

**TDHCA Board Approved *Draft* of 10 TAC Chapter 1,
Administration, Subchapter A §1.5 concerning Previous
Participation Reviews**

Disclaimer

Attached is a draft of Chapter 1, Subchapter A §1.15 Previous Participation that was approved by the TDHCA Governing Board on September 12, 2013. This draft incorporates changes made by the Board as a result of public comment at the meeting.

The rules are scheduled to be published in the September 27 edition of the *Texas Register* and will constitute the official version for purposes of public comment. The version herein should not be relied upon as the basis for public comment. The public comment period shall be September 27 – October 28.

<u>TITLE 10</u>	COMMUNITY DEVELOPMENT
<u>PART 1</u>	TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
<u>CHAPTER 1</u>	ADMINISTRATION
<u>SUBCHAPTER A</u>	GENERAL POLICIES AND PROCEDURES

§1.5. Previous Participation Reviews.

(a) The governing board (Board) of the Texas Department of Housing and Community Affairs (the “Department”) designates the Executive Award and Review and Advisory Committee (“EARAC”), established pursuant to Texas Government Code, §2306.1112, to receive reports regarding the compliance history of an applicant for financial assistance or awards from the Department and any affiliate of any such applicant and provide to the Board the assessment contemplated in Texas Government Code, §2306.057 in order that this Board may consider the compliance history and make and document its award decisions with full knowledge of these matters.

(b) The executive director of the Department shall designate the membership of EARAC, and the makeup of EARAC shall include, at a minimum, those members required by Texas Government Code, §2306.1112.

(c) For any application for financial assistance or awards presented to EARAC and in addition to any application-specific considerations including but not limited to threshold evaluation, selection scoring criteria and underwriting, EARAC shall receive the following reports regarding the applicant and each affiliate of the applicant from the division responsible for monitoring for compliance:

- (1) A report of any instance(s) of noncompliance that remain uncorrected and for which the applicable period for corrective action has expired;
- (2) A report of any instance(s) of noncompliance that have been corrected within the last three (3) years, but that were not corrected within the applicable period for corrective action; and,
- (3) If the applicant or any affiliate of the applicant is subject to the requirement of an annual single audit:
 - (A) A report of any required single audit or single audit certification form that is currently past due; and
 - (B) If such single audit has been submitted and the most recent single audit report contained findings, a copy of that single audit.

(d) From the division responsible for the receipt and application of payments on loans held by the Department and the receipt of fees associated with multifamily bond developments or housing tax credit developments:

- (1) A report of any payment of principal or interest to the Department that is past due beyond any grace period provided for in the applicable loan documents;
- (2) A report of any failure to provide evidence of or maintain any required insurance on any collateral for any loan held by the Department;
- (3) A report of any failure to pay property taxes or provide evidence of the payment of property taxes on any collateral for any loan held by the Department unless either provision has been made for such payment or the Department has been provided satisfactory evidence of a tax exemption; and
- (4) A report of any past due fees.

(e) From the division responsible for overseeing asset management issues for affordable rental properties assisted by the Department a report documenting any known current or ongoing concerns regarding the applicant or any affiliate of the applicant to financially or operationally manage one or more affordable rental properties assisted by the Department in a manner to keep the development sanitary, decent, and safe, including but not limited to:

- (1) The establishment and maintenance of appropriate reserves; (2) Identification of the development's capacity to meet financial obligations consistent with the minimum ratios to meet underwriting feasibility for the long term;
- (3) Requests for significant modifications or amendments;
- (4) Any financing known to be in a workout status; and
- (5) Delays in issuance of IRS Form(s) 8609 which are within the control of the owner.

(f) EARAC shall review the reports provided and determine whether and the extent to which matters set forth in the report bear on the applicant's or affiliate's ability to perform, in a compliant manner, with regard to funding and allocation decisions by the Board. While EARAC may review and analyze the information provided, EARAC does not function as an appeal panel and does not affirm or overturn findings in division reports. However, EARAC may return the matter to the respective division, as time permits, for further review, information, and development.

(g) If an issue is identified during a review, prior to EARAC notification, the applicant will be provided a five (5) business day period to submit evidence to resolve the issue(s) identified.

(h) Requests for funding and allocation assistance that involve disqualification or termination required by operation of law, such as an applicant who has been disbarred, will not be brought before EARAC, and such matters will be handled or terminated at the program level, subject to any applicable appeals process.

(i) For each application EARAC shall either:

- (1) Recommend approval;
- (2) Recommend denial, accompanied by an assessment of all reports received and setting out the factual basis for the denial recommendation;
- (3) Recommend approval but disclose that one or more issues under subsection (c), (d) or (e) of this section, above, have been reported, but after consideration of relevant material facts, and circumstances it has been determined that denial is not warranted because:
 - (A) It is in the best interests of the state to proceed with the award;
 - (B) The award will not present undue increased program risk or financial risk to the Department or the state;
 - (C) The applicant is not acting in bad faith; and
 - (D) The applicant has taken reasonable measures within its power to remedy the issue; or
- (4) Take such other action as deemed reasonable and necessary to make full, accurate, and informative recommendations to the Board regarding funding and allocation decisions, including recommendations with conditions.

(j) EARAC is designated to review and shall follow the same procedure prior to approval of an entity as a reservation system participant and for assessing an applicant and each affiliate when the applicant seeks a non-affiliate, as defined

by §10.3 of this title (relating to Definitions), transfer of ownership of an affordable rental property assisted by the Department.

(k) An applicant or any affiliate of an applicant who is not recommended for an award of funding based on their compliance history may appeal EARAC's determination in accordance with §1.7 and §1.8 of this chapter (relating to Staff Appeals Process and Board Appeals Process).