

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**  
**An Internal Audit of the Multifamily Asset Management Division Amendments and Constructions**

Status Reports functions

Audit Report #24-003

**Executive Summary**

The Office of Internal Audit (OIA) performed an audit of the Amendments and Construction Status Reports functions of the Multifamily Asset Management Division. This audit was conducted in accordance with applicable audit standards and included the objectives to review, assess, and evaluate for compliance with applicable rules and regulations. Based on our review and testing, the Amendments and Construction Status Reports functions appear to be operating effectively. The auditor has identified the following areas that necessitate improvement, all of which have been detailed in the final audit report.

**Observations and Recommendations**

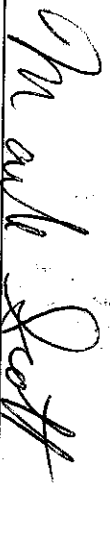
- *IA recommends that a note be made in the post-award activities manual that states that 4% HTC developments may not need to provide AIA G702 and G703 and construction inspection forms if they are not yet available for the required initial construction status report.*

**Management Response**

Management agreed with our recommendations, and detailed response is included in the body of the report.

**Objective, Scope and Methodology**

Our scope included a review of related Texas Administrative Codes<sup>1</sup>, relevant Texas Government Codes<sup>2</sup>, the Qualified Allocation Plan<sup>3</sup>, relevant federal code<sup>4</sup>, data collected by the division on completed and/or pending amendments, data regarding construction status reports provided by the division, board books, and materials found on the TDHCA website for the past 1 year of operation—from January 2023 to the current date.



5/29/24  
Date Signed

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

<sup>1</sup> TAC Chapter 10 Subchapter E; Chapter 10 Subchapter C, Rule §11.207

<sup>2</sup> Texas Code §2306.6731, §2306.6726, §2306.6725

<sup>3</sup> The 2023 and 2024 version

<sup>4</sup> Federal Code §42



## TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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May 29, 2024

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Board Members of the Texas Department of Housing and Community Affairs ("TDHCA")

RE: Internal Audit of the Multifamily Asset Management Division Amendments and  
Constructions Status Reports functions

Dear Board Members:

This report presents the results of the Office of Internal Audit ("OIA") "*Audit of the Multifamily Asset Management Division Amendments & Constructions Status Reports functions*". This audit was conducted in accordance with applicable audit standards and included the objectives to review, assess, and evaluate the Amendments and Construction Status Reports functions for compliance with applicable rules and regulations.

The Multifamily Asset Management Division rated high on the annual risk assessment due to a lack of prior audits, as well as its importance in ensuring proper processes and approval for each state of the construction process. Three specific functions of the division were chosen for an audit: amendments, construction status reports, and ownership transfers. This report addresses the Amendments and Construction Status Reports functions only—the ownership transfer function was addressed in a prior audit report.

This report includes the following sections:

- A. Overall Result
- B. Background
- C. Scope and Methodology
- D. Roles and Responsibilities
- E. Testing and Recommendations

#### **A. Overall Results**

Based on our review and testing, the Amendments and Construction Status Reports functions appear to be operating effectively. The auditor has identified one recommended area for improvement.

#### **B. Background**

Asset Management is responsible for development-performance oversight for all multifamily properties. The Asset Management team operates in a proactive manner by enforcing regulatory documents to minimize exposure to the Department and ensure long term financial viability of developments. This Division handles both amendments and construction status reports.

Amendments can be split into three different distinctions: application amendments, direct loan amendments, and amendments to the Land Use Restriction Agreement (LURA). The Asset Management division is responsible for overseeing both application and LURA amendments—direct loan amendments are processed by staff in the Direct Loan division and is not under the purview of the Asset Management team. Amendments can be broken down further into four different types: material, non-material, waivers, and notifications. Material amendment and waivers are considered major changes to an agreement and typically are brought before the TDHCA board for final approval. Non-material amendments typically involve more minor changes to a development and are approved administratively within the division. Notifications are very minor changes and do not require department approval- they are typically noted for information purposes only. The requirements governing these amendments types can be found in the Texas administrative code and the post-award activities manual, a guide created by the Asset Management team to streamline the amendment process for all developments.

