PROVISIONAL IMPLEMENTATION PLAN
FOR THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

The enactment of the American Recovery and Reinvestment Act of 2009 (the "ARRA" or the "Stimulus Bill") puts into law a broad array of federally-funded programs that will be available for states and other designated recipients to access for purposes that Congress intends to spur broad economic recovery. The ARRA provides for state leadership to make decisions regarding the acceptance of Stimulus Bill funds. The Texas Department of Housing and Community Affairs (the "Department" or "TDHCA") will be the state agency to administer several of the programs funded by ARRA because (a) those programs represent expanded funding under existing programs administered by TDHCA or (b) they are new programs based on existing federal programs administered by TDHCA. These programs all are designed to compliment or expand TDHCA's current programs and mission.

GENERAL AND OVERARCHING IMPLEMENTATION ISSUES

Major External Factors

The receipt of Stimulus Bill funds and programs occurs at a time when the Department is already subject to truly enormous unusual demands and challenges:

- Administration of $1,049,211,634 in federal CDBG disaster funds to assist victims of hurricanes Ike, Dolly, Gustave, Wilma, Katrina, and Rita in the recovery process. Additional funds, possibly on the magnitude of $500,000,000, are anticipated imminently in order to address additional Hurricane Ike and Dolly related recovery.
- Administration of approximately $102,000,000 in funds received under the Housing and Economic Recovery Act of 2008 ("HERA") for the development and the implementation of the Neighborhood Stabilization Program.
- Addressing major systemic changes in the financial markets impacting the Department's single family bond program (first time homebuyer), including working with the Comptroller of Public Accounts to replace the liquidity faculties that support variable rate bonds.
- Addressing major systemic issues in the tax credit markets which have created the need for gap financing, much of which is now addressed in ARRA.

Staffing and Technology

The effective implementation of ARRA will clearly require the utilization of additional resources to augment the staff that is already working on the development of information and plans. However, it is also important that this be done in a manner where those additional resources will have a scope and role that enables the Department to resume a normalized operating structure once the ARRA response and the activities it generates are concluded.

Utilizing established planning protocols on an expedited basis the Department has formed a framework for identifying and quantifying those additional resources and will be able to move quickly to accomplish that as soon as necessary additional program guidance and rules are issued at the federal level.

It is clear that these resources will include additional qualified staff to:

- Provide for a clear, transparent, well-documented set of processes and the necessary internal audit resources to provide assurances as to adherence to these processes in a manner that prevents fraud, waste, and abuse, consistent with RP-36.
- Provide necessary technical assistance to units of local government and other qualified parties serving in the distribution networks for any of these programs.
- Provide prudent underwriting and scoring for the distribution of programs funds that are to be administered by competitive processes.
- Provide for the management of significantly increased transactional documentation, draw administration, and other “back” office functions associated with such programs.
- Provide for the monitoring of subrecipients, awardees, and others who receive and administer funds, credits, developments, and programs. This will involve monitoring of program qualifications for non-competitive recipients, such as weatherization or homelessness prevention funds as well as more intense asset administration and oversight for recipients of development funds and credits.
- Provide for the necessary systems and technical support to support these processes.
- Provide for increased accounting and reporting activity.

<u>Space and Hard Assets</u>

To house these additional resources and enable them to perform their work as effectively as possible, the Department will require additional space and FF & E, including additional computing hardware. The Department’s current space is insufficient to house its staff as it implements the response to the recent hurricanes, let alone the implementation of ARRA. **ADDITIONAL SPACE IS A CRITICAL NEED, and as these major new programs undergo development it is essential that they be in a location where they can utilize and interface with Department management and support.**

PROGRAMMATIC ASPECTS OF THE PLAN

Here is a brief overview of the manner in which the Department plans to administer Stimulus Bill funds. Areas that are left blank or questions noted will be completed as soon as the necessary federal guidance becomes available.

Homelessness Prevention

Current (FY2009) funding: $4,850,000 for the Emergency Shelter Grants (ESG) Program. ESG eligible activities include homelessness prevention; rehabilitation of homeless shelters; essential services; operations and administration; and maintenance, operation and furnishings.

