Development Block Grant program, TDHCA will administer close to $2 billion to construct, reconstruct, and repair several thousand homes and rental units in areas impacted by recent hurricanes. To date the agency has financed more than 2,400 homes and 2,050 rental units. The Department also received more than $1 billion through the American Recovery and Reinvestment Act (ARRA) and other economic stimulus programs to support tax credit rental property development, community services, weatherization services, homelessness prevention, and foreclosure recovery. Appendix A provides more information on these programs.

TDHCA is administering about $3 billion in disaster and economic recovery funds.

Housed within TDHCA, the Manufactured Housing Division (Division) regulates manufactured housing production, sales, and installation to ensure safety and reduce financial risks for consumers. HUD requires that all manufactured homes be built to federal code and installed properly. To ensure units are safe, all states must provide for installation and complaint-based inspections or rely on HUD to perform and administer inspections. If Texas were to eliminate its complaint and installation inspections, Texas would lose federal funding dedicated to this purpose and HUD would assume regulatory responsibilities. In fiscal year 2009, the Division issued 2,318 licenses and inspected 5,200 home installations.

The Manufactured Housing Division also issues manufactured home titles, which help consumers to obtain loans, insurance, and homestead exemptions, and to verify ownership and lien status in a home purchase transaction. In fiscal year 2009, the Division issued 63,767 titles. Appraisal districts use division records to assess and enforce taxes in their jurisdictions. Without this function Texans would have difficulty selling, insuring, and financing manufactured homes, and taxing entities could have trouble accurately assessing taxes.

Appraisal districts use Manufactured Housing Division records to assess taxes.

Review of the Department and other related agencies did not reveal any significant beneficial alternatives for consolidating or transferring functions.

The Department administers several programs that are similar to programs at other agencies, as outlined below, but Sunset staff concluded that the administration of these programs is consistent with the goals of the Department and transfer of programs would not achieve any greater efficiencies.

- Texas State Affordable Housing Corporation (Corporation), a quasi-state agency, operates a private activity bond program similar to the Department's. A 2009 Sunset staff review of the Corporation identified several agency functions as duplicative of the Department's functions, but targeted at different populations. The Sunset Commission recommended continuing the Corporation for six years but the Legislature failed to pass the legislation. Instead, the Legislature tasked Sunset staff with a re-review of the Corporation, which will examine the ongoing appropriateness of the Sunset Commission's previous recommendation to maintain the Corporation as an independent agency. The Sunset staff report on the Corporation is scheduled for release in November 2010.

- Texas Department of Rural Affairs (TDRA) and the Department are charged with serving rural Texans, TDRA through the provision of grants for infrastructure and the Department through the provision of housing grants. As a result of the similar populations served, the Department and TDRA collaborate in the administration of several state programs, including the Community Development Block Grant Disaster Recovery program, Neighborhood Stabilization Program, and Colonia Self-Help Centers. Before the Legislature established TDRA in 2001, the Department administered the federal Community Development Block Grant program – currently TDRA's largest function – which provides funds to rural communities for infrastructure and economic development projects.

  Both state agencies essentially allocate money to subrecipients, a function that could be wholly performed at either agency; however the Legislature has demonstrated a preference for stand-alone housing and rural agencies. To meet their charges both agencies work together in a number of programs via joint administration or transfers of funds, allowing federal funds to flow into infrastructure or housing projects as dictated by state law. TDRA will be subject to Sunset review in 2013.

- The Health and Human Services Commission or another health and human service agency could administer the Community Services Block Grant, a program that funds a variety of services to low-income households across the state. However, requiring TDHCA to administer the program is consistent with the idea behind the agency's original creation in 1991, namely to coordinate housing and related programs, leading to greater self-sufficiency and increasing the likelihood that households will move towards homeownership.

- The Texas Department of Licensing and Regulation (TDLR), Texas' umbrella licensing agency, regulates 29 professions and has a well-established structure for occupational licensing and enforcement. TDLR currently regulates residential and commercial modular buildings, which are similar to manufactured housing. TDLR also regulated manufactured housing until 1995, when the Legislature transferred the function to the Department over concerns about inspection backlogs.

  While a transfer of manufactured housing functions to TDLR could provide some opportunities for improved coordination and efficiency of similar operations, the Legislature has considered and not supported such a move in the past. Instead, the Legislature opted to maintain the regulation of manufactured housing at the Department but established a separate board to provide focused oversight of this industry. Today, both the Division and TDHCA gain efficiencies from this unusual arrangement. The Department, which has very few field offices, uses division staff located throughout Texas to inspect many single- and multifamily development financed through the Department. The Division benefits from the Department's provision of administrative services like payroll, human resources, and information technology.

All states have an agency to administer federal housing funds.

While organizational structures vary, all states have a state agency to administer housing and community services programs, some of which also regulate manufactured housing.

All states have a state housing finance function that operates under the direction of a governor-appointed board. Many states use one agency to perform housing finance functions, such as issuing bonds and administering tax credits, as well as to allocate other federal housing and community service-related grants and payments. Many states also administer community development, through the Community Development Block Grant program, via this one state agency.

Other states separate community affairs and development programs among several agencies. Some states use a housing agency to manage tax credits, bond finance, and home buyer assistance, and then use a separate agency or several agencies to manage community affairs and community development programs. Federal housing programs and state housing trust funds are evenly distributed between housing finance and community development agencies.

States vary considerably in their approach to regulation of manufactured housing, with housing agencies sometimes performing this function, as manufactured housing can be a significant source of affordable housing. In the balance of states a combination of agencies, including fire marshals, state insurance agencies, departments of transportation, and departments of licensing perform federal and state-required inspection functions and titling activities.

The Manufactured Housing Division's statute does not reflect standard language typically applied across-the-board during Sunset reviews.

The Division's statute does not include a standard provision relating to alternative rulemaking and dispute resolution that the Sunset Commission routinely applies to agencies under review. Without this provision the Division could miss ways to improve rulemaking and dispute resolution through more open, inclusive, and conciliatory processes designed to solve problems by building consensus rather than through contested proceedings. A similar provision exists in the Department's governing statute but does not clearly extend to the operations of the Division.