Regular construction status reports for developments was added as a requirement to the Asset Management and Texas Administrative code rules in 2013. The reporting requirement was added to the rules to provide the Department the ability to track the progress of construction and rehabilitation of a development. This requirement is not identified in statute and is only specified in the Asset Management rules. Developments must supply these reports by each quarter's end. Delinquent reports without a prior approved extension by the division incur a fee that must be

paid prior to the issuance of IRS forms 8609. Submission of a Construction Status Report is required for all multifamily developments, regardless of the funding source.

### **C. Scope and Methodology**

Our scope included a review of related Texas Administrative Codes<sup>1</sup>, relevant Texas Government Codes<sup>2</sup>, the Qualified Allocation Plan<sup>3</sup>, relevant federal code<sup>4</sup>, data collected by the division on completed and/or pending amendments, data regarding construction status reports provided by the division, board books, and materials found on the TDHCA website for the past 1 year of operation—from January 2023 to the current date.

### **D. Roles and Responsibilities**

**DIVISION STAFF:** The amendment and construction status report processes are supervised by the Director of Multifamily Asset Management. The amendment and construction status report workload is divided amongst eight Asset Managers, all of which are assigned a geographical area in Texas. Each Asset Manager handles amendment requests and construction status reports originating from their assigned area; however, other Asset Managers may assist other managers with their assignments as needed.

The Texas Administrative Code and Post-Award Activity manual clearly define what is considered a material amendments, non-material amendment, a waiver, and a notification. For material amendments, Asset Managers prepare a Board Action Request (BAR) for consideration by the board for approval. Once prepared, the Division's Director will begin reviewing the BARs and route them to the Deputy Executive Director, Director of External Affairs, the Legal Division, and Executive Director for approval. If the approved amendment requires an amendment to the Land Use Restriction Agreement (LURA), the Asset Manager will prepare and submit to the Division's Director a Loan Document Routing Request form, which is then routed to the Legal Department for approval. Non-material amendments are typically routed to the Director of Asset Management and the Executive Director for approval, and do not require board approval to be executed. In many cases, the Director of Asset Management acts as designee for the Executive Director to approve non-material amendments. Notifications do not require department approval.

Construction status reports require no additional approval outside of general Director oversight. The status reports are reviewed by asset managers and escalated as needed to management if issues arise. Asset Managers will attempt to contact Development Owners that have not submitted the required reports or if a report is incomplete. However, it is the Development Owners' responsibility to comply with the reporting requirements specified in the rules, including

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<sup>1</sup> TAC Chapter 10 Subchapter E; Chapter 10 Subchapter C, Rule §11.207

<sup>2</sup> Texas Code §2306.6731, §2306.6726, §2306.6725

<sup>3</sup> The 2023 and 2024 version

<sup>4</sup> Federal Code §42

adhering to the specified deadlines. Missing deadlines incurs a fee. Asset Managers will review the report dates entered into the database to confirm that required extension fees were paid or outstanding prior to routing a cost certification for approval. All outstanding fees regarding construction status reports are required to be settled prior to the issuance of IRS Forms 8609.

**PARTICIPANTS:** The participants in the amendments and construction status reports are the entities and natural persons involved in the Developments. These entities can be for-profit corporations or non-profit entities.