ARRA proposed additional funding: $41,472,772

Nature of the program: The focus of homelessness prevention is a rapid response to homelessness, especially those at risk of homelessness. The new funding is intended to help beneficiaries maintain or secure housing and help them avoid falling into the category of chronically homeless. Through the Homelessness Prevention program, services to at-risk populations will include:

- Assistance to help program users locate, secure, and/or maintain housing, including mediation or outreach to property owners to help avoid eviction;
- Assistance to program users with certain financial needs, such as utility payment, utility security deposit assistance, housing search and moving costs;
- Counseling and other activities to help clients repair their credit rating;
- Case management to ensure that clients receive appropriate programs to help them achieve and maintain self-sufficiency.

Planned Approach: Department plans to release a Notice of Funding Availability (based on Board and public input). Nonprofit entities and units of local government will be eligible to apply for Homelessness Prevention funds. The Department anticipates that nonprofits currently providing foreclosure prevention services, mortgage, rental and utility assistance, credit counseling and case management services will apply. The Department will, in the NOFA process, consider establishing one or more set-asides to serve targeted areas.

Expenditure/timing requirements under ARRA: HUD must publish the program notice in the Federal Register within 30 days of the enactment of the bill, which occurred on February 17, 2009. Once funds are made available to Texas (estimated date not currently known), the funds must be expended as follows.

- 60% expended within two years; and
- 100% expended within three years.

Additional Department resources believed necessary: The Department will add any necessary additional resources required to carry out this activity in a manner that is tied directly to the utilization of Stimulus Bill funds. When the process is completed, permanent staffing levels will not have been increased as a result of the Stimulus Bill implementation.

Financing for additional resources: 5% for TDHCA administration ($2,073,638).

Weatherization

Current (FY2009) funding: $13,000,000

ARRA proposed funding (estimated): $240,000,000-$350,000,000

Nature of the program: Traditionally, the Weatherization Assistance Program (WAP) funds local non-profit entities and units of local government to enable them, through subcontractors, to improve the energy efficiency of low income households. By reducing residents' overall energy consumption, the state's overall demand for energy – for which all Texans share the cost – is reduced. Individual households' energy costs are also reduced. Through reduced energy costs, a household's financial strength is improved. The program historically served residents whose income was capped at 125% of the national poverty level. Enhancing program participants' financial position aids in transitioning them to self sufficiency. Allowed activities under the existing WAP program include:

- Installation of ceiling, wall, and floor insulation;
- Replacement of appliances and heating and cooling units with energy efficient items;
- Measures to reduce air filtration, such as replacement of doors and windows, repairing of holes, and caulking; and
- Educating recipients as to ways that they can reduce their energy consumption.

Under ARRA, the program is expanded by statute to serve applicants whose income may now go up to 200% of the national poverty level, though the Department may choose a lower limit based on the public comment of the subgrantees. Some increase in the cap is likely making these benefits available to a significantly expanded array of Texans. As a result, the additional funds will broaden not only the energy management impact of WAP, but the positive financial impact of more disposable income to these Texans to be spent on other goods and services.

Furthermore, ARRA raises the monetary cap that may be spent on each household from $3,055 to $6,500. In the WAP program, TDHCA currently combines Department of Energy WAP funds with other funds to provide an average of $4,000 per household, illustrating that more than $3,055 is usually required for effective weatherization. This raise in household cap at the national level increases the likelihood that weatherization efforts will have the greatest possible effect on the state's energy consumption.

Finally, ARRA raises the percentage of funds that can be used for training and technical assistance from 10% to 20%. Currently DOE allows training and technical assistance funds to be used to train state (TDHCA) staff and the staff of the non-profit entities and units of local government that administer weatherization at the local level. Funds are not currently allowed to train subcontractors or the general public. DOE may address this issue further in the grant guidance.

Planned Approach: The current network of 34 local non-profits and units of local government is configured to serve all of Texas' 254 counties. These local partners will need to enter into expanded procurement activity to bring in significant numbers of additional qualified contractors and vendors. TDHCA is also considering the possibility of creating additional local capacity and/or regional capacity to utilize resources not previously active in this arena but well-qualified, such as volume builders who desire to use this as an opportunity to keep crews active and together until home building activity returns to the necessary levels to support Texas' projected growth.