Recommendations

Change in Statute

8.1 Continue the Texas Department of Housing and Community Affairs for 12 years.

While the Department has some operational challenges ahead, as discussed in the previous issues of the report, this recommendation would continue the Texas Department of Housing and Community Affairs as an independent agency responsible for the allocation of state and federal funds related to development of affordable housing and the provision of community services for 12 years. The recommendation would also continue the Manufactured Housing Division, within the Department, and maintain its separate board.

8.2 Apply the standard Sunset across-the-board requirement for the Manufactured Housing Division to develop a policy regarding negotiated rulemaking and alternative dispute resolution.

This recommendation would ensure that the Division develops and implements a policy to encourage alternative procedures for rulemaking and dispute resolution, conforming to the extent possible to model guidelines by the State Office of Administrative Hearings. The Division would also coordinate implementation of the policy, provide training as needed, and collect data concerning the effectiveness of these procedures. Because the recommendation only requires the Division to develop a policy for this alternative approach to solving problems, it would not require additional staffing or other expenses.

Fiscal Implication Summary

If the Legislature continues the current functions of the Department using the existing organizational structure, the agency's annual appropriation of $171.7 million, excluding one-time, federal ARRA funds, would continue to be required for its operation. Applying the standard Sunset provision relating to alternative rulemaking and dispute resolution would not have a fiscal impact.

....

[1] Texas Department of Housing and Community Affairs, *2010 State of Texas Low Income Housing Plan and Annual Report* (Austin, Texas, January 2010), pp. 18-19. Online. Available: www.tdhca.state.tx.us/housing-center/docs/10-SLIHP.pdf. Accessed: June 27, 2010.

[2] Ibid., p. 27.

[3] Ibid.

Responses to Issue 8

Recommendation 8.1

Continue the Texas Department of Housing and Community Affairs for 12 years.

Agency Response to 8.1

The Texas Department of Housing and Community Affairs concurs with this recommendation, including the assessment that Texas has a continuing need for an agency to provide affordable housing and community services, and that the Department is the most appropriate and qualified agency to perform these functions. (C. Kent Conine, Board Chairman and Michael Gerber, Executive Director – Texas Department of Housing and Community Affairs)

For 8.1

Steven Carriker, Executive Director – Texas Association of Community Development Corporations, Austin

Meghan Garza-Oswald, Assistant VP of Governmental Relations on behalf of Bill Greehey, Board Chairman – Haven for Hope, San Antonio

Justin MacDonald, Vice President – MacDonald & Associates, Inc.; Member – Texas Affiliation of Affordable Housing Providers, Kerrville

M. Scott Norman, Executive Director – Texas Association of Builders, Austin

Stella Rodriguez, Executive Director – Texas Association of Community Action Agencies, Inc., Austin

Mike Sugrue, Ex Officio Member – Texas Affiliation of Affordable Housing Providers, Gun Barrel City

Chuck Wemple, Economic Development Program Manager – Houston-Galveston Area Council of Governments, Houston

Against 8.1

None received.

Recommendation 8.2

Apply the standard Sunset across-the-board requirement for the Manufactured Housing Division to develop a policy regarding negotiated rulemaking and alternative dispute resolution.

Division Response to 8.2

The Division concurs with this recommendation. (Joe A. Garcia, Executive Director – Manufactured Housing Division, Texas Department of Housing and Community Affairs)

For 8.2

None received.

Against 8.2

None received.

Commission Decision

Adopted Recommendations 8.1 and 8.2.

Legislative Action

During the Regular Session, the Legislature had adopted the Sunset provisions to continue TDHCA for 12 years (Recommendation 8.1) and to require the Manufactured Housing Division to develop a standard policy on dispute resolution (Recommendation 8.2) as part of H.B. 2608; however, the Governor vetoed the bill. Later, during the 1st Called Session, the Legislature continued the agency, but for only two years, and did not revisit the dispute resolution policy.

The Legislature through Senate Bill 1 of the 1st Called Session modified the Sunset provision to continue the Texas Department of Housing and Community Affairs as an independent agency for two years, instead of 12. The bill also continues the Manufactured Housing Division, within the Department, and maintains its separate board. In addition, S.B. 652 of the 82nd Regular Legislative Session directs the Sunset Commission to focus its next review of TDHCA on the appropriateness of its recommendations to the 82nd Legislature. (Recommendation 8.1)

New Issues

New Issues

The following issues were raised in addition to the issues in the staff report. These issues are numbered sequentially to follow the staff's recommendations.

TDHCA Board

9. Create a TDHCA appeals board to hear all appeals of staff decisions, other than formal appeals of penalties levied by the Department. Require the board to be comprised of one sitting board member acting as liaison, and one additional member appointed by each of the remaining TDHCA board members. Require the appeals board chair to be an appeals board member other than the liaison. Require TDHCA to webcast appeals board meetings in a similar manner to regular board meetings. (John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin; Kevin Jewell, Consultant – on behalf of the following 11 organizations: Advocacy Inc., Association of Rural Communities in Texas, Center on Disability and Development – Texas A&M University, Easter Seals Central Texas, Habitat for Humanity of Texas, Motivation Education & Training, Inc., Texas Association of Community Development Corporations, Texas Association of Local Housing Finance Agencies, Texas Council for Developmental Disabilities, Texas Center for Disability Studies – UT, and Texas Low Income Housing Information Service)

10. Encourage the TDHCA board to focus on policy issues and the staff to focus on administration so that the board's workload is reduced and the board can do a more efficient job of adopting policy. (Steven Carriker, Executive Director – Texas Association of Community Development Corporations, Austin; Cyrus Reed, Conservation Director – Sierra Club, Lone Star Chapter, Austin)

11. Change statute to require the TDHCA board to include one member who is a recipient of public housing through TDHCA, in its role as a public housing authority, to ensure that the State complies with federal law and Texas local government code requirements for public housing authorities. (Belinda Carlton, Public Policy Specialist – Texas Council for Developmental Disabilities, Austin; John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin; Kevin Jewell, Consultant – on behalf of the following 11 organizations: Advocacy Inc., Association of Rural Communities in Texas, Center on Disability and Development – Texas A&M University, Easter Seals Central Texas, Habitat for Humanity of Texas, Motivation Education & Training, Inc., Texas Association of Community Development Corporations, Texas Association of Local Housing Finance Agencies, Texas Council for Developmental Disabilities, Texas Center for Disability Studies – UT, and Texas Low Income Housing Information Service; Sarah Mills, Policy Specialist – Advocacy, Inc., Austin; Cyrus Reed, Conservation Director – Sierra Club, Lone Star Chapter, Austin)

12. Require the TDHCA board to include a designated representative of people with disabilities and a representative of rural areas, with rural areas defined as a city of less than 10,000 in population not adjacent to a metropolitan statistical area, or an unincorporated area of a county less than 20,000 in population. (Belinda Carlton, Public Policy Specialist – Texas Council for Developmental Disabilities, Austin; Donna Chatham, Executive Director –

Association of Rural Communities in Texas, Austin; John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin; Kevin Jewell, Consultant – on behalf of the following 11 organizations: Advocacy Inc., Association of Rural Communities in Texas, Center on Disability and Development – Texas A&M University, Easter Seals Central Texas, Habitat for Humanity of Texas, Motivation Education & Training, Inc., Texas Association of Community Development Corporations, Texas Association of Local Housing Finance Agencies, Texas Council for Developmental Disabilities, Texas Center for Disability Studies – UT, and Texas Low Income Housing Information Service; Sarah Mills, Policy Specialist – Advocacy, Inc., Austin)

13. Expand the TDHCA Board to include a green housing/energy efficiency expert. (Cyrus Reed, Conservation Director – Sierra Club, Lone Star Chapter, Austin)

14. Require the TDHCA board to broadcast meeting proceedings, including board and audit meetings, via webcast and make the archived webcasts immediately available to the public. (Belinda Carlton, Public Policy Specialist – Texas Council for Developmental Disabilities, Austin; John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin; Kevin Jewell, Consultant – on behalf of the following 11 organizations: Advocacy Inc., Association of Rural Communities in Texas, Center on Disability and Development – Texas A&M University, Easter Seals Central Texas, Habitat for Humanity of Texas, Motivation Education & Training, Inc., Texas Association of Community Development Corporations, Texas Association of Local Housing Finance Agencies, Texas Council for Developmental Disabilities, Texas Center for Disability Studies – UT, and Texas Low Income Housing Information Service; Cyrus Reed, Conservation Director – Sierra Club, Lone Star Chapter, Austin)

15. Require TDHCA to provide separate agenda items with separate links in board materials so the public does not need to download an 1,000 page document to look at minutes or for one particular agenda item. (Cyrus Reed, Conservation Director – Sierra Club, Lone Star Chapter, Austin)

    Staff Comment: TDHCA board materials are available from the agency's website in PDF form. Board materials are bookmarked or tabbed according to agenda items, making it possible to easily search agenda items.

Low Income Housing Tax Credit and Other Housing Programs

16. Require the Department to create a housing program category for Texans earning between zero and 110 percent of Supplemental Security Income, who may earn too little to qualify for existing housing programs provided through the Department. (Belinda Carlton, Public Policy Specialist – Texas Council for Developmental Disabilities, Austin; John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin; Kevin Jewell, Consultant – on behalf of the following 11 organizations: Advocacy Inc., Association of Rural Communities in Texas, Center on Disability and Development – Texas A&M University, Easter Seals Central Texas, Habitat for Humanity of Texas, Motivation Education & Training, Inc., Texas Association of Community Development Corporations, Texas Association of Local Housing Finance Agencies, Texas Council for Developmental Disabilities, Texas Center for Disability Studies – UT, and Texas Low Income Housing Information Service; Sarah Mills, Policy Specialist – Advocacy, Inc., Austin)

17. Clarify in statute that Housing Trust Fund programmed activities funded with less than $3 million are exempt from the Department's Regional Allocation Formula. (John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin; Kevin Jewell, Consultant – on behalf of the following 11 organizations: Advocacy Inc., Association of Rural Communities in Texas, Center on Disability and Development – Texas A&M University, Easter Seals Central Texas, Habitat for Humanity of Texas, Motivation Education & Training, Inc., Texas Association of Community Development Corporations, Texas Association of Local Housing Finance Agencies, Texas Council for Developmental Disabilities, Texas Center for Disability Studies – UT, and Texas Low Income Housing Information Service; Deena Perkins, Director of Policy & Research – Texas Association of Community Development Corporations, Austin)

18. Require TDHCA to maintain a master record of subsidized housing across all governmental agencies (federal, state, local) that have affordable housing programs in place. Require TDHCA to collect and publish key data (location, apartment sizes, rents charged, number of units for each size apartment, etc.) for affordable housing programs, and require applicants to include a supplemental study in the application of the existing affordable housing in the region. (Chris Hajovsky on behalf of Spring Branch Central Superneighborhood, Houston)

19. Require TDHCA to consider apartment density in a region before awarding taxpayer funds that will lock the property for 30 years, with points taken off applications based on a region's apartment density. Require TDHCA to subtract 10 points for between 40 and 50 percent apartment density, 20 points for between 50 and 60 percent apartment density, and 40 points for greater than 60 percent apartment density. (Chris Hajovsky on behalf of Spring Branch Central Superneighborhood, Houston)

20. Require TDHCA to consider affordable housing (multifamily) density as a percentage of total existing multifamily housing. If an area's apartment density is 50 percent of total households or higher, require TDHCA to subtract 10 points from applications if 25 to 30 percent of apartments are government-subsidized affordable housing, subtract 20 points if 30 to 40 percent of apartments are government-subsidized affordable housing, and 30 points if more than 40 percent of apartments are government-subsidized affordable housing. (Chris Hajovsky on behalf of Spring Branch Central Superneighborhood, Houston)

21. Require TDHCA to consider surrounding rental rates to assess whether capped rental rates (i.e., awarding TDHCA funds) are necessary. Require TDHCA to conduct biennial rental rate assessments for major market areas by zip code, and require applicants to provide rental rate assessments with an application. (Chris Hajovsky on behalf of Spring Branch Central Superneighborhood, Houston)

22. Prohibit older properties from filing initial applications for tax credits. Specifically, prohibit properties over 25 years of age from filing an initial application for tax credits. Prohibit properties over 40 years of age from filing an application for subsequent tax credits. (Chris Hajovsky on behalf of Spring Branch Central Superneighborhood, Houston)

23. Require TDHCA to consider occupancy rates. Specifically, require TDHCA to deduct 20 points from the application score of any application in a region for which occupancy rates are at or below 85 percent. (Chris Hajovsky on behalf of Spring Branch Central Superneighborhood, Houston)

24. Require TDHCA to calculate additional costs to the surrounding community (i.e., quality of education and cost to school district taxpayers). Specifically, require TDHCA and the applicants to conduct a comprehensive calculation of derivative costs to a community to include in the application as well as TDHCA board approval packages, with sufficient detail to allow the public to inspect the calculations for accuracy. Require applicants to face penalties or repayment for failure to include measurable community costs in the calculation. (Chris Hajovsky on behalf of Spring Branch Central Superneighborhood, Houston)

25. Prohibit applications if there is another affordable housing apartment complex within a one-mile radius, or any other tax credit property in a three-mile radius that has received an award within the past 10 years. (Chris Hajovsky on behalf of Spring Branch Central Superneighborhood, Houston)

26. Require TDHCA to establish a pilot program to facilitate more effective investment of HOME funds by selecting regional intermediary organizations, such as nonprofits, to administer HOME funds on behalf of the State. Intermediaries would be allowed to use a percentage of HOME funding for their own projects and would receive a percentage of HOME administrative funding equal to the overall percentage of HOME funds administered on behalf of the State. (Noel Poyo, Executive Director – National Association of Latino Community Asset Builders, San Antonio)

27. Preserve Community Development Block Grant funds for rural communities and do not use CDBG funds to support fair housing enforcement or training. (Donna Chatham, Executive Director – Association of Rural Communities in Texas, Austin)

Energy Efficiency

28. Create a Texas Gas and Energy Efficiency Coordinating Council that would meet quarterly and report energy efficiency gains from TDHCA, Public Utility Commission, State Energy Conservation Office, Texas Commission on Environmental Quality (TCEQ), Railroad Commission of Texas, and other programs to the Electric Reliability Council of Texas (ERCOT), allowing ERCOT's long-term planning process to account for these gains. Require the Council to report pollution gains to the Texas A&M Energy Systems Laboratory and TCEQ. (Cyrus Reed, Conservation Director – Sierra Club, Lone Star Chapter, Austin)

29. Require TDHCA to make basic information about where to obtain weatherization available on the TDHCA website. (Cyrus Reed, Conservation Director – Sierra Club, Lone Star Chapter, Austin)

    Staff Comment: The Department's website includes a prominent link to "Help for Texans", a service which connects Texans with local service providers providing weatherization, utility assistance, and a myriad of other services.

30. Require TDHCA to expand the Weatherization Assistance Program Advisory Committee and require it to meet more frequently to come up with best practices and reviews of weatherization providers. (Cyrus Reed, Conservation Director – Sierra Club, Lone Star Chapter, Austin)

    Staff Comment: The Department is required to establish a Weatherization Assistance Program (WAP) Advisory Committee as a condition of receiving WAP funds from the federal Department of Energy. To expand the membership of this federally required committee, the Legislature would first have to establish it in state law.

Technical Assistance

31. Direct the Department to invest in technical assistance and regional cooperation among community development corporations, particularly in the Border region. Require the Department to use a panel of representatives of nonprofit community development corporations to determine the type of assistance to be provided and to select the provider. (Noel Poyo, Executive Director – National Association of Latino Community Asset Builders, San Antonio)

Manufactured Housing

32. Require the Manufactured Housing Division to broadcast board meetings via webcast and make the archived webcasts immediately available to the public. (John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin; Kevin Jewell, Consultant – on behalf of the following 11 organizations: Advocacy Inc., Association of Rural Communities in Texas, Center on Disability and Development – Texas A&M University, Easter Seals Central Texas, Habitat for Humanity of Texas, Motivation Education & Training, Inc., Texas Association of Community Development Corporations, Texas Association of Local Housing Finance Agencies, Texas Council for Developmental Disabilities, Texas Center for Disability Studies – UT, and Texas Low Income Housing Information Service)

33. Require the Manufactured Housing Division to regulate manufactured housing lease-purchase transactions at the time of contract execution. Specifically, require the Division to apply all licensing and disclosure requirements under the Manufactured Housing Standards Act to lease-purchase contracts at the time of contract execution, including licensing requirements for high-volume sellers, the use of standardized forms and sales disclosures, and proof of clear state of location held by the seller. (John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin; Kevin Jewell, Consultant – on behalf of the following 11 organizations: Advocacy Inc., Association of Rural Communities in Texas, Center on Disability and Development – Texas A&M University, Easter Seals Central Texas, Habitat for Humanity of Texas, Motivation Education & Training, Inc., Texas Association of Community Development Corporations, Texas Association of Local Housing Finance Agencies, Texas Council for Developmental Disabilities, Texas Center for Disability Studies – UT, and Texas Low Income Housing Information Service)

34. Authorize the Division to review evictions on homes under lease-purchase contract to ensure landlord-tenant law is not being misused to void a valid sales contract. (John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin; Kevin Jewell, Consultant – on behalf of the following 11 organizations: Advocacy Inc., Association of Rural Communities in Texas, Center on Disability and Development – Texas A&M University, Easter Seals Central Texas, Habitat for Humanity of Texas, Motivation Education & Training, Inc., Texas Association of Community Development Corporations, Texas Association of Local Housing Finance Agencies, Texas Council for Developmental Disabilities, Texas Center for Disability Studies – UT, and Texas Low Income Housing Information Service)

35. Eliminate the real property election requirement in the Tax Code as a condition for obtaining a homestead exemption on land. Permit local taxing authorities to determine joint homestead status for a manufactured home and land through a simple modification to the homestead tax exemption application. (Allison Schmitz and Rachel Stone – University of Texas School of Law, Community Development Clinic representing the Rancho Vista and Redwood Colonia Settlements, San Marcos)

36. Require the Manufactured Housing Division, rather than consumers, to notify taxing districts of consumers' election to treat manufactured homes as real property. (Allison Schmitz and Rachel Stone – University of Texas School of Law, Community Development Clinic representing the Rancho Vista and Redwood Colonia Settlements, San Marcos)

37. Require the Manufactured Housing Division to provide additional education to consumers about the impacts of the real property election and the process to perfect a real property election in both English and Spanish. Require the Division to include explanations of real property election in the retailer disclosure and with the delivery of a Statement of Ownership and Location. (Allison Schmitz and Rachel Stone – University of Texas School of Law, Community Development Clinic representing the Rancho Vista and Redwood Colonia Settlements, San Marcos)

Commission Decision

Adopted New Issue 17 to clarify in statute that Housing Trust Fund programmed activities funded with less than $3 million are exempt from the Department's Regional Allocation Formula.

The Commission adopted the following new issue not previously listed.

- Delete the provision in Sec. 2306.6710 of the Government Code that gives points to low-income housing tax credit applications based on a letter of support from a state senator or state representative.

Legislative Action

The Legislature, through Senate Bill 1 of the 1st Called Session adopted the Sunset provision to clarify that the Department should not apply the regional allocation formula to an activity funded by the Housing Trust Fund unless the activity received more than $3 million in funding for that application cycle. This provision had been originally adopted in H.B. 2608, which was vetoed, and then later included again in S.B. 1 of the 1st Called Session. (New Issue 17)

In addition, the Legislature did not adopt the Sunset provision to stop giving points to low-income housing tax credit applications based on letters of support from state senators or state representatives. Initially, through H.B. 2608, the Legislature had eliminated the requirement for state senators, but not for state representatives; however, the Governor vetoed the bill and the Legislature did not revisit this issue in the 1st Called Session. (New Issue - Not numbered)

Provisions Added by Legislature

Provisions Added by Legislature

House Bill 2608 was vetoed by the Governor.

Appendices

Appendix A

Emergency and Temporary Federal Funding (as of July 2010)

Federal Program *Allocation date or timeline for expenditures*	**Purpose**	**Amount**	**Measures of Use**[1]
Community Development Block Grant (CDBG) – Disaster Recovery 2005 and 2008			
Hurricane Rita, Round I *June 2006*	Provides funding for repair, reconstruction, and rehabilitation of single- and multifamily units in counties impacted by the hurricanes. Total funds are jointly administered by TDHCA for housing activities, and the Texas Department of Rural Affairs (TDRA) for infrastructure activities. This chart includes the portion administered by TDHCA for housing only.	$42.4 million	• 94.1% funds expended • 519 single-family homes completed
Hurricane Rita, Round II *May 2007*		$384.6 million	• 70.9% expended • 1,678 single-family homes completed • 1,180 rental units completed
Hurricanes Dolly and Ike, Round I *March 2009*		$654.2 million	• 2.6% expended • 235 households served
Hurricanes Dolly and Ike, Round II *To be released*		$1,054.2 million (estimated)	N/A
Emergency Economic Stability Act (EESA) 2008			
Supplemental Tax Credit Program *2008, 2009, and 2010*	Provides additional low-income housing tax credits in 2008, 2009, and 2010 to counties impacted by Hurricane Ike.	$44.7 million	• $29.8 million to assist construction of 4,411 units in 2009 • $14.9 million to assist construction of 1,166 units in 2010
Housing and Economic Recovery Act (HERA) 2008			
Tax Credit Program *2008 and 2009*	Provides additional low-income housing tax credits.	$9.4 million	• $4.7 million in credits; 893 units assisted in 2007 and 2008 • $4.7 million in credits; 435 units assisted in 2009
Neighborhood Stabilization Program *Commitment of funds by September 2010, use of funds by March 2013*	Provides funding to redevelop foreclosed properties into affordable housing, or to acquire and hold foreclosed properties. Program administered by TDHCA and TDRA.	$102 million[2]	• 36% of funds obligated • 192 properties funded
National Foreclosure Mitigation Counseling Program *July 2009 – August 2010*	Provides funding for foreclosure counselors to assist households in avoiding foreclosure.	$941,450	• 90% of funds expended • 2,421 households served

Appendix A

Emergency and Temporary Federal Funding (as of July 2010)

Federal Program *Allocation date or timeline for expenditures*	**Purpose**	**Amount**	**Measures of Use**[1]
American Recovery and Reinvestment Act (ARRA) 2009			
Homelessness Prevention and Rapid Re-Housing Program *February 2009 – March 2012*	Provides funds to enable persons who are homeless, or at risk of homelessness, to maintain housing.	$41.5 million	• 35.5% expended • 22,422 persons assisted • 164 jobs created/ retained
Weatherization Assistance Program *Obligation of funds by September 2010, use of funds by March 2012*	Provides residential weatherization and other cost-effective, energy-related home repair to increase energy efficiency of dwellings owned or occupied by low-income people.	$327 million	• 13% expended • 10,927 households weatherized • 626 jobs created/ retained
Community Services Block Grant *February 2009 – September 2010*	Provides funding to address needs related to education, nutrition, emergency services, employment, housing, health, and income management.	$48.2 million	• 78.8% expended • 73,149 persons assisted • 309.99 jobs created/ retained
Tax Credit Assistance Program *February 2009 – February 2012*	Provides funding to housing tax credit developments adversely affected by current tax credit market conditions.	$148 million	• 8.3% expended • 3,353 households served • 187.88 jobs created/ retained
Housing Tax Credit Exchange Program *February 2009 – December 2012*	Allows TDHCA to exchange returned tax credits at a rate of $0.85 for each dollar for credits allocated in 2007, 2008, and through September 2009.	$594.1 million	• 9.9% expended • 5,653 households served • 6,464 jobs created/ retained • 50% of written agreements executed
Single-Family Mortgage Revenue Bond	Provides funding for first time homebuyers through the First Time Homebuyer and Mortgage Credit Certificate Programs.	$180 million	• 83.3% expended • 929 households served

[1] Measures of use includes unaudited expenditures, obligations, households served as well as other measures of program production or performance.

[2] Of this amount, the Texas Department of Rural Affairs administers $19 million.

Appendix B

TDHCA Housing and Community Service Programs

Continuum of Services	Program/Activities	Description	Households / People Served in FY 09
Poverty Prevention	Community Services Block Grant	Funds local community action agencies to provide essential services and poverty programs	285,674
	Community Services Block Grant American Recovery and Reinvestment Act (ARRA)		Estimated to serve 68,818[1]
	Comprehensive Energy Assistance	Funds local agencies to offer energy education, utility bill assistance and heating, ventilating, and air conditioning replacement	133,132
Homelessness Prevention	Emergency Shelter Grant Program	Funds entities to provide shelter and related services to the homeless	116,209
	Homelessness Prevention and Rapid Re-Housing Program (ARRA)	Funds qualifying entities to provide homelessness prevention and re-housing assistance to persons who are homeless	Estimated to serve 22,422[1]
	Homeless Housing and Services Program	Funds the eight largest Texas cities to provide services or facilities to homeless individuals and families	Estimated to serve 890[1]
Rental Assistance	Section 8 Housing Choice Vouchers	Offers tenant-based rental assistance vouchers in certain rural areas	956
	HOME Program / Tenant-Based Rental Assistance	Provides tenant-based rental assistance for up to two years	286
	Housing Trust Fund / TX Veterans Housing Assistance Program – Rental Assistance	Provides rental subsidies for veterans for a maximum of two years	35
Multifamily Development	Housing Trust Fund / Affordable Housing Match Program	Provides funding to nonprofit organizations to attract, or meet requirements for, affordable housing grants or government programs	147
	HOME Program / Community Housing Development Organization Set-Aside	Provides funding to nonprofit organizations to develop or preserve affordable rental housing	169
	HOME Program / Rental Housing Development	Provides loans or grants to develop or preserve affordable rental housing	
	Housing Tax Credit Program	Provides tax credits to developers for the creation or preservation of affordable rental housing	10,641
	Multifamily Bond Program	Provides loans to develop or preserve affordable rental housing	504
	Housing Trust Fund / Rural Housing Expansion Program – Direct Housing	Provides awards to eligible applicants to enhance capacity and preserve rural affordable housing	Estimated to serve 46[1]
	Housing Trust Fund / Rental Production Program	Provides loans and grants to develop or preserve affordable rental housing	160
	HOME Program / Tax Credit Assistance Program (ARRA)	Provides HOME fund awards to housing tax credit developments affected by the tax credit devaluation	Estimated to serve 8,100[1, 2]
	Texas Tax Credit Exchange Program (ARRA)	Allows developments affected by the housing tax credit devaluation to return their credits and receive a cash grant in its place	Estimated to serve 7,774[1, 2]

Appendix B

TDHCA Housing and Community Service Programs

Continuum of Services	Program/Activities	Description	Households / People Served in FY 09
Homebuyer Education	Colonia Self-Help Center Program[3]	Provides education and training to residents of designated colonias	8,752
	Texas Statewide Homebuyer Education	Trains nonprofits to provide homebuyer education	3,000
Homebuyer Assistance	90-Day Down Payment Assistance (ARRA) and Mortgage Advantage Program (ARRA)	Provides up to $6,000 of the first lien mortgage amount, or $7,000 for down payment and/or closing costs at zero percent interest for 90 or 120 days	854
	First Time Homebuyer Program	Provides low-interest loans and/or down payment and closing costs for first time homebuyers	476
	HOME Program / Homeownership Assistance – Contract for Deed Conversion	Provides financial and technical support to convert contracts for deed in colonias into traditional mortgages	21
	HOME Program / Homeownership Assistance	Provides loan and grants for entities to offer down payment and closing cost assistance	149
	Housing Trust Fund / Homeownership Assistance Program – Homebuyer Assistance	Provides loan and grants for entities to offer down payment and closing cost assistance, including assistance targeted to persons with disabilities	64
	Housing Trust Fund / Affordable Housing Match Program	Provides funding to nonprofit organizations to attract or meet requirements for affordable housing grants or government programs	230[1]
	Housing Trust Fund / TX Veterans Housing Assistance Program – Homeownership Assistance[4]	Funds eligible applicants to provide low-income veterans up to $35,000 for down payment assistance, closing costs, and accessibility modifications	0[5]
	Housing Trust Fund / Rural Housing Expansion – USDA Section 502	Provides grants to eligible applicants for the packaging and submission of U.S Department of Agriculture home loans	58[1]
	Mortgage Credit Certificate Program	Provides annual tax credit for qualified homebuyers based on the interest paid on the homebuyer's mortgage loan	359
Single-Family Development	HOME Program / Community Housing Development Organization Set-Aside	Provides loans to organizations to assist in the acquisition, rehabilitation, or new construction of single-family housing	11
	Housing Trust Fund / Rural Housing Expansion Program – Direct Housing	Provides awards to eligible applicants to enhance capacity and preserve rural affordable housing	20[1]
	Texas Bootstrap Loan Program	Funds entities to offer owner-builder loan programs	154

Appendix B

TDHCA Housing and Community Service Programs

Continuum of Services	Program/Activities	Description	Households / People Served in FY 09
Rehabilitation	Housing Trust Fund / Home Free Barrier Removal and Rehabilitation Program	Grants for entities to provide home modifications needed for persons with disabilities	154[1]
	Housing Trust Fund / Homeownership Assistance Program – Homeowner Rehabilitation	Provides loans to homeowners for innovative homeownership initiatives, including barrier removal	16
	HOME Program / Homeowner Rehabilitation	Provides loans and grants for entities to provide home repair assistance	288
Weatherization	Weatherization Assistance Program	Funds local agencies to provide minor home repairs to increase energy efficiency	4,722
	Weatherization Assistance Program (ARRA)		Estimated to serve 11,482[1]
Foreclosure Prevention and Post-Foreclosure Assistance	National Foreclosure Mitigation Counseling	Funds foreclosure counselors to assist households in avoiding foreclosure	1,131
	Neighborhood Stabilization Program	Provides funds primarily to purchase and rehabilitate foreclosed homes as affordable housing	Estimated to serve 958[1,6]
Disaster Recovery and Relief	Community Development Block Grant Program – Round One	Funds single-family and rental home repair and reconstruction, infrastructure repair and reconstruction, and community services	312[7]
	Community Development Block Grant Program – Round Two		279[7]
	Community Development Block Grant – Hurricanes Dolly and Ike		235[1,8]
	Housing Trust Fund / Disaster Recovery Homeowner Repair	Assists households who are lacking only a small portion of funds to fulfill their full cost of construction	285[9]

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[1] New programs in fiscal year 2010. Data reflects households assisted or estimated to be assisted in 2010.

[2] These programs do not create new households served; these households are already counted in the Housing Tax Credit program.

[3] This program is classified as homebuyer education but provides a variety of services.

[4] Program discontinued after fiscal year 2009.

[5] The Department made one award in 2009 but it was later deobligated.

[6] Reflects single- and multifamily units scheduled to be assisted under current contracts.

[7] For CDBG Round I and Round II, "households served" reflects actual homes completed.

[8] The Department has 239 projects and more than 200 households are in new homes as a result of down payment assistance, but no construction activities are reported as completed to date.

[9] All households served under the Housing Trust Fund's Disaster Recovery program were assisted because of their participation in the CDBG program. So, the entire population reported under Disaster Recovery Homeowner Repair Program (Housing Trust Fund) is also be reported under CDBG Rounds I and II.

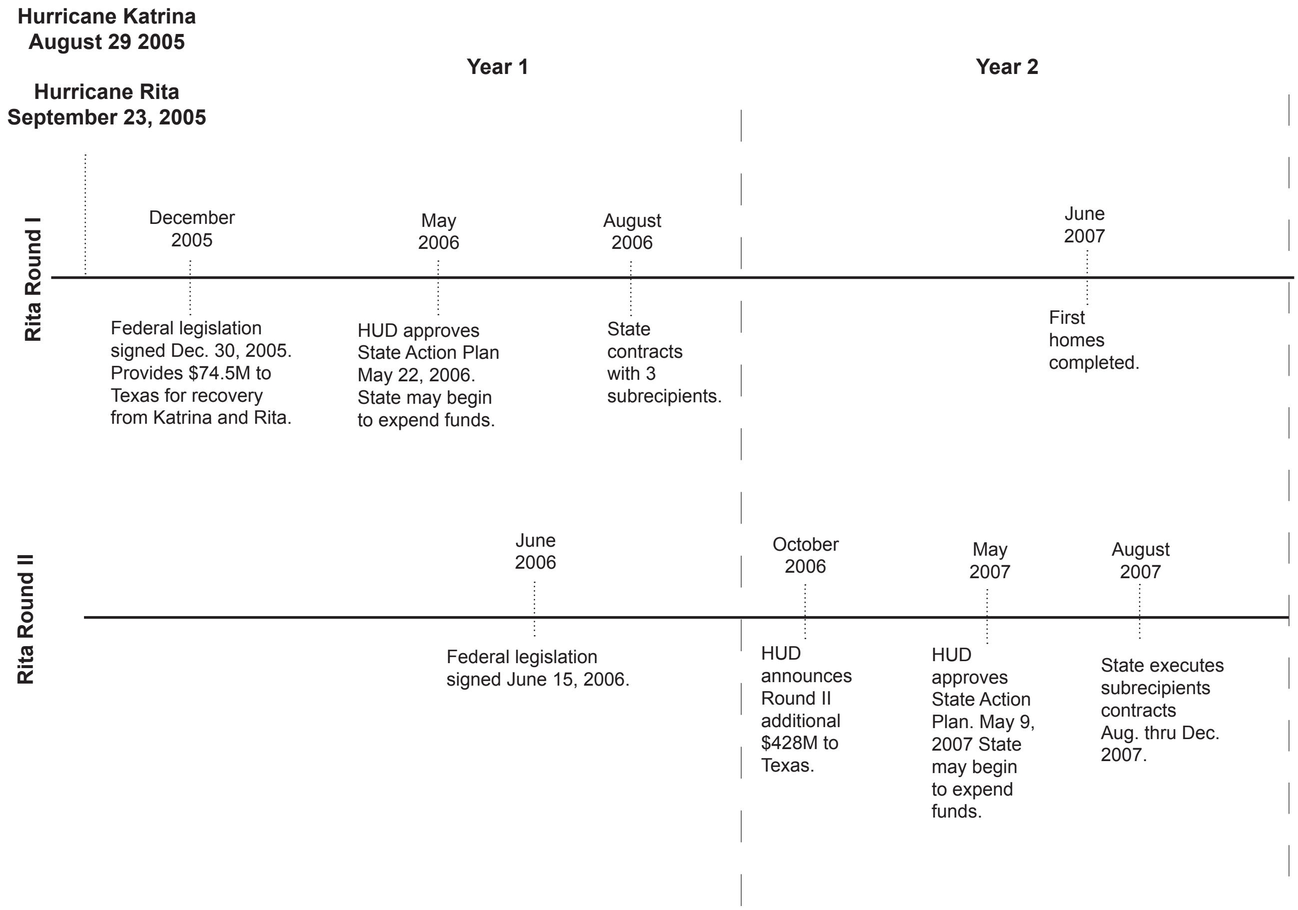
Appendix C

Disaster Recovery Timelines

The following two pages contain timelines for the four rounds of federal Community Development Block Grant funding received by Texas to date for Hurricanes Katrina, Rita, Dolly, and Ike.

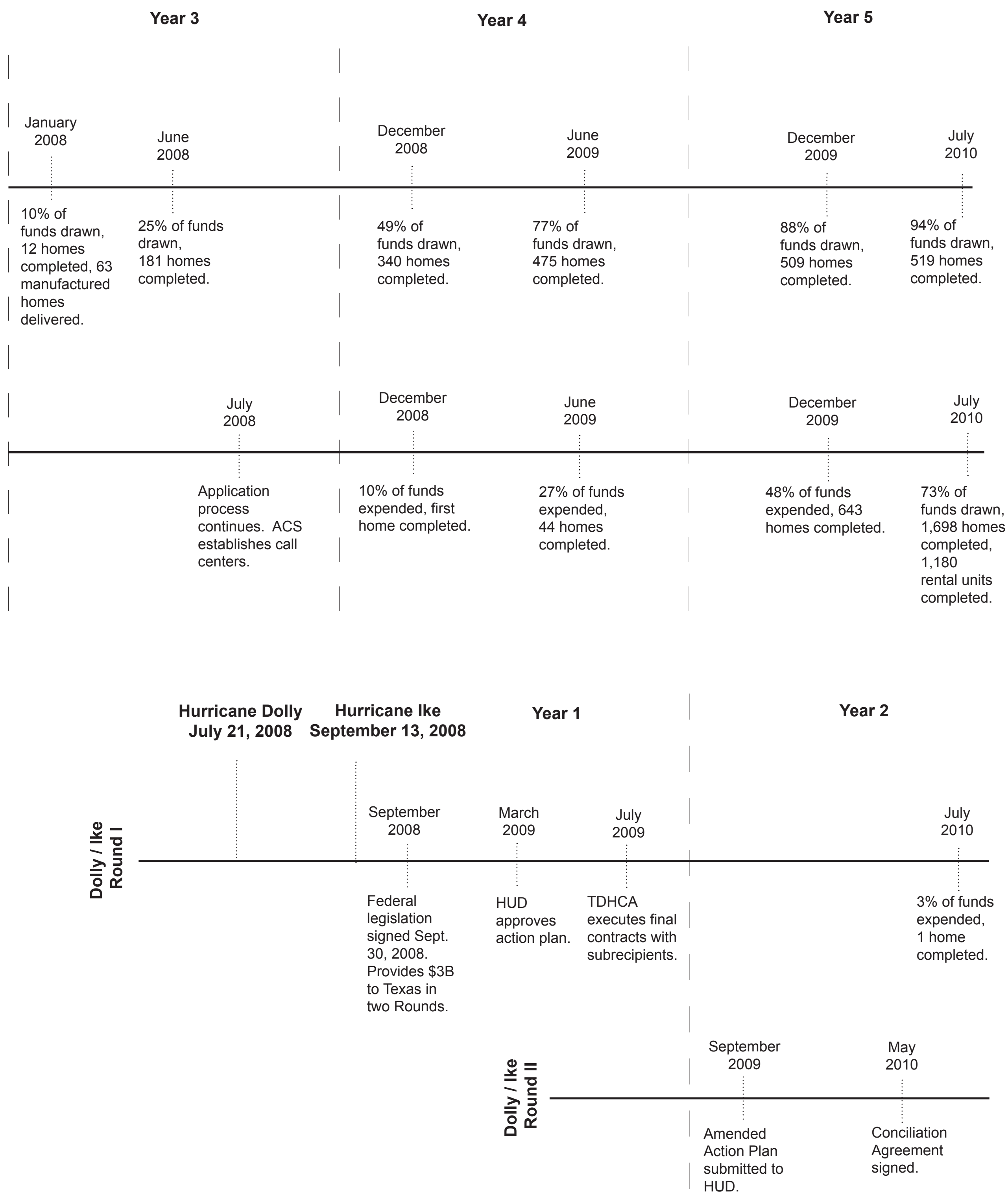
Appendix C

Disaster Recovery Timelines



Appendix C

Disaster Recovery Timelines



Appendix D

Disaster Recovery Activities

This chart primarily focuses on housing activities. While each round of funding to Texas has followed a different process, the activities below are, for the most part, included in all rounds.

Activity	Description
Disaster Declaration	The Federal Emergency Management Agency (FEMA) and local partners assess damages. If damages meet certain thresholds the President declares a federal disaster.
Federal Legislation	Congress drafts legislation supporting appropriations for recovery.
HUD Allocation	U.S. Department of Housing and Urban Development (HUD) divides the federal appropriation among impacted states.
State Action Plan	Agencies develop the plan that explains the State's process for distributing funding to localities or areas of the state, including the split between housing and infrastructure funding. The Plan is developed by staff, approved by the board of the lead state agency, and must be approved by HUD.
Methods of Distribution (MODs)	Councils of Government identify local administrators, the funding each will receive, and any amounts set aside for specific activities. TDHCA, TDRA, and HUD must approve MODs.
Local Contracts	Local administrators submit applications to TDHCA detailing program activities and budgets. TDHCA Board approves the application and the agency executes the contract.
Approval of Program Guidelines	Subrecipients develop guidelines for each activity, including budgets and intended production. TDHCA approves guidelines. Local administrators cannot expend funds for construction activities until approved.
Project / Activity Set-ups	TDHCA "sets up" each project/activity in its contract system to capture required information for HUD. TDHCA must approve each set-up.
Funding Draws	Subrecipients expend funds and submit draw requests. TDHCA provides reimbursement after verifying expenses.
Monitoring	TDHCA performs on-going monitoring of subrecipients to ensure compliance with state and federal rules.
Local Outreach	Local administrators and other groups conduct outreach activities in communities impacted by storms.
Verification of Eligibility	Administrators process applications and must verify information such as: home ownership, income, storm damage, primary residency, and property tax and child support status. All applicants must be current on taxes and child support or have a payment plan in place.
Inspection and Work	Inspectors examine damaged properties and determine type of repair or reconstruction.
Environmental Review	Properties undergo an environmental review to verify flood zone status and determine if any environmental mitigation activities are needed.
Historical Review	Properties undergo review to determine if historical clearance is needed. Local administrators obtain a Texas Historical Commission clearance, as required.
Benefit Selection	Local administrators verify data on benefits provided by other entities including FEMA, U.S. Small Business Administration, and insurance companies; review allowable activities; determine duplication of benefits and/or gaps in benefits; determine activity; select builder; and bid repair.
Grant Determination	Administrators calculate the household grant.
Closing	Contractors complete home closing and file appropriate documents with TDHCA.
Construction	Contractors request initial payment from the State; obtain building permits; perform municipal and other inspections when required; complete construction; and request final payment from the State.

Appendix E

Staff Review Activities

During the review of the Texas Department of Housing and Community Affairs (TDHCA), Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; attended TDHCA and Manufactured Housing Board meetings; spoke with staff from key legislative offices; conducted interviews and solicited written comments from interest groups and the public; reviewed agency documents and reports, state and federal statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research using the Internet.

In addition, Sunset staff also performed the following activities unique to this agency.

- Toured single- and multifamily projects as well as Colonia Self-Help Centers and Border Field Offices in Cameron, Hidalgo, and Starr counties.
- Toured single- and multifamily projects in Hays and Travis counties.
- Met with staff from the Governor's office.
- Interviewed staff from the Texas Department of Rural Affairs, Texas Department of Licensing and Regulation, and U.S. Department of Housing and Urban Development.
- Met with local administrators of disaster recovery housing projects in Houston, Galveston, and Beaumont; and toured rebuilt single-family housing.
- Toured Haven for Hope, a homeless services campus in San Antonio.
- Toured a manufactured housing production plant, retail location, and residential park in Austin, and observed an installation inspection.
- Interviewed numerous administrators of TDHCA funds as well as affordable housing experts in Texas and other states.
- Attended roundtable discussions, committees, work groups, and trainings facilitated by TDHCA.
- Attended several conferences and summits related to affordable housing in Texas.

Sunset Staff Review of the Texas Department of Housing and Community Affairs

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