#### **E. Testing and Recommendations**

The auditor began the review by cross-referencing Texas government code, Texas administrative code, and federal code with internal manuals and guides provided by the division for the amendments and construction status reports functions. The purpose of this test was to review whether division processes adhered to code stipulations and that all materials are consistent. It appears that although the post-award activities guide contains detailed instructions on how to pursue the majority of amendment types, waivers are not included, despite instructions appearing in the TAC. The Director of Asset Management stated that instructions on waivers were purposefully excluded because they are intended to be very rare exceptions made for developments under extraordinary circumstances. Although there has been an uptick in waiver requests from developers lately, this is due to specific circumstances within the industry and are not expected to continue into the future. The auditor acknowledges this challenge, and agrees that if this is intended to be a rare amendment, not including it in the post-activities manual appears to be justified. Therefore, this discrepancy is noted as an observation and no recommendation was issued. No additional discrepancies regarding the processing of amendments and construction status reports were identified.

Next, testing was conducted on application amendments received by the division. Testing was conducted using specific sampling to ensure that all types of application amendments—non-material amendment, waiver, material amendment, and notification-- were included in the testing pool. All types of amendments require a fee and letter of explanation—this requirement was used as parameters for testing. Beyond this, the requirements for each type of amendment varies; therefore, testing parameters were tailored to each specific amendment type and is specified in supporting documentation. No gaps in documentation were identified by the auditor.

Further testing was conducted on LURA amendments. Testing was conducted using a randomized sample. Developments are required to submit a fee as well as a letter of explanation for the amendment that they seek. Additional documents are also typically submitted to support the request for a change—however, as these documents are not technically required and amendment requests can vary based on the individual circumstances of the development, only the fee and letter of explanation were used as testing parameters. According to testing and further inquiry, all the necessary paperwork was identified. Additionally, it was noted that amendments to the Right of First Refusal clause comprised roughly 30% of the amendment

requests—statue changed the length of time of ROFR from 2 years to 180 days. The amendment request usually originates from older developments wishing to update this clause to current rules. Despite this being a relatively common request, there was no specific guidance for the types of documentation needed for approval by the division. The Director indicated that the division had plans later this year to clarify these types of LURA amendments in guides and manuals provided to developments. As a result, this is being noted as an observations and not as a recommendation.

Lastly, testing was also conducted on documents received to satisfy quarterly construction status report (CSR) requirements. All multifamily housing developments currently under construction are required to send in documents quarterly to demonstrate construction progress. The initial report from brand new developments require more paperwork than subsequent reports: partnership agreements, construction contracts, loan agreements, the American Institute of Architecture (AIA) G702 and G703 forms, inspection reports, and minority owned business reports. Subsequent reports only require that AIA G702 and G703 forms, inspection reports, and minority owned business reports be filed. These reports are required to be submitted quarterly until construction is complete as evidenced by a certificate of occupancy, AIA G04 documents indicating substantial completion, or final AIA documents G702 or G703 forms. Three gaps in documentation were identified. The first discrepancy is that a development did not provide a signed minority owned business report. Upon further review, it was discovered that the development had provided additional paperwork that meets the requirement, and was instructed by the division to provide the signed form in future construction status reports. The auditor finds this solution acceptable and is noting it as an observation only. The next gap identified was a missing inspection report. The Director explained to the auditor that that particular development was facing construction delays and no report was able to be provided as a result. The auditor finds this exception acceptable and is noting it as an observation only. Lastly, it was discovered that although documents state that AIA G702 and G703 and construction inspection forms are required to be submitted with initial construction status reports, it appears that these documents are commonly not available for 4% HTC developments this early in the construction process. The auditor has issued recommendation pertaining to this finding, which can be found below:

<b>Observation Number</b>	<b>Status Pertaining to the Recommendations and Action to be Taken</b>	<b>Target Completion Date</b>	<b>Responsible Party</b>
24-003.01	IA recommends that a note be made in the post-award activities manual that states that 4% HTC developments may not need to provide AIA G702 and G703 and construction inspection forms if they are not yet available for the required initial construction status report.	9/1/2024	Lee Ann Chance

**Management Response:**

The Post Award Activities Manual will be revised to add the note recommended by IA.

OIA extends our appreciation to the Asset Management Division and staff for their cooperation and assistance during the course of this audit.

Sincerely,



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

MS/MM