The Department will consider the establishment of one or more set-asides to address weatherization programs administered by large cities, smaller towns and cities, and rural areas, but a statewide distribution via the existing network will proceed to ensure that the deployment of these funds covers all areas of the state and begins to take place promptly. Any set-asides would overlay this statewide network.

Expenditure/timing requirements under ARRA: TDHCA anticipates receiving direct funding from DOE WAP. ARRA states that unless provided for otherwise under the Act, all funds shall be available for obligation until September 30, 2010.

Additional Department resources believed necessary: The Department will add any necessary additional resources required to carry out this activity in a manner that is tied directly to the utilization of Stimulus Bill funds. When the process is completed, permanent staffing levels will not have been increased as a result of the Stimulus Bill implementation.

Financing for additional resources: 5% for TDHCA ($12,000,000 - $17,500,000)

<u>Community Services Block Grant ("CSBG")</u>

Current (FY2009) funding: $31,000,000

ARRA proposed additional funding (estimated): $48,700,000

Nature of the program: Currently the Community Services Block Grant Program (CSBG) is received from the U.S. Department of Health and Human Services (USHHS) to fund activities that support the intent of the CSBG Act. Activities are aimed at households with incomes at or below 125 percent of the current federal income poverty guidelines issued by USHHS. Activities include:

- Administrative support for other poverty programs, such as Head Start, Weatherization Assistance, and Meals on Wheels;
- Direct services such as credit counseling, short-term rental assistance, and transportation;
- Other programs offered vary from county to county.

CSBG assists local Community Action Agencies (CAA) and other eligible entities serving all 254 Texas counties to provide local essential services to those living in poverty.

With the new funding available under ARRA, 99% must be made available to the CSBG eligible entities, 1% of funding must be used to help clients enroll in federal, state, and local benefits programs. In addition, ARRA expands the population that may be served from 125% to 200% of the federal poverty guidelines.

Planned Approach: Distribution through existing network.

Expenditure/timing requirements under ARRA: ARRA states that unless provided for otherwise under the Act, all funds shall be available for obligation until September 30, 2010. TDHCA anticipates receiving the funding through a formula allocation. TDHCA does not yet know when funds would be received.

Additional Department resources believed necessary: The Department will add any necessary additional resources required to carry out this activity in a manner that is tied directly to the utilization of Stimulus Bill funds. When the process is completed, permanent staffing levels will not have been increased as a result of the Stimulus Bill implementation.

Financing for additional resources: 1% for TDHCA ($487,000)

HOME Tax Credit Assistance Program (TCAP)

Current (FY2009) funding: The Department presently has a general HOME allocation of $42,000,000, but these are traditional HOME program funds and are programmed by means of a HUD-approved action plan for a variety of uses, including owner-occupied rehabilitation, homebuyer assistance, and tenant-based rental assistance in addition to rental development. The Department has limited resources for gap funds and no funding dedicated solely to Housing Tax Credit (HTC) gap financing.

ARRA proposed additional funding: $148,354,769 specifically for use as gap funding for HTC developments.

Nature of the program: This program supports the Governor's priority of economic development. Tax credit awards allocated and administered by TDHCA are the major way that the state facilitates the development of affordable multifamily rental housing. This activity is also a major contributor to the Texas economy, providing as much as $1.2 billion in 2008 in development costs and adding improvements to real property that generated $131 million per year in additional tax revenues at the local level.

The HTC Program is the primary vehicle for developing affordable rental housing for working families. Through the HTC Program, the federal government encourages private investment in affordable rental housing by providing investors a dollar for dollar reduction on their federal tax liability for every dollar of eligible construction expenses. Each state receives an annual allocation of tax credits.

A multifamily developer that has, in an annual competitive process, received a tax credit allocation must convert those awarded credits into equity to be used in their development. This process, using limited partnership structures and syndicators, requires that those syndicators utilize developed markets to find investors for those credits. Historically those markets have been willing to make investments that converted credits to equity at ninety cents on the dollar or better. However, recent collapses in financial markets have eroded the housing tax credit market resulting in greatly devalued credits. Accordingly, developers who had put transactions together that were underwritten on reasonable market assumptions at the time, find that if they can syndicate their credits at all, it is at prices that are appreciably lower, perhaps less than sixty-five cents on the dollar. However, even though market conditions have changed, their equity requirements must still be met, thus creating the need to fund the "gap" created by market conditions driving down the equity value to be derived from tax credits. The HOME TCAP program provides funds to finance the "gap" for recipients of previously awarded 2007 and 2008 tax credits and recipients of 2009 awards.

This new TCAP activity would provide funding through a competitively allocated program (which, although in respects based on the HOME Program, is allocated using the tax credit allocation model) to compensate for the current devaluation of housing tax credits, which is jeopardizing affordable rental developments approved for housing tax credit funding through the program in 2007 and 2008 as well as current 2009 applicants.

Applicable rules/restrictions:

- Eligible recipients for this funding are previously awarded 2007 and 2008 HTC developments as well as recipients of 2009 tax credits.
- Awards made with this funding must meet HTC use, income and rent restrictions; the HTC Program can only be used for the new construction or rehabilitation/reconstruction of rental properties affordable to households earning up to 60% of the area median family income as determined by HUD.
- HOME requirements apply with respect to labor and environmental issues.

Planned Approach: Utilization of a competitive application process to maximize the units of affordable rental housing to be delivered to the State of Texas.

Expenditure/timing requirements under ARRA: TDHCA would receive a formula allocation based on the state's total HOME allocation. TDHCA must award/commit 75% of the funds within 1 year of the date of enactment. Recipients must expend 75% of the funds within 2 years enactment and 100% of the funds within 3 years enactment.

Additional Department resources believed necessary: The Department will add any necessary additional resources required to carry out this activity in a manner that is tied directly to the utilization of Stimulus Bill funds. When the process is completed, permanent staffing levels will not have been increased as a result of the Stimulus Bill implementation.

Financing for additional resources:

Other material issues: It is anticipated that administrative funding will be consistent with the HOME program, but this requires clarification with HUD as program guidance is issued.

Housing Tax Credit Exchange Program

Current (FY2009) funding: None.

ARRA proposed funding (estimated): $0-320,000,000

Nature of the program: The HTC Program is the primary vehicle for developing affordable rental housing for working families. Through the HTC Program, the federal government encourages private investment in affordable rental housing by providing investors a dollar for dollar reduction on their federal tax liability for every dollar of eligible construction expenses. Each state receives an annual allocation of tax credits.

The current credit crisis has decreased demand for tax credits by investors, as a result, the "pricing" of tax credits, has plummeted, undermining the ability of HTC applicants to raise sufficient capital to move forward. In some instances, especially in rural areas, the tax credit market is non-existent.

To compensate for this, ARRA allows state allocating agencies to receive a portion of the HTC in the form of a grant from the federal government rather than as tax credits. The total amount available is calculated as follows:

- 40% of 2009 9% HTC allocation
- Plus 100% of unused 2008 9% HTC allocation and returned 2009 9% HTC
- Multiplied by $0.85 and 10

The HTC Program can only be used for the new construction or rehabilitation/reconstruction of rental properties affordable to households earning up to 60% of the area median family income, as determined by HUD.

The Department believes that up to $320,000,000 may be eligible for use. It is not known how any such funds would be awarded, but only 2009 applicants with active applications meeting the requirements of the State of Texas 2009 Qualified Allocation Plan (QAP) would be eligible for exchange. The Department is aware that one or more bills are under consideration for filing that could potentially enlarge the pool of tax credit recipients eligible to participate in the exchange. A party to whom the Department provides funds received from any such exchange is a "subawardee."

Planned Approach: If a decision is made by the TDHCA Governing Board to proceed with the exchange of some or all of the eligible credits, an allocation and award system consistent with the current award process will be utilized.

Expenditure/timing requirements under ARRA: TDHCA must return any unused funds by 1/1/2011.

Additional resources believed necessary: The Department will add any necessary additional resources required to carry out this activity in a manner that is tied directly to the utilization of Stimulus Bill funds. When the process is completed, permanent staffing levels will not have been increased as a result of the Stimulus Bill implementation.

Financing for additional resources: The Department may collect reasonable fees to cover its expenses under Section 1602(c)(3).

Other material issues: The Stimulus Bill provides in Title B, Subtitle G, Section 1602(c)(3) that the Department must perform asset management functions to ensure compliance by any subawardee with IRC Section 42.

The Stimulus Bill provides in Title B, Subtitle G, Section 1602(c)(4) that the Department shall impose conditions or restrictions, including recapture provisions on subawardees to ensure that the subawardee's building remains a qualified low-income building during the compliance period. Since the funds would have been given in lieu of credits, "recapture" is an unclear concept.

Homebuyer Tax Credit

Current (FY 2009): N/A.

ARRA proposed additional funding: Federal tax credit to homebuyers up to $8,000 per household or 10% of the purchase price.

Nature of the Program: ARRA extends federal tax credits made available to first time homebuyers under the Housing and Economic Recovery Act of 2008 (HERA), increasing the maximum allowable credit and extending the period in which home purchases can be made.

Eligible first time homebuyers will be eligible for a tax refund equal to 10% of the purchase price of their home or $8,000, whichever is least. Eligible households include people buying their first home, people who have not owned a home in the past three years, and veterans buying a home. To receive the full credit, single homebuyers can earn no more than $75,000 per year while married tax payers can earn no more than $150,000. A partial credit is available to some homebuyers earning above these ceilings. New provisions under ARRA allow homebuyers that have purchased their home through TDHCA's First Time Homebuyer and Mortgage Credit Certificate Programs, and similar programs administered by other housing finance agencies, to receive the credits.

Planned Approach: The Department will provide down payment assistance in the form of a second lien repayable loan to households utilizing the Homebuyer Tax Credit. The down payment assistance loan will be prepaid the following year when the household files for the Homebuyer Tax Credit. If the down payment assistance loan is not paid off, principal and interest payments to repay the loan over 10 years will begin automatically.

Expenditure/timing requirements under ARRA: This credit applies to home purchases on or after January 1, 2009, and before December 1, 2009. Homebuyers would apply for these credits while filing their income taxes.

Additional Department resources believed necessary: The Department will add any necessary additional resources required to carry out this activity in a manner that is tied directly to the utilization of Stimulus Bill funds. When the process is completed, permanent staffing levels will not have been increased as a result of the Stimulus Bill implementation.

Financing for additional resources: As awards are made and credits are monetized, the Department will receive a percentage to cover administrative costs.

Other material issues:

Neighborhood Stabilization Program

Current (FY2009) funding: $102,000,000 under HERA. NOFA for distribution is in process.

ARRA proposed additional funding (estimated): This is a competitive application, so it unknown what amount TDHCA would receive.

Nature of the program: The Neighborhood Stabilization Program was established under the Housing and Economic Recovery Act of 2008 (HERA). Through the program, states, units of local government, and nonprofits can purchase foreclosed or abandoned properties to demolish or create affordable housing and stabilize existing neighborhoods.

Direct housing activity, such as down-payment assistance, home rehabilitation, and low interest loans, through this program is targeted to households earning up to 120% of the area median income as defined by HUD. Over half (51%) of beneficiaries from indirect activities, such as demolition, must also meet this income requirement to establish an area-wide benefit.

Changes under ARRA include:

- Provides additional, competitive funding for the program.
- Allows for up to 10% to be used for capacity building and local support.
- Restricts land banking and demolition activity to 10% of funding.
- Provides increased protections for tenants that may reside in repurposed properties.

Planned Approach: Distribution to units of local government and qualifying non-profits through use of a NOFA employing competitive processes and targeting the most impacted areas. The parameters of the ARRA NOFA will be dependent upon the forthcoming *Federal Register* program notice and the need and capacity to administer NSP funds as demonstrated through applications to the HERA NOFA.

Expenditure/timing requirements under ARRA: HUD must publish the program notice in the Federal Register within 75 days of enactment; applications are due to HUD within 150 days of enactment. HUD must obligate funds in 1 year. Successful applicants must expend 50% of funds received with 2 years of receipt and 100% of funds within 3 years of receipt.

Additional Department resources believed necessary: The Department will add any necessary additional resources required to carry out this activity in a manner that is tied directly to the utilization of Stimulus Bill funds. When the process is completed, permanent staffing levels will not have been increased as a result of the Stimulus Bill implementation.

Financing for additional resources: Up to 10% of the award amount will be available for State and local administration.

Other material issues: