Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §18.10

The Texas Ethics Commission (the Commission) proposes amendments to Texas Ethics Commission Rules in Chapter 18. Specifically, the Commission proposes amendments to §18.10, regarding Guidelines for Substantial Compliance for a Corrected/Amended 8-day Pre-election Report.

This proposal amends the rules used to determine whether an otherwise timely filed 8-day pre-election report will be considered late by virtue of correction. If a filer makes a correction to an 8-day pre-election report, the law requires the Commission to review the correction to see if the report substantially complied with the law as originally filed. Tex. Gov't Code § 571.0771(c). If a substantial correction is made to the report, the report is considered filed as of the day of the correction. Since 8-day reports are subject to an accruing penalty of $500 for the first day late and $100 for each additional day after that up to $10,000, a voluntary correction to an 8-day pre-election report can trigger substantial fines. The filer must also affirm that the report was filed in good faith and within 14 business days of learning of the error or omission for the correction not to trigger a late penalty. *Id.*

The 8-day reports are considered "critical" reports which provide voters important information immediately before an election. The law is designed to prevent a filer from filing an incomplete or inaccurate report only to correct it later while evading any late filing penalty. However, the Commission has an interest in encouraging voluntary corrections to good-faith errors or omissions in reports. Knowing that a correction may trigger a hefty fine could dissuade some filers from correcting their reports. The proposed rule amendment attempts to strike a balance of encouraging corrections for good-faith mistakes while preventing a person from filing an inaccurate or incomplete report before an election.

The Commission currently decides whether a report substantially complied as originally filed by using TEC Rule 18.10. If a corrected 8-day report is determined to be late by virtue of correction, a filer may request that the fine be waived or reduced. TEC Rule 18.10 provides a special set of criteria for reductions or waivers of fines of 8-day reports that are late due to correction. The general rules for late reports, TEC Rule §18.23 through 18.26, are also applied to 8-day reports that are considered late due to correction. The filer is given the more generous outcome.

The proposed amendment raises the monetary threshold of what would constitute a substantial correction. It also moves criteria that would qualify a corrected report or a waiver into the determination of whether the report will be considered late because of the correction. This provides a filer the waiver it would be entitled to under the current rules without having to file an affidavit of defense.

This proposal is submitted concurrently with the proposed repeal of §18.11, regarding Guidelines for Waiver or Reduction of a Late Fine for a Corrected/Amended 8-day Pre-election Report, so that waivers or reductions will be determined by the general rules for late reports. This will clear up the ambiguity as to which set of rules apply and create a simpler, more uniform set of rules for late reports.

James Tinley, General Counsel, has determined that for the first five-year period the proposed amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amended rule.

The General Counsel has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefit will be consistency and clarity in the Commission's rules regarding late fines for 8-day pre-election reports. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amended rule.

The General Counsel has determined that during the first five years that the proposed amended rule is in effect, it will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; create a new regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed amended rule from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to J.R. Johnson, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed amended rule may do so at any Commission meeting during the agenda item relating to the proposed amended rule. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

The amended rule is proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed amended rule affects Title 15 of the Election Code and Chapter 571 of the Government Code.

§18.10. Guidelines for Substantial Compliance for a Corrected/Amended 8-day Pre-election Report.

(a) A corrected/amended 8-day pre-election report substantially complies with the applicable law and will not be assessed a late fine under §18.9 of this title (relating to Corrected/Amended Reports) if:

(1) The original report was filed in good faith and the corrected/amended report was filed not later than the 14th business day after the date the filer learned of the errors or omissions; and

(2) The only corrections/amendments needed were to correct the following types of errors or omissions:

(A) a technical, clerical, or *de minimis* error, including a typographical error, that is not misleading and does not substantially affect disclosure;

(B) an error in or omission of information that is solely required for the commission's administrative purposes, including a report type or filer identification number;

(C) an error that is minor in context and that, upon correction/amendment, does not result in changed monetary amounts or activity disclosed, including a descriptive change or a change to the period covered by the report;

(D) one or more errors in disclosing contributions that, in total:

(i) do not exceed $3,000 [~~2,000~~]; or

(ii) do not exceed the lesser of 10% of the total contributions on the corrected/amended report or $10,000;

(E) one or more errors in disclosing expenditures that, in total:

(i) do not exceed $3,000 [~~2,000~~]; or

(ii) do not exceed the lesser of 10% of the total expenditures on the corrected/amended report or $10,000;

(F) one or more errors in disclosing loans that, in total:

(i) do not exceed $3,000 [~~2,000~~]; or

(ii) do not exceed the lesser of 10% of the amount originally disclosed or $10,000; or

(G) an error in the amount of total contributions maintained that:

(i) does not exceed $3,000 [~~250~~]; or

(ii) does not exceed the lesser of 10% of the amount originally disclosed or $10,000 [~~2,500~~].

(H) The only correction/amendment by a candidate or officeholder was to add to or delete from the outstanding loans total an amount of loans made from personal funds;

(I) The only correction/amendment by a political committee was to add the name of each candidate supported or opposed by the committee, when each name was originally disclosed on the appropriate schedule for disclosing political expenditures;

(J) The only correction/amendment was to disclose the actual amount of a contribution or expenditure, when:

(i) the amount originally disclosed was an overestimation;

(ii) the difference between the originally disclosed amount and the actual amount did not vary by more than 10%; and

(iii) the original report clearly included an explanation of the estimated amount disclosed and the filer's intention to file a correction/amendment as soon as the actual amount was known; or

(K) The only correction/amendment was to delete a duplicate entry.

(b) The executive director shall determine whether an 8-day pre-election report as originally filed substantially complies with applicable law by applying the criteria provided in this section.

(c) In this section, "8-day pre-election report" means a report due eight days before an election filed in accordance with the requirements of §§20.213(d), 20.325(e), or 20.425(d) of this title (relating to a candidate, a specific-purpose committee, or a general-purpose committee, respectively) and §§254.064(c), 254.124(c), or 254.154(c) of the Election Code (relating to a candidate, a specific-purpose committee, or a general-purpose committee, respectively).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2023.

TRD-202303948
James Tinley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: December 10, 2023
For further information, please call: (512) 463-5800

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1 TAC §18.11

The Texas Ethics Commission (the Commission) proposes the repeal of a rule in Texas Ethics Commission Chapter 18. Specifically, the Commission proposes the repeal of §18.11, regarding Guidelines for Waiver or Reduction of a Late Fine for a Corrected/Amended 8-day Pre-election Report.

This proposal, along with the amendments to §18.10 which are submitted concurrently with this proposal, amends the rules used to determine whether an otherwise timely filed 8-day pre-election report will be considered late by virtue of correction. This proposal repeals TEC Rule §18.11 so that waivers or reductions will be determined by the general rules for late reports. This will clear up the ambiguity as to which set of rules apply and create a simpler, more uniform set of rules for late reports.

James Tinley, General Counsel, has determined that for the first five-year period the proposed repealed rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed repealed rule.

The General Counsel has also determined that for each year of the first five years the proposed repealed rule is in effect, the public benefit will be consistency and clarity in the Commission's rules regarding late fines for campaign finance reports. There

will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed repealed rule.

The General Counsel has determined that during the first five years that the proposed repealed rule is in effect, it will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; create a new regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed repealed rules from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to J.R. Johnson, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed repealed rule may do so at any Commission meeting during the agenda item relating to the proposed repealed rule. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

The repealed rule is proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rule affects Title 15 of the Election Code and Chapter 571 of the Government Code

§18.11. Guidelines for Waiver or Reduction of a Late Fine for a Corrected/Amended 8-day Pre-election Report.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2023.

TRD-202303947
James Tinley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: December 10, 2023
For further information, please call: (512) 463-5800

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TITLE 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 12. LOANS AND INVESTMENTS

SUBCHAPTER A. LENDING LIMITS

7 TAC §§12.2, 12.3, 12.6, 12.11, 12.12

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend Subchapter A of Chapter 12 of Title 7 of the Texas Administrative Code, concerning loans and investments by state banks. The amended rules are proposed to conform the rules to changes in applicable Texas law, federal regulation, and accounting standards.

Subchapter A of Chapter 12 governs lending limits for state banks as required by the Texas Finance Code (Finance Code). Section 12.2 provides various definitions for Subchapter A that incorporate various concepts and standards from other state laws and from federal banking regulations and generally accepted accounting standards to ensure clear, consistent, and fair regulation with minimal additional burden. Certain citations in Section 12.2 to Texas laws, federal regulations, and Financial Accounting Standards Board are no longer correct and need to be updated. Although the citations for those other requirements have changed, the substance of those requirements have not materially changed. In addition, state banks are already subject to these other requirements as currently in effect.

Section 12.6 of Subchapter A indicates that a state bank has the option of obtaining an opinion from the Texas Attorney General about the applicability of the Finance Code's lending limit to loans guaranteed by various government agencies. However, Section 402.042 of the Texas Government Code does not permit a state bank to request such an opinion. This reference should be removed from the lending limit rules.

Section 12.6 of Subchapter A also indicates that the department, rather than the Banking Commissioner (commissioner), should make certain determinations for whether temporary purchases of mortgages by state banks are subject to the lending limit. This is inconsistent with other provisions of Subchapter A, which provide that the commissioner should make similar determinations rather than the department. This should be made consistent by amending this rule to require the commissioner to make this determination.

For the particular sections of Subchapter A being amended for other reasons, some minor stylistic edits are made to improve clarity and consistency within Chapter 12.

Jared Whitson, Director of Bank and Trust Supervision, has determined that for the first five years the proposed amended rules are in effect, there will be no foreseeable increases or reductions in costs or other fiscal implications to state or local government as a result of enforcing or administering the rules as amended.

Director Whitson has further determined that for the first five years the proposed amended rules are in effect, the public benefit anticipated from enforcing the rules is ensuring that the Finance Code lending limits and other lending laws will be enforced for the benefit of borrowers, banks, and bank depositors and shareholders in a manner that is clear and not unnecessarily complex for state banks, and consistent with applicable Texas law, federal regulations, and accounting standards.

Director Whitson has also determined that for the first five years the proposed amended rules are in effect the economic costs to persons required to comply with the rules as proposed will be unchanged from the costs required under these rules as they currently exist.

In addition, Director Whitson has determined that for the first five years the proposed amended rules are in effect, the rules will not: create or eliminate a government program; require the creation of new department employee positions or the elimination of existing agency employee positions; require an increase or

decrease in future legislative appropriations to the department; require an increase or decrease in fees paid to the department; create a new regulation; or increase or decrease the number of individuals subject to the rules' applicability.

Finally, Director Whitson has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities from the proposed amended rules and no difference in the cost of compliance for these entities.

To be considered, comments on the proposed amendments must be submitted to the department in writing no later than 5:00 p.m. on December 11, 2023. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

This proposal is made under the authority of Finance Code §11.301 which authorizes the commission to adopt rules applicable to state banks, and Finance Code, §31.003, which authorizes the commission to adopt rules necessary to preserve or protect the safety and soundness of state banks.

This proposal affects the statutes administered and enforced by the department's commissioner with respect to state banks, contained in Finance Code, Subtitle A. No other statute is affected by this proposal.

§12.2. Definitions.

Definitions in the Finance Code, Title 3, Subtitles A and G, are incorporated herein by reference. As used in this subchapter and in Finance Code, Chapter 34, concerning investments and loans, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (3) (No change.)

(4) Credit derivative--As defined in 12 C.F.R. §324.2 (or 12 C.F.R. §217.2 in the case of a bank that is a member of the Federal Reserve System) [~~§2 of the federal capital adequacy guidelines~~].

(5) - (6) (No change.)

(7) Eligible credit derivative--A single-name credit derivative or a standard, non-tranched index credit derivative provided that:

(A) the derivative contract meets the requirements of an eligible guarantee, as defined in 12 C.F.R. §324.2 (or 12 C.F.R. §217.2 in the case of a bank that is a member of the Federal Reserve System) [~~§2 of the federal capital adequacy guidelines~~], and has been confirmed by the protection purchaser and the protection provider;

(B) any assignment of the derivative contract has been confirmed by all relevant parties;

(C) if the credit derivative is a credit default swap, the derivative contract includes the following credit events:

(i) failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and

(ii) bankruptcy, insolvency, restructuring (for obligors not subject to bankruptcy or insolvency), or inability of the obligor on the reference exposure to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due, and similar events;

(D) the terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract;

(E) if the derivative contract allows for cash settlement, the contract incorporates a robust valuation process to estimate loss with respect to the derivative reliably and specifies a reasonable period for obtaining post-credit event valuations of the reference exposure;

(F) if the derivative contract requires the protection purchaser to transfer an exposure to the protection provider at settlement, the terms of at least one of the exposures that is permitted to be transferred under the contract provides that any required consent to transfer may not be unreasonably withheld; and

(G) if the credit derivative is a credit default swap, the derivative contract clearly identifies the parties responsible for determining whether a credit event has occurred, specifies that this determination is not the sole responsibility of the protection provider, and gives the protection purchaser the right to notify the protection provider of the occurrence of a credit event.

(8) (No change.)

[~~(9) Federal capital adequacy guidelines--The federal reference entitled "Capital Adequacy Guidelines for Banks: Internal-Ratings-Based and Advanced Measurement Approaches," codified as Appendix D to 12 C.F.R. part 325 (or Appendix F to 12 C.F.R. part 208 in the case of a bank that is a member of the Federal Reserve System).~~]

[~~(10) Federal risk-based capital standards--The federal system for calculating a bank's equity capital and its specified components, set forth in Appendix A to 12 C.F.R. part 325 (or Appendix A to 12 C.F.R. part 208 in the case of a bank that is a member of the Federal Reserve System).~~]

(9) [~~(11)~~] Qualifying central counterparty--As defined in 12 C.F.R. §217.2 in the case of a bank that is a member of the Federal Reserve System)324.2 (or 12 C.F.R. §217.2 in the case of a bank that is a member of the Federal Reserve System) [~~§2 of the federal capital adequacy guidelines~~].

(10) [~~(12)~~] Qualifying master netting agreement--As defined in 12 C.F.R. §324.2 (or 12 C.F.R. §217.2 in the case of a bank that is a member of the Federal Reserve System) [~~§2 of the federal capital adequacy guidelines~~].

(11) [~~(13)~~] Sale of federal funds--A transaction between depository institutions involving the transfer of immediately available funds resulting from credits to deposit balances at Federal Reserve Banks, or from credits to new or existing deposit balances due from a correspondent depository institution.

(12) [~~(14)~~] Securities financing transaction--A repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction.

(13) [~~(15)~~] Tier 1 capital--A state bank's unimpaired capital and surplus. A state bank's Tier 1 capital is calculated under 12 C.F.R. part 324 (or 12 C.F.R. part 217 in the case of a bank that is a member of the Federal Reserve System) [~~the federal risk-based capital standards~~], is reported in the bank's most recent call report, and is periodically re-calculated as provided by §12.11 of this title (relating to Calculation of Lending Limit).

(14) [~~(16)~~] Unimpaired capital and surplus--A state bank's core capital, equal to its Tier 1 capital calculated under 12 C.F.R. part 324 (or 12 C.F.R. part 217 in the case of a bank that is a member of the Federal Reserve System) [~~the federal risk-based capital standards~~], and referred to as Tier 1 capital in this chapter.

§12.3. Loans and Extensions of Credit.

(a) (No change.)

(b) Loans or extensions of credit for purposes of the Finance Code, §34.201, and this subchapter do not include:

(1) funds advanced to or for the benefit of a borrower by a bank for taxes or insurance associated with collateral security for a loan or extension of credit, as well as funds advanced for utilities, security, and maintenance expenses associated with real property securing a loan or extension of credit, but only if necessary to preserve the value of the real property or other collateral security and consistent with safe and sound banking practices, provided the bank maintains sufficient records to demonstrate the necessity of the advance, and such advances are included in loans and extensions of credit thereafter until repaid for the purpose of determining whether additional loans or extensions of credit to the same borrower may be made within applicable lending limits;

(2) accrued and discounted interest on an existing loan or extension of credit, including interest that has been capitalized from prior notes and interest that has been advanced under terms and conditions of a loan agreement;

(3) that portion of a loan or extension of credit sold as a participation by a bank on a nonrecourse basis, provided the participation results in a pro rata sharing of credit risk proportionate to respective interests of the originating and participating lenders, except that:

(A) notwithstanding any requirement of Financial Accounting Standard Board Accounting Standard Codification Topic 860, Transfers and Servicing [~~Statement of Financial Accounting Standards No. 166 (Financial Accounting Standards Bd. 2009)~~], for lending limit purposes, if the participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing will be considered to exist only if, in the event of default or comparable event provided in the agreement, the participants share in all subsequent repayments and collections in proportion to their actual percentage participation at the time of the occurrence of the event;

(B) if the originating bank funds the entire loan, the participants must be contractually obligated to remit their portion to the bank before the close of business (the time at which the bank closes its accounting records for the business day) on the next business day of the originating bank or its portion funded by the originating bank will be considered a loan by the originating bank to the borrower;

(C) in the case of a participation sold in an existing loan, the amount of the participation may not be subtracted from the outstanding loans and extensions of credit of the originating bank until the proceeds of sale are in the possession of the originating bank; and

(D) a loan participation agreement that provides for weekly settlement of amounts due to and from the participants meets the requirements of this paragraph if the outstanding balance to the borrower from the originating bank does not at any time exceed the bank's legal lending limit;

(4) an advance against uncollected funds in the normal course of collection pursuant to the bank's availability schedule issued in compliance with Regulation CC (12 C.F.R. §229.1 et seq.), including the amount of an item that must be credited to the customer under the bank's availability schedule but remains uncollected and unreturned because of a delay or defect in the collection system;

(5) the sale of Federal funds with a maturity of one day or less, or Federal funds sold under a continuing contract, including contracts that provide for weekly settlement if the parties have the contractual right to obtain their funds at maturity of each transaction;

(6) intra-day credit exposures arising from a derivative transaction or a securities financing transaction;

(7) a renewal or restructuring of a nonconforming loan as a new loan or extension of credit, subject to compliance with §12.10(b) of this title (relating to Nonconforming Loans); and

(8) that portion of one or more loans or extensions of credit, not to exceed 15% of the bank's Tier 1 capital, with respect to which the bank has purchased protection in the form of a single-name eligible credit derivative [~~that meets the requirements of §12.2(a)(7) of this title (relating to Definitions)~~] from an eligible protection provider if the reference obligor is the same legal entity as the borrower in the loan or extension of credit and the maturity of the protection purchased equals or exceeds the maturity of the loan or extension of credit.

§12.6. Loans Not Subject to Lending Limits.

(a) - (e) (No change.)

(f) Government guaranteed loans. Pursuant to Finance Code, §34.201(a)(8), a loan or extension of credit to a borrower is not subject to the limitations of the Finance Code, §34.201, or this subchapter to the extent secured by unconditional takeout commitments, insurance, or guarantees of a governmental entity described in subsection (c) or (e) of this section, provided the commitment or guarantee is payable only in cash or its equivalent. If the purchasing, insuring, or guaranteeing entity is described in subsection (c) of this section, the lending bank must obtain an opinion of counsel [~~or the opinion of the attorney general~~] that the unconditional takeout commitment, insurance, or guarantee is a valid and enforceable general obligation of the purchasing, insuring, or guaranteeing entity. A takeout commitment, insurance, or guarantee is considered unconditional if the protection afforded the bank is not substantially diminished or impaired if loss should result from factors beyond the bank's control. Protection against loss is not materially diminished or impaired by procedural requirements such as an agreement to pay on the obligation only in the event of default, including default over a specific period of time, a requirement that notification of default be given within a specific period after its occurrence, or a requirement of good faith on the part of the bank.

(g) Loans secured by segregated deposit accounts. Pursuant to the Finance Code, §34.201(a)(10), loans or extensions of credit are not subject to the limitations of the Finance Code, §34.201, and this subchapter to the extent secured by a segregated deposit account in the lending bank, provided that:

(1) the lending bank has perfected its security interest in the deposit under applicable law;

(2) if the deposit is eligible for withdrawal before the secured loan matures, the bank establishes internal procedures to prevent release of the security without the lending bank's prior consent; and

(3) if the deposit is denominated and payable in a currency other than that of the loan or extension of credit that it secures, the deposit currency is freely convertible to U.S. dollars, except that only that portion of the loan or extension of credit that is fully secured by the U.S. dollar value of the deposit qualifies for exception and only if the lending bank establishes procedures to periodically revalue foreign currency deposits to ensure that the loan or extension of credit remains fully secured at all times.

(h) Discount of installment consumer paper.

(1) Loans and extensions of credit to one borrower arising from the discount of negotiable or nonnegotiable installment consumer paper that carries a full recourse endorsement or unconditional guarantee of payment by the person transferring the paper to the bank is considered a loan or extension of credit to the transferor, as well as the

maker, and subject to the general lending limit, except that the loan or extension of credit will not be considered made to the transferor to the extent the bank has met the requirements of the Finance Code, §34.201(a)(11), and this subsection. If the transferor of the paper offers only partial recourse to the bank, the exception provided by the Finance Code, §34.201(a)(11), and this subsection is available only to the extent of the total amount of paper the transferor may be obligated to repurchase or has guaranteed. An unconditional guarantee may be in the form of a repurchase agreement, separate guarantee agreement, or other agreement having the same effect. A condition reasonably within the power or control of the bank to perform will not render conditional an otherwise unconditional guarantee.

(2) In order to claim the installment consumer paper exception under the Finance Code, §34.201(a)(11), and this subsection, the bank must demonstrate its reliance on the maker of the paper by maintaining records supporting the bank's independent credit analysis of the maker's ability to repay the loan or extension of credit, maintained by the bank or a third party that is contractually obligated to make those records available for examination purposes, and a written certification by an officer of the bank, specifically designated by the board of the bank for this purpose, that the bank is relying primarily on the maker for repayment of the loan or extension of credit and not on a full recourse endorsement or unconditional guarantee by the transferor. If installment consumer paper is purchased in substantial quantities, the required records, evaluation, and certification must be in a form appropriate for the class and quantity of paper involved. The bank may use sampling techniques, or other appropriate methods, to independently verify the reliability of the credit information supplied by the seller.

(3) As used in this subsection, a consumer is the end user of a product, commodity, good, or service, whether leased or purchased, but not a person who purchases products or commodities for the purpose of resale or fabrication into goods for sale. Consumer paper includes paper relating to the lease or purchase of automobiles, mobile homes, residences, office equipment, household items, tuition fees, insurance premiums, and other consumer items. Consumer paper also includes paper relating to the lease or purchase of equipment for use in manufacturing, farming, construction, or excavation, if the bank is neither the lessor nor owner of the property.

(4) A bank may purchase and temporarily hold mortgages for sale to investors in the secondary market, and consider the purchases as loans to individual mortgagors rather than a mortgage warehouse facility, by purchasing without recourse to the transferor or, if purchased with recourse, by complying with this subsection. Whether an actual purchase is considered to occur depends on both the nature of the relationship established between the bank and other parties to the contractual arrangements and on assessment of the economic substance of the transaction. Failure to meet any one of the criteria listed below [~~applied by the department~~] does not necessarily result in characterization of an ostensible purchase transaction as a mortgage warehouse facility to the originator. In determining whether the economic substance of a transaction constitutes a purchase, the banking commissioner [~~department~~] will consider whether:

(A) provisions of the contractual arrangements governing the mortgage transfers consistently reflect a relationship of buyer and seller between the bank and the transferor, and whether the bank in fact acts as the owner of the mortgages;

(B) the bank obtains possession or control of the bearer instruments conveying ownership, including the original note, deed of trust, assignment from the transferor, and a power of attorney from the transferor for instruments endorsed in blank, provided that possession or control may also be established through safekeeping or custodial arrangements between the bank and a third party agent or bailee;

(C) the bank takes possession or control of underlying underwriting documents, provided that possession or control of the underwriting documents by the investor is not inconsistent with characterization of the bank as a purchaser and owner of the mortgages;

(D) the bank receives and controls the sales proceeds when remitted from the investor;

(E) the bank demonstrates reliance on the maker by reviewing the credit quality and documentation underlying a mortgage prior to committing to make the purchase, provided that a bank purchasing mortgages in significant quantities may use sampling techniques or other appropriate methods to independently verify the reliability of the credit information supplied by the transferor;

(F) recourse and repurchase obligations of the transferor are subject to conditions outside the control of the transferor, such as a commitment to repurchase the mortgage if rejected by the investor for reasons other than fraud or underwriting deficiency; and

(G) the bank earns interest on the mortgages according to the interest rate on the face of each note rather than at a rate separately negotiated with the transferor.

(i) (No change.)

§12.11. Calculation of Lending Limit.

(a) Calculation date. For purposes of determining compliance with Finance Code, §34.201, and this subchapter, a state bank shall determine its lending limit as of the most recent of the following dates:

(1) the last day of the preceding calendar quarter; or

(2) the date on which there is a change in the bank's capital category for purposes of 12 U.S.C. §1831o [~~1831o~~] and 12 C.F.R. §324.402 [~~§325.102~~] (or 12 C.F.R. §324.402 [~~CFR §208.32~~] in the case of a bank that is a member of the Federal Reserve System).

(b) - (c) (No change.)

§12.12. Credit Exposure Arising from Derivative and Securities Financing Transactions.

(a) (No change.)

(b) Derivative transactions.

(1) Non-credit derivatives. Subject to paragraphs (2) - (4) of this subsection, a state bank shall calculate the credit exposure to a counterparty arising from a derivative transaction by one of the following methods. Subject to paragraphs (3) and (4) of this subsection, a bank shall use the same method for calculating counterparty credit exposure arising from all of its derivative transactions.

(A) Model method.

(i) Credit exposure. The credit exposure of a derivative transaction under the model method is equal to the sum of the current credit exposure of the derivative transaction and the potential future credit exposure of the derivative transaction.

(ii) Calculation of current credit exposure. A bank shall determine its current credit exposure by the mark-to-market value of the derivative contract. If the mark-to-market value is positive, then the current credit exposure equals that mark-to-market value. If the mark-to-market value is zero or negative, then the current credit exposure is zero.

(iii) Calculation of potential future credit exposure. A bank shall calculate its potential future credit exposure by using an internal model that has been approved in writing for purposes of 12 C.F.R. §324.132(d) (or 12 CFR §217.132(d) in the case of a bank that is a member of the Federal Reserve System) [~~§32(d) of the federal capital~~

~~adequacy guidelines~~], provided that the bank notifies the commissioner prior to its use for purposes of this section, or another model approved by the department based on the views of the bank's primary federal banking regulatory agency and any third party testing and evaluation reports submitted to the commissioner. Any substantive revisions to an internal model made after the bank has provided notice of its use, or after the commissioner has approved the use of an alternate model, must be approved by the commissioner before a bank may use the revised model for purposes of this section.

(iv) Net credit exposure. A bank that calculates its credit exposure by using the model method pursuant to this subparagraph may net credit exposures of derivative transactions arising under the same qualifying master netting agreement.

(B) Conversion factor matrix method. The credit exposure arising from a derivative transaction under the conversion factor matrix method is equal to and will remain fixed at the potential future credit exposure of the derivative transaction, which equals the product of the notional amount of the derivative transaction and a fixed multiplicative factor determined by reference to Table 1 of this section.
Figure: 7 TAC §12.12(b)(1)(B) (No change.)

(C) Current exposure method. The credit exposure arising from a derivative transaction (other than a credit derivative transaction) under the current exposure method is calculated in the manner provided by 12 C.F.R. §324.34(b)-(c) (or 12 C.F.R. §217.34(b)-(c) in the case of a bank that is a member of the Federal Reserve System) [~~§32(c)(5), (6) and (7) of the federal capital adequacy guidelines~~].

(2) Credit derivatives.

(A) Counterparty exposure.

(i) General rule. Notwithstanding paragraph (1) of this subsection and subject to clause (ii) of this subparagraph, a state bank that uses the conversion factor matrix method or the current exposure method, or that uses the model method without entering an effective margining arrangement as defined in §12.2 of this title (relating to Definitions), shall calculate the counterparty credit exposure arising from credit derivatives entered by the bank by adding the net notional value of all protection purchased from the counterparty on each reference entity.

(ii) Special rule for certain effective margining arrangements. A bank must add the effective margining arrangement threshold amount to the counterparty credit exposure arising from credit derivatives calculated under the model method. The effective margining arrangement threshold is the amount under an effective margining arrangement with respect to which the counterparty is not required to post variation margin to fully collateralize the amount of the bank's net credit exposure to the counterparty.

(B) Reference entity exposure. A state bank shall calculate the credit exposure to a reference entity arising from credit derivatives entered into by the bank by adding the net notional value of all protection sold on the reference entity. A bank may reduce its exposure to a reference entity by the amount of any eligible credit derivative purchased on that reference entity from an eligible protection provider.

(3) Special rule for central counterparties. In addition to amounts calculated under paragraphs (1) and (2) of this subsection, the measure of counterparty exposure to a central counterparty must also include the sum of the initial margin posted by the bank plus any contributions made by it to a guaranty fund at the time such contribution is made. However, this requirement does not apply to a bank that uses an internal model pursuant to paragraph (1)(A) of this subsection if such model reflects the initial margin and any contributions to a guaranty fund.

(4) Mandatory or alternative use of method. The commissioner may in the exercise of discretion require or permit a state bank to use a specific method or methods set forth in this subsection to calculate the credit exposure arising from all derivative transactions, from any category of derivative transactions, or from a specific derivatives transaction if the commissioner in the exercise of discretion finds that such method is consistent with the safety and soundness of the bank.

(c) Securities financing transactions.

(1) In general. Except as provided by paragraph (2) of this subsection, a state bank shall calculate the credit exposure arising from a securities financing transaction by one of the following methods. A state bank shall use the same method for calculating credit exposure arising from all of its securities financing transactions.

(A) Model method. A state bank may calculate the credit exposure of a securities financing transaction by using an internal model that has been approved in writing for purposes of 12 C.F.R. §324.132(b) (or 12 CFR §217.132(b) in the case of a bank that is a member of the Federal Reserve System) [~~§32(b) of the federal capital adequacy guidelines~~], provided that the bank notifies the commissioner prior to its use for purposes of this section, or another model approved by the department based on the views of the bank's primary federal banking regulatory agency and any third party testing and evaluation reports submitted to the commissioner. Any substantive revisions to an internal model made after the bank has provided notice of its use, or after the commissioner has approved the use of an alternate model, must be approved by the commissioner before a bank may use the revised model for purposes of this section.

(B) Basic method. A state bank may calculate the credit exposure of a securities financing transaction as follows:

(i) Repurchase agreement. The credit exposure arising from a repurchase agreement shall equal and remain fixed at the market value at execution of the transaction of the securities transferred to the other party less cash received.

(ii) Securities lending.

(I) Cash collateral transactions. The credit exposure arising from a securities lending transaction where the collateral is cash shall equal and remain fixed at the market value at execution of the transaction of securities transferred less cash received.

(II) Non-cash collateral transactions. The credit exposure arising from a securities lending transaction where the collateral is other securities shall equal and remain fixed as the product of the higher of the two haircuts associated with the two securities, as determined by reference to Table 2 of this section, and the higher of the two par values of the securities. Where more than one security is provided as collateral, the applicable haircut is the higher of the haircut associated with the security lent and the notional-weighted average of the haircuts associated with the securities provided as collateral.

(iii) Reverse repurchase agreements. The credit exposure arising from a reverse repurchase agreement shall equal and remain fixed as the product of the haircut associated with the collateral received, as determined by reference to Table 2 of this section, and the amount of cash transferred.

(iv) Securities borrowing.

(I) Cash collateral transactions. The credit exposure arising from a securities borrowed transaction where the collateral is cash shall equal and remain fixed as the product of the haircut on the collateral received, as determined by reference to Table 2 of this section, and the amount of cash transferred to the other party.

(II) Non-cash collateral transactions. The credit exposure arising from a securities borrowed transaction where the collateral is other securities shall equal and remain fixed as the product of the higher of the two haircuts associated with the two securities, as determined by reference to Table 2 of this section, and the higher of the two par values of the securities. Where more than one security is provided as collateral, the applicable haircut is the higher of the haircut associated with the security borrowed and the notional-weighted average of the haircuts associated with the securities provided as collateral. Figure: 7 TAC §12.12(c)(1)(B)(iv)(II) (No change.)

(C) Basel collateral haircut method. A state bank may calculate the credit exposure of a securities financing transaction in the manner provided by 12 C.F.R. §324.132(b)(2)(i) and (ii) (or 12 CFR §217.132(b)(2)(i) and (ii) in the case of a bank that is a member of the Federal Reserve System) [~~§32(b)(2)(i) and (ii) of the federal capital adequacy guidelines~~].

(2) Mandatory or alternative use of method. The commissioner may in the exercise of discretion require or permit a state bank to use a specific method or methods set forth in this subsection to calculate the credit exposure arising from all securities financing transactions, from any category of securities financing transactions, or from a specific derivatives transaction if the commissioner finds in the exercise of discretion that such method is consistent with the safety and soundness of the bank.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER B. LOANS

7 TAC §12.33

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend Subchapter B of Chapter 12 of Title 7 of the Texas Administrative Code, concerning loans and investments by state banks. The amended rule is proposed to conform the rule to changes in applicable Texas law.

Subchapter B of Chapter 12 governs lending by Texas state banks. Section 12.33 of Subchapter B references the Uniform Electronic Transactions Act, which is now in Chapter 322 of the Texas Business and Commerce Code. This statutory reference should be updated.

Jared Whitson, Director of Bank and Trust Supervision, has determined that for the first five years the proposed amended rule is in effect, there will be no foreseeable increases or reductions in costs or other fiscal implications to state or local government as a result of enforcing or administering the rule as amended.

Director Whitson has further determined that for the first five years the proposed amended rules is in effect, the public benefit anticipated from enforcing the rule is ensuring that the Finance Code will be enforced for the benefit of borrowers and banks in a manner that is consistent with applicable law.

Director Whitson has also determined that for the first five years the proposed amended rule is in effect, the economic costs to persons required to comply with the rule as proposed will be unchanged from the costs required under this rule as it currently exists.

In addition, Director Whitson has determined that for the first five years the proposed amended rule is in effect, the rule will not: create or eliminate a government program; require the creation of new department employee positions or the elimination of existing agency employee positions; require an increase or decrease in future legislative appropriations to the department; require an increase or decrease in fees paid to the department; create a new regulation; or increase or decrease the number of individuals subject to the rule's applicability.

Finally, Director Whitson has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities from the proposed amended rule and no difference in the cost of compliance for these entities.

To be considered, comments on the proposed amendment must be submitted to the department in writing no later than 5:00 p.m. on December 11, 2023. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

This proposal is made under the authority of Finance Code §11.301 which authorizes the commission to adopt rules applicable to state banks, and Finance Code, §31.003, which authorizes the commission to adopt rules necessary to preserve or protect the safety and soundness of state banks.

This proposal affects the statutes administered and enforced by the department's commissioner with respect to state banks, contained in Finance Code, Subtitle A. No other statute is affected by this proposal.

§12.33. Debt Cancellation Contracts and Debt Suspension Agreements.

(a) - (e) (No change.)

(f) Disclosures.

(1) Content of short form of disclosures. The short form of disclosures required by this section must include the information described in subparagraphs (A) through (F) of this paragraph that is appropriate to the product offered. Short form disclosures made in a form that is substantially similar to these disclosures will satisfy the short form disclosure requirements of this subsection.

(A) This product is optional. "Your purchase of (product name) is optional. Whether or not you purchase (product name) will not affect your application for credit or the terms of any existing credit agreement you have with the bank."

(B) Lump sum payment of fee (applicable if a bank offers the option to pay the fee in a single payment, prohibited where the debt subject to the contract is a residential mortgage loan). "You may choose to pay the fee in a single lump sum or in monthly or quarterly payments. Adding the lump sum of the fee to the amount you borrow will increase the cost of (product name)."

(C) Lump sum payment of fee with no refund (applicable if a bank offers the option to pay the fee in a single payment for a no-refund debt cancellation contract, prohibited where the debt subject to the contract is a residential mortgage loan). "You may choose (product name) with a refund provision or without a refund provision. Prices of refund and no-refund products are likely to differ."

(D) Refund of fee paid in lump sum (applicable where the customer pays the fee in a single payment and the fee is added to the amount borrowed, prohibited where the debt subject to the contract is a residential mortgage loan). Either:

(i) "You may cancel (product name) at any time and receive a refund;"

(ii) "You may cancel (product name) within _____ days and receive a full refund;" or

(iii) "If you cancel (product name) you will not receive a refund."

(E) Additional disclosures. "We will give you additional information before you are required to pay for (product name)." If applicable: "This information will include a copy of the contract containing the terms of (product name)."

(F) Eligibility requirements, conditions, and exclusions. "There are eligibility requirements, conditions, and exclusions that could prevent you from receiving benefits under (product name)." Either:

(i) "You should carefully read our additional information for a full explanation of the terms of (product name);" or

(ii) "You should carefully read the contract for a full explanation of the terms."

(2) Content of long form of disclosures. The long form of disclosures required by this section must include the information described in subparagraphs (A) through (I) of this paragraph that is appropriate to the product offered. Long form disclosures made in a form that is substantially similar to these disclosures will satisfy the long form disclosure requirements of this subsection.

(A) This product is optional. "Your purchase of (product name) is optional. Whether or not you purchase (product name) will not affect your application for credit or the terms of any existing credit agreement you have with the bank."

(B) Explanation of debt suspension agreement (applicable if the contract has a debt suspension feature). "If (product name) is activated, your duty to pay the loan principal and interest to the bank is only suspended. You must fully repay the loan after the period of suspension has expired." If applicable: "This includes interest accumulated during the period of suspension."

(C) Amount of fee.

(i) For closed-end credit: "The total fee for (product name) is _____."

(ii) For open-end credit, either:

(I) "The monthly fee for (product name) is based on your account balance each month multiplied by the unit-cost, which is _____;" or

(II) "The formula used to compute the fee is _____."

(D) Lump sum payment of fee (applicable if a bank offers the option to pay the fee in a single payment, prohibited where the debt subject to the contract is a residential mortgage loan). "You may choose to pay the fee in a single lump sum or in monthly or quarterly payments. Adding the lump sum of the fee to the amount you borrow will increase the cost of (product name)."

(E) Lump sum payment of fee with no refund (applicable if a bank offers the option to pay the fee in a single payment for a no-refund debt cancellation contract, prohibited where the debt subject to the contract is a residential mortgage loan.) "You have the option to purchase (product name) that includes a refund of the unearned portion of the fee if you terminate the contract or prepay the loan in full prior to the scheduled termination date. Prices of refund and no-refund products may differ."

(F) Refund of fee paid in lump sum (applicable where customer pays the fee in a single payment and the fee is added to the amount borrowed, prohibited where the debt subject to the contract is a residential mortgage loan). Either:

(i) "You may cancel (product name) at any time and receive a refund;"

(ii) "You may cancel (product name) within _____ days and receive a full refund;" or

(iii) "if you cancel (product name) you will not receive a refund."

(G) Use of card or credit line restricted (applicable if the contract restricts the use of card or credit line when customer activates protection). "If (product name) is activated, you will be unable to incur additional charges on the credit card or use the credit line."

(H) Termination of (product name). Either:

(i) "You have no right to cancel (product name)"; or

(ii) "You have the right to cancel (product name) in the following circumstances _____:" and

(I) "The bank has no right to cancel (product name);" or

(II) "The bank has the right to cancel (product name) in the following circumstances _____."

(I) Eligibility requirements, conditions, and exclusions. "There are eligibility requirements, conditions, and exclusions that could prevent you from receiving benefits under (product name)." Either:

(i) "The following is a summary of the eligibility requirements, conditions, and exclusions (summary provided by bank);" or

(ii) "You may find a complete explanation of the eligibility requirements, conditions, and exclusions in paragraphs _____ of the (product name) agreement."

(3) Disclosure requirements; timing and method of disclosures.

(A) Short form disclosures. The bank shall make the short form disclosures orally at the time the bank first solicits the purchase of a contract.

(B) Long form disclosures. The bank shall make the long form disclosures in writing before the customer completes the purchase of the contract. If the initial solicitation occurs in person, then the bank shall provide the long form disclosures in writing at that time.

(C) Special rule for transactions by telephone. If the contract is solicited by telephone, the bank shall provide the short form disclosures orally and shall mail the long form disclosures and, if ap-

propriate, a copy of the contract to the customer within 3 business days, beginning on the first business day after the telephone solicitation.

(D) Special rule for solicitations using written mail inserts or "take one" applications. If the contract is solicited through written materials such as mail inserts or "take one" applications, the bank may provide only the short form disclosures in the written materials if the bank mails the long form disclosures to the customer within 3 business days, beginning on the first business day after the customer contacts the bank to respond to the solicitation, subject to the requirements of subsection (g)(3) of this section.

(E) Special rule for electronic transactions. The disclosure described in this section may be provided electronically in a manner consistent with the requirements of the Uniform Electronic Transactions Act, Texas Business and Commerce Code Chapter 322 [~~43~~], and the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §7001 et seq.

(4) Form of disclosures.

(A) Disclosures must be understandable. The disclosures required by this subsection must be in plain language, i.e., conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided.

(B) Disclosures must be meaningful. The disclosures required by this subsection must be in a meaningful form. Examples of methods that could call attention to the nature and significance of the information provided include:

(i) a plain-language heading to call attention to the disclosures;

(ii) a typeface and type size that are easy to read;

(iii) wide margins and ample line spacing;

(iv) boldface or italics for key words; and

(v) distinctive type style and graphic devices, such as shading or sidebars, when the disclosures are combined with other information.

(5) Advertisements and other promotional material. The short form disclosures are required in advertisements and promotional material for contracts unless the advertisements and promotional materials are of a general nature describing or listing the services or products offered by the bank.

(g) - (i) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES
SUBCHAPTER B. RULES FOR CREDIT ACCESS BUSINESSES

The Finance Commission of Texas (commission) proposes amendments to §83.3002 (relating to Filing of New Application), §83.3007 (relating to Processing of Application), §83.4003 (relating to Denial, Suspension, or Revocation Based on Criminal History), and §83.6007 (relating to Consumer Disclosures) in 7 TAC Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses.

The rules in 7 TAC Chapter 83, Subchapter B govern credit access businesses (CABs). In general, the purpose of the proposed rule changes to 7 TAC Chapter 83, Subchapter B is to implement changes resulting from the commission's review of the subchapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 83, Subchapter B was published in the *Texas Register* on August 4, 2023 (48 TexReg 4283). The commission received no official comments in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC did not receive any informal precomments on the rule text draft.

Proposed amendments to §83.3002 would update requirements for filing a new CAB license application. Currently, §83.3002(1)(A)(ii) requires a CAB license application to identify a "responsible person" with substantial management responsibility for each proposed office. The proposal would replace the "responsible person" requirement in §83.3002(1)(A)(ii) with a requirement to list a "compliance officer," who must be an individual responsible for overseeing compliance, and must be authorized to receive and respond to communications from the OCCC. The amendment would enable CABs to identify an individual who can be contacted on a company-wide basis. The amendment is intended to ensure that each CAB lists an individual who can be contacted about compliance issues. In addition, a proposed amendment to §83.3002(2)(A)(v) would remove language suggesting that CAB license applicants send fingerprints directly to the OCCC. Currently, license applicants submit fingerprints through a party approved by the Texas Department of Public Safety.

Proposed amendments to §83.3007 would revise provisions governing the OCCC's denial of a CAB license application. Under Texas Finance Code, §393.603(b), if the OCCC finds that a CAB license applicant has not met the eligibility requirements for a CAB license, then the OCCC will notify the applicant. Under Texas Finance Code, §393.603(c), an applicant has 30 days after the date of the notification to request a hearing on the denial. Proposed amendments at §83.3007(d) would specify that if the eligibility requirements for a license have not been met, the OCCC will send a notice of intent to deny the license application, as described by Texas Finance Code, §393.603(b). Proposed amendments at §83.3007(e) would revise current language to specify that an affected applicant has 30 days from the date of the notice of intent to deny to request a hearing, as provided by Texas Finance Code, §393.603(c). These amendments would ensure consistency with the license application denial process in Texas Finance Code, §393.603. The amendments

are consistent with the OCCC's current practice for notifying an applicant of the intent to deny a license application.

Proposed amendments to §83.4003 relate to the OCCC's review of the criminal history of a CAB applicant or licensee. The OCCC is authorized to review criminal history of CAB applicants and licensees under Texas Occupations Code, Chapter 53; Texas Finance Code, §14.151; and Texas Government Code, §411.095. The proposed amendments to §83.4003 would ensure consistency with HB 1342, which the Texas Legislature enacted in 2019. HB 1342 included a change to Texas Occupations Code, §53.022 relating to factors considered in determining whether an offense relates to the duties and responsibilities of the licensed occupation. Proposed amendments to §83.4003(c)(2) would implement this statutory change from HB 1342. A proposed amendment to §83.4003(d) would correct an internal cross-reference in the rule.

Proposed amendments to the figures accompanying §83.6007 would revise the model forms for the consumer cost disclosure used by CABs. The proposed amendments implement Texas Finance Code, §393.223(a), which authorizes the commission to adopt rules including the disclosure. The proposed amendments include updated information regarding the cost of comparable forms of consumer credit, as well as updated information on patterns of repayment based on 2022 quarterly and annual reports provided by CABs to the OCCC.

Mirand Diamond, Director of Licensing, Finance and Human Resources, has determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implications for state or local government as a result of administering the rule changes.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed rule changes are in effect, the public benefits anticipated as a result of the changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules, will better enable licensees to comply with Chapter 393 of the Texas Finance Code, and will aid licensees in preparing disclosures that clearly disclose up-to-date information to consumers.

Additional economic costs may be incurred by persons who are required to comply with the proposed amendments to the consumer disclosure rule at §83.6007. The anticipated costs would include the costs associated with producing new forms, and costs attributable to the loss of obsolete forms inventory. For licensees not using the fillable forms provided by the agency online, any additional economic costs are anticipated to be minimal, with an estimated programming time of less than five hours to produce the updated forms.

The agency has attempted to lessen any potential costs by providing on the agency's website fillable PDF versions of the disclosure forms free of charge. Additionally, the agency is considering a delayed implementation date for use of the revised forms, which will help minimize potential costs and allow use of current forms inventory. In particular, the agency is considering a possible implementation date of July 1, 2024, and invites comments on this issue.

The OCCC does not anticipate economic costs to persons who are required to comply with the other rule changes as proposed.

The OCCC is not aware of any adverse economic effect on small businesses, micro-businesses, or rural communities resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the OCCC invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses, micro-businesses, and rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposal does not require an increase or decrease in fees paid to the OCCC. The proposal would not create a new regulation. The proposal would expand current §83.3002 by specifying a requirement to identify a compliance officer, would expand current §83.3007 to specify the process to deny a CAB license application, and would expand current §83.4003 to specify requirements for the by amending grounds on which the OCCC may deny, suspend, or revoke a license on grounds of criminal history. The proposal would limit current §83.3002 by removing a requirement for a license applicant to identify a responsible person for each office. The proposal would not repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the *Texas Register.* After the 30th day after the proposal is published in the *Texas Register,* no further written comments will be considered or accepted by the commission.

DIVISION 3. APPLICATION PROCEDURES

7 TAC §83.3002, §83.3007

The rule changes are proposed under Texas Finance Code, §393.622, which authorizes the commission to adopt rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G (governing CABs). In addition, Texas Finance Code, §393.223 authorizes the commission to adopt rules regarding the cost disclosure used by CABs.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 393.

§83.3002. Filing of New Application.

An application for issuance of a new credit access business license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. Appropriate fees must be filed with the application and the application must include the following:

(1) Required application information. All questions must be answered.

(A) Application for license.

(i) (No change.)

(ii) Compliance officer. The application must list a compliance officer. The compliance officer must be an individual responsible for overseeing compliance, and must be authorized to receive and respond to communications from the OCCC.

~~*f(ii)* Responsible person. For each of the applicant's proposed offices, the person with substantial management responsibility for operations must be named.~~]

(iii) - (iv) (No change.)

(B) - (E) (No change.)

(2) Other required filings.

(A) Fingerprints.

(i) - (iv) (No change.)

(v) For individuals who have previously submitted fingerprints to another state agency (e.g., Texas Department of Savings and Mortgage Lending), fingerprints are still required to be submitted under [~~to the OCCC, as per~~] Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others, except as authorized by Texas Government Code, §560.002.

(B) - (F) (No change.)

(3) (No change.)

§83.3007. Processing of Application.

(a) - (c) (No change.)

(d) Notice of intent to deny application. If the OCCC does not find that the eligibility requirements for a license have been met, then the OCCC will send a notice of intent to deny the license application to the applicant.

(e) [~~(d)~~] Hearing. An [~~Whenever an application is denied, the~~] affected applicant has 30 calendar days from the date of the notice of intent to deny the license application [~~the application was denied~~] to request in writing a hearing to contest the denial. This hearing will be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions), before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(f) [~~(e)~~] Denial. If an application has been denied, the assessment fee will be refunded to the applicant. The investigation fee and the fingerprint processing fee in §83.3010 of this title (relating to Fees) will be forfeited.

(g) [~~(f)~~] Processing time.

(1) - (3) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Matthew Nance
General Counsel
Office of Consumer Credit Commissioner
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DIVISION 4. LICENSE

7 TAC §83.4003

The rule changes are proposed under Texas Finance Code, §393.622, which authorizes the commission to adopt rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G (governing CABs). In addition, Texas Finance Code, §393.223 authorizes the commission to adopt rules regarding the cost disclosure used by CABs.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 393.

§83.4003. Denial, Suspension, or Revocation Based on Criminal History.

(a) - (b) (No change.)

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a credit access business, as provided by Texas Occupations Code, §53.021(a)(1).

(1) (No change.)

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; [~~and~~]

(D) the relationship of the crime to the ability or[~~,~~] capacity[~~, or fitness~~] required to perform the duties and discharge the responsibilities of a licensee; and[~~.~~]

(E) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

(3) (No change.)

(d) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §393.607(a). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its principal parties. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(1) [~~(f)(2)~~] of this section, this reflects negatively on an applicant's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness

of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2) - (3) of this section in its review of character and fitness.

(e) - (f) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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DIVISION 6. CONSUMER DISCLOSURES AND NOTICES

7 TAC §83.6007

The rule changes are proposed under Texas Finance Code, §393.622, which authorizes the commission to adopt rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G (governing CABs). In addition, Texas Finance Code, §393.223 authorizes the commission to adopt rules regarding the cost disclosure used by CABs.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 393.

§83.6007. Consumer Disclosures.

(a) Consumer disclosure for single payment payday loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and before a financial evaluation occurs in conjunction with a single payment payday loan is presented in the following figure.
Figure: 7 TAC §83.6007(a)
[~~Figure: 7 TAC §83.6007(a)~~]

(b) Consumer disclosure for multiple payment payday loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and before a financial evaluation occurs in conjunction with a multiple payment payday loan is presented in the following figure.
Figure: 7 TAC §83.6007(b)
[~~Figure: 7 TAC §83.6007(b)~~]

(c) Consumer disclosure for single payment auto title loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and before a financial evaluation occurs in conjunction with a single payment auto title loan is presented in the following figure.
Figure: 7 TAC §83.6007(c)
[~~Figure: 7 TAC §83.6007(c)~~]

(d) Consumer disclosure for multiple payment auto title loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and before a financial evaluation occurs in conjunction with a multiple payment auto title loan is presented in the following figure.
Figure: 7 TAC §83.6007(d)
[~~Figure: 7 TAC §83.6007(d)~~]

(e) - (f) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES
SUBCHAPTER G. EXAMINATIONS

7 TAC §§84.707 - 84.709

The Finance Commission of Texas (commission) proposes amendments to §84.707 (relating to Files and Records Required (Retail Sellers Assigning Retail Installment Sales Contracts)), §84.708 (relating to Files and Records Required (Retail Sellers Collecting Installments on Retail Installment Sales Contracts)), and §84.709 (relating to Files and Records Required (Holders Taking Assignment of Retail Installment Sales Contracts)) in 7 TAC Chapter 84, concerning Motor Vehicle Installment Sales.

The rules in 7 TAC Chapter 84 govern motor vehicle retail installment transactions. In general, the purposes of the proposed rule changes to 7 TAC Chapter 84 are: (1) to implement changes relating to recordkeeping for debt cancellation agreements under HB 2746 (2023), and (2) to make technical corrections and updates.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received one informal precomment on the rule text draft. The OCCC appreciates the thoughtful input provided by stakeholders.

Proposed amendments to §84.707 would update recordkeeping requirements for retail sellers that assign motor vehicle retail installment contracts to another holder. Proposed amendments at §84.707(d)(2)(A)(iv) would remove a reference to the Tax Collector's Receipt for Texas Title Application/Registration/Motor Vehicle Tax handwritten receipt (Form 31-RTS). Based on information from the Texas Department of Motor Vehicles (TxDMV), the OCCC understands that this form is obsolete for motor vehicle dealer sales. A proposed amendments would remove current §84.707(d)(2)(E), which requires retail sellers to maintain the County of Title Issuance form (Form VTR-136). The OCCC understands that this form is now obsolete and is no longer used, following the passage of SB 876 (2021) and amendments to Texas Transportation Code, Chapter 501. Other proposed amendments throughout §84.707 would renumber provisions to be consistent with these amendments and would make technical corrections.

Proposed amendments at §84.707(d)(2)(I) would update recordkeeping requirements for motor vehicle debt cancellation agreements. Under Texas Finance Code, §354.007, a buyer is entitled to a refund of a debt cancellation agreement fee when the agreement terminates due to prepayment of the retail installment contract. The OCCC has identified failure to provide these refunds as a recurring issue in its examinations of licensees. In examinations conducted between 2016 and 2023, the OCCC instructed licensees to provide more than $26 million in refunds to consumers as a result of this issue. In the 2023 regular legislative session, the Texas Legislature passed HB 2746, which amended requirements for debt cancellation agreement refunds. In particular, HB 2746 amended Texas Finance Code, §354.007 to specify: (1) that retail sellers and third-party administrators are responsible for providing refunds upon cancellation or termination of a debt cancellation agreement (based on the portion of the debt cancellation agreement fee that the retail seller and administrator received), (2) that holders must either refund a debt cancellation agreement fee or provide written instruction to the administrator and retail seller to make the refund, and (3) that administrators and retail sellers are responsible for maintaining records of a refund. The proposed amendments to §84.707(d)(2)(I) would specify that retail sellers must maintain documentation of the disbursement of the debt cancellation agreement fee, any written instruction from a holder to make a refund, and documentation of any refund. These amendments would help ensure that retail sellers maintain records to show compliance with Texas Finance Code, §354.007, as amended by HB 2746. Licensees must maintain these records to document that consumers are receiving legally required refunds.

In an informal precomment, an attorney representing an association of motor vehicle dealers asked two questions regarding the proposed amendments to §84.707. First, the attorney asked: "With respect to the required 'written instruction' from a holder and the documentation of any refund of the DCA, if the written instructions are sent electronically, may the written instructions be maintained electronically by the retail seller?" Second, the attorney asked: "With the recognition that the DCA is to be maintained in each retail installment transaction file or a copy of any page of the DCA with a signature, transaction-specific term, the cost of the DCA and any blank spaces completed and a master copy of each DCA maintained as required, do the written instructions and refund documents have to be maintained in each retail buyer's file, or may they be maintained collectively?" These issues are addressed in the current rule's introductory text to §84.707(d)(2), which includes the following two sentences: "A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. . . . If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request." These two sentences apply to the records that are normally part of the retail installment transaction file, and these sentences are not being changed in this proposal. As described in these two sentences, a retail seller could maintain an electronic record that is not included in the transaction file, as long as the electronic record can be accessed on request within a reasonable amount of time.

Proposed amendments to §84.708 would update recordkeeping requirements for retail sellers that collect payments on motor vehicle retail installment contracts. The proposed amendments to §84.708 are substantially similar to the proposed amendments to §84.707 described in the previous two paragraphs. In particular, the proposed amendments would delete a reference to Form 31-RTS, delete a reference to Form VTR-136, make technical corrections, and require sellers to maintain records of debt cancellation agreement refunds to ensure consistency with HB 2746.

Proposed amendments to §84.709 would update recordkeeping requirements for holders that take assignment of motor vehicle retail installment contracts. Specifically, proposed amendments to §84.709(e)(2)(D) would explain that holders must maintain any written instruction to another person to make a refund, and must maintain any other refunding documentation that comes into their possession. Proposed amendments to §84.709(e)(2)(F) would specify that holders must maintain documents relating to the cancellation or termination of a debt cancellation agreement that come into their possession, and must cooperate in obtaining related documents. These proposed amendments are consistent with a holder's current responsibility under §84.709(e)(2)(F) to maintain (and cooperate in obtaining) documents relating to a debt cancellation agreement claim. It is important that licensees maintain these records to document that consumers are receiving legally required refunds.

Mirand Diamond, Director of Licensing, Finance and Human Resources, has determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implications for state or local government as a result of administering the rule changes.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of the changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules, and will better enable licensees to comply with Texas Finance Code, Chapters 348 and 354.

The OCCC does not anticipate that the proposed rule changes will result in any economic costs to persons who are required to comply with the proposed rule changes. If there are any new costs of maintaining records for debt cancellation agreements, these costs would result from HB 2746's amendments to Chapter 354, not from the proposed rule changes.

The OCCC is not aware of any adverse economic effect on small businesses, micro-businesses, or rural communities resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the OCCC invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses, micro-businesses, and rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposal does not require an increase or decrease in fees paid to the OCCC. The proposal would not create a new regula-

tion. The proposal would expand current §§84.707, 84.708, and 84.709 by specifying certain records that a licensee must maintain. The proposal would limit current §§84.707, 84.708, and 84.709 by removing references to certain records that a licensee must maintain. The proposal would not repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the *Texas Register.* After the 30th day after the proposal is published in the *Texas Register,* no further written comments will be considered or accepted by the commission.

The rule amendments are proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4. In addition, Texas Finance Code, §348.513 authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 348.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 348 and 354.

§84.707. Files and Records Required (Retail Sellers Assigning Retail Installment Sales Contracts).

(a) - (c) (No change.)

(d) Records required.

(1) Retail installment sales transaction report.

(A) General requirements. Each licensee must maintain records sufficient to produce a retail installment sales transaction report that contains a listing of each Texas Finance Code, Chapter 348 retail installment sales contract entered into by the licensee. The report is only required to include those retail installment sales contracts that are subject to the record retention period of paragraph (7) [~~(6)~~] of this subsection.

(B) - (D) (No change.)

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) for all retail installment sales transactions:

(i) - (iii) (No change.)

(iv) the Texas Department of Motor Vehicles' Title Application Receipt (Form VTR-500-RTS)[~~, Tax Assessor's Tax Collector's Receipt for Title Application/Registration/Motor Vehicle Tax handwritten receipt (Form 31-RTS),~~] or similar document evidencing the disbursement of the sales tax, and fees for license, title, and registration of the vehicle;

(v) (No change.)

(vi) any records applicable to the retail installment transaction outlined by subparagraphs (B) - (P) [~~(Q)~~] of this paragraph.

(B) - (D) (No change.)

[~~(E) for a retail installment sales transaction in which the retail buyer elects to have the vehicle registered in another county as permitted by Texas Transportation Code, §501.0234, a completed copy of the Texas Department of Motor Vehicles' County of Title Issuance form (Form VTR-136) signed by the retail buyer.~~]

(E) [~~(F)~~] for a retail installment sales transaction involving a downpayment, a copy of any document relating to the downpayment including:

(i) - (iv) (No change.)

(F) [~~(G)~~] for a retail installment sales transaction involving a trade-in motor vehicle, a copy of the Texas Disclosure of Equity in Trade-In Motor Vehicle required by Texas Finance Code, §348.0091 and §84.204 of this title (relating to Disclosure of Equity in Retail Buyer's Trade-in Motor Vehicle).

(G) [~~(H)~~] for a retail installment sales transaction involving the disbursement of funds for money advanced pursuant to Texas Finance Code, §348.404(b) and (c), a copy of any document relating to the disbursement of funds for money advanced.

(H) [~~(I)~~] for a retail installment sales transaction in which the licensee issues a certificate of insurance regarding insurance policies issued by or through the licensee in connection with the retail installment sales transaction, copies of the certificates of insurance.

(I) [~~(J)~~] for a retail installment sales transaction in which the licensee issues a debt cancellation agreement, a complete copy of the debt cancellation agreement provided to the retail buyer, documentation of disbursement of the debt cancellation agreement fee to the retail seller or a third-party administrator, any written instruction from a holder to make a full or partial refund of the debt cancellation agreement fee, and documentation of any refund provided upon cancellation or termination of the debt cancellation agreement. As an alternative to maintaining a complete copy of the debt cancellation agreement in the retail installment sales transaction file, the licensee may maintain all of the following:

(i) in the retail installment sales transaction file, a copy of any page of the debt cancellation agreement with a signature, a transaction-specific term, the cost of the debt cancellation agreement, or any blank space that has been filled in;

(ii) in the licensee's general business files, a complete master copy of each debt cancellation agreement form used by the licensee during the period described by paragraph (7) of this subsection;

(iii) in the licensee's general business files, policies and procedures that show a verifiable method for ensuring that the master copy of the debt cancellation agreement accurately reflects the debt cancellation agreement used in each individual transaction.

(J) [~~(K)~~] for a retail installment sales transaction in which the licensee issues a certificate of coverage regarding ancillary products issued by or through the licensee in connection with the retail installment sales transaction, records of the ancillary products

(motor vehicle theft protection plans, service contracts, maintenance agreements, identity recovery service contracts, etc.) including all certificates of coverage.

(K) [~~(L)~~] for a retail installment sales transaction where separate disclosures are required by federal or state law including the following:

(i) - (ii) (No change.)

(L) [~~(M)~~] for a retail installment sales contract that has an itemized charge for the inspection of a used motor vehicle, access to a copy of the work order, inspection receipt, or other verifiable evidence that reflects that the inspection was performed including the date and cost of the inspection.

(M) [~~(N)~~] for a retail installment sales transaction involving the sale of a trade-in credit agreement under Texas Finance Code, §348.125:

(i) - (iii) (No change.)

(N) [~~(O)~~] for a retail installment sales transaction in which a retail buyer requests or receives a benefit under a trade-in credit agreement under Texas Finance Code, §348.125:

(i) - (iii) (No change.)

(O) [~~(P)~~] for a retail installment sales transaction in which a retail buyer requests or receives a benefit under a depreciation benefit optional member program under Texas Occupations Code, §1304.003(a)(2)(C):

(i) - (ii) (No change.)

(P) [~~(Q)~~] any conditional delivery agreement signed by the retail buyer or provided to the retail buyer.

(3) - (7) (No change.)

§84.708. Files and Records Required (Retail Sellers Collecting Installments on Retail Installment Sales Contracts).

(a) - (d) (No change.)

(e) Records required.

(1) Retail installment sales transaction report.

(A) General requirements. Each licensee must maintain records sufficient to produce a retail installment sales transaction report that contains a listing of each Texas Finance Code, Chapter 348 retail installment sales contract made or acquired by the licensee. The report is only required to include those retail installment sales contracts that are subject to the record retention period of paragraph (10) [~~(9)~~] of this subsection.

(B) - (D) (No change.)

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) for all retail installment sales transactions:

(i) - (iv) (No change.)

(v) the Texas Department of Motor Vehicles' Title Application Receipt (Form VTR-500-RTS) [~~, Tax Assessor's Tax Collector's Receipt for Title Application/Registration/Motor Vehicle Tax handwritten receipt (Form 31-RTS),~~] or similar document evidencing the disbursement of the sales tax, and fees for license, title, and registration of the vehicle;

(vi) (No change.)

(vii) any records applicable to the retail installment transaction outlined by subparagraphs (B) - (U) [~~(V)~~] of this paragraph.

(B) - (D) (No change.)

[~~(E) for a retail installment sales transaction in which the retail buyer elects to have the vehicle registered in another county as permitted by Texas Transportation Code, §501.0234, a completed copy of the Texas Department of Motor Vehicles' County of Title Issuance form (Form VTR-136) signed by the retail buyer.~~]

(E) [~~(F)~~] for a retail installment sales transaction involving a downpayment, a copy of any record or document relating to the downpayment including:

(i) - (iv) (No change.)

(F) [~~(G)~~] for a retail installment sales transaction involving a trade-in motor vehicle, a copy of the Texas Disclosure of Equity in Trade-In Motor Vehicle required by Texas Finance Code, §348.0091 and §84.204 of this title (relating to Disclosure of Equity in Retail Buyer's Trade-in Motor Vehicle).

(G) [~~(H)~~] for a retail installment sales contract that has an itemized charge for the inspection of a new or used motor vehicle, a copy of or access to the work order, inspection receipt, or other verifiable evidence that reflects that the inspection was performed including the date and cost of the inspection.

(H) [~~(I)~~] for a retail installment sales transaction involving the disbursement of funds for money advanced pursuant to Texas Finance Code, §348.404(b) and (c), a copy of any document, form, or agreement relating to the disbursement of funds for money advanced.

(I) [~~(J)~~] for a retail installment sales transaction in which the licensee issues a certificate of insurance regarding insurance policies issued by or through the licensee in connection with the retail installment sales transaction, copies of the certificates of insurance.

(J) [~~(K)~~] for a retail installment sales transaction in which the licensee issues a debt cancellation agreement, a complete copy of the debt cancellation agreement provided to the retail buyer, documentation of disbursement of the debt cancellation agreement fee to the retail seller or a third-party administrator, any written instruction to another person to make a full or partial refund of the debt cancellation agreement fee, and documentation of any refund provided upon cancellation or termination of the debt cancellation agreement. As an alternative to maintaining a complete copy of the debt cancellation agreement in the retail installment sales transaction file, the licensee may maintain all of the following:

(i) in the retail installment sales transaction file, a copy of any page of the debt cancellation agreement with a signature, a transaction-specific term, the cost of the debt cancellation agreement, or any blank space that has been filled in;

(ii) in the licensee's general business files, a complete master copy of each debt cancellation agreement form used by

the licensee during the period described by paragraph (10) of this subsection;

(iii) in the licensee's general business files, policies and procedures that show a verifiable method for ensuring that the master copy of the debt cancellation agreement accurately reflects the debt cancellation agreement used in each individual transaction.

(K) [~~(L)~~] for a retail installment sales transaction in which the licensee issues a certificate of coverage regarding ancillary products issued by or through the licensee in connection with the retail installment sales transaction, records of the ancillary products (motor vehicle theft protection plans, service contracts, maintenance agreements, identity recovery service contracts, etc.) including all certificates of coverage.

(L) [~~(M)~~] for a retail installment sales transaction involving insurance claims for credit life, credit accident and health, credit property, credit involuntary unemployment, collateral protection, or credit gap insurance:

(i) - (ii) (No change.)

(M) [~~(N)~~] for a retail installment sales transaction involving the cancellation of a full or partial balance under a debt cancellation agreement for total loss or theft of an ordinary vehicle:

(i) - (ii) (No change.)

(N) [~~(O)~~] for a retail installment sales transaction where separate disclosures are required by federal or state law including the following:

(i) - (ii) (No change.)

(O) [~~(P)~~] for a retail installment sales transaction that has been repaid in full, evidence of the discharge or release of lien as prescribed by 43 TAC §217.106 (relating to Discharge of Lien).

(P) [~~(Q)~~] for a retail installment sales transaction involving a repossession, the records required by subsection (f) of this section.

(Q) [~~(R)~~] for a retail installment sales transaction in which the licensee agrees to defer all or part of one or more payments:

(i) - (ii) (No change.)

(R) [~~(S)~~] for a retail installment sales transaction involving the sale of a trade-in credit agreement under Texas Finance Code, §348.125:

(i) - (iii) (No change.)

(S) [~~(T)~~] for a retail installment sales transaction in which a retail buyer requests or receives a benefit under a trade-in credit agreement under Texas Finance Code, §348.125:

(i) - (iii) (No change.)

(T) [~~(U)~~] for a retail installment sales transaction in which a retail buyer requests or receives a benefit under a depreciation benefit optional member program under Texas Occupations Code, §1304.003(a)(2)(C):

(i) - (ii) (No change.)

(U) [~~(V)~~] any conditional delivery agreement signed by the retail buyer or provided to the retail buyer.

(3) - (10) (No change.)

(f) (No change.)

§84.709. Files and Records Required (Holders Taking Assignment of Retail Installment Sales Contracts).

(a) - (d) (No change.)

(e) Records required.

(1) (No change.)

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) - (C) (No change.)

(D) for a retail installment sales transaction in which the licensee issues or takes assignment of a debt cancellation agreement, a complete copy of the debt cancellation agreement provided to the retail buyer and any written instruction to another person to make a full or partial refund of the debt cancellation agreement fee, and any documentation that comes into the licensee's possession regarding a refund provided upon cancellation or termination of the debt cancellation agreement. As an alternative to maintaining a complete copy of the debt cancellation agreement in the retail installment sales transaction file, the licensee may maintain all of the following:

(i) in the retail installment sales transaction file, a copy of any page of the debt cancellation agreement with a signature, a transaction-specific term, the cost of the debt cancellation agreement, or any blank space that has been filled in;

(ii) in the licensee's general business files, a complete master copy of each debt cancellation agreement form used by the licensee during the period described by paragraph (9) of this subsection;

(iii) in the licensee's general business files, policies and procedures that show a verifiable method for ensuring that the master copy of the debt cancellation agreement accurately reflects the debt cancellation agreement used in each individual transaction.

(E) (No change.)

(F) for a retail installment sales transaction involving the cancellation of a full or partial balance under a debt cancellation agreement for total loss or theft of an ordinary vehicle, or involving the cancellation or termination of a debt cancellation agreement, the licensee must:

(i) maintain any documents that come into its possession relating to the creation, processing, [~~or~~] resolution, cancellation, or termination of a debt cancellation agreement; and

(ii) upon request of the agency, cooperate in requesting and obtaining access to the type of documents described in clause (i) of this subparagraph that are not in its possession.

(G) - (J) (No change.)

(3) - (9) (No change.)

(f) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 7. HOMELESSNESS PROGRAMS SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §§7.1 - 7.12

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 7, Subchapter A, General Policies and Procedures. The purpose of the proposed action is to repeal the current rule, while replacing it with a new rule with revisions to conform to State and Federal regulatory updates under separate action.

GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect:

1. The proposed repeal does not create or eliminate a government program, but relates to the making changes to an existing activity;

2. The proposed repeal does not require a change in the number of employees of the Department;

3. The proposed repeal does not require additional future legislative appropriations;

4. The proposed repeal to the rule will not result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed repeal to the rule will not create a new regulation;

6. The proposed repeal to the rule will repeal an existing regulation;

7. The proposed repeal to the rule will not increase or decrease the number of individuals subject to the rule's applicability.

8. The proposed repeal to the rule will neither negatively nor positively affect this state's economy.

ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department has evaluated the proposed new rule and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal and new rule would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the amended section would be more clarity on the administration of homeless programs. There will not be economic costs to individuals required to comply with the amended section.

FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 10, 2024 through December 11, 2024, to receive input on the proposed new rule. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email rosy.falcon@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, December 11, 2024.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repeal affects no other code, article, or statute.

§7.1. Purpose and Goals.

§7.2. Definitions.

§7.3. HHSP and EH Construction Activities.

§7.4. Subrecipient Contract.

§7.5. Subrecipient Reporting.

§7.6. Subrecipient Data Collection.

§7.7. Subrecipient Contact Information.

§7.8. Records Retention.

§7.9. Contract Termination and Deobligation.

§7.10. Inclusive Marketing.

§7.11. Compliance Monitoring.

§7.12. Waivers.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2023.

TRD-202303966
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 10, 2023
For further information, please call: (512) 475-3959

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10 TAC §§7.1 - 7.12

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 7, Subchapter A, General Policies and Procedures. The purpose of the proposed action is to update the rule to conform to State and Federal regulatory updates.

GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed new rule does not create or eliminate a government program, but relates to the making changes to an existing activity;

2. The proposed rule does not require a change in the number of employees of the Department;

3. The proposed new rule does not require additional future legislative appropriations;

4. The proposed new rule will not result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed new rule will modify, but not create a new regulation;

6. The proposed rule will not repeal an existing regulation;

7. The proposed rule will not increase or decrease the number of individuals subject to the rule's applicability.

8. The proposed rule will neither negatively nor positively affect this state's economy.

ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department has evaluated this proposed rule and determined that the proposed rule will not create an economic effect on small or micro-businesses or rural communities.

TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed rule does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).The Department has evaluated the proposed rule as to its possible effects on local economies and has determined that for the first five years the proposed rule would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed rule is in effect, the public benefit anticipated as a result of the new section would be more clarity on the administration of homeless programs. There will not be economic costs to individuals required to comply with the section.

FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed rule is in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 10, 2024 through December 11, 2024, to receive input on the proposed new rule. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email rosy.falcon@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, December 11, 2024.

STATUTORY AUTHORITY. The proposed new rule is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed rule affects no other code, article, or statute.

§7.1 Purpose and Goals.

(a) The rules established in this Chapter relate to Homeless Programs, for which the General Provisions provided in this subchapter apply to all of the Homeless Programs, unless otherwise noted. Additional program specific requirements are contained within each program subchapter.

(b) The Homeless Programs administered by the Texas Department of Housing and Community Affairs (the "Department") support the Department's statutorily assigned mission to address homelessness among Texans.

(c) The Department accomplishes this mission by acting as a conduit for state and federal funds directed for homelessness programs. Ensuring program compliance with the state and federal laws that govern these programs is another important part of the Department's mission. Oversight and program mandates ensure state and federal resources are expended in an efficient and effective manner.

(d) Unless otherwise noted herein or required by federal law or regulation, or state statute, all provisions of this chapter apply to any Application received for federal funds and any Contract of state funds on or after the effective date of this rule.

§7.2 Definitions.

The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise. Other definitions may be found in Chapters 1, concerning Administration, Chapter 2, concerning Enforcement, of this title, or in federal or state law including, but not limited to, 24 CFR Parts 91, 200, 576, 582, and 583, and UGMS or TXGMS, as applicable.

(1) Affiliate--An entity related to an Applicant that controls by contract or by operation of law the Applicant or has the power to control the Applicant or a third entity that controls, or has the power to control both the Applicant and the entity. Examples include but are not limited to entities submitting under a common application, or instrumentalities of a unit of government. This term also includes any entity

that is required to be reported as a component entity under Generally Accepted Accounting Standards, is required to be part of the same Single Audit as the Applicant, is reported on the same IRS Form 990, or is using the same federally approved indirect cost rate.

(2) Allocation Formula--Mathematical relationship among factors, authorized by the Board, that determines, when applicable, how much funding is available in an area or region in Subchapters B, C, and D of this chapter, relating to Homelessness Programs.

(3) Applicant--A unit of local government, nonprofit corporation or other entity, as applicable, who has submitted to the Department an Application for Department funds or other assistance.

(4) Application--A request for a Contract award submitted by an Applicant to the Department, in a form prescribed by the Department, including any exhibits or other supporting material.

(5) At-risk of Homelessness--Defined by 24 CFR §576.2, except as otherwise defined by Contract, the income limits for Program Participants are determined by the Subrecipient but, at a minimum, do not exceed the moderate income level pursuant to Tex. Gov't Code §2306.152.

(6) Code of Federal Regulations (CFR)--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

(7) Continuum of Care (CoC)--The group composed of representatives of relevant organizations, which generally includes nonprofit homeless providers; victim service providers; faith-based organizations; governments; businesses; advocates; public housing agencies; school districts; social service providers; mental health agencies; hospitals; universities; affordable housing developers; law enforcement; organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons that are organized to plan for and provide, as necessary, a system of outreach, engagement, and assessment; emergency shelter; rapid re-housing; transitional housing; permanent housing; and prevention strategies to address the various needs of homeless persons and persons at risk of homelessness for a specific geographic area. HUD funds a CoC Program designed to assist sheltered and unsheltered homeless people by providing the housing and/or services needed to help individuals move into transitional and permanent housing, with the goal of long-term stability.

(8) CoC Lead Agency--CoC collaborative applicant in the HUD CoC Program per 24 CFR §578.3.

(9) Contract--The executed written agreement between the Department and a Subrecipient performing a program activity that describes performance requirements and responsibilities assigned by the document.

(10) Contract System--The electronic recordkeeping system established by the Department, as required by the program.

(11) Contract Term--Period of time identified in the Contract during which program activities may be conducted.

(12) Cost Reimbursement--A Contract sanction whereby reimbursement of costs incurred by the Subrecipient occurs only after the Department has reviewed all relevant documentation provided by the Subrecipient to support Expenditures. Reimbursement will only be approved by the Department where the documentation clearly supports the eligible use of funds.

(13) Declaration of Income Statement (DIS)--A Department-approved form used only when it is not possible for a Subrecipient to obtain third-party or firsthand verification of income, per 24 CFR §576.500(e)(4).

(14) Dwelling Unit--A residence that meets Habitability Standards that is not an emergency shelter, hotel, jail, institution, or similar temporary lodging. Transitional Housing is included in this definition unless the context clearly states otherwise. Common areas supporting the Dwelling Unit are also included in this definition.

(15) Elderly Person--

(A) For state funds, a person who is 60 years of age or older; and

(B) For ESG, a person who is 62 years of age or older.

(16) Ending Homelessness (EH) Fund--The voluntary-contribution state program established in Texas Transportation Code §502.415.

(17) Emergency Solutions Grants (ESG)--A HUD-funded program which provides funds for services necessary to help persons that are at risk of homelessness or homeless quickly regain stability in permanent housing.

(18) Emergency Solutions Grants CARES (ESG CARES)--A HUD-funded program which provides funds for services necessary to help persons that are risk of homelessness or homeless quickly regain stability in permanent housing authorized by the Coronavirus Aid, Relief, and Economic Security Act (CARES).

(19) ESG Interim Rule--The regulations with amendments promulgated at 24 CFR Part 576 as published by HUD for the ESG Program.

(20) Expenditure--An amount of money accounted for by a Subrecipient as spent.

(21) Finding--A Subrecipient's material failure to comply with rules, regulations, the terms of the Contract or to provide services under each program to meet appropriate standards, goals, and other requirements established by the Department or funding source (including performance objectives). A Finding impacts the organization's ability to achieve the goals of the program and jeopardizes continued operations of the Subrecipient. Findings include the identification of an action or failure to act that results in disallowed costs.

(22) Head of Household--As defined in the most recent Homeless Management Information System (HMIS) Data Dictionary issued by HUD.

(23) HMIS-Comparable Database--Database established and operated by a victim service provider or legal service provider that is comparable to HMIS and collects Program Participant-level data over time.

(24) HMIS Data Dictionary--The Dictionary published by HUD which defines terms for the use of HMIS and comparable databases.

(25) HMIS Data Standards Manual--Manual published by HUD which documents the requirements for the programming and use of all HMIS and comparable databases.

(26) HMIS Lead Agency--The entity designated by the CoC to operate the CoC's HMIS on its behalf.

(27) Homeless or Homeless Individual--An individual as defined by 42 U.S.C. §§11371 - 11378 and 24 CFR §576.2. For state-funded programs, a homeless individual may have right of occupancy because of a signed lease, but still qualify as homeless if his or her

primary nighttime residence is an emergency shelter or place not meant for human habitation.

(28) Homeless Housing and Services Program (HHSP)--The state-funded program established under Tex. Gov't Code §2306.2585.

(29) Homeless Management Information System (HMIS)--Information system designated by the CoC to comply with the HUD's data collection, management, and reporting standards and used to collect Program Participant-level data and data on the provision of housing and services to homeless individuals and families and persons at-risk of homelessness.

(30) Homeless Programs--Reference to programs that have the specific purpose of addressing homelessness administered by the Department, including ESG Program, ESG CARES, HHSP, and EH Fund.

(31) Homeless Subpopulations--Persons experiencing Homelessness who are part of the special population categories as defined by the most recent Point In Time Data Collection guidance issued by HUD.

(32) Household--A Household is a single individual or a group of persons who apply together for assistance and who live together in one Dwelling Unit, or, for persons who are not housed or in a shelter, who would live together in one Dwelling Unit if they were housed, or as defined in the most recent HMIS Data Dictionary issued by HUD.

(33) Households Served--A single individual or a group of persons who apply for Homeless Program assistance, meets a Homeless Program's eligibility requirements, receives a Homeless Program's services, and whose data is entered into an HMIS or comparable database.

(34) Land Use Restriction Agreement (LURA)--An agreement, regardless of its title, between the Department and a property owner, including an emergency shelter, which is a binding covenant upon the property owner and successors in interest, that, when recorded, encumbers the property with respect to the requirements of the programs for which it receives funds.

(35) Match--A contribution to the ESG Program from a non-ESG source governed by 24 CFR §576.201.

(36) Monthly Expenditure Report--Information on Expenditures from Subrecipient to the Department.

(37) Monthly Performance Report--Information on Program Participants and program activities from Subrecipient to the Department.

(38) Notice of Funding Availability (NOFA)--Notice of Funding Availability or announcement of funding published by the Department notifying the public of available funds for a Program with certain requirements.

(39) Outcome--A benefit or change achieved by a Program Participant served by the Department's Homeless Programs.

(40) Performance Target--Number of persons/Households to be served, outcomes to be reached, or construction/rehabilitation/conversion to be performed that the Subrecipient commits to accomplish during the Contract Term.

(41) Private Nonprofit Organization--An organization described in §501(c) of the Internal Revenue Code (the "Code") of 1986 and which is exempt from taxation under subtitle A of the Code, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance. This does not include a governmental organization such as a public housing authority or a housing finance agency.

(42) Project--A group of eligible activities identified in an Application or Contract to the Department, and designated in HMIS or HMIS-comparable database.

(43) Program Participant--An individual or Household that is assisted by a Homeless Program.

(44) Program Year--Contracts with funds from a specific federal allocation (ESG and ESG CARES) or year of a state biennium (HHSP).

(45) Recertification--Required review of a Program Participant's eligibility determination for continuation of assistance.

(46) Service Area--The city(ies), county(ies) and/or place(s) identified in the Application (as applicable), and Contract that the Subrecipient will serve.

(47) State--The State of Texas or the Department, as indicated by context.

(48) Subcontract--A contract made between the Subrecipient and a purveyor of goods or services through a procurement relationship.

(49) Subcontractor--A person or an organization with whom the Subrecipient contracts to provide services.

(50) Subgrant--An award of financial assistance in the form of money made under a grant by a Subrecipient to an eligible Subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases.

(51) Subgrantee--The legal entity to which a Subgrant is awarded and which is accountable to the Subrecipient for the use of the funds provided.

(52) Subrecipient--An organization that receives federal or states funds passed through the Department to operate ESG and/or state funded Homeless Programs.

(53) Texas Administrative Code (TAC)--A compilation of all state agency rules in Texas.

(54) United States Department of Housing and Urban Development (HUD)--Federal department that provides funding for ESG.

(55) Unit of General Purpose Local Government--A unit of government which has, among other responsibilities, the authority to assess and collect local taxes and to provide general governmental services.

(56) United States Code (U.S.C.)--A consolidation and codification by subject matter of the general and permanent laws of the United States.

(57) Youth Headed Household--Household that includes unaccompanied youth 24 years of age and younger, parenting youth 24 years of age and younger and children of parenting youth 24 years of age and younger.

§7.3 HHSP and EH Construction Activities.

(a) A Subrecipient of Homeless Program funds that constructs or rehabilitates a building or Dwelling Unit, or converts a building(s) for use as a shelter may be required to enter into a LURA. No new construction, renovation (other than repairs), rehabilitation, or conversion

of a shelter, or construction or rehabilitation of a Dwelling Unit may be performed using ESG funds.

(b) Tex. Gov't Code §2306.185 requires certain multifamily rental developments to have, among other provisions, a 30-year LURA.

(c) A Subrecipient that intends to expend funds for new construction, rehabilitation, or conversion must submit a copy of the activity budget inclusive of all sources and uses of funding, documents for a construction plan review, and identification of the entity and signature authorization of the individual (name and title) that will execute the LURA. These documents must be submitted no less than 90 calendar days prior to the end of the Contract Term under which funds for the activity are provided. The Department may elect to reconsider award amounts if financial resources other than those presented in the Application are subsequently committed to an activity.

(d) A Subrecipient must request a final construction inspection within 30 calendar days of construction completion. The inspection will cover the Shelter and Housing Standards, National Standards for the Physical Inspection of Real Estate, 2012 International Residential Code (or municipality adopted later version), Minimum Energy Efficiency Requirements for Single Family Construction Activities, and the Accessibility Standards in Chapter 1, Subchapter B, as applicable for the Homeless Program and activity.

§7.4 Subrecipient Contract.

(a) Subject to prior Board approval, the Department and a Subrecipient shall enter into and execute a Contract for the disbursement of program funds. The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver authorized modifications and/or amendments to the Contract, as allowed by state and federal laws and rules.

(b) Subrecipients of state funds may Subcontract for the delivery of Program Participant assistance without obtaining Department's prior approval, but must obtain the Department's written permission before entering into a Subgrant. Department ESG funds and ESG Match may not be Subgranted.

(c) The Subrecipient is responsible for ensuring that the performance rendered under all Subcontracts, Subgrants, and other agreements are rendered so as to comply with Homeless Program requirements, as if such performance rendered were rendered by the Subrecipient. Department maintains the right to monitor and require the Subrecipient's full compliance with the terms of the Subrecipient Contract.

(d) A performance statement and budget are attachments to the Contract between the Subrecipient and the Department. Execution of the Contract enables the Subrecipient to access funds through the Department's Contract System.

(e) Amendments and Extensions to Contracts.

(1) Except for amendments that only move funds within budget categories, program staff will recommend denial of amendment requests if any of the following conditions exist:

(A) if the award for the Contract was competitively awarded and the amendment would materially change the scope of the Contract performance or affected the score;

(B) if the Subrecipient is delinquent in the submission of their Single Audit or their Single Audit Certification form required by §1.403 of this title (relating to Single Audit Requirements);

(C) for an amendment adding funds to the Contract, if the Subrecipient owes the Department disallowed amounts in excess of $1,000 and a Department-approved repayment plan is not in place or has been violated;

(D) for an amendment adding funds (not applicable to amendments for extending time), if the Department has cited the Subrecipient for violations within §7.11 of this subchapter (related to Compliance Monitoring) and the corrective action period has expired without correction of the issue or a satisfactory plan for correction of the issue;

(E) the Contract has expired; or

(F) a member of the Subrecipient's board has been debarred and has not been removed.

(2) Except for amendments that only move funds within budget categories, program staff may recommend denial of amendment requests if any of the following conditions exist:

(A) the request for an amendment was received in writing less than 30 calendar days from the end of the Contract Term; or

(B) if the funds associated with the Contract will reach their federal or state expiration date within 45 calendar days of the request.

(3) Denial of an amendment may be subject to §1.7 of this title (relating to Appeals Process).

(4) The Executive Director may on appeal approve an amendment where the Single Audit Certification Form has not been submitted as reflected in paragraph (1)(B) of this section. In addition, the Executive Director may on appeal approve an amendment where the conditions in paragraph (2)(A) and paragraph (2)(B) of this section exist. The Subrecipient must demonstrate good cause for the amendment, and such an amendment must not cause the Department to miss a federal obligation or expenditure deadline, or a state expenditure deadline.

(5) Additional program specific requirements for amendments and extensions to Contracts are found in the program rules of this chapter, relating to Homelessness Programs.

(f) The Department reserves the right to request supporting Expenditure documentation at any time in reviewing an Expenditure report for approval. The Department will use full Cost Reimbursement method of payment whenever any of the following conditions exists:

(1) The Department determines that the Subrecipient has maintained cash balances in excess of need;

(2) The Department identifies significant deficiency in the cash controls or financial management system used by the Subrecipient; or

(3) The Subrecipient fails to comply with the reporting requirements in §7.5 (relating to Subrecipient Reporting) and §7.6 (relating to Subrecipient Data Collection) of this subchapter.

(g) Voluntary deobligation. The Subrecipient may fully relinquish funds in the form of a written request signed by the signatory, or successor thereto, of the Contract. The Subrecipient may partially relinquish funds under a Contract in the form of a written request from the signatory if the partial relinquishment in performance measures and budget would not have impacted the award of the Contract. Voluntary relinquishment of a Contract does not limit a Subrecipient's ability to participate in future funding.

(h) Funds provided under a Contract may not be used for sectarian or explicitly religious activities such as worship, religious instruction or proselytization, and must be for the benefit of persons regardless of religious affiliation.

§7.5 Subrecipient Reporting.

(a) Subrecipient will be reimbursed for the amount of actual cash disbursements as reflected in the approved Monthly Expenditure Reports.

(b) Subrecipient must submit a Monthly Performance Report and a Monthly Expenditure Report through the Contract System not later than the last day of each month which reflects performance and expenditures conducted in the prior month.

(c) For performance reports, Program Participants that are assisted continuously as a Contract ends and a new Contract begins in the same program will count as new Program Participants for the new Contract. However, the start of a new Contract does not require new eligibility determination or documentation for Program Participants, except as required for Recertification.

(d) Subrecipient shall reconcile their Expenditures with their performance at least monthly before seeking a request for funds for the following month. If the Subrecipient is unable to reconcile on a month-to-month basis, the Subrecipient must provide at the request of the Department, a written explanation for the variance and take appropriate measures to reconcile the subsequent month. It is the responsibility of a Subrecipient to ensure that it has documented the compliant use of all funds provided prior to receipt of additional funds, or if this cannot be done to address the repayment of such funds.

(e) Failure of a Subrecipient to provide reports as required under Department rules or the Contract may be sufficient reason for the Department to deobligate funds for which a Monthly Expenditure Report has not been submitted.

(f) If the Subrecipient fails to submit within 45 calendar days of its due date, any report or response required by this section and responses to monitoring reports, Department may, in its sole discretion, suspend payments, place the Subrecipient on Cost Reimbursement method of payment, and initiate proceedings to terminate any active Contract.

(g) Subrecipient must report on all measures in the Monthly Performance Report for demographics and Program Participant Services for which they are awarded.

(h) Subrecipient must submit information requested by the Department for annual or biannual reporting. The annual reporting may extend over multiple Contracts.

(1) ESG Subrecipients will submit information yearly as required for the Consolidated Annual Performance and Evaluation Report, including, but not limited to:

(A) HMIS exports as required per HUD; and

(B) Section 3 provision of the HUD Act of 1968, as required per HUD.

(2) Subrecipients of state funds will submit information for biennial reporting to the Texas Legislature, including, but not limited to:

(A) The successes and challenges of the program, including using state funding in ways that cannot be used by other funding sources; and

(B) How funds were used to leverage other funding sources to persons experiencing homelessness.

§7.6 Subrecipient Data Collection.

(a) Subrecipient must ensure that data on all persons served and all activities assisted under Homeless Programs is entered into the applicable HMIS or HMIS-comparable database for domestic violence or legal service providers in order to integrate data from all homeless assistance and homelessness prevention projects in a CoC.

(b) The Performance Targets shall be indicated in the Contract.

§7.7 Subrecipient Contact Information.

(a) In accordance with §1.22 of this title (relating to Providing Contact Information to the Department), Subrecipient will notify the Department and provide contact information for staff that approve the Contract and submit/approve reports in the Contract System. A primary and secondary contact are required to be provided to the Department for submission and approval of reports. The notification will be sent to the Department by updating its Contract System access request information.

(b) If the organization is a nonprofit organization, contact information for the chair and vice-chair of the organization's governing board must be provided to the Department and shall include the:

(1) Board Member's name;

(2) Beginning and end dates of the member's term;

(3) Member's mailing address (which must be different from the organization's mailing address);

(4) Member's phone number (different from the organization's phone number); and

(5) Member's direct email address.

(c) Subrecipient will notify the Department and provide contact information for Subcontractors and Subgrantee within 30 calendar days of the effective date of the Subcontract or Subgrant. Contact information for the entities with which the Subrecipients' Subcontract or Subgrant must be provided to the Department, including the organization name, name and title of authorized person who entered into the Subgrant or Subcontract, phone number, e-mail address, and type of services provided.

(d) At the start of the Contract and within 30 calendar days of contact information changes, including entering into Subcontracts or Subgrants, Subrecipient will notify the Department of contact information used for the public to receive assistance through Homeless Programs. The contact information for the public should include, but is not limited to, organization name, phone number to receive assistance, email to receive assistance, type of assistance offered, and Service Area in which the assistance is offered.

(e) The Department will rely solely on the contact information supplied by the Subrecipient as indicated in the Department's web-based Contract System. It is the Subrecipient's sole responsibility to ensure such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in the Contract System will be deemed delivered to the Subrecipient. The Department is not required to send a paper copy and if it does so it does as a voluntary and non-precedential courtesy only.

§7.8 Records Retention.

(a) Records must be kept in accordance with §1.409 of this Title (relating to Records Retention).

(b) Record retention for construction/rehabilitation/conversion of emergency shelters or Dwelling Units must be retained until the expiration of the LURA.

(c) For ESG, retention for records relevant to the ESG Contract (including but not limited to shelter and habitability inspections) shall be kept in accordance with 24 CFR §576.500 and TXGMS, as defined at §1.401 of this title (relating to Definitions), as applicable except if any litigation, claim, negotiation, audit, monitoring, inspection

or other action has started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later. The record retention period does not begin until one year after the expiration of the Contract.

(d) For state funds, retention for records relevant to the Contract (including but not limited to shelter and habitability inspections) shall be kept in accordance with UGMS or TXGMS, as applicable, and retained by the Subrecipient for a period of three years from the expiration of the Contract except if any litigation, claim, negotiation, audit, monitoring, inspection or other action has started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

§7.9 Contract Termination and Deobligation.

(a) When a Contract is terminated or voluntarily relinquished, the procedures described in this subsection will be implemented.

(b) The terminology of a "terminated" Subrecipient is intended to include the Subrecipient that is voluntarily or involuntarily terminating their Contract, but does not include Contracts that expire without being sent a termination letter.

(1) The Department will issue a termination letter to the Subrecipient no less than 30 calendar days prior to terminating the Contract. The Department may determine to take any of the following actions: suspend funds immediately or allow a temporary transfer to another Subrecipient; or provide instructions to the Subrecipient to prepare a proposed budget and written plan of action that supports the closeout of the Contract. The plan must identify the name and current titles of staff that will perform the closeout and an estimated dollar amount to be incurred. The plan must identify the CPA or firm which will perform the Single Audit. The Department will issue an official termination date to allow all parties to calculate deadlines which are based on such date.

(2) No later than 30 calendar days after the Contract is terminated, the Subrecipient will take a physical inventory of Program Participant files, including case management files.

(3) The terminated Subrecipient will have 30 calendar days from the date of the physical inventory to make available to the Department all Program Participant files. Current and active case management files also must be inventoried.

(4) The terminated Subrecipient will prepare and submit no later than 30 calendar days from the date the Department retrieves the files, a final report containing a full accounting of all funds expended under the Contract.

(5) A Monthly Expenditure Report and a Monthly Performance Report for all remaining expenditures incurred during the closeout period must be received by the Department no later than 45 calendar days from the date the Department determines that the closeout of the program and the period of transition are complete.

(6) The Subrecipient will submit to the Department no later than 45 calendar days after the termination of the Contract, an inventory of the non-expendable personal property acquired in whole or in part with funds received under the Contract.

(7) The Department may require transfer of Equipment title to the Department or to any other entity receiving funds under the program in question. The Department will make arrangements to remove Equipment covered by this paragraph within 90 calendar days following termination of the Contract.

(8) A current year Single Audit must be performed for all entities that have exceeded the federal expenditure threshold under 2 CFR Part 200, Subpart F or the State expenditure threshold under TXGMS, as applicable. The Department will allow a proportionate share of program funds to pay for accrued audit costs, when an audit is required, for a Single Audit that covers the date up to the closeout of the Contract. To be reimbursed for a Single Audit, the terminated Subrecipient must have a binding contract with a CPA firm on or before the termination date of the Contract. The actual costs of the Single Audit and accrued audit costs including support documentation must be submitted to the Department no later than 45 calendar days from the date the Department determines the closeout is complete. See §1.403 of this title (relating to Single Audit Requirements) for more information.

(9) Subrecipient shall submit within 45 calendar days after the date of the closeout process all financial, performance, and other applicable reports to the Department. The Department may approve extensions when requested by the Subrecipient. However, unless the Department authorizes an extension, the Subrecipient must abide by the 45 calendar day requirement of submitting all referenced reports and documentation to the Department.

§7.10 Inclusive Marketing.

(a) The purpose of this section is to highlight certain policies and/or procedures that are required to have written documentation. Other items that are required for written standards are included in the federal or state rules.

(b) Participant selection criteria:

(1) Selection criteria will be applied in a manner consistent with all applicable laws, including the Texas and Federal Fair Housing Acts, program guidelines, and the Department's rules.

(2) If the local CoC has adopted priority for certain Homeless subpopulations or a specific funding source has a statutory or regulatory preference, then those subpopulations may be given priority by the Subrecipient. Such priority must be listed in the participant selection criteria.

(3) Notifications on denial, non-renewal, or termination of Assistance must:

(A) State that a Person with a Disability may request a reasonable accommodation in relation to such notice.

(B) Include any appeal rights the participant may have in regards to such notice.

(C) Inform Program Participants in any denial, non-renewal or termination notice, information on rights they may have under VAWA (for ESG only, in accordance with the Violence Against Women Reauthorization Act of 2022 (VAWA) protections). Subrecipient may not deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking.

(c) Other policies and procedures:

(1) Affirmative Fair Housing Marketing Plan. Subrecipients providing project-based rental assistance must have an Affirmative Fair Housing Marketing Plan created in accordance with HUD requirements to direct specific marketing and outreach to potential tenants who are considered "least likely" to know about or apply for housing based on an evaluation of market area data. Subrecipient must comply with HUD's Affirmative Fair Housing Marketing and the Age Discrimination Act of 1975.

(2) Language Access Plan. A Subrecipient that interacts with Program Participants must create a Language Access Plan for Limited English Proficiency (LEP) Requirements. Consistent with Ti-

tle VI and Executive Order 13166, Subrecipient is also required to take reasonable steps to ensure meaningful access to programs and activities for LEP persons.

(3) Affirmative Outreach. If it is unlikely that outreach will reach persons of any particular race, color, religion, sex, age, national origin, familial status, or disability who may qualify for those facilities and services, the Subrecipient must establish policies and procedures that target outreach to those persons. Subrecipient must take appropriate steps to ensure effective communication with persons with disabilities including, but not limited to, adopting procedures that will make available to interested persons information concerning the location of assistance, services, and facilities that are accessible to persons with disabilities. Subrecipient must make known that use of the facilities, assistance, and services are available to all on a nondiscriminatory basis.

(4) Reasonable Accommodation. Subrecipient must comply with state and federal fair housing and antidiscrimination laws. Subrecipient's policies and procedures must address Reasonable Accommodation, including, but not limited to, consideration of Reasonable Accommodations requested to apply for assistance. See Chapter 1, Subchapter B of this title, relating to Accessibility and Reasonable Accommodations, for more information.

§7.11 Compliance Monitoring.

(a) Purpose and Overview

(1) This section provides the procedures that will be followed for monitoring for compliance with the programs in this chapter.

(2) Any entity administering any or all of the programs detailed in this chapter is a Subrecipient. A Subrecipient may also administer other programs, including programs administered by other state or federal agencies and privately funded programs. If the Subrecipient has Contracts for other programs through the Department, including but not limited to the HOME Partnerships Program, the Neighborhood Stabilization Program, or the Texas Housing Trust Fund, the Department may, but is not required to and does not commit to, coordinate monitoring of those programs with monitoring of those programs under this Chapter.

(3) Any entity administering any or all of the programs provided for in subsection (a)(2) of this section as part of a Memorandum of Understanding (MOU), contract, or other legal agreement with a Subrecipient is a Subgrantee.

(b) Frequency of Reviews, Notification and Information Collection.

(1) In general, the Subrecipient or Subgrantee will be scheduled for monitoring based on state or federal monitoring requirements and/or a risk assessment. Factors to be included in the risk assessment include but are not limited to: the number of Contracts administered by the Subrecipient or Subgrantee, the amount of funds awarded and expended, the length of time since the last monitoring, findings identified during previous monitoring, issues identified through the submission or lack of submission of a Single Audit, complaints received by the Department, and reports of fraud, waste and/or abuse. The risk assessment will also be used to determine which Subrecipients or Subgrantees will have an onsite review and which may have a desk review.

(2) The Department will provide the Subrecipient or Subgrantee with written notice of any upcoming onsite or desk monitoring review, and such notice will be given to the Subrecipient and Subgrantee by email to the Subrecipient's and Subgrantee's Contract contact at the email address most recently provided to the Department by the Subrecipient or Subgrantee. In general, a 30 calendar day notice will be provided. However, if a credible complaint of fraud or other egregious noncompliance is received the Department reserves the right to conduct unannounced monitoring visits. It is the responsibility of the Subrecipients to provide to the Department the current contact information for the organization and the Board in accordance with §7.7 of this subchapter (relating to Subrecipient Contact Information) and §1.22 of this title (relating to Providing Contact Information to the Department).

(3) Upon request, Subrecipient and Subgrantee (if applicable) must make available to the Department all books and records that the Department determines are reasonably relevant to the scope of the Department's review. Typically, these records may include (but are not limited to):

(A) Minutes of the governing board and any committees thereof, together with all supporting materials;

(B) Copies of all internal operating procedures or other documents governing the Subrecipient's operations;

(C) The Subrecipient's Board approved operating budget and reports on execution of that budget;

(D) The Subrecipient's strategic plan or comparable document if applicable and any reports on the achievement of that plan;

(E) Correspondence to or from any independent auditor;

(F) Contracts with any third parties for goods or services and files documenting compliance with any applicable procurement and property disposition requirements;

(G) All general ledgers and other records of financial operations (including copies of checks and other supporting documents);

(H) Applicable Program Participant files with all required documentation;

(I) Applicable human resources records;

(J) Monitoring reports from other funding entities;

(K) Program Participant files regarding complaints, appeals and termination of services; and

(L) Documentation to substantiate compliance with any other applicable state or federal requirements including, but not limited to, the Davis-Bacon Act, HUD requirements for environmental clearance, Lead Based Paint, the Personal Responsibility and Work Opportunity Act, HUD LEP requirements, and requirements imposed by Section 3 of the Housing and Urban Development Act of 1968.

(c) Post Monitoring Procedures.

(1) In general, within 30 calendar days of the last day of the monitoring visit, a written monitoring report will be prepared for the Subrecipient describing the monitoring assessment and any corrective actions, if applicable. The monitoring report will be emailed to the Subrecipient's Board Chair and Executive Director. All Department monitoring reports and Subrecipient responses to monitoring reports must be provided to the governing body of the Subrecipient within the next two regularly scheduled meetings. Issues of concern over which there is uncertainty or ambiguity may be discussed by the Department with the staff of cognizant agencies overseeing federal funding. Certain types of suspected or observed improper conduct may trigger requirements to make reports to other oversight authorities, state and federal, including but not limited to the State Auditor's Office and applicable Inspectors General.

(2) Subrecipient Response. If there are any Findings of noncompliance requiring corrective action, the Subrecipient will be provided 30 calendar days from the date of the email to respond, which may be extended for good cause. In order to receive an extension, the Subrecipient must submit a written request to the Director of Compliance within the corrective action period, stating the basis for good cause that justifies the extension. The Department will approve or deny the extension request within five calendar days.

(3) Monitoring Close Out. Within 45 calendar days after the end of the corrective action period, a close out letter will be issued to the Subrecipient. If the Subrecipient's response satisfies issues raised in the monitoring letter, the issue of noncompliance will be noted as resolved. If the Subrecipient's response does not correct all Findings, the follow-up letter will identify the documentation that must be submitted to correct the issue.

(4) Options for Review. If, following the submission of corrective action documentation, Compliance staff continues to find the Subrecipient or Subgrantee in noncompliance, and the Subrecipient disagrees, the Subrecipient may request or initiate review of the matter using the following options, where applicable:

(A) If the issue is related to a program requirement or prohibition of a federal program, the Subrecipient may contact the applicable federal program officer for guidance or request that the Department contact applicable federal program officer for guidance without identifying the Subrecipient.

(B) If the issue is related to application of a provision of the Contract or a requirement of the Texas Administrative Code, the Subrecipient may request to submit an appeal to the Executive Director consistent with §1.7 (regarding Appeals Process) of this title.

(C) The Subrecipient may request Alternative Dispute Resolution (ADR). Subrecipient may send a proposal to the Department's Dispute Resolution Coordinator to initiate ADR pursuant to Chapter 1, Subchapter A of this title, relating to General Policies and Procedures.

(5) If the Subrecipient does not respond to a monitoring letter or fail to provide acceptable evidence of compliance, the matter will be handled through the procedures described in Chapter 2 of this Title, relating to Enforcement.

§7.12 Waivers.

(a) The Department's Governing Board (the "Board") may waive rules in this chapter for good cause to meet the purpose of the Homeless Programs described further in §7.1 of this title (relating to Purpose and Goals). However, any waiver cannot conflict with the federal statutes or regulations, the Department's Action Plan, or state statutes governing any of the Homeless Programs.

(b) A provision of a closed NOFA may not be waived except in the case of a disaster as described in §1.5 of this title (related to Waiver Applicability in the Case of Federally Declared Disasters) or a change in federal law that makes adherence to the requirements of the NOFA impossible or impracticable as determined by the Board.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2023.

TRD-202303967

Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 10, 2023
For further information, please call: (512) 475-3959

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SUBCHAPTER B. HOMELESS HOUSING AND SERVICES PROGRAM (HHSP)

10 TAC §§7.21 - 7.29

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 7, Subchapter B, Homeless Housing and Services Program. The purpose of the proposed action is to repeal the current rule while proposing a new rule to conform to State and Federal regulatory updates under separate action.

GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect:

1. The proposed repeal does not create or eliminate a government program, but relates to the making changes to an existing activity;

2. The proposed repeal does not require a change in the number of employees of the Department;

3. The proposed repeal does not require additional future legislative appropriations;

4. The proposed repeal to the rule will not result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed repeal to the rule will not create a new regulation;

6. The proposed repeal to the rule will repeal an existing regulation;

7. The proposed repeal to the rule will not increase or decrease the number of individuals subject to the rule's applicability.

8. The proposed repeal to the rule will neither negatively nor positively affect this state's economy.

ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department has evaluated this proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the amended section would be more clarity on the administration of homeless programs. There will not be economic costs to individuals required to comply with the amended section.

FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 10, 2024 through December 11, 2024, to receive input on the proposed repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email rosy.falcon@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, December 11, 2024.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repeal affects no other code, article, or statute.

§7.21. Purpose and Use of Funds.

§7.22. HHSP Subrecipient Application and Selection.

§7.23. Allocation of Funds and Formula.

§7.24. General HHSP Requirements.

§7.25. Program Income.

§7.26. Conflict of Interest.

§7.27. Eligible Costs.

§7.28. Program Participant Eligibility and Program Participant Files.

§7.29. Shelter and Housing Standards.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2023.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 10, 2023
For further information, please call: (512) 475-3959

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10 TAC §§7.21 - 7.29

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 7, Subchapter B, Homeless Hosing and Services Program, consisting of §§7.21 - 7.29. The purpose of the proposed action is to repeal the existing rules and simultaneously propose new rules to conform to State and Federal regulatory updates.

GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rules would be in effect:

1. The proposed new rules do not create or eliminate a government program, but relates to the making changes to an existing activity;

2. The proposed new rules do not require a change in the number of employees of the Department;

3. The proposed new rules do not require additional future legislative appropriations;

4. The proposed new rules will not result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed new rules will modify, but not create a new regulation;

6. The proposed new rules will not repeal an existing regulation;

7. The proposed new rules will not increase or decrease the number of individuals subject to the rules' applicability.

8. The proposed new rules will neither negatively nor positively affect this state's economy.

ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department has evaluated these proposed new rules and determined that the proposed new rules will not create an economic effect on small or micro-businesses or rural communities.

TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed new rules do not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).The Department has evaluated the proposed new rules as to their possible effects on local economies and has determined that for the first five years the proposed new rules would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rules.

PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed new rules are in effect, the public benefit anticipated as a result of the amended section would be more clarity on the administration of homeless programs. There will not be economic costs to individuals required to comply with the amended section.

FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed new rules are in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 10, 2024 through December 11, 2024, to receive input on the proposed new rules. Written comments may be submitted to the Texas Department

of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email rosy.falcon@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, December 11, 2024.

STATUTORY AUTHORITY. The proposed new rules are made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new rules affect no other code, article, or statute.

§7.21 Purpose and Use of Funds.

(a) In accordance with Tex. Gov't Code §2306.2585, HHSP provides funding to municipalities with populations of 285,500 or greater (which the Department will determine with the most recent available 1 Year American Community Survey (ACS) data) to develop programs to prevent and eliminate Homelessness.

(b) HHSP eligible activities are:

(1) administrative costs associated with HHSP, including Program Participant tracking using HMIS or a HMIS-comparable database;

(2) case management for households experiencing or At-risk of Homelessness to assess, arrange, coordinate and monitor the delivery of services;

(3) construction/rehabilitation/conversion of buildings or Dwelling Unit (including administrative facilities) to serve persons experiencing Homelessness or At-risk of Homelessness;

(4) essential services for Homeless Households or Households At-risk of Homelessness to find or maintain housing stability;

(5) homelessness prevention to provide financial assistance to Homeless Households or Households At-risk of Homelessness;

(6) homelessness assistance to provide financial assistance provided to Homeless Households or Households At-risk of Homelessness;

(7) operation of emergency shelters or administrative facilities to serve Homeless Households or Households At-risk of Homelessness;

(8) transitional living activities for Youth Headed Households designed to provide safe short-term housing (typically less than 24 months) in conjunction with appropriate supportive services designed to foster self-sufficiency; and

(9) other local programs to assist Homeless Households or Households At-risk of Homelessness, if approved by the Department in writing in advance of the Expenditure.

§7.22 HHSP Subrecipient Application and Selection.

(a) Any written information provided to the Department in order to execute a Contract is part of the Application, including but not limited to the information in this subsection.

(b) The municipality may apply to administer the funding directly or designate a Private Nonprofit Organization or other governmental entity to apply to administer the funds in the municipality in accordance with Tex. Gov't Code §2306.2585(a).

(1) Designation of administering entity. The municipality that is designating an entity to administer the funds within their jurisdiction shall provide notification to the Department within 60 calendar days of notification of the allocated amount. The notification must be in the form of a resolution or other city council action from the municipality's governing body, and should indicate that the municipality is designating another entity to administer the funds on behalf of the municipality.

(2) The municipality may designate the other entity for one or two years, as desired by the municipality. If designated for two years, the requirement that the resolution or council action be submitted within 60 calendar days of notification of allocated amount will be considered met for the second year since the council action was approved.

(c) Application for funds. Application for funds will be submitted within 60 calendar days of notification of the allocated amount. After 60 calendar days of notification, if no application for funding is received, the funding may be reallocated through the formula outlined in this section to the other areas receiving HHSP funding. The Application for funding will include, but not be limited to:

(1) information sufficient to conduct a Previous Participation review for the municipality or entity designated to administer HHSP funds;

(2) proposed budget;

(3) proposed performance targets; and

(4) activity descriptions.

(d) Prior to Contract execution, entities expected to administer an award of HHSP funds must submit a resolution, governing body action, or other approved documentation approved by entity's direct governing body which includes authorization to enter into a Contract for HHSP funds and title of the person authorized to represent the entity and who also has signature authority to execute a Contract. The documentation submitted must be dated no more than 12 months from the date of Contract execution.

(e) An entity recommended for HHSP funds is subject to the Department's Previous Participation Rule, found in §1.302 of this title. In addition to the considerations of the Previous Participation Rule, an entity receiving HHSP funds may not be in breach or violation, after notice and a reasonable opportunity to cure, of any contract with the Department or LURA.

(f) Subrecipient must enter into a Contract with the Department governing the use of such funds. If the source of funds for HHSP is funding under another specific Department program, such as the Housing Trust Fund, as authorized by Tex. Gov't Code, §2306.2585(c), the Contract will incorporate any requirements applicable to such funding source.

§7.23 Allocation of Funds and Formula.

(a) Contract Award Funding Limits. The funding will be established by Allocation Formula as described in this section.

(b) HHSP funds will be awarded upon appropriation from the legislature, and will be made available to any of those municipalities subject to the requirements of this rule and be distributed in accordance with the formula set forth in subsection (c) of this section relating to Formula.

(c) General Population Formula. Funds made available under HHSP for the general population shall be distributed in accordance with an Allocation Formula that is calculated each year that takes into account the proportion of the following factors:

(1) population of the municipality, as determined by the most recent available 1 Year American Community Survey (ACS) data;

(2) poverty, defined as persons in the municipality's population with incomes at or below the poverty threshold, as determined by the most recent available 1 Year ACS data;

(3) population of Homeless persons, as determined by the most recent publicly available Point-In-Time Counts submitted to HUD by the CoCs in Texas or by the Texas Homeless Network;

(4) population of Homeless veterans, as determined by the most recent publicly available Point-In-Time Counts submitted to HUD by the CoCs in Texas or by the Texas Homeless Network;

(5) population of Homeless Unaccompanied Youth, Parenting Youth, and Children of Parenting Youth, as determined by the most recent publicly available Point-In-Time Counts submitted to HUD by the CoCs in Texas or by the Texas Homeless Network;

(6) population of persons with disabilities, defined as that percentage of the municipality's population composed of persons with disabilities, as determined by the most recent available 1 Year ACS data; and

(7) incidents of family violence, as determined by reports from local police departments.

(d) The factors enumerated shall be used to calculate distribution percentages for each municipal area based on the following formula:

(1) thirty percent weight for population;

(2) thirty percent weight for poverty populations;

(3) twenty percent weight for the Homeless population;

(4) five percent weight for population of Homeless Veterans;

(5) five percent weight for population of Homeless Unaccompanied Youth, Parenting Youth, and Children of Parenting Youth;

(6) five percent weight for population of persons with disabilities; and

(7) five percent weight for instances of family violence.

(e) Youth Population Formula. Funds made available to HHSP for youth shall be distributed in accordance with an Allocation Formula that is calculated each year that takes into account the proportion of the following factors:

(1) population of the municipality, as determined by the most recent available 1 Year American Community Survey (ACS) data;

(2) poverty, defined as persons in the municipality's population with incomes at or below the poverty threshold, as determined by the most recent available 1 Year ACS data;

(3) population of Homeless Unaccompanied Youth, Parenting Youth, and Children of Parenting Youth, as determined by the most recent publicly available Point-In-Time Counts submitted to HUD by the CoCs in Texas;

(4) population of persons with disabilities, defined as that percentage of the municipality's population composed of persons with disabilities, as determined by the most recent available 1 Year ACS data; and

(5) incidents of family violence, as determined by reports from local police departments.

(f) The factors enumerated shall be used to calculate distribution percentages for each municipal area based on the following formula:

(1) thirty percent weight for population;

(2) thirty percent weight for poverty populations;

(3) thirty percent weight for population of Homeless Unaccompanied Youth, Parenting Youth, and Children of Parenting Youth;

(4) five percent weight for population of persons with disabilities; and

(5) five percent weight for instances of family violence.

(g) Prior to month nine of the Contract, the HHSP Subrecipient may choose to voluntarily deobligate up to 15% of the total amount of funds in the Contract if the HHSP Subrecipient anticipates that it will not expend all the funds. The Department reserves the right to refuse any returned funds prior to the end of the Contract Term. The Department may reallocate the voluntary deobligated funds to existing HHSP Subrecipients with the highest expenditure rates based on percent of funds expended. The eligible HHSP Subrecipients may be required to complete a Previous Participation Review, as outlined in §1.302 of this title, and any reallocated funds in excess of 25% of the original Contract award will require a complete Previous Participation Review.

§7.24 General HHSP Requirements.

(a) Subrecipient must have written policies and procedures to ensure that sufficient records are established and maintained to enable a determination that HHSP requirements are met.

(b) Subrecipient must have written standards for providing HHSP assistance to Program Participants. The written standards must be applied consistently for all Program Participants. The written standards must include, but not be limited to, Inclusive Marketing outlined in §7.10 of this chapter.

(c) Rent restriction. Rental assistance cannot be provided unless the gross rent complies with the standard of rent reasonableness established in the Subrecipient's written policies and procedures. Gross rent includes the contract rent and an estimate of utilities established by the Public Housing Authority for the area in which the Dwelling Unit is located.

(d) The occupancy standard set by the Subrecipient must not conflict with local regulations or Texas Property Code §92.010.

(e) Subrecipient must document compliance with the Shelter and Housing Standards in this Chapter, relating to Homelessness Programs, including but not limited to construction and shelter inspection reports, and the Accessibility Standards in Chapter 1, Subchapter B of this title.

(f) If the Subrecipient is providing funds for single family ownership, the requirements of Chapters 20, relating to Single Family Programs Umbrella Rule, and 21 Minimum Energy Efficiency Requirements for Single Family Construction Activities of this Part, will apply.

(g) If the Subrecipient is providing funds to an entity for rental ownership, operations, or providing project-based vouchers/rental assistance, the rental development must comply with the greater of regulatory regulations governing the development or program to which HHSP funds are comingled, or, if none, must comply with local health and safety codes.

§7.25 Program Income.

(a) Program income includes but is not limited to: income from fees for services performed, the use or rental of real or personal property acquired under this award, the sale of commodities or items fabricated under this award, and from payments of principal and interest on loans made with this award, where authorized. Program income does not include interest on federal grant funds, rebates, credits,

discounts, refunds, etc. and interest earned on any of them. Interest earned in excess of $250 on grants or loans from purely state sources is considered program income.

(b) Security and utility deposits must be reimbursed to the Program Participant and are not considered program income. The deposit must remain with the Program Participant and be returned only to the Program Participant.

(c) In accounting for program income, the Subrecipient must accurately reflect the receipt of such funds separate from the receipt of program funds and Subrecipient funds.

(d) Program income that is received during the Contract Term may be expended for HHSP eligible costs during the Contract Term, and reported in the Monthly Expenditure Report.

(e) Program income that is received after the end of the Contract Term, or not expended within the Contract Term, must be returned to the Department within 10 calendar days of receipt.

§7.26 Conflict of Interest.

(a) Subrecipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of Contracts. Failure to maintain written standards of conduct and to follow and enforce the written standards is a condition of default and may result in termination of the Contract or deobligation of funds.

(b) No employee, officer, or agent of Subrecipient shall participate in the selection, award, or administration of a contract supported by funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the listed parties, has a financial or other interest in the firm selected for an award.

(c) The officers, employees, and agents, including consultants, officers, or elected or appointed officials of the Subrecipient or its Subgrantees shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. Subrecipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Subrecipient.

(d) The provision of any type or amount of direct HHSP assistance may not be conditioned on a Program Participant's acceptance or occupancy of emergency shelter or housing owned by the Subrecipient or Subgrantee, or a parent or subsidiary of the Subrecipient or Subgrantee.

(e) No Subrecipient may, with respect to Household occupying a Dwelling Unit owned by the Subrecipient or Subgrantee, or any parent or subsidiary of the Subrecipient or Subgrantee, carry out the initial intake required for Program Participant files.

(f) For transactions and activities other than the procurement of goods and services, no officers, employees, and agents, including consultants, officers, or elected or appointed officials of the Subrecipient, Subgrantee, or Subcontractor who exercises or has exercised any functions or responsibilities with respect to activities assisted under HHSP, or who is in a position to participate in a decision-making process or gain inside information with regard to activities assisted under the program, may obtain a financial interest or benefit from an assisted activity; have a financial interest in any contract, subcontract, or agreement with respect to an assisted activity; or have a financial interest in the proceeds derived from an assisted activity, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure or during the one-year period following his or her tenure.

§7.27 Eligible Costs.

(a) Administrative costs include employee compensation and related costs for staff performance of management, reporting, and accounting of HHSP activities, including office space. Costs associated with the purchase or licensing of HMIS or an HMIS-comparable databases are eligible administrative costs.

(b) Case management costs include staff salaries related to assessing, arranging, coordinating and monitoring the delivery of services related to finding or maintaining housing. Costs include, but are not limited to, Household eligibility determination, counseling, coordinating services and obtaining mainstream benefits for Program Participants, monitoring Program Participant progress, providing safety planning for persons under VAWA, developing a housing and service plan, and entry into HMIS or an HMIS-comparable database.

(c) Construction rehabilitation, and conversion costs include, but are not limited to, costs for:

(1) Pre-Development, such as environmental review, site-control, survey, appraisal, architectural fees, and legal fees.

(2) Development, such as:

(A) land acquisition;

(B) site work (including infrastructure for service utilities, walkways, curbs, gutters);

(C) lot clearance and site preparation;

(D) construction to meet uniform building codes, international energy conservation code, or local rehabilitation standards;

(E) accessibility features to site and building;

(F) essential improvements and energy-related improvements;

(G) abatement of lead-based paint hazards;

(H) barrier removal/construction for accessibility features for persons with disabilities; and

(I) non-luxury general property improvements.

(d) Essential services costs are associated with finding and maintaining stable housing, and include, but are not limited to, costs for:

(1) out-patient medical services;

(2) child care;

(3) education services;

(4) legal services;

(5) mental health services;

(6) local transportation assistance;

(7) drug and alcohol rehabilitation; and

(8) job training.

(e) Homelessness prevention and homelessness assistance costs are associated with housing relocation, stabilization and assistance costs. Staff time entering information into HMIS or HMIS-comparable database related to homelessness prevention and homeless assistance is also an eligible cost. Homeless prevention and homelessness assistance costs include, but are not limited to, hotel or

motel costs; transitional housing; rental and utility assistance; rental arrears; utility reconnection fees; reasonable and customary security and utility deposits; and moving costs.

(f) Operation costs include rent, utilities, supplies and equipment purchases, food pantry supplies, and other related costs necessary to operate an emergency shelter or Transitional Living Activities, serving individuals experiencing or at-risk of homelessness.

§7.28 Program Participant Eligibility and Program Participant Files.

(a) A Program Participant must satisfy the eligibility requirements by meeting the appropriate definition of Homeless or At-risk of Homelessness in this Chapter, relating to Homelessness Programs, including but not limited to applicable income requirements.

(b) A Program Participant who is Homeless qualifies for emergency shelter, Transitional Living Activities, case management, essential services, and homeless assistance.

(c) A Program Participant who is At-risk of Homelessness qualifies for case management, essential services, and homeless prevention.

(d) The Subrecipient shall establish income limits that do not exceed the moderate income level pursuant to Tex. Gov't Code §2306.152 in its written policies and procedures, and may adopt the income limit calculation method and procedures in HUD Handbook 4350 to satisfy this requirement.

(e) Recertification. Recertification is required for Program Participants receiving homelessness prevention and homelessness assistance within 12 months of the assistance start date. Subrecipient's written policies may require more frequent recertification. At a minimum, recertification includes that Program Participants receiving homelessness prevention or homelessness assistance:

(1) meet the income eligibility requirements as established by the Subrecipient, if such limits are implemented in the Subrecipient's policies and procedures and required to be reviewed at Recertification; and

(2) lack sufficient resources and support networks necessary to retain housing without assistance.

(f) Break in service. The Subrecipient must document eligibility before providing services after a break in service. A break in service occurs when a previously assisted household has exited the program and is no longer receiving services through Homeless Programs. Upon reentry into HHSP, the Household is required to complete a new intake application and provide updated source documentation, if applicable. The Subrecipient would not need to document further eligibility for HHSP if the Program Participant is currently receiving assistance through ESG.

(g) Program participant files. Subrecipient or their Subgrantees shall maintain Program Participant files, for non-emergency activities providing direct subsidy to or on behalf of a Program Participant that contain the following:

(1) an Intake Application, including the signature or legally identifying mark of all adult Household members certifying the validity of information provided, an area to identify the staff person completing the intake application, and the language as required by Tex. Gov't Code §434.212;

(2) certification from the Applicant that they meet the definition of Homeless or At-risk of Homelessness. The certification must include the Program Participant's signature or legally identifying mark;

(3) documentation of income eligibility, if applicable, which may include a DIS if documentation is unobtainable;

(4) documentation of annual recertification, as applicable, including income eligibility determination and verification that the Program Participant lacks sufficient resources and supports networks necessary to retain housing without assistance;

(5) documentation of determination of ineligibility for assistance when assistance is denied. Documentation must include the reason for the determination of ineligibility;

(6) copies of all leases and rental assistance agreements for the provision of rental assistance, documentation of payments made to owners for the provision of rental assistance, and supporting documentation for these payments, including dates of occupancy by Program Participants;

(7) documentation of the monthly allowance for utilities used to determine compliance with the rent restriction; and

(8) documentation that the Dwelling Unit for Program Participants receiving rental assistance complies with the Housing Standards in this Chapter, relating to Homelessness Programs.

§7.29 Shelter and Housing Standards.

(a) Minimum standards for emergency shelters. Any building for which HHSP funds are used for construction, rehabilitation, conversion, or other renovation, must meet state or local government safety and sanitation standards, as applicable, and the following minimum safety and sanitation standards. Any emergency shelter that receives assistance for shelter operations must also meet the following minimum safety and sanitation standards.

(1) Structure and materials. The shelter building must be structurally sound to protect residents from the elements and not pose any threat to health and safety of the residents. Any renovation (including major rehabilitation and conversion) carried out with HHSP assistance must use Energy Star and WaterSense or equivalent products and appliances.

(2) Access. The shelter must be accessible in accordance with Section 504 of the Rehabilitation Act (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8; the Fair Housing Act (42 U.S.C. 3601 et seq.) as outlined in 10 TAC Chapter 1, Subchapter B, and implementing regulations at 24 CFR Part 100; and Title II of the Americans with Disabilities Act (42 U.S.C. 12131 et seq.) and 28 CFR Part 35; where applicable.

(3) Space and security. Except where the shelter is intended for day use only, the shelter must provide each program participant in the shelter with an acceptable place to sleep and adequate space and security for themselves and their belongings.

(4) Interior air quality. Each room or space within the shelter must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of residents.

(5) Water supply. The shelter's water supply must be free of contamination.

(6) Sanitary facilities. Each program participant in the shelter must have access to sanitary facilities that are in proper operating condition and are adequate for personal cleanliness and the disposal of human waste.

(7) Thermal environment. The shelter must have any necessary heating/cooling facilities in proper operating condition.

(8) Illumination and electricity. The shelter must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the shelter.

(9) Food preparation. Food preparation areas, if any, must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.

(10) Sanitary conditions. The shelter must be maintained in a sanitary condition.

(11) Fire safety. There must be at least one working smoke detector in each occupied unit of the shelter. Where possible, smoke detectors must be located near sleeping areas. The fire alarm system must be designed for hearing-impaired residents. All public areas of the shelter must have at least one working smoke detector. There must also be a second means of exiting the building in the event of fire or other emergency.

(b) Minimum standards for housing for occupancy. Housing assisted under HHSP must meet the minimum habitability standards within 30 calendar days after the term of assistance begins. HHSP funds may assist a Program Participant in returning the Dwelling Unit to the minimum habitability standard in cases where the Program Participant is the responsible party for ensuring such conditions.

(1) Structure and materials. The structures must be structurally sound to protect residents from the elements and not pose any threat to the health and safety of the residents.

(2) Space and security. Each resident must be provided adequate space and security for themselves and their belongings. Each resident must be provided an acceptable place to sleep.

(3) Interior air quality. Each room or space must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of residents.

(4) Water supply. The water supply must be free from contamination.

(5) Sanitary facilities. Residents must have access to sufficient sanitary facilities that are in proper operating condition, are private, and are adequate for personal cleanliness and the disposal of human waste.

(6) Thermal environment. The Dwelling Unit must have any necessary heating/cooling facilities in proper operating condition.

(7) Illumination and electricity. The structure must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the structure.

(8) Food preparation. All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.

(9) Sanitary conditions. The housing must be maintained in a sanitary condition.

(10) Fire safety.

(A) There must be a second means of exiting the building in the event of fire or other emergency.

(B) Each Dwelling Unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each occupied level of the unit. Smoke detectors must be located, to the extent practicable, in a hallway adjacent to a bedroom. If the unit is occupied by hearing impaired persons, smoke detectors must have an alarm system designed for hearing-impaired persons in each bedroom occupied by a hearing-impaired person.

(C) The public areas of all Dwelling Units must be equipped with a sufficient number, but not less than one for each area, of battery-operated or hard-wired smoke detectors. Public areas include, but are not limited to, laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas.

(c) Lead-based paint remediation and disclosure. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations in 24 CFR Part 35, subparts A, B, H, J, K, M, and R apply to all shelters and all Dwelling Units occupied by Program Participants.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Bobby Wilkinson
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Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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SUBCHAPTER C. EMERGENCY SOLUTIONS GRANTS (ESG)

10 TAC §§7.34, 7.37, 7.41

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 7, Subchapter C, §7.34, Continuing Awards; §7.37, Application Review and Administrative Deficiency Process; and §7.41, Contract Term, Expenditure Benchmark, Return of Funds, and Performance Targets. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect:

1. The proposed repeal does not create or eliminate a government program, but relates to the making changes to an existing activity;

2. The proposed repeal does not require a change in the number of employees of the Department;

3. The proposed repeal does not require additional future legislative appropriations;

4. The proposed repeal to the rule will not result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed repeal to the rule will not create a new regulation;

6. The proposed repeal to the rule will repeal an existing regulation;

7. The proposed repeal to the rule will not increase or decrease the number of individuals subject to the rule's applicability.

8. The proposed repeal to the rule will neither negatively nor positively affect this state's economy.

ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department has evaluated this proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repeal or proposed new sections would be more clarity on the administration of homeless programs. There will not be economic costs to individuals required to comply with the amended section.

FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 10, 2023 through December 11, 2023, to receive input on the proposed repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email rosy.falcon@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, December 11, 2023.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repeal affects no other code, article, or statute.

§7.34. Continuing Awards.

§7.37. Application Review and Administrative Deficiency Process.

§7.41. Contract Term, Expenditure Benchmark, Return of Funds, and Performance Targets.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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10 TAC §§7.34, 7.37, 7.41

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 7, Subchapter C, §7.34, Continuing Awards; §7.37, Application Review and Administrative Deficiency Process; and §7.41, Contract Term, Expenditure Benchmark, Return of Funds, and Performance Targets. The purpose of the proposed new rules is to update the application eligibility process for continuing awards, distinction of the deficiency process, and updating reobligation processes.

GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed new rule does not create or eliminate a government program, but relates to the making changes to an existing activity;

2. The proposed new rule does not require a change in the number of employees of the Department;

3. The proposed new rule does not require additional future legislative appropriations;

4. The proposed new rule to the rule will not result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed new rule to the rule will modify, but not create a new regulation;

6. The proposed new rule to the rule will not repeal an existing regulation;

7. The proposed new rule to the rule will not increase or decrease the number of individuals subject to the rule's applicability.

8. The proposed new rule to the rule will neither negatively nor positively affect this state's economy.

ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department has evaluated this proposed new rule and determined that the proposed new rule will not create an economic effect on small or micro-businesses or rural communities.

TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed new rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).The Department has evaluated the proposed new rule as to its possible effects on local economies and has determined that for the first five years the proposed new rule would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed new rule is in effect, the public benefit anticipated as a result of the amended section would be more clarity on the administration of homeless programs. There will not be economic costs to individuals required to comply with the amended section.

FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed new rule is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 10, 2023 through December 11, 2023, to receive input on the proposed new rule. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email rosy.falcon@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, December 11, 2023.

STATUTORY AUTHORITY. The proposed new rule is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new rule affects no other code, article, or statute.

§7.34. Continuing Awards.

(a) TDHCA will withhold a portion of funds from the competition for funds to be used for continuing awards to prior Subrecipients of its ESG allocation, not including ESG CARES or Contracts for reallocated funds from prior years only, in accordance with §7.33 of this subchapter (related to Apportionment of ESG Funds).

(b) ESG funds withheld for continuing awards by the Department will be allocated in accordance with the Allocation Formula, and are not subject to the award process and requirements outlined in §7.38 of this subchapter (relating to Competitive Award and Funding Process).

(c) The subsequent years of allocation of ESG funds received by the Department will be offered to eligible Subrecipients of ESG funds (not including ESG CARES) that were awarded funds from at least three of the prior four allocations of ESG. An ESG Subrecipient is eligible for an offer of a continuing award of funds if the Subrecipient meets the following requirements:

(1) Submits an abbreviated Application for funding within 21 days of the request from the Department as promulgated by the Department;

(2) Resolves administrative deficiencies within the timeframe and in the manner outlined in §7.37 of this subchapter (relating to Application Review and Administrative Deficiency Process for Department NOFAs);

(3) Submitted four or fewer delinquent monthly reports for each of their active ESG Contracts or for the most recently closed ESG Contract if there are no active ESG Contracts, (not including ESG CARES) for reports due in the six month period preceding the application submission deadline;

(4) Satisfies the requirements of the Previous Participation Review as provided for in §1.302 of this title (relating to Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter);

(5) Does not have unresolved monitoring findings in any TDHCA funded program after the corrective action period;

(6) Does not have monitoring findings in any TDHCA funded program which resulted in disallowed costs in excess of $5,000;

(7) Does not apply for funds within the same COC Region under the competitive Application process for Program Participant service(s) in which they are already funded for a Continuing Award;

(8) Expended a minimum of 95% of their contracted award amount, as amended in their most recently closed ESG Contract (not including ESG CARES);

(9) Did not voluntarily deobligate an amount that exceeds 5% of their contracted award amount, as amended for increases due to reallocated funds, on their most recently closed ESG Contract (not including ESG CARES); and

(10) Is approved by the Department's Governing Board.

(d) Any offer of ESG funds made under this section is contingent on retaining similar terms and conditions or agreeing to adjustments reflective of funding amount, including but not limited to performance and match requirements, in the active ESG annual Contract issued under a NOFA.

(e) Offers of funding will be based on the prior year's award, excluding Contracts comprised exclusively of reallocated funds, before amendments, and will be proportionally increased or decreased in proportion to the total amount of ESG funds available subject to the allocation formula.

(f) If additional funds are made available due to reduced continuing awards in the region, awards may be increased proportionate to the increased withheld funds. In any event, an increased award from funds made available from reduced awards may not exceed 115% of the award amount under the allocation or the maximum award amount established in the NOFA.

(g) Funds that remain available after all eligible continuing awards have been accepted will be transferred to the competition for funds for the regional competition in accordance with §7.38 of this subchapter.

(h) Percentages identified in this section will not be rounded up to the nearest whole number.

§7.37. Application Review and Administrative Deficiency Process.

(a) The Department will accept Applications on an ongoing basis during the Application acceptance period as specified in the NOFA or notification of an offer of a continuing award, as applicable. Applications will be reviewed for threshold criteria and selection criteria, if applicable, administrative deficiencies, and competitive Applications will be ranked based upon the score of the Application as determined by the Department upon completion of the review.

(b) The administrative deficiency process allows the Applicant to provide additional information with regard to an Application after the Application acceptance period has ended, but only if it is requested in writing by Department staff. Staff may request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. Staff will send the deficiency notice via email and responses must be in kind unless otherwise defined in the notice. A review of the Applicant's response may reveal that additional admin-

istrative deficiencies are exposed or that issues initially identified as an administrative deficiency are actually determined to be beyond the scope of an administrative deficiency process, meaning that they are in fact matters of a material nature not susceptible to be resolved. For example, a response to an administrative deficiency that causes a new inconsistency which cannot be resolved without reversing or eliminating the need for the first deficiency response would be an example of an issue that is beyond the scope of an administrative deficiency. Department staff will make a good faith effort to provide an Applicant confirmation that an administrative deficiency response has been received and/or that such response is satisfactory. Communication from staff that the response was satisfactory does not establish any entitlement to points, eligibility status, or to any presumption of a final determination that the Applicant has fulfilled any other requirements as such is the sole determination of the Department's Board.

(c) An Applicant may not change or supplement any part of an Application in any manner after submission to the Department, except in response to a direct written request from the Department to remedy an administrative deficiency or by amendment of an Application after the Board approval of an ESG award. An administrative deficiency may not be cured if it would, in the Department's determination, substantially change an Application including score, or if the Applicant provides any new unrequested information to cure the deficiency.

(d) The time period for responding to a deficiency notice commences on the first day following the deficiency notice date.

(1) If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m. on the seventh calendar day following the date of the deficiency notice, then one point shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. If administrative deficiencies are not resolved by 5:00 p.m. on the fourteenth calendar day following the date of the deficiency notice for an Application in response to a NOFA, then the Application shall be terminated.

(2) If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m. on the seventh calendar day following the date of the deficiency notice for an Application in response to a continuing award offer, then the Application shall be terminated.

§7.41. Contract Term, Expenditure Benchmark, Return of Funds, and Performance Targets.

(a) The Contract Term for ESG funds may not exceed 12 months. All funds awarded under the Contract must be expended by the Subrecipient on or before the expiration of the Contract, unless an extension has been granted in accordance with this section. A request to extend the Contract Term must show evidence that the extension is necessary to provide services required under the Contract, and provide good cause for failure to timely expend the funds. Extensions of Contract Terms are considered on a case-by-case basis, but are subject to §7.4(e) of this title (relating to Amendments and Extensions of Contracts).

(1) The Executive Director or his or her designee may approve an extension to the ESG Contract Term of up to six months from the original Contract Term; and may approve an extension to the Expenditure deadline for ESG CARES.

(2) Board approval is required if the Subrecipient requests to extend an ESG Contract Term for more than six months from the original Contract Term.

(3) Amendments of Expenditure requirements will not be granted by the Executive Director or the Board when such action would cause the Department to miss a federal Expenditure deadline.

(b) Subrecipient is required to have reported Expenditures in its Monthly Expenditure Reports reflecting at least 50% of the Contracted funds by month nine of the original Contract Term. A Subrecipient that has not met this Expenditure benchmark must submit a plan to the Department evidencing the ability of the Subrecipient to expend the remaining funds by month 12 of the original Contract Term. This Expenditure benchmark may not be extended though amendment.

(c) Not later than 60 days prior to the end of the Contract Term, a Subrecipient may submit a written request to voluntarily return some or all of its funds to the Department. Voluntary return of funds prior to the Expenditure benchmark constitutes a reduction in the awarded amount, and returned funds at or prior to the Expenditure benchmark will not be considered deobligated funds for the purpose of future funding recommendations. Subrecipient must return any funds that would result in a violation of the administrative and HMIS expenditure limits of the Contract, as outlined in §7.33(f) of this subchapter prior to approval of a request to voluntarily deobligate funds for any Program Participant services.

(d) Funds remaining at the end of Contract which are not reflected in the last Monthly Expenditure Report will be automatically deobligated. Deobligation of funds may affect future funding recommendations.

(e) The Department may request information regarding the performance or status of a Contract prior to the Expenditure benchmark, at various times during the Contract, or during the record retention period. Subrecipient must respond within the time limit stated in the request. Prolonged or repeated failure to respond may result in suspension of funds, termination of the Contract by the Department, and could impact future funding recommendations.

(f) If additional funds become available through returned or deobligated amounts from an award made under the allocation formula or program income generated from an award made under the allocation formula, the funds may be offered to ESG Subrecipients with active Contracts that have not been amended to extend the Contract Term. Returned or deobligated funds will be offered with priority given to ESG Subrecipients with the highest Expenditure rate as of the most recent Monthly Expenditure Report. However, funds may not be offered to any Subrecipient that returned funds, or from whom funds were deobligated. The Executive Director or designee may increase the Contract of an ESG Subrecipient or authorize a new Contract with a Subrecipient by up to 25% of the original Contract amount. The increase of reallocated funds may not exceed 25% of the initial Contract award, unless approved by the Board.

(g) Funds that have been returned more than once or returned less than three months before the federal Expenditure deadline may be retained by the Department.

(h) The Contract will reflect the Performance Targets that were utilized as selection criteria for the award of funds. Requests to amend Performance Targets may not be submitted less than 60 days prior to the end of the Contract Term. Requests to amend Performance Targets will not be granted if such an amendment would have precluded the award to the Subrecipient.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER F. COMPLIANCE MONITORING

10 TAC §§10.602, 10.606, 10.621, 10.623, 10.625

The Texas Department of Housing and Community Affairs (the Department) proposes amending §10.602 Notice to Owners and Corrective Action Periods; §10.606 Construction Inspections; §10.621 Property Condition Standards; §10.623 Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period; and Figure §10.625. The amendments will delete references to an inspection protocol that is being sunset on September 30, 2023, and replace it with HUD's new inspection protocol, NSPIRE. Additionally, the amendments will clarify when corrective action deadlines may be superseded by federal requirements and adds clarification on the actions when an Owner must take when they disagree with an NSPIRE inspection score.

FISCAL NOTE. Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the amendment to the rule is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed rule action would be in effect, the proposed actions do not create or eliminate a government program, but relate to changes to an existing activity, compliance monitoring and inspecting.

2. The proposed amendment to the rule will not require a change in the number of employees of the Department;

3. The proposed amendment to the rule will not require additional future legislative appropriations;

4. The proposed amendment to the rule will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed amendment to the rule will not create a new regulation;

6. The proposed amendment to the rule will not repeal an existing regulation;

7. The proposed amendment to the rule will not increase or decrease the number of individuals subject to the rule's applicability; and

8. The proposed amendment to the rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Wilkinson also has determined that, for each year of the first five years the amendment to the rule is in effect, the public benefit anticipated as a result of the action will be the clarification of a required definition. There will not be any economic cost to any individual required to comply with the amendment.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. All comments or questions in response to this action may be submitted in writing from November 10, 2023, through December 11, 2023. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Wendy Quackenbush, Compliance Monitoring Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or email wendy.quackenbush@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, December 11, 2023.

STATUTORY AUTHORITY. The proposed amendment is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed amendment affects no other code, article, or statute.

§10.602. Notice to Owners and Corrective Action Periods.

(a) The Department will provide written notice to the Owner if the Department does not receive the Annual Owner Compliance Report (AOCR) timely or if the Department discovers through monitoring, audit, inspection, review, or any other manner that the Development is not in compliance with the provisions of the LURA, deed restrictions, application for funding, conditions imposed by the Department, this subchapter, or other program rules and regulations, including but not limited to §42 of the Internal Revenue Code.

(b) For a violation other than a violation that poses an imminent hazard or threat to health and safety, the notice will specify a 30 day Corrective Action Period for noncompliance related to the AOCR, and a 90 day Corrective Action Period for other violations. During the Corrective Action Period, the Owner has the opportunity to show that either the Development was never in noncompliance or that the Event of Noncompliance has been corrected. Documentation of correction must be received during the Corrective Action Period for an event to be considered corrected during the Corrective Action Period. The Department may extend the Corrective Action Period for up to six months from the date of the notice to the Development Owner only if there is good cause for granting an extension and the Owner requests an extension during the original 90 day Corrective Action Period, and the request would not cause the Department or the Owner to miss a federal deadline. Requests for an extension may be submitted to: compliance.extensionrequest@tdhca.state.tx.us. If an Owner submits evidence of corrective action during the Corrective Action Period that addresses each finding, but does not fully address all findings, the Department will give the Owner written notice and an additional 10 calendar day period to submit evidence of full corrective action. References in this subchapter to the Corrective Action Period include this additional 10 calendar day period.

(c) If any communication to the Owner under this section is returned to the Department as refused, unclaimed, or undeliverable, the Development may be considered not in compliance without further notice to the Owner. The Owner is responsible for providing the Department with current contact information, including address(es) (physical and electronic) and phone number(s). The Owner must also provide current contact information to the Department as required by §1.22 of this title (relating to Providing Contact Information to the Department), and ensure that such information is at all times current and correct.

(d) The Department will notify Owners of upcoming reviews and instances of noncompliance. The Department will rely solely on the information supplied by the Owner in the Department's web-based Compliance Monitoring and Tracking System (CMTS) to meet this requirement. It is the Owner's sole responsibility to ensure at all times that such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in CMTS will be deemed delivered to the Owner. Correspondence from the Department may be directly uploaded to the property's CMTS account using the secure electronic document attachment system. Once uploaded, notification of the attachment will be sent electronically to the email address listed in CMTS. The Department is not required to send a paper copy, and if it does so it does as a voluntary and non-precedential courtesy only.

(e) Unless otherwise required by law or regulation, Events of Noncompliance will not be reported to the IRS, referred for enforcement action, considered as cause for possible debarment, or reported in an applicant's compliance history or Previous Participation Review, until after the end of the Corrective Action Period described in this section.

(f) Upon receipt of facially valid complaints the Department may contact the Owner and request submission of documents or written explanations to address the issues raised by the complainant. The deadline to respond to the issue will be specific to the matter. Whenever possible and not otherwise prohibited or limited by law, regulation, or court order, the complaint received by the Department will be provided along with the request for documents or Owner response.

(g) If another federal or state requirement applicable to funding or resources that the Department monitors stipulates that corrective action must be completed with less than a 90 day Corrective Action Period, the Department will inform the Owner in writing and enforce the applicable timeframe.

§10.606. Construction Inspections.

(a) Owners are required to submit evidence of final construction within 30 calendar days of completion in a format prescribed by the Department. Owners are encouraged to request a final construction inspection promptly to allow the Department to inspect Units prior to occupancy to avoid disruption of households in the event that corrective action is required. In addition, the Architect of Record must submit a certification that the Development was built in compliance with all applicable laws, and the Engineer of Record (if applicable) must submit a certification that the Development was built in compliance with the design requirements.

(b) During the inspection, the Department will confirm that committed amenities have been provided and will inspect for compliance with the applicable accessibility requirements. In addition, a National Standards for the Physical Inspection of Real Estate [~~Uniform Physical Condition Standards inspection~~] may be completed.

(c) IRS Form(s) 8609 will not be released until the Owner receives written notice from the Department that all noted deficiencies have been resolved.

§10.621. Property Condition Standards.

(a) All Developments funded by the Department must be decent, safe, sanitary, in good repair, and suitable for occupancy throughout the Affordability Period. The Department will use HUD's National Standards for the Physical Inspection of Real Estate (NSPIRE) [~~Uniform Physical Condition Standards (UPCS)~~] to determine compliance with property condition standards. In addition, Developments must comply with all local health, safety, and building codes. Timelines for correcting deficiencies under the NSPIRE standards are as follows:

(1) Life-Threatening and Severe deficiencies must be corrected within 24 hours.

(2) Moderate deficiencies must be corrected within 30 days.

(3) Low deficiencies must be corrected within 60 days.

(b) HTC Development Owners are required by Treasury Regulation §1.42-5 to report (through the Annual Owner's Compliance Report) any local health, safety, or building code violations. HTC Developments that fail to comply with local codes shall be reported to the IRS.

(c) The Department is required to report any HTC Development that fails to comply with any requirements of the NSPIRE [~~UPCS~~] or local codes at any time during the compliance period to the IRS on IRS Form 8823. Accordingly, the Department will submit IRS Form 8823 for any NSPIRE [~~UPCS~~] violation.

(d) Acceptable evidence of correction of deficiencies is a certification from an appropriate licensed professional that the item now complies with the inspection standard or other documentation that will allow the Department to reasonably determine when the repair was made and whether the repair sufficiently corrected the violation(s) of NSPIRE [~~UPCS~~] standards. Acceptable documentation includes: copies of work orders (listing the deficiency, action taken or repairs made to correct the deficiency, date of corrective action, and signature of the person responsible for the correction), invoices (from vendors, etc.), or other proof of correction. Photographs are not required but may be submitted if labeled and only in support of a work order or invoice. The Department will determine if submitted materials satisfactorily document correction of noncompliance.

(e) Selection of Units for Inspection.

(1) Vacant Units will not be inspected (alternate Units will be selected) if a Unit has been vacant for fewer than 30 days.

(2) Units vacant for more than 30 days are assumed to be ready for occupancy and may be inspected. No deficiencies will be cited for inspectable items that require utility service, if utilities are turned off and the inspectable item is present and appears to be in working order.

(f) The Department will consider a request for review of a NSPIRE [~~UPCS~~] score using a process similar to the process established by the U. S. Department of Housing and Urban Development Real Estate Assessment Center. The request must be submitted in writing within 45 calendar days of receiving the initial NSPIRE [~~UPCS~~] inspection report and score. The request must be accompanied by evidence that supports the claim [~~control occurred~~], which if corrected will result in a significant improvement in the overall score of the property. Upon receipt of this request from the Owner the Department will review the inspection and evidence. If the Department's review determines that an objectively verifiable and material error (or errors) or adverse condition(s) beyond the Owner's control has been documented and that it is likely to result in a significant improvement in the Development's overall score, the Department will take one or a combination of the following actions:

(1) Undertake a new inspection;

(2) Correct the original inspection; or

(3) Issue a new physical condition score.

(g) The responsibility rests with the Owner to demonstrate that an objectively verifiable and material error (or errors) or adverse conditions occurred in Department's inspection through submission of materials, which if corrected will result in a significant improvement in

the Development's overall score. To support its request for a technical review of the physical inspection results, the Owner may submit photographic evidence, written material from an objective source with subject matter expertise that pertains to the item being reviewed such as a local fire marshal, building code official, registered architect, or professional engineer, or other similar third party-documentation.

(h) [~~(g)~~] Examples of items that can be adjusted include, but are not limited to:

(1) Building Data Errors--The inspection includes the wrong building or a building that is not owned by the Development.

(2) Unit Count Errors--The total number of units considered in scoring is incorrect as reported at the time of the inspection.

(3) Non-Existent Deficiency Errors--The inspection cites a deficiency that did not exist at the time of the inspection.

(4) Local Conditions and Exceptions--Circumstances include inconsistencies between local code requirements and the NSPIRE [~~UPCS~~] inspection protocol, such as conditions permitted by local variance or license (e.g., child guards allowed on sleeping room windows by local building codes) or preexisting physical features that do not conform to or are inconsistent with the Department's physical condition protocol.

(5) Ownership Issues--Items that were captured and scored during the inspection that are not owned and not the responsibility of the Development. Examples include sidewalks, roads, fences, retaining walls, and mailboxes owned and maintained by adjoining properties or the city/county/state and resident-owned appliances that are not maintained by the Owner. However, if the Owner has an agreement with the city/county/state for the responsibility of maintenance on accessible routes including sidewalks, then the Owner will be responsible for any repairs.

(6) Modernization Work In Progress--Developments undergoing extensive modernization work in progress, underway at the time of the physical inspection, may qualify for an adjustment. All elements of the Unit that are not undergoing modernization at the time of the inspection (even if modernization is planned) will be subject to the Department's physical inspection protocol without adjustment. Any request for a technical review process [~~Database adjustment~~] for modernization work in progress must include proof the work was contracted before any notice of inspection was issued by the Department.

(i) [~~(h)~~] Examples of items that cannot be adjusted include, but are not limited to:

[~~(1) Disagreements over the severity of a defect, such as deficiencies rated Level 3 that the Owner believes should be rated Level 1 or 2;~~]

(1) [~~(2)~~]Deficiencies that were repaired or corrected during or after the inspection; or

(2) [~~(3)~~] Deficiencies recorded with no associated point loss (for example, inoperable smoke detectors) or deficiencies for survey purposes only (for example, fair housing accessibility).

(j) [~~(i)~~] All Life-Threatening and Severe deficiencies [~~Exigent and Fire Safety (E&FS or EH&S) deficiencies~~] must be corrected within 24 hours [~~immediately~~]. Project Owner's Certification That All Life Threatening and Severe [~~Exigent and Fire Safety~~] Deficiencies Have Been Corrected must be completed and uploaded to CMTS within 72 hours (three Department business days).

§10.623. Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period.

(a) HTC properties allocated credit in 1990 and after are required under §42(h)(6) of the Code to record a LURA restricting the Development for at least 30 years. Various sections of the Code specify monitoring rules State Housing Finance Agencies must implement during the Compliance Period.

(b) After the Compliance Period, the Department will continue to monitor HTC Developments using the criteria detailed in paragraphs (1) - (14) of this subsection:

(1) The frequency and depth of monitoring household income, rents, social services and other requirements of the LURA will be determined based on risk. Factors will include changes in ownership or management, compliance history, timeliness of reports and timeliness of responses to Department requests;

(2) At least once every three years the property will be physically inspected including the exterior of the Development, all building systems and 10% of Low-Income Units. No less than five but no more than 35 of the Development's HTC Low-Income Units will be physically inspected to determine compliance with HUD's National Standards for the Physical Inspection of Real Estate [~~Uniform Physical Condition Standards~~];

(3) Each Development shall submit an annual report in the format prescribed by the Department;

(4) Reports to the Department must be submitted electronically as required in §10.607 of this subchapter (relating to Reporting Requirements);

(5) Compliance monitoring fees will continue to be submitted to the Department annually in the amount stated in the LURA;

(6) All HTC households must be income qualified upon initial occupancy of any Low Income Unit. Proper verifications of income are required, and the Department's Income Certification form must be completed unless the Development participates in the Rural Rental Housing Program or a project-based HUD program, in which case the other program's certification form will be accepted;

(7) Rents will remain restricted for all HTC Low-Income Units. After the Compliance Period, utilities paid to the Owner are accounted for in the utility allowance. TCAP, Exchange, Bond, and THTF Developments layered with Housing Tax Credits no longer within the Compliance Period also include utilities paid to the Owner as part of the utility allowance. The tenant paid portion of the rent plus the applicable utility allowance must not exceed the applicable limit. Any excess rent collected must be refunded;

(8) All additional income and rent restrictions defined in the LURA remain in effect;

(9) For Additional Use Restrictions, defined in the LURA (such as supportive services, nonprofit participation, elderly, etc.), refer to the Development's LURA to determine if compliance is required after the completion of the Compliance Period or if the Compliance Period was specifically extended beyond 15 years;

(10) The Owner shall not terminate the lease or evict low-income residents for other than good cause;

(11) The total number of required HTC Low-Income Units can be maintained Development wide;

(12) Owners may not charge fees for amenities that were included in the Development's Eligible Basis;

(13) Once a calendar year, Owners must continue to collect and maintain current data on each household that includes the number of household members, age, ethnicity, race, disability status student

status and rental assistance (if any). This information can be collected on the Department's Annual Eligibility Certification form or the Income Certification form or HUD Income Certification form or USDA Income Certification form; and

(14) Employee occupied units will be treated in the manner prescribed in §10.622(h) of this chapter (relating to Special Rules Regarding Rents and Rent Limit Violations).

(c) After the first 15 years of the Extended Use Period, certain requirements will not be monitored as detailed in paragraphs (1) - (4) of this subsection.

(1) The student restrictions found in §42(i)(3)(D) of the Code. An income qualified household consisting entirely of full time students may occupy a Low-Income Unit. If a Development markets to students or leases more than 15% of the total number of units to student households, the property will be found in noncompliance unless the LURA is amended through the Material Amendments procedures found in §10.405 of this chapter (relating to Amendments);

(2) All households, regardless of income level or 8609 elections, will be allowed to transfer between buildings within the Development;

(3) The Department will not monitor the Development's application fee after the Compliance Period is over; and

(4) Mixed income Developments are not required to conduct annual income recertifications. However, Owners must continue to collect and report data in accordance with subsection (b)(13) of this section.

(d) While the requirements of the LURA may provide additional requirements, right and remedies to the Department or the tenants, the Department will monitor post year 15 in accordance with this section as amended.

(e) Unless specifically noted in this section, all requirements of this chapter, the LURA and §42 of the Code remain in effect for the Extended Use Period. These Post-Year 15 Monitoring Rules apply only to the HTC Developments administered by the Department. Participation in other programs administered by the Department may require additional monitoring to ensure compliance with the requirements of those programs.

§10.625. Events of Noncompliance.

Figure: 10 TAC §10.625 lists events for which a multifamily rental Development may be found to be in noncompliance for compliance monitoring purposes. This list is not an exclusive list of events and issues for which an Owner may be subject to an administrative penalty, debarment or other enforcement action. The first column of the chart identifies the noncompliance event. The second column indicates to which program(s) the noncompliance event applies. The last column indicates if the issue is reportable on IRS Form 8823 for HTC Developments.

Figure: 10 TAC §10.625

[~~Figure: 10 TAC §10.625~~]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2023.

TRD-202303958

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: December 10, 2023

For further information, please call: (512) 475-3959

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SUBCHAPTER H. INCOME AND RENT LIMITS

10 TAC §10.1005

The Texas Department of Housing and Community Affairs (the Department) proposes amendments to §10.1005 Income and Rent Limits. The rule amendments add the term "HOME-Match" to section (a) and to change the word "Developments" to "units" to provide better clarity on program Income and Rent Limits requirements.

FISCAL NOTE. Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the amendment to the rule is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Wilkinson also has determined that, for the first five years the amendment would be in effect:

1. The proposed amendment to the rule will not create or eliminate a government program;

2. The proposed amendment to the rule will not require a change in the number of employees of the Department;

3. The proposed amendment to the rule will not require additional future legislative appropriations;

4. The proposed amendment to the rule will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed amendment to the rule will not create a new regulation;

6. The proposed amendment to the rule will not repeal an existing regulation;

7. The proposed amendment to the rule will not increase or decrease the number of individuals subject to the rule's applicability; and

8. The proposed amendment to the rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Wilkinson also has determined that, for each year of the first five years the amendment to the rule is in effect, the public benefit anticipated as a result of the action will be the clarification of a required definition and provide consistence among the various Uniform Multifamily Rules by the Department. There will not be any economic cost to any individual required to comply with the amendment.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. All comments or questions in response to this action may be submitted in writing from November 10, 2023, through December 11, 2023. Writ-

ten comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Wendy Quackenbush, Compliance Monitoring Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or email wendy.quackenbush@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local (Central) time, December 11, 2023.

STATUTORY AUTHORITY. The proposed amendment is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed amendment affects no other code, article, or statute.

§10.1005. HOME, HOME-ARP, TCAP RF, and NSP.

(a) HOME, HOME-ARP, HOME Match and TCAP RF [~~Developments~~] units must use the HOME Program Income and Rent Limits that are calculated annually by HUD's Office of Policy Development and Research (PDR). The limits are made available for each Metropolitan Statistical Areas (MSA), Primary Metropolitan Statistical Areas (PMSA) and Area, District or County by State.

(1) Upon publication, the Department will determine which counties are in each MSA, PMSA, Area or District.

(2) Generally, PDR publishes income limits in tables identifying the following Area Median Gross Income (AMGI) by household size:

(A) Extremely Low-Income Limits which are generally 30% of median income, which will be shown as the 30% limit in the Department's income limits;

(B) Very Low-Income Limits which are generally 50% of median income, which will be shown as the 50% limit in the Department's income limits;

(C) 60% Limits; and

(D) Low-Income Limits which are generally 80% of the median income, but capped at the national median income with some exceptions which will be shown as the 80% limits in the Department's income limits.

(3) If not published, the Department will use the following methodology to calculate, without rounding, additional income limits from the HOME Program income limits released by PDR:

(A) To calculate the 30% AMGI, the 50% AMGI limit will be multiplied by .60 or 60%.

(B) To calculate the 40% AMGI, the 50% AMGI limit will be multiplied by .80 or 80%.

(C) To calculate the 60% AMGI, the 50% AMGI limit will be multiplied by 1.2 or 120%.

(b) PDR publishes High and Low HOME rent limits by bedroom size.

(c) PDR does not publish a 30% or 40% rent limits that certain HOME, HOME-ARP and TCAP RF Developments are required to use. These limits will be calculated using the same formulas described in §10.1004 of this subchapter (relating to Housing Tax Credit Properties, TCAP, Exchange and SHTF).

(d) In the event that PDR publishes rent limits after the HOME program income limits, the Department permits HOME, HOME-ARP and TCAP RF Developments to delay the implementation of the 30% and 40% rent limits until the High and Low HOME rent limits must be used.

(e) NSP income limits are published annually by HUD for each county with tables identifying the 50% AMGI and 120% AMGI for household size. If not published, the Department will use the following methodology to calculate, without rounding, additional income limits from the HOME Program income limits released by HUD:

(1) To calculate the 30% AMGI, the 50% AMGI limit will be multiplied by .60 or 60%.

(2) To calculate the 40% AMGI, the 50% AMGI limit will be multiplied by .80 or 80%.

(3) To calculate the 60% AMGI, the 50% AMGI limit will be multiplied by 1.2 or 120%.

(4) To calculate the 80% AMGI, the 50% AMGI limit will be multiplied by 1.6 or 160%.

(f) If the LURA for an NSP Development restricts rents, the amount of rent the Development Owner is permitted to charge will be the High or Low HOME rent published by PDR or calculated in the same manner described in §10.1004 of this subchapter using the HOME income limits.

(g) The LURA for HOME-ARP may require the rent and income limit to follow a different Department program during the state affordability period. In that case, rent will be calculated in the manner of the program identified in the LURA and described in this subchapter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2023.

TRD-202303963
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 10, 2023
For further information, please call: (512) 475-3959

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SUBCHAPTER I. PUBLIC FACILITY CORPORATION COMPLIANCE MONITORING

10 TAC §§10.1101 - 10.1107

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Subchapter I, Public Facility Corporation Compliance Monitoring, §§10.1101 - 10.1107. The purpose of the proposed new rules is to provide compliance with recent statutory requirements, and as authorized by Tex. Gov't Code §2306.053. The new rules provide guidance on auditing and reporting requirements for Public Facility Corporation multifamily residential developments that are required to be audited no later June 1, 2024, and the results reviewed and published by the Department.

Tex. Gov't Code §2001.0045(b) does not apply to the new rules proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rules would be in effect:

1. The proposed new rules do not create or eliminate a government program. This rule provides for an assurance that required monitoring requirements tasked to the Department are clearly relayed to Responsible Parties of Public Facility Corporations and their Sponsors.

2. The proposed new rules do not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The proposed new rules do not require additional future legislative appropriations.

4. The proposed new rules will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The proposed news are creating a new regulation, which is created as a result of the approved HB 2071.

6. The proposed new rules will not limit or repeal an existing regulation, but can be considered to "expand" the existing regulations on this activity because the proposed new rule is necessary to ensure compliance with HB 2071 and for the Department to establish rules.

7. The proposed new rules will not increase or decrease the number of individuals subject to the rule's applicability;

8. The proposed new rules will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting these proposed new rules, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of HB 2071 and Tex. Gov't Code §2306.053.

1. The Department has evaluated these new rules and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. To the extent that PFC multifamily residential developments are considered small or micro-businesses subject to the proposed new rules, the economic impact of the rules is projected to be $0. There are no rural communities subject to the proposed new rules, so the economic impact of the rules is projected to be $0.

3. The Department has determined that because the rules apply to Public Facilities Corporation multifamily residential development approved on or after June 18, 2023, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed new rules do not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new rules as to its possible effects on local economies and has determined that for the first five years the new rules will be in effect the proposed new rules have no economic effect on local employment because the new rules only relate to monitoring Public Facilities Corporation multifamily residential developments; therefore, no local employment impact statement is required to be prepared for the new rules.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the new rules on employment in each geographic region affected by this new rule..." Considering that these new rules will only impact monitoring of Public Facilities Corporation multifamily residential developments that are not allocated or funded by the Department, there are no "probable" effects of the new rules on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of the new rules will provide a new procedure of monitoring Public Facilities Corporations multifamily residential developments that are generally exempt from ad valorem taxation. There will not be any economic cost to any individuals required to comply with the new rules because there are no fees collected by the Department to perform compliance monitoring on Public Facilities Corporation multifamily residential developments.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new rules are in effect, enforcing or administering the new rules does not have any foreseeable implications related to costs or revenues of the state or local governments because there are no fees collected by the Department.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 10, 2023, to December 11, 2023, to receive input on the newly proposed rules. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Wendy Quackenbush, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email wendy.quackenbush@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, December 11, 2023.

STATUTORY AUTHORITY. The new rules are proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new rules affect no other code, article, or statute.

§10.1101. Purpose.

The purpose of Chapter 10, Subchapter I is to:

(1) Establish rules governing Multifamily Residential Developments owned or sponsored by a Public Facility Corporation (PFC) that are subject to Sections 303.0421 and 303.0425 of Local Government Code.

(2) To enable the Department to communicate with responsible persons and parties, not limited to the PFC, sponsor of a PFC, governing body of a PFC, the Operator, the Texas Comptroller of Public Accounts, and, if the PFC's Sponsor is a Housing Authority, the Housing Authority governing board regarding the results of the Audit Report.

(3) To establish qualifications for third party Auditors and reporting standards and formats.

(4) To establish compliance requirements, tenant protections, and affirmative marketing requirements.

§10.1102. Definitions.

The capitalized terms or phrases used herein are defined in the title. Any other capitalized terms in the subchapter shall have the meaning defined in Tex. Gov't Code 2306, Chapter 303 Local Government Code, Chapter 392 Local Government Code, and other state or Department rules, as applicable. Defined terms, when not capitalized, are to be read in context and construed according to common usage.

(1) Audit Report--A report completed by an approved third party auditor, in a manner and format prescribed by the Department.

(2) Auditor--Independent auditor or compliance expert with an established history of providing similar audits on housing compliance matters.

(3) Board--The governing board of the Texas Department of Housing and Community Affairs.

(4) Business Day--Any day that is not a Saturday, Sunday, or holiday observed by the State of Texas.

(5) Business hours--8:00 a.m. to 5:00 p.m. Central local time.

(6) Department--The Texas Department of Housing and Community Affairs.

(7) Director--The Executive Director of the Department.

(8) Development--A multifamily residential development owned by a Public Facility Corporation created under Chapter 303 Local Government Code.

(9) Housing Choice Voucher Program--The housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437(f).

(10) Public Facility Corporation (PFC)--A nonprofit corporation that can be created by a municipality, county, school district, housing authority or a Sponsor, as outlined in Chapter 303 of Local Government Code.

(11) Regulatory Agreement--A Land Use Restriction Agreement (LURA), Ground Lease, or Deed Restriction.

(12) Responsible Parties--The PFC, Sponsor of a PFC, governing body of a PFC, the Operator, the Texas Comptroller of Public Accounts, and, if the PFC's Sponsor is a housing authority, the housing authority governing board.

(13) Sponsor--A municipality, county, school district, housing authority, or special district that causes a corporation to be created to act in accordance with Chapter 303 of Local Government Code.

(14) Unit Type--Means the type of unit determined by the number of bedrooms.

§10.1103. Reporting Requirements.

The following reporting requirements apply to Public Facility Corporation (PFC) or a Sponsor of a PFC Multifamily Residential Development where final financing was approved by the governing body on or after June 18, 2023.

(1) No later than June 1 of each year, the PFC will submit to the Department an Audit Report from an Auditor, obtained at the expense of the PFC.

(2) The first Audit Report must be submitted no later than the year following the first anniversary of:

(A) The date of the PFC acquisition for an occupied multifamily residential development; or

(B) The date a newly constructed PFC multifamily residential development first becomes occupied by one or more tenants.

(3) No later than 60 days after the receipt of the Audit Report, the Department will post a summary of the report on its website. A copy of the report will also be provided to the Development and all Responsible Parties.

(4) If noncompliance is identified by the Auditor, the Development will be notified within 45 days and given 60 days to correct. At the end of the 60 days, the Department will post a final report on its website.

(5) If all noncompliance is not corrected within the 60 days, the Development will lose the tax exemption for the taxable year.

(6) The PFC must provide the Department a copy of their PFC Regulatory Agreement with its first Audit Report submission.

(7) The PFC must annually complete the contact information form available on the Department's website and submit it with the Audit Report.

(8) The qualification of the Auditor must be submitted with each Audit Report. Qualifications must include experience auditing low income housing, a current Certified Occupancy Specialist (COS) certification or an equivalent certification, and resume. The Auditor may not be affiliated with or related to any Responsible Parties. Additionally, a current or previous Management Agent and/or Auditor that has or had oversight of the property or is/was responsible for reviewing and approving tenant files does not qualify as an Auditor under these rules.

(9) The PFC may not engage the same Auditor for more than three consecutive years. After the third consecutive audit, the PFC must procure a new Auditor for at least two reporting years before re-engaging with a prior Auditor.

(10) Audit Reports and supporting documentation and required forms must be submitted to the following email address: pfc.monitoring@tdhca.state.tx.us.

§10.1104. Audit Requirements.

(a) The Auditor must use the Department's Public Facilities Corporation monitoring forms made available on the website. The review performed by the Auditor may either be completed onsite or done electronically. Original records must be made available to the Auditor.

(b) The Auditor will ensure Development meets the following requirements and will report any deficiencies found:

(1) The sample must contain twenty percent (20%) of the total number of restricted units for each Development, but no more than a total of fifty (50) household files. The selection of units should primarily be new move-ins but should also include a ten percent (10%) sample of household files that have recertified.

(2) The Development has a properly recorded Regulatory Agreement with a minimum 10-year term.

(3) Ten percent (10%) of the units in the Development are reserved for, or occupied by, households at or below sixty percent (60%) Area Median Income (AMI) and paying no more than sixty percent (60%) rents, as determined by the U.S. Department of Housing and Urban Development (HUD).

(4) An additional forty percent (40%) of the units in the Development are reserved for, or occupied by, households at or below eighty percent (80%) AMI and paying no more than eighty percent (80%) rents, as determined by HUD.

(5) Any additional rent and occupancy restrictions outlined in the Regulatory Agreement are being complied with.

(6) The restricted units are dispersed across all Unit Types in substantially the same percentage (the greater of 5.0% or one unit) as the market rate units, and in a manner that does not violate fair housing laws.

(7) Restricted units are required to recertify annually, no later than the anniversary of move-in, the income of the household using a Department-approved Income Certification form. Households that exceed the income limit at an annual income recertification should follow the Available Unit Rule as outlined in Section 42(g)(2)(D) of the Internal Revenue Code.

(8) The Audit Report must calculate the annual savings to households living in rent restricted units (when compared to the annual rental income that would've been collected on those units if they were charged market rate for a unit of the same bedroom size at the Development). The total savings for rent-restricted households must be no less than sixty percent (60%) of the estimated amount of the annual ad-valorem taxes that would be imposed on the development without an exemption.

(9) The Development must affirmatively market to individuals and families participating in the Housing Choice Voucher program and local housing authorities.

(10) Review the PFC's website for requirements with: Policies on the acceptance of Housing Choice Vouchers holders and list of affordable properties owned or sponsored by the PFC.

(11) The following tenant protections exist for Developments covered by this subsection:

(A) Owner cannot refuse to rent to families participating in a Housing Choice Voucher program.

(B) Owner cannot require a minimum income standard for families participating in a Housing Choice Voucher program that exceeds two hundred and fifty percent (250%) of the tenant potion of rent.

(C) Each lease agreement must provide the following:

(i) The landlord may not retaliate against the tenant or the tenant's guests by taking action because the tenant established, attempted to establish, or participated in a tenant organization; and

(ii) The landlord may only choose to not renew the lease if the tenant is in material noncompliance with the lease, including nonpayment of rent; committed one or more substantial violations of the lease; failed to provide required information on the income, composition, or eligibility of the tenant's household; or committed repeated minor violations of the lease that: disrupt the livability of the property, adversely affect the health and safety of any person or the right to quiet enjoyment of the leased premises and related development facilities, interfere with the management of the Development, or have an adverse financial effect on the Development, including the failure of the tenant to pay rent in a timely manner.

(D) To non-renew a lease, the owner must provide, at minimum, a thirty (30)-day written notice.

(E) Tenants may not waive these protections in a lease or lease addendum.

(12) The Auditor must maintain monitoring records and papers for three years, and must provide the Department and/or the Appraisal District a copy of their monitoring records upon request.

§10.1105. Income and Rent Requirements.

(a) Annual Income shall be determined consistent with the Section 8 Program administered by the U.S. Department of Housing and Urban Development (HUD), using the definitions of annual income described in 24 CFR §5.609 as furthered described in the HUD Handbook 4350.3, as amended from time to time.

(b) Income and rent limits will be derived from data released by federal agencies including HUD.

(c) The income and rent limits specified in the Regulatory Agreement will be used to determine if a household's income and rent is restricted. In the absence of specified income and or rent limit in a Regulatory Agreement, the Development must rely on a method approved by the Department in writing.

§10.1106. Penalties.

Failure to comply with Sections 303.0421 and or 303.0425 of Local Government Code, or this Subchapter will result in a Department report to the Texas Comptroller, and recommendation of loss of tax exempt status.

§10.1107. Options for Review.

(a) A Public Facility Corporation is entitled to appeal any noncompliance issued by the Auditor. The Auditor should be contacted directly to file an appeal.

(b) If the initial appeal cannot be resolved with the Auditor, a PFC may request to meet with a Compliance Director or Manager at the Department. The PFC and Auditor must provide all requested documentation prior to meeting with the Department.

(c) A PFC may request alternative dispute resolution in accordance with the Department's rules regarding such resolution set forth at §1.17 of this title (related to Alternative Dispute Resolution).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2023.

TRD-202303960
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 10, 2023
For further information, please call: (512) 475-3959

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CHAPTER 13. MULTIFAMILY DIRECT LOAN RULE

10 TAC §§13.1 - 13.13

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 13, Multifamily Direct Loan Rule, §§13.1 - 13.13. The purpose of the proposed repeal is to provide for clarification of the existing rule through new rulemaking action.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect:

1. The proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption of rules, with changes, regarding an existing activity: administration of the Multifamily Direct Loan Program.

2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The proposed repeal does not require additional future legislative appropriations.

4. The proposed repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity: administration of the Multifamily Direct Loan Program.

7. The proposed repeal will not increase or decrease the number of individuals subject to the rule's applicability

8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate or authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a) (6). The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore no local employment impact statement is required to be prepared.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be increased clarity and improved access to the Multifamily Direct Loan funds. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 1, 2023, through December 1, 2023, to receive input on the proposed repealed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Priscilla Stevenson, Multifamily Direct Loan Program Specialist, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email priscilla.stevenson@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local (Central) time December 1, 2023.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed sections affect no other code, article, or statute.

§13.1. Purpose.
§13.2. Definitions.
§13.3. General Loan Requirements.
§13.4. Set-Asides, Regional Allocation, and NOFA Priorities.
§13.5. Application and Award Process.
§13.6. Scoring Criteria.
§13.7. Maximum Funding Requests and Minimum Number of MFDL Units.
§13.8. Loan Structure and Underwriting Requirements.
§13.9. Construction Standards.
§13.10. Development and Unit Requirements.
§13.11. Post-Award Requirements.
§13.12. Pre-Closing Amendments to Direct Loan Terms.
§13.13. Post-Closing Amendments to Direct Loan Terms.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2023.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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10 TAC §§13.1 - 13.13

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 13, Multifamily Direct Loan Rule, §§13.1 - 13.13. The purpose of the proposed new sections is to provide compliance with Tex. Gov't Code §2306.111 and to update the rule to: clarify program requirements in multiple sections, codify in rule practices of the division, and change citations to align with changes to other multifamily rules. In general, most changes proposed are corrective in nature, intended to gain consistency with state or federal

rules, delete duplicative language or provisions, correct or update rule references, and clarify language or processes to more adequately communicate the language or process.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed rule does not create or eliminate a government program, but relates to the readoption of this rule, with changes, to an existing activity: administration of the Multifamily Direct Loan Program.

2. The proposed new rule does not require a change in work that would require the creation of new employee positions nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The proposed rule changes do not require additional future legislative appropriations.

4. The proposed rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The proposed rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The proposed rule will not expand, limit, or repeal an existing regulation.

7. The proposed rule will not increase or decrease the number of individuals subject to the rule's applicability; and

8. The proposed rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this proposed rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.111.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the procedures for multifamily direct loan applications and award through various Department fund sources. Other than in the case of a small or micro-business that is an applicant for such a loan product, no small or micro-businesses are subject to the rule. It is estimated that approximately 200 small or micro-businesses are such applicants; for those entities the new rule provides for a more clear, transparent process for applying for funds and does not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the proposed rule because this rule is applicable only to direct loan applicants for development of properties, which are not generally municipalities. The fee for applying for a Multifamily Direct Loan product is $1,000, unless the Applicant is a nonprofit that provides supportive services or the Applicant is applying for Housing Tax Credits in conjunction with Multifamily Direct Loan funds, in which case the application fee may be waived. These fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing.

There are 1,296 rural communities potentially subject to the proposed rule for which the economic impact of the rule is projected to be $0. 10 TAC Chapter 13 places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. In an average year the volume of applications for MFDL resources that are located in rural areas is approximately fifteen. In those cases, a rural community securing a loan will experience an economic benefit, including, potentially, increased property tax revenue from a multifamily Development.

3. The Department has determined that because there are rural MFDL awardees, this program helps promote construction activities and long term tax base in rural areas of Texas. Aside from the fees and costs associated with submitting an Application, there is a probable positive economic effect on small or micro-businesses or rural communities that receive MFDL awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed rule does not contemplate or authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed rule may provide a possible positive economic effect on local employment in association with this rule since MFDL Developments, layered with housing tax credits, often involve a typical minimum investment of $10 million in capital, and more commonly an investment from $20 million to $30 million. Such a capital investment has direct, indirect, and induced effects on the local and regional economies and local employment. However, because the exact location of where program funds or developments are directed is not determined in rule, and is driven by real estate demand, there is no way to predict during rulemaking where these positive effects may occur. Furthermore, while the Department believes that any and all impacts are positive, that impact is not able to be quantified for any given community until MFDL awards and LIHTCs are actually awarded to a proposed Development, given the unique characteristics of each proposed multifamily Development.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule" Considering that significant construction activity is associated with any MFDL Development layered with LIHTC and each apart-

ment community significantly increases the property value of the land being developed, there are no probable negative effects of the new rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive MFDL awards.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be improved clarity of program requirements in multiple sections, codification in rule practices of the division, and change citations to align with changes to other multifamily rules. There will not be any economic cost to any individuals required to comply with the new sections because this rule does not have any new requirements that would cause additional costs to applicants.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments because it does not have any new requirements that would cause additional costs to applicants.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 1, 2023, to December 1, 2023, to receive input on the proposed new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Priscilla Stevenson, Multifamily Direct Loan Program Specialist, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email priscilla.stevenson@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local (Central) time December 1, 2023.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

§13.1. Purpose.

(a) Authority. The rules in this chapter apply to the funds provided to Multifamily Developments through the Multifamily Direct Loan Program (MFDL or Direct Loan Program) by the Texas Department of Housing and Community Affairs (the Department). Notwithstanding anything in this chapter to the contrary, loans and grants issued to finance the development of multifamily rental housing are subject to the requirements of the laws of the State of Texas, including but not limited to Tex. Gov't Code, Chapter 2306, and federal law pursuant to the requirements of Title II of the Cranston-Gonzalez National Affordable Housing Act, Division B, Title III of the Housing and Economic Recovery Act (HERA) of 2008 - Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes, Section 1497 of the Dodd-Frank Wall Street Reform and Consumer Protection Act: Additional Assistance for Neighborhood Stabilization Programs, Title I of the Housing and Economic Recovery Act of 2008, Section 1131 (Public Law 110-289), and the implementing regulations 24 CFR Parts 91, 92, 93, and 570 as they may be applicable to a specific fund source. The Department is authorized to administer Direct Loan Program funds pursuant to Tex. Gov't Code, Chapter 2306.

(b) General. This chapter applies to Applications submitted for, and award of, MFDL funds by the Department and establishes the general requirements associated with the application and award process for such funds. Applicants pursuing MFDL assistance from the Department are required to certify, among other things, that they have familiarized themselves with all applicable rules that govern that specific program including, but not limited to this chapter, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 10 of this title (relating to Uniform Multifamily Rules), Chapter 11 of this title (relating to Qualified Allocation Plan (QAP)), and Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules) as applicable. The Applicant is also required to certify that it is familiar with the requirements of any other federal, state, or local financing sources that it identifies in its Application. Any conflict with rules, regulations, or statutes will be resolved on a case by case basis that allows for compliance with all requirements. Conflicts that cannot be resolved may result in Application ineligibility, with the right to an Appeal as provided in 10 TAC §1.7 of this title (relating to Appeals Process) or 10 TAC §11.902 of this title (relating to Appeals Process for the Housing Tax Credit program), as applicable.

(c) Waivers. Requests for waivers of any program rules or requirements must be made in accordance with 10 TAC §11.207 of this title (relating to Waiver of Rules), as limited by the rules in this chapter. Waiver requirements are provided in paragraphs (1) - (3) of this subsection:

(1) Rule Waivers and NOFA Amendments prior to Construction Completion. For Direct Loan Developments, an Applicant may request, at the latest at Application submission, that the Department amend its NOFA, amend its Consolidated Plan or One Year Action Plan, or ask HUD to grant a waiver of its regulations, if such request will not impact the timing of the Application's review, nor alter the scoring or satisfaction of threshold requirements for the Housing Tax Credits or other Department resources. Such requests will be presented to the Department's Board. The Board may not waive rules that are federally required, or that have been incorporated as a required part of the Department's Consolidated Plan or One Year Action Plan (OYAP) to the U.S. Department of Housing and Urban Development (HUD), unless those Plans are so amended by the earlier of a date the NOFA is closed or by an earlier date that is identified by the Board. Such items include §13.8 of this chapter, relating to Loan Structure and Underwriting Requirements, the interest rate published in the NOFA, the maximum subsidy limits as published in the NOFA, the priorities listed in the NOFA, the eligibility requirements of applicants describe in rule or the NOFA, scoring, and the tiebreaker procedure. Prior to Contract, except as otherwise described in rule, the Application Acceptance Date will then be the date the Department completes the amendment process or receives a waiver from HUD, if funds are still available in the NOFA. After Contract, but prior to Construction Completion staff will not recommend a waiver or NOFA Amendment;

(2) Utility Allowance Waivers with Project-Based Vouchers. Upon request before or with the submittal of the Application or at the time the Application is amended to reflect the vouchers, for Developments that are layered with Project-Based Vouchers awarded under 24 CFR Part 983 from a Housing Authority that is not Moving to Work Housing Authority, Department staff will submit a waiver to the Office of Community Planning and Development at HUD to allow the Development to use the Public Housing Utility Allowance. For Project-Based Vouchers from a Housing Authority that is a Moving to Work Housing Authority, the Applicant must have the Moving to Work Housing Authority obtain this waiver from the appropriate HUD office or agree that the Development will be all bills-paid before Contract Execution. These waivers, if granted by HUD, will not require the Development to receive a new Application Acceptance Date; and

(3) Waivers under Closed NOFAs. The Board may not waive any portion of a closed NOFA prior to Construction Completion. Thereafter, the Board may only waive any portion of a closed NOFA as part of an approved Asset Management Division work out.

Allowable Post-Closing Amendments are described in 10 TAC §13.13 of this chapter (relating to Post-Closing Amendments to Direct Loan Terms).

(d) Eligibility and Threshold Requirements. Applications for Multifamily Direct Loan funds must meet all applicable eligibility and threshold requirements of Chapter 11 of this title (relating to the Qualified Allocation Plan (QAP)), unless otherwise excepted in this rule or NOFA.

§13.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Tex. Gov't Code, Chapter 2306; §§141, 142, and 145 of the Internal Revenue Code; 24 CFR Parts 91, 92, and 93; 2 CFR Part 200; and 10 TAC Chapters 1 of this title regarding Administration, 2 of this title regarding Enforcement, 10 of this title regarding Uniform Multifamily Rules, and 11 of this title regarding the Qualified Allocation Plan.

(1) Application Acceptance Date--The date the MFDL Application is considered received by the Department as described in this chapter, chapter 11 of this title, or in the NOFA.

(2) Community Housing Development Organization (CHDO)--A private nonprofit organization with experience developing or owning affordable rental housing that meets the requirements in 24 CFR Part 92 for purposes of receiving HOME Investment Partnerships Program (HOME) funds under the CHDO Set-Aside. A member of a CHDO's board cannot be a Principal of the Development beyond their role as a board member of the CHDO or be an employee of the development team, and may not receive financial benefit other than reimbursement of expenses from the CHDO (e.g., a voting board member cannot also be a paid executive).

(3) Construction Completion or Development Period--The Development Period is the time allowed to complete construction, which includes, without limitation, that necessary title transfer requirements and construction work has been fully performed, the certificate(s) of occupancy (if New Construction or reconstruction), Certificate of Substantial Completion (AIA Form G704), Form HUD-92485 (for instances in which a federally insured HUD loan is utilized), or equivalent notice has been issued.

(4) Deobligated Funds--The funds released by the Development Owner or recovered by the Department canceling a Contract or award involving some or all of a contractual financial obligation between the Department and a Development Owner or Applicant.

(5) Federal Affordability Period--The period commencing on the later of the date after Construction Completion and after all Direct Loan funds have been disbursed for the project, or the date of Project Completion as defined in 24 CFR §92.2 or §93.3, as applicable, and ending on the date which is the required number of years as defined by the federal program.

(6) HOME--the HOME Investment Partnership Program, authorized by Title II of the Cranston-Gonzalez National Affordable Housing Act,

(7) HOME Match-Eligible Unit--A Unit in the Development that is not assisted with HOME Program funds, but would qualify as eligible for Match under 24 CFR Part 92. Unless otherwise identified by the provisions in the NOFA, TCAP RF and matching contribution on NSP and NHTF Developments must meet all criteria to be classified as HOME-Match Eligible Units.

(8) Housing Contract System (HCS)--The electronic information system established by the Department for tracking, funding, and reporting Department Contracts and Developments. The HCS is primarily used by the Department for Direct Loan Programs administered by the Department.

(9) Land Use Restriction Agreement (LURA) Term--The period commencing on the effective date of the LURA and ending on the date which, at a minimum, is the greater of the loan term or 30 years. The LURA may include the Federal Affordability Period, in addition to the State Affordability Period requirements and State restrictive criteria.

(10) Matching Contribution (Match)--A contribution to a Development from nonfederal sources that may be in one or more of the forms provided in subparagraphs (A) - (E) of this paragraph:

(A) Cash contribution (grant), except for cash contributions made by investors in a limited partnership or other business entity subject to pass through tax benefits in a tax credit transaction or owner equity (including Deferred Developer Fee and General Partner advances);

(B) Reduced fees or donated labor from certain eligible contractors, subcontractors, architects, attorneys, engineers, excluding any contributions from a party related to the Developer or Owner;

(C) Net present value of yield foregone from a below market interest rate loan as described in HUD Community Planning and Development (CPD) Notice 97-03;

(D) Waived or reduced fees or taxes from cities or counties not related to the Applicant in connection with the proposed Development; or

(E) Donated land or land sold by an unrelated third party at a price below market value, as evidenced by a third party appraisal.

(11) NHTF--National Housing Trust Fund.

(12) NOFA--Notice of Funding Availability.

(13) NSP--Neighborhood Stabilization Program.

(14) Qualifying Unit--means a Unit designated for Multifamily Direct Loan use and occupancy in compliance with State and federal regulations, as set forth in the Contract. Except if the Development is all-bills paid, Qualifying Units may not also have a Project-Based Voucher issued under 24 CFR Part 983, unless the Application contains permission from the Public and Indian Housing Division of HUD for the layered units to use a utility allowance that is not the Public Housing Utility Allowance, or the Applicant has received permission from the Community Planning and Development Division of HUD for the layered units to use the Public Housing Utility Allowance.

(15) Relocation Plan--A residential anti-displacement and relocation assistance plan and budget in an Application that addresses residential and non-residential displacement and complies with the Uniform Relocation Assistance and Real Property Act as implemented at 49 CFR Part 24, HUD Handbook 1378, and the TDHCA Relocation Handbook. Additionally, some HOME and NSP funded Developments must comply with Section 104(d) of the Housing and Community Development Act of 1974 (as amended), and 24 CFR Part 42 (as modified for NSP and HOME American Rescue Plan (ARP) funds), which requires a one-for-one replacement of occupied and vacant, occupiable low- and moderate-income dwelling units demolished or converted. Guidance is on the Department's website at https://www.tdhca.state.tx.us/multifamily/home/index.htm. The Relocation Plan

must be in form and substance consistent with requirements of the Department.

(16) Section 234 Condominium Housing Basic Mortgage Limits (Section 234 Condo Limits)--The per-unit subsidy limits for all MFDL funding. These limits take into account whether or not a Development is elevator served and any local conditions that may make development of multifamily housing more or less expensive in a given metropolitan statistical area. If the high cost percentage adjustment applicable to the Section 234 Condo Limits for HUD's Fort Worth Multifamily Hub is applicable for all Developments that TDHCA finances through the MFDL Program, then confirmation of that applicability will be included in the applicable NOFA.

(17) Site and Neighborhood Standards--HUD requirements for New Construction or reconstruction Developments funded by NHTF (24 CFR §93.150) or New Construction Developments funded by HOME (24 CFR §92.202). Proposed Developments must provide evidence that the Development will comply with these federal regulations in the Application. Guidance for successful submissions is provided on the Department website at https://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm. Applications that are unable to comply with requirements in 24 CFR §983.57(e)(2) and (3) will not be eligible for HOME or NHTF.

(18) State Affordability Period--The LURA Term as described in the MFDL contract and loan documents and as required by the Department in accordance with the Chapter 2306, Texas Gov't Code which may be an additional period after the Federal Affordability Period.

(19) Surplus Cash--Except when the first lien mortgage is a federally insured HUD mortgage that is subject to HUD's surplus cash definition, Surplus Cash is any cash remaining:

(A) After the payment of:

(i) All sums due or currently required to be paid under the terms of any superior lien;

(ii) All amounts required to be deposited in the reserve funds for replacement;

(iii) Operating expenses actually incurred by the borrower for the Development during the period with an appropriate adjustment for an allocable share of property taxes and insurance premiums;

(iv) Recurring maintenance expenses actually incurred by the borrower for the Development during the period; and

(v) All other obligations of the Development approved by the Department; and

(B) After the segregation of an amount equal to the aggregate of all special funds required to be maintained for the Development; and

(C) Excluding payment of:

(i) All sums due or currently required to be paid under the terms of any subordinate liens against the property;

(ii) Any development fees that are deferred including those in eligible basis; and

(iii) Any payments or obligations to the borrower, ownership entities of the borrower, related party entities; any payment to the management company exceeding 5% of the effective gross income; incentive management fee; asset management fees; or any other expenses or payments that shall be negotiated between the Department and borrower.

(20) TCAP Repayment Funds--(TCAP RF) the Tax Credit Assistance Payment program funds.

§13.3. General Loan Requirements.

(a) Funding Availability. Direct Loan funds may be made available through a NOFA or other similar governing document that includes the method for applying for funds and funding requirements.

(b) Oversourced Developments. A Direct Loan request may be reduced or not recommended if the Department's Underwriting Report concludes the Development does not need all or part of the MFDL funds requested in the Application because it is oversourced, and for which a timely appeal has been completed, as provided in 10 TAC §1.7 of this title (relating to Appeals Process) or 10 TAC §11.902 of this title (relating to Appeals Process for Competitive HTC Applications), as applicable.

(c) Funding Sources. Direct Loan funds are composed of annual HOME and National Housing Trust Fund (NHTF) allocations from HUD and associated Program Income, repayment of TCAP or TCAP RF loans, HOME Program Income, NSP Program Income (NSP PI or NSP), and any other similarly encumbered funding that may become available, except as otherwise noted in this chapter. Similar funds include any funds that are identified by the Board to be loaned or granted for the development of multifamily property and are not governed by another chapter in this title, with the exception of State funds appropriated for a specific purpose.

(d) Eligible and Ineligible Activities.

(1) Eligible Activities. Direct Loan funds may be used for the predevelopment, acquisition, New Construction, reconstruction, Adaptive Reuse, rehabilitation, or preservation of affordable housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, or operating cost reserves, subject to applicable HUD guidance. Other expenses, such as financing costs, relocation expenses of any displaced persons, families, businesses, or organizations may be included. MFDL funds may be used to assist Developments previously awarded by the Department when approved by specific action of the Board. Eligible Activities may have fund source restrictions or may be restricted by a NOFA.

(2) Ineligible Activities. Direct Loan funds may not be awarded to a Development:

(A) Layered with Housing Tax Credits that have elected the income averaging election under Section 42(g)(1)(C) of the Internal Revenue Code that have more than 15% of the Units designated as Market Rate Units;

(B) In which the Applicant will not be directly leasing Units to residents, except as specifically described in the NOFA;

(C) Applicants applying for HOME or NSP funds may not commit any choice limiting activities as defined by HUD in 24 CFR Part 58 prior to obtaining environmental clearance, and will be subject to termination of the Direct Loan award if such action is undertaken. For an Applicant applying for NHTF funds, choice limiting activities prior to full execution of a Contract with the Department are not prohibited, but the eligibility of costs associated with these activities will be impacted in keeping with 24 CFR §93.201(h) and all applicable federal regulations. Furthermore, certain activities which prohibit environmental mitigation may cause the Development to be ineligible and will cause the termination of the Direct Loan award.

(e) Ineligible Costs. All costs associated with the Development and known by the Applicant must be disclosed as part of the Application. Other federal funds will be included in the Final Direct Loan Eligible Costs located in Table 1 of the Direct Loan Calculator as part of

the required per-unit subsidy limit calculation. Costs ineligible for reimbursement with Direct Loan funds in accordance with 24 CFR Parts 91, 92, 93, and 570, and 2 CFR Part 200, as federally required or identified in the NOFA, include but are not limited to:

(1) Offsite costs;

(2) Stored Materials;

(3) Site Amenities, such as swimming pools and decking, landscaping, playgrounds, and athletic courts;

(4) The purchase of equipment required for construction;

(5) Furnishings and Furniture, Fixtures and Equipment (FF&E) required for the Development;

(6) Detached Community Buildings;

(7) Carports and/or parking garages, unless attached as a feature of the Unit;

(8) Commercial Space costs;

(9) Personal Property Taxes;

(10) TDHCA fees;

(11) Syndication and organizational costs;

(12) Reserve Accounts, except Initial Operating Deficit Reserve Accounts;

(13) Delinquent fees, taxes, or charges;

(14) Costs incurred more than 24 months prior to the effective date of the Direct Loan Contract, unless the Application is awarded TCAP RF, and if specifically allowed by the Board;

(15) Costs that have been allocated to or paid by another fund source (except for soft costs that are attributable to the entire project as specifically identified in the applicable federal rule, or for TCAP RF if specifically allowed by the NOFA), including but not limited to, contingency, including soft cost contingency, and general partner loans and advances;

(16) Deferred Developer Fee;

(17) Texas Bond Review Board (BRB) fees;

(18) Community Facility spaces that are not for the exclusive use of tenants and their guests;

(19) The portion of soft costs that are allocated to support ineligible hard costs;

(20) Other costs limited by Award or NOFA, or as established by the Board;

(21) Interest on Construction Loans; and

(22) Acquisition that occurred before the Application Acceptance Date and environmental clearance for HOME and NSP projects. For NHTF, acquisition that occurred prior to Contract signing.

§13.4. Set-Asides, Regional Allocation, and NOFA Priorities.

(a) Set-Asides. Specific types of Activities or Developments for which a portion of MFDL funds may be reserved in a NOFA will be grouped in categories called Set-Asides. Not all Set-Asides will be available in every NOFA, and the Board may approve Set-Asides not described in this section. The amount of a single award may be credited to multiple Set-Asides, in which case the credited portion of funds may be repositioned into an oversubscribed Set-Aside prior to a defined collapse deadline. Applications under any and all Set-Asides may or may not be layered with other Department Multifamily programs except as provided in this section or as determined by the Board to address unique circumstances not addressed by these rules.

(1) General / Soft Repayment Set-Aside.

(A) Applicants seeking to qualify for NHTF under this set-aside must propose Developments in which all Units assisted with MFDL funds are available for households earning the greater of the poverty rate or 30% AMI, and have rents no higher than the rent limits for extremely low-income tenants in 24 CFR §93.302(b).

(B) Applicants seeking to qualify for HOME under this set-aside must propose Developments in which all Units assisted with MFDL funds are available to households earning no more than 80% AMI and have rents no higher than the rent limits 24 CFR §92.2.

(C) A portion of the General / Soft Repayment Set-Aside may be reallocated into the CHDO Set-Aside in order to fully fund a CHDO award that exceeds the remaining amount in the CHDO Set-Aside.

(2) CHDO Set-Aside. Unless waived or reduced by HUD, a portion of the Department's annual HOME allocation will be set aside for eligible CHDOs meeting the requirements of the definition of Community Housing Development Organization in 24 CFR §92.2 and 10 TAC §13.2(2) of this chapter. Applicants under the CHDO Set-Aside must be proposing to develop housing on Development Sites located outside Participating Jurisdictions (PJ), unless the award is made within a Persons with Disabilities (PWD) Set-Aside, or the requirement under Tex. Gov't Code §2306.111(c)(1) has been waived by the Governor. A grant for CHDO operating expenses may be awarded in conjunction with an award of MFDL funds under this Set-Aside, if no other CHDO operating grants have been awarded to the Applicant in the same Calendar year, in accordance with 24 CFR §92.208. Applications under the CHDO Set-Aside may not have a for profit special limited partner within the ownership organization chart.

(b) Regional Allocation and Collapse. All funds subject to Tex. Gov't Code §2306.111 or as described to HUD in planning documents will be allocated to regions and potentially subregions based on a Regional Allocation Formula (RAF) within the applicable Set-Asides (unless the funds have already been through a RAF of the annual NOFA and/or Special Purpose NOFA). The RAF methodology may differ by fund source. HOME funds will be allocated in accordance with Tex. Gov't Code Chapter 2306. The end date and Application Acceptance Date for the regionally allocated funds will be identified in the NOFA, but in no instance shall it be less than 30 days from the date a link to the Board approved NOFA or NOFA Amendment is published on the Department's website.

(1) After funds have been made available regionally and the period for regional allocation has expired, remaining funds within each respective Set-Aside may collapse and be pooled together on a date identified in the NOFA. All Applications received prior to these collapse dates will continue to hold their priority unless they are withdrawn, terminated, suspended, or funded.

(2) Funds remaining after expiration of the Set-Asides on the end date identified in the NOFA, which have not been requested in the form of a complete Application, may be collapsed and pooled together to be made available statewide on a first-come first-served basis to Applications submitted after the collapse dates, as further described in the NOFA.

(3) In instances where the RAF would result in regional or sub regional allocations insufficient to fund an Application, the Department may use an alternative method of distribution, including an early collapse, revised formula or other methods as approved by the Board, and reflected in the NOFA.

(c) Notice of Funding Availability (NOFA). MFDL funds will be distributed pursuant to the terms of a published NOFA that provides the specific collapse dates and deadlines as well as Set-Aside and RAF amounts applicable to each NOFA, along with scoring criteria, priorities, award limits, and other Application information. Set-asides, RAFs, and total funding amounts may increase or decrease in accordance with the provisions herein without further Board action as authorized by the Board.

§13.5. Application and Award Process.

(a) Applications. MFDL Applicants must follow the applicable requirements in 10 TAC Chapter 11, Subchapter C (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules) and the Notice of Funding Availability for which the Application is submitted.

(b) Application Acceptance Date. Applications will be considered received on the business day of receipt, unless a different time period is described in the Department's rules or NOFA. If an Application is received after 5:00 p.m., Austin local time, it will be determined to have been received on the following business day. Applications received on a non-business day will be considered received on the next day the Department is open. Applications will be considered complete at the time all Application materials, required third party reports and application fee(s) are received by the Department. Within certain Set-Asides or priorities, the date of receipt may be fixed, regardless of the earlier actual date a complete Application is received, if so specified in the Department's rules or NOFA. If multiple Applications have the same Application Acceptance Date, in the same region or subregion (as applicable), within the same Set-Aside, and for 9% then score and tiebreaker factors, as described 10 TAC §11.7 of this title (relating to Tie Breaker Factors) will be used to determine the Application's rank.

(c) Market Analysis. Applications proposing Rehabilitation that request MFDL as the only source of Department funding may be exempted from the Market Analysis requirement in 10 TAC §11.205(2) (relating to Required Third Party Reports) if the Development's rent rolls for the most recent six months reflect occupancy of at least 80% of all Units.

(d) Required Site Control Agreement Provisions. All Applicants for MFDL funds must include the following provisions in the purchase contract or site control agreement if the subject property is not already owned by the Applicant:

(1) "Notwithstanding any other provision of this Contract, Purchaser shall have no obligation to purchase the Property, and no transfer of title to the Purchaser may occur, unless and until the Department has provided Purchaser and/or Seller with a written notification that: (A) It has completed a federally required environmental review and its request for release of federal funds has been approved and, subject to any other Contingencies in this Contract, (i) the purchase may proceed, or (ii) the purchase may proceed only if certain conditions to address issues in the environmental review shall be satisfied before or after the purchase of the property; or (B) It has determined that the purchase is exempt from federal environmental review and a request for release of funds is not required."; and

(2) "The Buyer does not have the power of eminent domain relating to the purchase and acquisition of the Property. The Buyer may use federal funds from the U.S. Department of Housing and Urban Development (HUD) to complete this purchase. HUD will not use eminent domain authority to condemn the Property. All parties entered this transaction voluntarily and the Buyer has notified the Seller of what it believes the value of the Property to be in accordance with 49 CFR Part 24 Appendix A. If negotiations between both parties fail, Buyer will not take further action to acquire the Property."

(e) Oversubscribed Funds for Competitive HTC-Layered Applications. Should MFDL funds be oversubscribed in a Set-Aside or for a fund source that has geographic limitations within a Set-Aside, Applications concurrently requesting Competitive HTC will be notified and may amend their Application to accommodate another fund source and make changes that still meet threshold requirements in 10 TAC Chapters 11 and 13 of this title, if such changes do not impact scoring under 10 TAC §11.9 (relating to Competitive HTC Selection Criteria). The Department will provide notice to all impacted Applicants in the case of over-subscription, which will include a deadline by which the Applicant must respond to the Department. Multiple Applications from a single or affiliated Applicants do not constitute oversubscription, and the Applicant(s) will not be able to amend their Applications as described in this subsection. If MFDL funds become available between the Market Analysis Delivery Date, and the date of the Department's Board meeting at which final Competitive HTC awards are made, the MFDL funds will not be reserved for Competitive HTC-layered Applications, unless the reservation is described in the NOFA.

(f) Availability of funds for Non-Competitive HTC-layered Applications. If an Application requesting layered Non-Competitive HTC and Direct Loan funds is terminated under 10 TAC §11.201(2)(E) (relating to Withdrawal of Certificate of Reservation), the Application will receive a new Application Acceptance Date for purposes of Direct Loan funds upon submission to the Department of the new Certificate of Reservation if the Board has not made an award. Direct Loan funds will not be reserved for terminated Applications, and may not be available for the Application with a new Reservation.

(g) Eligibility Criteria and Determinations.

(1) The Department will evaluate Applications received under a NOFA for eligibility and threshold pursuant to the requirements of this chapter and Chapter 11 of this title (relating to the Qualified Allocation Plan). The Department may terminate the Application if there are changes at any point prior to MFDL loan closing that would have had an adverse effect on the score and ranking order of the Application that would have resulted in the Application not being recommended for an award or being ranked below another Application received prior to the subject Application.

(2) Applicants requesting MFDL as the only source of Department funds must be able to demonstrate that a Principal of the Developer, Development Owner, or General Partner has previously developed and placed into service a minimum of 50 multifamily housing units. It is the Applicant's responsibility to identify and submit sufficient evidence of this experience in the Application. If the Department determines that the evidence submitted is not substantial, additional evidence may be submitted through the Administrative Deficiency process, if it is available. If the Applicant is unable to provide satisfactory evidence, the Applicant will be ineligible for funding.

(h) Effective rules and contractual terms. The contractual terms of an award will be governed by and reflect the rules in effect at the time of Application; however, any changes in federal requirements will be reflected in the contractual terms. Further provided, that if after award, but prior to execution of such Contract, there are new rules in effect, the Direct Loan awardee may elect to be governed by the new rules, provided the Application would continue to have been eligible for award under the rules and NOFA in effect at the time of Application.

§13.6. Scoring Criteria and Tie Breaker Factors.

(a) Scoring. The scoring items used to calculate the score for a Competitive HTC-Layered Application will be utilized for scoring for an MFDL Application, and evaluated in the same manner. For all other Applications, the Tie Breaker described below will be utilized to deter-

mine which Applications to recommend for an award if multiple Applications are given the same Application Acceptance Date within the same Set-Aside and with the same Priority as described in the NOFA.

(b) Tie Breaker. In the event that two or more Applications receive the same Application Acceptance Date, within the same Set-Aside and having the same Priority, staff will utilize the Tie Breaker Factors established in §11.7 of this title.

§13.7. Maximum Funding Requests and Minimum Number of MFDL Units.

(a) Maximum Funding Request. The maximum funding request for an Application will be identified in the NOFA, and may vary by development type, set-aside, Priority, or fund source.

(b) Maximum New Construction or Reconstruction Per-Unit Subsidy Limits. The per-Unit subsidy limit for a Development will be determined by the Department as the Section 234 Condo limits with the applicable high cost percentage adjustment in effect at the start date of the NOFA, which are the maximum MFDL eligible cost per-Unit subsidy limits that an Applicant may use to determine the amount of MFDL funds combined with other federal funds that may subsidize a Unit.

(c) Maximum Rehabilitation Per-Unit Subsidy Limits. The MFDL eligible cost per-Unit to rehabilitate a Development may not exceed the HUD 221(d)(4) statutory limits, subject to high cost factors as published in the NOFA.

(d) Minimum Number of MFDL Units. The minimum required number of MFDL Units will be determined by the MFDL per-Unit subsidy limits and the cost allocation analysis, which will ensure that the amount of MFDL Units as a percentage of total Units is equal to or greater than the percentage of MFDL funds requested as a percentage of total eligible MFDL Development costs.

§13.8. Loan Structure and Underwriting Requirements.

(a) Loan Structures. Loan structures must meet the criteria described in this section and as further described in a NOFA. The interest rate, amortization period, and term for the loan will be approved by the Board at the time of award, and can only be amended prior to loan closing by the process in 10 TAC §13.12 (relating to Pre-Closing Amendments to Direct Loan Terms).

(b) Criteria for Construction-to-Permanent Loans. Direct Loans awarded through the Department must adhere to the criteria as identified in paragraphs (1) - (7) of this subsection if being requested as construction-to-permanent loans, for which the interest rate will be specified in the NOFA and approved by the Board:

(1) The construction term for MFDL loans shall generally be coterminous with any superior construction loan(s), but no greater than 36 months. In the event the MFDL loan is the only loan with a construction term or is the superior construction loan, the construction term may be up to 36 months. Shorter timeframes may be required to meet federal project completion or expenditure deadlines;

(2) No interest will accrue during the construction term;

(3) The loan term shall be no less than 15 years and no greater than 40 years, and the amortization period shall be between 30 to 40 years. The Department's loan must mature at the same time or within six months of the shortest term of any senior debt, so long as neither exceeds 40 years. The loan term commences following the end of the construction term;

(4) Loans shall be secured with a deed of trust with a permanent lien position that is superior to any other sources for financing including hard repayment debt that is in an amount less than or equal to the Direct Loan amount and superior to any other sources that have soft repayment structures, non-amortizing notes, have deferred forgivable provisions, or in which the lender has an identity of interest with any member of the Development Team. Parity liens may only be considered with federal loan funds from USDA Rural Development;

(5) In general, up to 50% of the MFDL loan may be advanced at loan closing, should there be sufficient eligible costs to reimburse that amount; however, this amount may be proportionally exceeded for a Development being awarded additional MFDL funds, if the Development is past 50% at loan closing, so long as the required Mid-Construction Inspection has been completed. In all cases, at least 10% of the funds will be reserved for the final Draw.

(c) Criteria for Construction Only Loans. MFDL Loans through the Department must adhere to the following criteria as identified in this paragraph, if being requested as construction only loans. The term of the construction loan shall generally be coterminous with any superior construction loan(s), but no greater than 36 months. In the event that the MFDL loan is the only construction loan or is the superior construction loan, the term may not exceed 36 months. Shorter timeframes may be required to meet federal project completion or expenditure deadlines;

(d) Criteria for Permanent Refinance Loans. If 90% of the Department's loan will repay existing debt, the first payment will be due the month after the month of loan closing; 90% of the loan may be advanced at loan closing, unless the Board approves another date.

(e) Evaluations. All Direct Loan Applicants in which third-party financing entities are part of the sources of funding must include a pro forma and lender approval letter evidencing review of the Development and the Principals, as described in 10 TAC §11.9(f)(1) of this title (relating to Competitive HTC Selection Criteria). Where no third-party financing exists, the Department reserves the right to procure a third-party evaluation which will be required to be prepaid by the Applicant.

(e) Pass-Through Loans. Department funds may not be used as pass-through financing. The Department's Borrower must be the Development Owner.

§13.9. Construction Standards.

All Developments financed with Direct Loans will be required to meet at a minimum the applicable requirements in Chapter 11 of this title (relating to the Qualified Allocation Plan). In addition, Developments must meet all applicable state and local codes, ordinances, and standards; the 2021 International Existing Building Code (IEBC) or International Building Code (IBC), as applicable. Should IEBC be more restrictive than local codes, or should local codes not exist, then the Development must meet the requirements imposed by IEBC or IBC, as applicable. Developments must also meet the requirements in paragraphs (1) - (5) of this section:

(1) Third-Party Recommendations. Recommendations made in the Environmental Site Assessment (§11.305 of this title) and any Scope of Work and Cost Review (§11.306 of this title) with respect to health and safety issues, life expectancy of major systems (structural support; roofing; cladding and weatherproofing; plumbing; electrical; and heating, ventilation, and air conditioning) must be implemented;

(2) Lead and Asbestos Testing. For properties originally constructed prior to 1978, the Scope of Work and Cost Review must be provided to the party conducting the lead-based paint and/or asbestos testing, and the Development Owner must implement the mitigation recommendations of the testing report;

(3) Broadband Infrastructure. The broadband infrastructure requirements described in 24 CFR §92.251(a)(2)(vi) or (b)(1)(x)

for HOME, NSP, or TCAP RF; or 24 CFR §93.301(a)(2)(vi) or 24 CFR §93.301(b)(2)(vi) for NHTF, as applicable;

(4) Properties in Catastrophe Areas. Developments located in the designated catastrophe areas specified in 28 TAC §5.4008 must comply with 28 TAC §5.4012 (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After April 1, 2020); and

(5) Minimum Construction Standards. Rehabilitation Developments funded with federal sources may also be required to meet Minimum Rehabilitation Standards, as required by HUD. Rehabilitation Developments funded by the national Housing Trust Fund are required to meet the Multifamily Minimum Rehabilitation Standards approved by HUD, as posted on the Department's website at https://www.tdhca.state.tx.us/multifamily/home/index.htm, in addition to the Department's rules and NOFA requirements.

§13.10. Development and Unit Requirements.

(a) Proportionality. The bedroom/bathroom/amenities and square footages for Direct Loan Units must be comparable to the bedroom/bathroom/amenities and square footages for the total number of Units in the Development based on the amount of Direct Loan funds requested as a percentage of total MFDL eligible costs. As a result of this requirement, the Department will use the Proration Method as the Cost Allocation Method in accordance with HUD CPD Notice 16-15, except as described in subsection (b) of this section. Additionally, the amount of Direct Loan funds requested cannot exceed the per-unit subsidy limit described in this chapter or in the applicable NOFA. Direct Loan Units must be provided as a percentage of each Unit Type, in proportion to the percentage of total costs included in the Direct Loan.

(b) Floating Units. Floating Direct Loan Units may only float among the Units as described in the Direct Loan Contract and Direct Loan LURA.

(1) For HOME, NSP, and TCAP RF, Direct Loan Units must float throughout the Development unless the Development also contains public housing Units that will receive Operating Fund or Capital Fund assistance under Section 9 of the 1937 Act as defined in 24 CFR §5.100.

(2) For NHTF, Direct Loan Units must float throughout the Development, except as prohibited by 24 CFR §93.203, concerning public housing units.

(c) Unit Match Requirements.

(1) For a Development funded with NSP and/or NHTF, a required matching contribution will result in at least one HOME Match-Eligible Unit, in addition to the NSP and/or NHTF Units.

(2) For a Development funded with HOME, a required matching contribution may or may not result in a HOME Match-Eligible Unit, beyond the Department's HOME assisted Units.

(3) For a Development funded with TCAP RF in the annual NOFA, a matching contribution in addition to the Match that the Department counts from the TCAP RF investment will result in some amount of TCAP RF assisted Units being considered HOME Match-Eligible Units.

(d) Minimum Affordability Period. The minimum affordability period for all Direct Loan Units awarded under a NOFA will match the greater of the term of the loan, or 30 years unless a lesser period is approved by the Board. The Department reserves the right to extend the Affordability Period for Developments that fail to meet Program requirements.

(e) Restricted Units. If the Department is the only source of permanent funding for the Development by virtue of equity from HTC and MFDL funding, all Units must be income and rent restricted under a combination of HTC and Direct Loan LURAs, regardless of the amount of deferred Developer Fee as a permanent source. If the MFDL funding is the only source of permanent funding for the Development, all Units must be income and rent restricted by the Direct Loan LURA, and all costs must be MFDL eligible, regardless of the amount of deferred Developer Fee as a permanent source.

(f) Income Levels Committed at Time of Application. If the Direct Loan funds are used in a Competitive or non-Competitive HTC-Layered Development that is electing Income Averaging to qualify under IRC §42, the Direct Loan Units required by the LURA must continue to be provided at the income levels committed at the time of Application. Direct Loan Unit designations may not change to meet Income Averaging requirements.

(g) Mandatory Development Features. Development features described under 10 TAC §11.101(b)(4) (relating to Mandatory Development Amenities) may be selected to meet federal or state requirements, without a change to the number or description of features (e.g. selection of Broadband).

§13.11. Post-Award Requirements.

(a) Direct Loan awardees must satisfactorily complete the Post-Award Requirements identified in this section after the Board approval date.

(b) If a Direct Loan award is declined by the Direct Loan awardee and returned after Board approval, or if the Direct Loan awardee or Affiliates fail to timely enter into the Contract, close the loan, begin and complete construction, or leave a portion of the Direct Loan award unexpended, penalties may apply under 10 TAC §11.9(f) (relating to Competitive HTC Selection Criteria), and/or the Department may prohibit the Applicant and all Affiliates from applying for MFDL funds for a period of two years.

(c) Benchmarks. Extensions to the benchmarks in paragraphs (1) - (8) of this subsection may only be approved by the Executive Director or authorized designee in accordance with §13.12 or §13.13 of this chapter (relating to Pre-Closing and Post-Closing Amendments), as applicable.

(1) Environmental Clearance. In order to obtain environmental clearance required by the National Environmental Policy Act (NEPA) and other related Federal and state environmental laws (if applicable), Direct Loan Applicants, including those previously awarded HTC, must submit a fully completed environmental review, including any applicable reports to the Department within 90 days of the Application Acceptance Date.

(2) Contract Execution. After a Development receives environmental clearance (if applicable), the Department will draft a Contract to be emailed to the Direct Loan awardee. Direct Loan awardees must execute and return a Contract to the Department within 30 calendar days after receipt of the Contract.

(3) Loan Closing and Construction Commencement. Loan closing must occur and construction must begin on or before the dates described in the Contract. If construction has not commenced within 12 months of the Contract Effective Date, the award may be terminated.

(4) Loan Closing. In preparation for closing any Direct Loan, the Development Owner must submit the items described in subparagraphs (A) - (F) of this paragraph. Providing incomplete documents, or not responding timely to subsequent Department requests for materials needed to facilitate closing, may significantly delay closing. Any request to change the financing structure of the Development, or

the ownership structure, will in most cases extend the amount of time it will take for the Department to meet closing timelines, and may move prioritization of the closing below that of other Developments.

(A) Documentation of the prior closing or concurrent closing with all sources of funds necessary for the long-term financial feasibility of the Development.

(B) Due diligence items determined by the Department to be prudent and necessary to meet the Department's rules and to secure the interests of the Department, as requested by Staff.

(C) When Department funds have a first lien position during the construction term, or if the Development is a public work under state law, assurance of completion of the Development in the form of payment and performance bonds in the full amount of the construction contract or equivalent guarantee as allowable under state law in the sole determination of the Department is required. Development Owners utilizing the USDA §515 program for a Development that is not a public work are exempt from this requirement, but must meet the alternative requirements set forth by USDA.

(D) Documentation required for preparation of closing loan documents includes, but is not limited to:

(i) Substantially final information necessary for REA staff to reevaluate the transaction prior to loan closing, including but not limited to a substantially final development cost schedule, sources and uses, operating pro forma, annual operating expenses, rent schedule, updated written financial commitments or term sheets, and any additional financing exhibits that have changed since the time of Application;

(ii) Substantially final Draft Owner/General Contractor agreement and draft Owner/Architect agreement prior to closing with final executed copies required by the day of closing;

(iii) Survey of the Property that includes a certification to the Department, Development Owner, Title Company, and other lenders;

(iv) Plans and specifications for review by the Department's inspection staff. Inspection staff will issue a plan review letter that is intended to assist in identifying early concerns associated with the Department's final construction requirements; and

(v) If layered with Housing Tax Credits, a substantially final draft limited partnership agreement between the General Partner and the tax credit investor entity.

(E) If required by the fund source, prior to Contract Execution unless an earlier period is described in Chapters 10, 11, or 12 of this title, the Development Owner must provide verification of:

(i) Environmental clearance from the Department or HUD, as applicable;

(ii) Site and Neighborhood clearance from the Department;

(iii) Documentation necessary to show compliance with the Uniform Relocation Assistance and Property Act and any other relocation requirements that may apply;

(iv) Title Insurance Commitment or Policy showing the Department as Lender, with copies of all Schedule B documents; and

(v) Any other documentation that is necessary or prudent to meet program requirements or state or federal law in the sole determination of the Department.

(F) The Direct Loan Contract as executed, which will be drafted by the Department's counsel or its designee for the Department. No changes proposed by the Developer or Developer's counsel will be accepted unless approved by the Department's Legal Division or its designee.

(6) Loan Documents. The Development Owner is required to execute all loan closing documents required by and in the form and substance acceptable to the Department's Legal Division.

(A) Loan closing documents include but are not limited to a promissory note, deed of trust, construction loan agreement (if the proceeds of the loan are to be used for construction), LURA, Architect and/or licensed engineer certification of understanding to complete environmental mitigation if such mitigation is identified in HUD's environmental clearance or the Underwriting Report and assignment and security instruments whereby the Developer, the Development Owner, and/or any Affiliates (if applicable) grants the Department their respective right, title, and interest in and to other collateral, including without limitation the Owner/Architect agreement and the Owner/General Contractor agreement, to secure the payment and performance of the Development Owner's obligations under the loan documents. Additional loan terms and conditions may be imposed by the loan closing documents.

(B) Loan terms and conditions may vary based on the type of Development, Real Estate Analysis Underwriting Report, and the Set-Aside under which the award was made.

(7) Quarterly Construction Status Reports. The Development Owner is required to submit quarterly Construction Status Reports to the Asset Management Division as described and by the deadlines specified in 10 TAC §10.401(e) of this title (relating to Construction Status Report).

(8) Mid-Construction Development Inspection Letter. In addition to any other obligations required as the result of any other Department funding sources, the Development Owner must submit a Mid-Construction Development Inspection Request once the Development has met at least 25% construction completion as indicated on the G703 Continuation Sheet or HUD equivalent form. Department inspection staff will issue a Mid-Construction Development Inspection Letter that confirms work is being done in accordance with the applicable codes, the construction contract, and construction documents.

(9) Construction Completion. Construction must be completed, as reflected by the Development's certificate(s) of occupancy (if new construction and/or reconstruction) and Certificate of Substantial Completion (AIA Form G704) or Form HUD-92485 for instances in which a federally insured HUD loan is being utilized, within the construction term of any superior construction loan(s) or up to 36 months of the actual loan closing date if no superior construction loan(s) exists, unless a shorter timeline is necessitated by the federal funding source.

(10) Closed Final Development Inspection Letter. The Closed Final Development Inspection Letter must be issued by the Department within 36 months of loan closing. This letter will verify committed amenities have been provided and confirm compliance with all applicable accessibility requirements; this letter may include deficiencies that require resolution. The Closed Final Development Inspection may be conducted concurrently with a NSPIRE inspection. However, any letters associated with a NSPIRE inspection will not satisfy the Closed Final Development Inspection Letter required by this subsection.

(11) Initial Occupancy. Initial occupancy of all MFDL assisted Units by eligible households shall occur within six months of the final Direct Loan draw. Requests to extend the initial occupancy

period must be accompanied by documentation of marketing efforts and a marketing plan. The marketing plan may be submitted to HUD for final approval, if required by the MFDL fund source.

(12) Per Unit Repayment. Repayment may be required on a per Unit basis for Units that have not been rented to eligible households within 6-18 months of the final Direct Loan draw, depending on the fund source.

(13) Termination and Repayment for Failure to Complete. Termination of the Direct Loan award and repayment of all disbursed funds will be required for any Development that is not completed within four years of the effective date of a Direct Loan Contract.

(14) Disbursement of Funds. The Borrower must comply with the requirements in subparagraphs (A) - (K) of this paragraph in order to receive a disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Borrower's compliance with these requirements is required with a request for disbursement:

(A) All requests for disbursement must be submitted using the MFDL draw workbook or such other format as the Department may require;

(B) Documentation of the total construction costs incurred and costs incurred since the last disbursement of funds must be submitted. Such documentation must be signed by the General Contractor and certified by the Development architect and is generally in the form of an AIA Form G702/ G703 or HUD equivalent form;

(C) Disbursement requests must include a down-date endorsement to the Direct Loan (mortgagee) title policy or Nothing Further Certificate that includes a title search through the date of the Architect's signature on AIA form G702 or HUD equivalent form. For release of retainage, the down-date endorsement to the Direct Loan title policy or Nothing Further Certificate must be dated at least 30 calendar days after the date of the completion as certified on the Certificate of Substantial Completion (AIA Form G704) with $0 as the work remaining to be completed. If AIA Form G704 or HUD equivalent form indicates an amount of work remaining to be completed, the Architect must provide confirmation that all work has been completed. Disbursement requests for acquisition and closing costs are exempt from this requirement;

(D) Table Funding (the wiring of Direct Loan funds to the title company at loan closing) may be permitted at the time of closing, for disbursement of funds related to eligible acquisition costs and eligible softs costs incurred, and in an amount not to exceed 50% of the total funds. Table Funding must be requested in writing at least 30 calendar days prior to the anticipated closing date, and will not be considered unless the Direct Loan Contract has been executed and all necessary documentation has been submitted to and accepted by the Department at least 10 calendar days prior to the anticipated closing date;

(E) At least 50% of Direct Loan funds (except as otherwise allowed for Permanent Refinance Loans described in 10 TAC §13.8(e)) will be withheld from the initial disbursement of loan funds to allow for periodic disbursements;

(F) The initial draw request for the Development (excluding Table Funding) must be entered into the Department's Housing Contract System no later than 180 days after loan closing, and may not be submitted prior to submission of all architectural drawings;

(G) Developer Fee disbursement shall be limited by subparagraph (I) of this paragraph and is further conditioned upon clauses (i) - (iii) of this subparagraph, as applicable:

(i) For Developments in which the loan is secured by a first lien deed of trust against the Property, 75% shall be disbursed in accordance with percent of construction completed. 75% of the total allowable fee will be multiplied by the percent completion, as documented by the construction contract and as may be verified by an inspection by the Department. The remaining 25% shall be disbursed at the time of release of retainage; or

(ii) For Developments in which the loan is not secured by a first lien deed of trust or the Development is also utilizing Housing Tax Credits, Developer Fees will not be reimbursed by the Department, except as follows. If all other lenders and syndicator in a Housing Tax Credit Development (if applicable) provide written confirmation that they do not have an existing or planned agreement to govern the disbursement of Developer Fees and expect that Department funds shall be used to fund Developer Fees, they shall be reimbursed in the same manner as described in subparagraph (A) of this paragraph; and

(iii) The Department may reasonably withhold any disbursement in accordance with the Loan Documents and if it is determined that the Development is not progressing as reasonably necessary to meet the benchmarks for the timely completion of construction of the Development as set forth in the loan documents, or that cost overruns have put the Development Owner's ability to repay its Direct Loan or complete the construction at risk in accordance with the terms of the loan documents and within budget. If disbursement has been withheld under this subsection, the Development Owner must provide evidence to the satisfaction of the Department that the Development will be timely completed and occupied in order to continue receiving funds. If disbursement is withheld for any reason, disbursement of any remaining Developer Fee will be made only after construction of the Development has been completed, and all requirements for expenditure and occupancy have been met;

(H) Expenditures must be allowable and reasonable in accordance with federal and state rules and regulations. The Department shall review each expenditure requested for reasonableness. The Department may request the Development Owner make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of Department funds to Development Owner as may be necessary or advisable for compliance with all program requirements;

(I) Following 50% construction completion, any funds will be released in accordance with the percentage of construction completion as documented on AIA Form G702/703 or HUD equivalent form. 10% of requested Hard Costs will be retained and will not be released until the final draw request. If the Development is receiving funds from more than one MFDL source, the retainage requirement will apply to each fund source individually. All of the items described in clauses (i) - (viii) of this subparagraph are required in order to approve the final draw request:

(i) Fully executed Certificate of Substantial Completion (AIA Form G704) or Form HUD-92485 (for instances in which a federally insured HUD loan is being utilized) with $0 as the cost estimate of work that is incomplete. If AIA Form G704 or Form HUD-92485 indicates an amount of work remaining to be completed, the Architect must provide confirmation that all work has been completed;

(ii) A down date endorsement to the Direct Loan title policy or Nothing Further Certificate dated at least 30 calendar days after the date of completion as certified on the Certificate of Substantial Completion (AIA Form G704) or Form HUD-92485;

(iii) For Developments not layered with Housing Tax Credits, a Closed Final Development Inspection Letter from the Department;

(iv) For NHTF Developments layered with HTCs, a separate, additional cost certification form completed by an independent, licensed, certified public accountant of all Development costs (including project costs), subject to the conditions and limitations set forth in the executed Direct Loan Contract, commonly known as a cost certification;

(v) For Developments subject to the Davis-Bacon Act, written documentation from the Department that the Department's Notice to Proceed that serves to lock in the Department of Labor's worker prevailing wage mandates at the development and authorizes start of construction was sent and final wage compliance report was received and approved or confirmation that HUD or other entity maintains Davis-Bacon oversight;

(vi) Certificate(s) of Occupancy (for New Construction or Reconstruction Units);

(vii) Development completion reports, which includes, but is not limited to, documentation of full compliance with the Uniform Relocation Act/104(d), Match Documentation requirements, and Section 3 of the Housing and Urban Development Act of 1968, as applicable to the Development, and any other applicable requirement;

(viii) If applicable to the Development, certification from Architect or a licensed engineer that all HUD environmental mitigation conditions have been met; and

(ix) Evidence of Match being credited to the Development.

(J) No disbursement of funds will be approved without receipt of all closing documents in the form and substance required by the Department's Legal Division;

(K) The final draw request must be submitted within the construction term as determined in accordance with 10 TAC §13.8(c)(1) or (d)(1) as applicable, unless the construction term has been extended in accordance with 10 TAC §13.12 or 10 TAC §13.13 of this chapter, as applicable; and

(L) Annually, Borrowers must submit at least one draw, and may not submit more than four draws, unless previously approved by the Executive Director or designee.

(15) Annual Audits and Cost Certifications under 24 CFR §93.406(b).

(A) Annual Audits under 24 CFR §93.406(b). Unless otherwise directed by the Department, the Development Owner shall arrange for the performance of an annual financial and compliance audit of funds received and performances rendered under the Direct Loan Contract, subject to the conditions and limitations set forth in the executed Direct Loan Contract. All approved audit reports will be made available for public inspection within 30 days after completion of the audit.

(B) Cost Certifications under 24 CFR §93.406(b).

(i) Non-HTC-Layered Developments. Within 180 calendar days of the later of all title transfer requirements and construction work having been performed, as reflected by the Development's Certificate(s) of Occupancy (if New Construction) or Certificate of Substantial Completion (AIA Form G704 or HUD equivalent form), or when all modifications required as a result of the Department's Final Construction Inspection are cleared as evidenced by receipt of the Closed Final Development Inspection Letter, the Development Owner will submit to the Department a cost certification done by an independent licensed certified public accountant of all Development costs (including project NHTF eligible costs), subject to the conditions and limitations set forth in the executed Direct Loan Contract.

(ii) HTC-Layered Developments. With the Cost Certification required by the Low Income Housing Tax Credit Program, the Development Owner must submit to the Department a cost certification completed by an independent licensed certified public accountant of all Development costs (including NHTF project eligible costs), subject to the conditions and limitations set forth in the executed Direct Loan Contract.

§13.12. Pre-Closing Amendments to Direct Loan Terms.

(a) Closing Memo to Underwriting Report. Any changes to the total development cost, expenses, income, and/or other sources of funds from time of the publication of the initial Underwriting Report at the time of award to the time of loan closing, if the type or amount of the sources and uses have changed must be reevaluated by the Real Estate Analysis division, which will typically publish a Closing Memo to the Underwriting Report. The Report may recommend changes to the principal amount and/or the repayment structure for the Multifamily Direct Loan pursuant to §11.302 of this title (relating to Underwriting Rules and Guidelines), except that the change must have been an available option in the rule or NOFA (as applicable), and may not be made to awards that were competitively scored to the extent that change would have caused the Development to lose points. This will allow the Department to uphold the competitive process, mitigate any increased risk, and to ensure that the Development is not over subsidized. Where the Department determines such risk is not adequately mitigated, the award may be terminated or reconsidered by the Board. If the changes cause the total Debt Coverage Ratio (DCR) to no longer comply with 10 TAC §11.302 of this title (relating to Underwriting Rules and Guidelines), the award may be subject to termination. The Department may require the Closing Memo to be completed before providing a Contract to the Development Owner.

(b) Executive Approval Required Pre-Closing. The Executive Director or authorized designee may approve amendments to loan terms prior to closing as described in paragraphs (1) - (6) of this subsection. Under no circumstances may an amendment cause the Department to violate or be at risk of violating a federal requirement or deadline.

(1) Extensions to the loan closing date required in 10 TAC §13.11(c)(4) of this chapter (relating to Post-Award Requirements) may be approved prior to closing. An Applicant must submit sufficient evidence documenting good cause, including but not limited to, documented delays caused by circumstances outside the control of the applicant or constraints in arranging a multiple fund source closing.

(2) Changes to the construction term and/or loan maturity date to accommodate the requirements of other lenders or to maintain parity of term may be approved prior to closing.

(3) Extensions to the Construction Completion date or date of receipt of a Closed Final Development Inspection Letter required in 10 TAC §13.11(c)(8) of this chapter may be requested but generally are not approved prior to initial loan closing. Extensions under this paragraph are determined based on documentation that the extension is necessary to complete construction and that there is good cause for the extension.

(4) Only to the extent determined necessary by Real Estate Analysis to maintain financial feasibility, changes to the amortization period (not to exceed 40 years) or interest rate (to not less than the minimum specified in rule or NOFA) may be approved if such changes

continue to meet all requirements of Chapter 11, Chapter 13, and the NOFA.

(5) Decreases in the Direct Loan amount, provided the decrease does not jeopardize the financial viability of the Development in the determination of Real Estate Analysis may be approved prior to closing, though the Development Owner may be subject to penalties as further described in 10 TAC §13.11 of this chapter (relating to Post-Award Requirements). Increases will not be approved unless the Applicant applies for the additional funding under an open NOFA.

(6) Changes to other loan terms or requirements that would not require a waiver, as necessary to facilitate the loan closing without exposing the Department to undue financial risk.

(c) Board Approval Required Pre-Closing. Board approval is necessary for any other changes prior to closing.

§13.13. Post-Closing Amendments to Direct Loan Terms.

(a) Good Cause Extensions. The Executive Director or authorized designee may approve extensions of up to 12 months under 10 TAC §13.11(c)(7) - (8) or (14)(L) of this chapter (relating to Post-Award Requirements) based on documentation that there is good cause for the extension and cause the Department to violate or be at risk of violating a federal requirement or deadline.

(b) Amendments to MFDL Awards. Except in cases of Force Majeure, changes to terms of awards subject to mandatory HUD reporting requirements will only be processed after the Construction Completion is reported to the federal oversight entity as completed, and the last of the MFDL funds have been drawn.

(c) Executive Amendments. The Executive Director or authorized designee may approve amendments to loan terms post-closing as described in paragraphs (1) - (3) of this subsection. Board approval is necessary for any other changes post-closing.

(1) Changes in Terms. Changes to the amortization or maturity date to accommodate the requirements of other lenders or maintain parity of term may be approved post-closing, provided the changes result in the Direct Loan continuing to meet the requirements of 10 TAC §13.8(c)(1) and (3) of this chapter (relating to Loan Structure and Underwriting Requirements), and NOFA requirements.

(2) Post-Closing Subordinations or Re-subordinations of MFDL Liens. Re-subordination of the Direct Loan in conjunction with refinancing may be approved post-closing, provided the conditions in subparagraphs (A) - (E) of this paragraph are met:

(A) The Borrower is current with loan payments to the Department, and no notice has been given of any Event of Default on any MFDL loan. Histories of late or non-payment on any other MFDL loan may result in denial of the request;

(B) The refinance does not propose payment to any of the Development Owner or Developer parties (including the Limited Partners);

(C) A proposal for partial repayment of the MFDL lien is made with the request;

(D) The new superior lien is in an amount that is equal to or less than the original senior lien and does not negatively affect the financial feasibility of the Development.

(i) For purposes of this section, a negative effect on the financial feasibility of the Development shall mean a reduction in the total Debt Coverage Ratio (DCR) of more than 0.05, or if the DCR no longer meets the requirements of 10 TAC §11.302 of this title; and

(ii) Changes to accommodate refinancing with a new superior lien that is in an amount that exceeds the original senior lien and which will be directly applied to property improvements, as evidenced by the loan or security agreements (exclusive of fees associated with the refinance and any required reserves), will be considered on a case by case basis; and

(E) The subordination or re-subordination request does not include a request to subordinate or resubordinate any MFDL LURA, with the exception of partial subordination or re-subordination of receivership rights (subject to the prosed receiver entity or Affiliate not having been debarred by the Department or on the Federal Suspended or Debarred Listing).

(3) Workout Arrangements. Changes required to the Department's loan terms or amounts that are part of an approved Asset Management Division work out arrangement may be approved after Construction Completion.

(d) Contract Assignments and Assumptions of MFDL Liens. The Executive Director or authorized designee may approve the Contract Assignment and Assumption of MFDL Liens following approval of an Ownership Transfer request if the conditions in paragraphs (1) - (3) of this subsection are met:

(1) The assignment or assumption is not prohibited by the Contract, Loan Documents, or regulations;

(2) The assignment or assumption request is based on either subparagraph (A) or (B) of this paragraph:

(A) There are insufficient funds available in the transaction to fully repay the Direct Loan at the time of acquisition, for which Deferred Developer Fee, Development Owner or Affiliate Contributions, or other similar liabilities will not be considered in determining whether the Direct Loan could be repaid at the time of acquisition; or

(B) The new superior lien will be directly applied to property improvements as evidenced by the loan or security agreements, exclusive of fees association with the new financing and any required reserves; and

(3) The corresponding Ownership Transfer has been approved in accordance with all requirements in 10 TAC §10.406 of this title (relating to Ownership Transfers), and no prospective Owner including person, or affiliate, as those terms are defined in 2 CFR Part 180 and 2 CFR Part 2424, Subpart I, has been subject to state Debarment or are on the Federal Suspended or Debarred Listing. This includes Board Members and Limited Partners.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2023.

TRD-202303962
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 448. STANDARD OF CARE

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §448.801, concerning Screening; §448.803, concerning Assessment; and §448.911, concerning Treatment Services Provided by Electronic Means.

BACKGROUND AND PURPOSE

This proposal is necessary to comply with and implement House Bill (H.B.) 4, 87th Legislature, Regular Session, 2021. H.B. 4, Section 2, amended Texas Government Code Chapter 531 to require HHSC to determine which services are cost-effective and clinically effective and adopt rules to develop and implement a system to allow providers to provide certain behavioral health services using audio-only means to an individual receiving those services. The proposed amendments allow a chemical dependency treatment facility (CDTF) to deliver certain audio-only substance use disorder treatment services that HHSC determined are clinically effective and safe.

The proposal also updates the requirements for providing services through electronic means to increase clarity and readability.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §448.801 requires a provider screening an individual through electronic means to screen the individual using synchronous audio-visual technology, except under certain circumstances when a provider may screen an individual using audio-only technology during a declared state of disaster.

The proposed amendment to §448.803 requires a provider assessing a client through electronic means to assess the client using synchronous audio-visual technology, except under certain circumstances when a provider may assess a client using audio-only technology during a declared state of disaster.

The proposed amendment to §448.911 defines several terms, allows a licensed outpatient CDTF program to provide individual and group counseling services using synchronous audio-only technology, and updates and clarifies other requirements for providing services through electronic means, including requiring a CDTF providing services through electronic means to be equipped to provide in-person services at the program's physical location at a client's request.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will not create a new rule;

(6) the proposed rules will not expand, limit, or repeal existing rules;

(7) the proposed rules will not change the number of individuals subject to the rules; and

(8) the proposed rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rules do not impose a cost and providing services through electronic means and using synchronous audio-only technology as described in the proposed rules is optional for CDTFs.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; do not impose a cost on regulated persons; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from rules that expand treatment services by allowing a CDTF to offer audio-only treatment services under certain circumstances. The public will also benefit from increased clarity regarding requirements for services provided through electronic means.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because participation in providing the services through electronic means and using synchronous audio-only technology as described in the proposed rules is optional.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to the owner's property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HCR_PRU@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before

midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R028" in the subject line.

SUBCHAPTER H. SCREENING AND ASSESSMENT

25 TAC §448.801, §448.803

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code Chapter 462, which authorizes the Executive Commissioner to adopt rules governing the treatment of persons with chemical dependencies; and Chapter 464, which authorizes the Executive Commissioner to adopt rules governing the organization and structure, policies and procedures, staffing requirements, services, client rights, records, physical plant requirements, and standards for licensed CDTFs.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapters 462 and 464.

§448.801. Screening.

(a) To be eligible for admission to a treatment program, an individual must [~~shall~~] meet the current Diagnostic and Statistical Manual of Mental Disorders (DSM) criteria for substance use disorders (or substance withdrawal or intoxication in the case of a detoxification program). The facility shall use a screening process appropriate for the target population, individual's age, developmental level, culture, and gender, which includes the Texas Department of Insurance (TDI) criteria to determine eligibility for admission or referral including an assessment of the client's financial resources and insurance benefits.

(b) The screening process shall collect other information as necessary to determine the type of services that are required to meet the individual's needs. This may necessitate the administration of all or part of validated assessment instruments.

(c) TDI criteria shall guide referral and treatment recommendations as well as placement decisions.

(d) Sufficient documentation shall be maintained in the client record to support the diagnosis and justify the referral or placement [~~referral/placement~~] decision. Documentation shall include the date of the screening and the signature and credentials of the Qualified Credentialed Counselor (QCC) supervising the screening process.

(e) For admission to a detoxification program, the screening will be conducted by a physician, physician assistant, nurse practitioner, registered nurse, or licensed vocational nurse (LVN). An LVN may conduct a screening under the following conditions:

(1) the LVN has completed detoxification training and demonstrated competency in the detoxification process;

(2) the training and competency verification is documented in the LVN's personnel file;

(3) the LVN shall convey in person or via telephone the medical data obtained during the screening process to a physician, who [~~in person or via telephone. The physician~~] shall determine the appropriateness of the admission and authorize the admission or give instructions for an alternative course of action; and

(4) the physician shall examine the client in person and sign the admission order within 24 hours of authorizing admission.

(f) For admission to all other treatment programs, the screening will be conducted by a counselor or counselor intern.

(g) A detoxification program shall not offer screenings through electronic means.

(h) A treatment program, other than a detoxification program, may offer screenings in-person and face-to-face, or through electronic means, as that term is defined by §448.911(a)(1) of this chapter (relating to Treatment Services Provided by Electronic Means). A facility offering [~~that offers~~] screenings through electronic means shall comply with the applicable requirements under §448.911 of this chapter and the following requirements.[:]

(1) A counselor intern must have more than 2,000 hours of supervised work experience or have a supervised work experience waiver under §140.408(b) of this title (relating to Requirements for LCDC Licensure) and must have passed the chemical dependency counselor licensing exam prior to screening an individual [~~conducted~~] through electronic means.

(2) A counselor or counselor intern screening an individual through electronic means shall use synchronous audiovisual technology, as that term is defined by §448.911(a)(4) [~~comply with the requirements under §448.911~~] of this chapter, except as provided under paragraph (3) of this subsection [~~(relating to Treatment Services Provided by Electronic Means)~~].

(3) To the extent allowed by federal law and only when all the following criteria are met, the counselor or counselor intern may screen an individual using synchronous audio-only technology, as that term is defined by §448.911(a)(3) of this chapter, when:

(A) the screening occurs during a declared state of disaster under Texas Government Code §418.014 (relating to Declaration of State of Disaster) in the county in which the facility where the client signed the client's consent for treatment form is located;

(B) the counselor or counselor intern determines and documents a justification for their determination in the individual's record that screening the individual using synchronous audio-only technology is safe and clinically appropriate for the individual being screened; and

(C) the individual being screened agrees and provides verbal consent, as that term is defined by §448.911(a)(5) of this chapter, to participate in a screening using synchronous audio-only technology.

(4) [~~(2)~~] The counselor or counselor intern [~~facility~~] shall conduct an in-person and face-to-face screening with an individual at the individual's request or if the individual does not provide their verbal consent to participate in a screening through electronic means.

§448.803. Assessment.

(a) A counselor or counselor intern shall conduct and document a comprehensive psychosocial assessment with the client admitted to the facility. The assessment shall document and elicit enough information about the client's past and present status to provide a thorough understanding of the following areas:

(1) presenting problems resulting in admission;

(2) alcohol and other drug use;

(3) psychiatric and chemical dependency treatment;

(4) medical history and current health status, to include an assessment of Tuberculosis (TB), HIV and other sexually transmitted disease (STD) risk behaviors as permitted by law;

(5) relationships with family;

(6) social and leisure activities;

(7) education and vocational training;

(8) employment history;

(9) legal problems;

(10) mental/emotional functioning; and

(11) strengths and weaknesses.

(b) The counselor or counselor intern may conduct the assessment with a client in-person and face-to-face, or through electronic means, as that term is defined by §448.911(a)(1) of this chapter (relating to Treatment Services Provided by Electronic Means). A facility offering [~~that offers~~] assessments through electronic means shall comply with the applicable requirements under §448.911 of this chapter and the following requirements.

(1) A counselor intern must have more than 2,000 hours of supervised work experience or have a supervised work experience waiver under §140.408(b) of this title (relating to Requirements for LCDC Licensure) and must have passed the chemical dependency counselor licensing exam prior to conducting an assessment through electronic means.

(2) A counselor or counselor intern assessing a client [~~An assessment conducted~~] through electronic means shall use synchronous audiovisual technology, as that term is defined by §448.911(a)(4) of this chapter, except as provided under paragraph (3) of this subsection [~~comply with the requirements under §448.911 of this chapter (relating to Treatment Services Provided by Electronic Means).~~].

(3) To the extent allowed by federal law and only when all the following criteria are met, the counselor or counselor intern may assess a client using synchronous audio-only technology, as that term is defined by §448.911(a)(3) of this chapter, when:

(A) the assessment occurs during a declared state of disaster under Texas Government Code §418.014 (relating to Declaration of State of Disaster) in the county in which the facility where the client signed their consent for treatment form is located;

(B) the counselor or counselor intern determines and documents a justification for their determination in the client's record that assessing the client using synchronous audio-only technology is safe and clinically appropriate for the client being assessed; and

(C) the client being assessed agrees and provides verbal consent, as that term is defined by §448.911(a)(5) of this chapter, to participate in an assessment using synchronous audio-only technology.

(4) [~~(3)~~] The counselor or counselor intern [~~facility~~] shall conduct an in-person and face-to-face assessment with a client [~~an individual~~] at the client's [~~individual's~~] request or if the client does not provide their verbal consent to participate in an assessment through electronic means.

(c) The assessment shall result in a comprehensive listing of the client's problems, needs, and strengths.

(d) The assessment shall result in a comprehensive diagnostic impression. The diagnostic impression shall correspond to current Diagnostic and Statistical Manual of Mental Disorders (DSM) standards.

(e) If the assessment identifies a potential mental health problem, the facility shall obtain a mental health assessment and seek appropriate mental health services when resources for mental health assessments or [~~and/or~~] services, or both, are available internally or through referral at no additional cost to the program. These services shall be provided by a facility or person authorized to provide such services or a qualified professional as described in §448.901 of this chapter (relating to Requirements Applicable to all Treatment Services).

(f) The assessment shall be signed by a QCC and filed in the client record within three individual service days of admission.

(g) The program may accept an evaluation from an outside source if:

(1) it meets the criteria set forth herein;

(2) it was completed during the 30 days preceding admission or is received directly from a facility that is transferring the client; and

(3) a counselor reviews the information with the client and documents an update.

(h) For residential clients, a licensed health professional shall conduct a health assessment of the client's physical health status within 96 hours of admission. The facility may accept a health assessment from an outside source completed no more than 30 days before admission or received directly from a transferring facility. If the client has any physical complaints or indications of medical problems, the client shall be referred to a physician, physician assistant, or nurse practitioner for a history and physical examination. The examination, if needed, shall be completed within a reasonable time frame and the results filed in the client record.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Karen Ray
Chief Counsel
Department of State Health Services
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For further information, please call: (512) 834-4591

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SUBCHAPTER I. TREATMENT PROGRAM SERVICES

25 TAC §448.911

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code Chapter 462, which authorizes the Executive Commissioner to adopt rules governing the treatment of persons with chemical dependencies; and Chapter 464, which authorizes the Executive Commissioner to adopt rules governing the organization and structure, policies and procedures, staffing requirements, services, client rights, records, physical plant requirements, and standards for licensed CDTFs.

The amendment implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapters 462 and 464.

§448.911. Treatment Services Provided Through ~~[by]~~ Electronic Means.

(a) In this section, the following words and terms have the following meanings:

(1) Electronic means--Live, synchronous, interactive treatment program services delivered using telecommunications or information technology by a health professional licensed, certified, or otherwise entitled to practice in this state and acting within the scope of the health professional's license, certification, or entitlement to a patient at a different physical location than the health professional. This term includes services delivered using synchronous audiovisual technology or synchronous audio-only technology but does not include pre-recorded videos.

(2) Existing clinical relationship--A relationship that occurs when a person has received at least one in-person or synchronous audiovisual treatment service from the same provider within the six months prior to the initial service delivered by synchronous telephone (audio-only) technology.

(3) Synchronous audio-only technology--An interactive, two-way audio telecommunications platform, including telephone technology, that uses only sound and meets the privacy requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

(4) Synchronous audiovisual technology--An interactive, two-way audio and video telecommunications platform that meets HIPPA privacy requirements.

(5) Verbal consent--Spoken agreement of a client, a client's legally authorized representative, or a client's medical consenter to participate treatment services through electronic means.

(b) ~~[(a)]~~ Except as provided under §448.801 of this chapter (relating to Screening) and §448.803 of this chapter (relating to Assessment), only a ~~[A]~~ licensed ~~[treatment program may provide]~~ outpatient chemical dependency treatment program may provide treatment program services through ~~[by]~~ electronic means ~~[provided the criteria outlined in this section are addressed]~~.

(c) ~~[(1)]~~ The program providing treatment services through electronic means ~~[Services]~~ may provide treatment services ~~[be provided]~~ to adult and adolescent clients to the extent allowed by the facility's license and shall comply with all requirements of this section.~~[; and]~~

(d) ~~[(2)]~~ The program shall ensure only the following individuals provide services through electronic means under this section: ~~[Services shall be provided by]~~

(1) a qualified credentialed counselor (QCC); or ~~[by]~~

(2) a counselor intern who has ~~[with]~~ more than 2,000 hours of supervised work experience or a supervised work experience waiver under §140.408(b) of this title (relating to Requirements for LCDC Licensure) and who has passed the chemical dependency counselor licensing exam.

(e) The program's physical location shall be equipped to provide in-person, face-to-face treatment services with an individual at the individual's request.

(f) ~~[(b)]~~ The program shall ensure all ~~[All]~~ treatment sessions shall have the following two forms of access control ~~[as follows]~~:

(1) all electronic ~~[on-line]~~ contact between a QCC and clients shall ~~[must]~~ begin with a verification of the client through a name, password or pin number; and

(2) security as detailed in HIPAA ~~[the Health Insurance Portability and Accountability Act of 1996 (HIPAA)]~~.

(g) ~~[(c)]~~ A facility shall ~~[must]~~ implement adequate security and encryption measures to ensure all patient communications, recordings and records are protected and adhere to ~~[are in adherence with]~~ federal and state privacy laws, including HIPAA and Texas Health and Safety Code Chapters 181, 464, and 466 (relating to Medical Records Privacy; Facilities Treating Persons with a Chemical Dependency, and Regulation of Narcotic Drug Treatment Programs).

(h) ~~[(d)]~~ A program ~~[Programs]~~ shall maintain compliance with HIPAA and ~~[Title 42 of the]~~ Code of Federal Regulations (CFR) Title 42, Part 2 (relating to Confidentiality of Substance Use Disorder Patient Records).

(i) ~~[(e)]~~ A program ~~[Programs]~~ shall not use e-mail communications containing client identifying information.

(j) ~~[(f)]~~ A program ~~[Programs]~~ shall use synchronous audiovisual technology, except as provided in subsection (k) of this section ~~[audio and video in real time]~~.

(k) A program may provide outpatient individual and group counseling to clients using synchronous audio-only technology only when all the following criteria are met:

(1) the client and provider have an existing clinical relationship;

(2) the provider receives the client's verbal consent before each session; and

(3) the provider documents in the client's record the specific reason why the provider provided outpatient counseling services using synchronous audio-only technology.

(l) ~~[(g)]~~ A program ~~[Programs]~~ shall ensure timely access to individuals qualified in the technology as backup for systems problems.

(m) ~~[(h)]~~ A program ~~[Programs]~~ shall develop a contingency plan and maintain alternate means of communication for clients when technical problems occur during the provision of services.

(n) ~~[(i)]~~ A program ~~[Programs]~~ shall provide individuals and clients with a description of all services offered.

(o) ~~[(j)]~~ A program ~~[Programs]~~ shall provide developed ~~[develop]~~ criteria, in addition to the Diagnostic and Statistical Manual of Mental Disorders ~~[DSM]~~, to assess clients for appropriateness of utilizing electronic services.

(p) ~~[(k)]~~ A program ~~[Programs]~~ shall provide appropriate referrals for clients who do not meet the criteria for services.

(q) ~~[(l)]~~ A program ~~[Programs]~~ shall develop a grievance procedure and provide the website and phone number ~~[a link]~~ to the Texas Health and Human Services Commission (HHSC) for filing a complaint ~~[when using the Internet or HHSC's toll-free number when counseling by telephone]~~.

(r) ~~[(m)]~~ Prior to clients engaging in electronic ~~[Internet]~~ services, a program ~~[programs]~~ shall describe and provide in writing the potential risks to clients. The risks shall address at a minimum the following ~~[these]~~ areas:

(1) clinical aspects;

(2) security; and

(3) confidentiality.

(s) In a HIPAA-compliant manner, a program shall document and maintain in a client's record the client's verbal consent to participate in services provided through electronic means. The program shall provide the verbal consent documentation to HHSC upon request.

(t) A program shall explain to the client or the client's legally authorized representative what verbal consent means and to what the client or client's legally authorized representative is consenting. The verbal consent a client provides when electing to participate in a treatment service delivered through electronic means only applies to one treatment service at a time. A program shall obtain the client's verbal consent before the client receives each service through electronic means.

(u) If the program does not obtain verbal consent for a treatment service through electronic means, the program shall provide the service to the client in-person and face-to-face.

(v) A program shall inform a client who chooses to receive services through electronic means that the program will:

(1) monitor services for evidence of fraud, waste, and abuse;

(2) determine whether the client needs additional social services or supports;

(3) ensure the provider documents, in writing and in the client's record, the client's verbal consent to participate in services provided through electronic means; and

(4) adhere to HIPPA, including using HIPAA-compliant technology for services provided through electronic means.

(w) [~~(n)~~] A program [~~Programs~~] shall create safeguards to ensure adolescents receive treatment services separately from adults and verify a client's identity and the identity of any authorized participant.

(x) [~~(o)~~] A program [~~Programs~~] shall provide clients with information to access online or a copy of the current version of the following chemical dependency treatment facility (CDTF) rules, statutes, and federal regulations to notify clients of applicable rules and laws regarding CDTFs:

(1) This chapter;

(2) Texas Health and Safety Code Chapter 464; and

(3) 42 CFR Part 2.

(y) [~~(p)~~] A program [~~Programs~~] shall provide the program's emergency contact information to the client.

(z) [~~(q)~~] A program [~~Programs~~] shall maintain resource information for the local area of the client.

(aa) [~~(r)~~] A program [~~Programs~~] shall provide reasonable Americans with Disabilities Act of 1990 (ADA) accommodations for clients upon request.

(bb) [~~(s)~~] A program shall be located [~~Programs must reside~~] and perform services in Texas.

(cc) [~~(t)~~] HHSC maintains the authority to regulate the program regardless of the location of the client.

(dd) [~~(u)~~] The facility shall provide the facility's emergency contact information to the client.

(ee) [~~(v)~~] The facility shall maintain resource information for the local area of the client.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Karen Ray
Chief Counsel
Department of State Health Services
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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 4. CONSUMER ASSISTANCE; CLAIM PROCESSES

28 TAC §5.4211

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §5.4211, concerning establishment of a time period for the Texas Windstorm Insurance Association (TWIA) appraisal process. Amendments to §5.4211 implement House Bill 3310, 88th Legislature, 2023.

EXPLANATION. HB 3310 requires the commissioner to adopt rules that establish a time period for an appraisal demanded under Insurance Code §2210.574. Amendments to §5.4211 are necessary to establish the required deadline.

Amendments to subsections (a)(2) and (b)(1) insert the titles of cited Insurance Code.

Proposed amendments add new subsections (e), (f), (j), (k), and (m). Existing subsections are redesignated as appropriate to reflect the addition of these new subsections.

Proposed new subsection (e) sets a deadline by which appraisers must disclose their projected fees to the parties and agree on an umpire. The deadline will help ensure that appraisers begin their involvement with the appraisal in a timely manner and help claimants evaluate the anticipated cost of the appraisal.

Proposed new subsection (f) establishes a deadline by which the appraisers must agree on the amount of loss. One way to complete an appraisal is for the appraisers to agree on the amount of loss, so proposed subsection (f) establishes a deadline to complete that effort. The deadline is longer for commercial claims because losses are frequently larger or more complex than the losses in residential claims.

The proposed amendment to redesignated subsection (i) provides for an umpire to become involved if the appraisers do not agree on the amount of loss by the applicable deadline in pro-

posed subsection (f). The proposed amendment does not prevent an umpire from becoming involved before the deadline.

If the appraisers do not agree on the amount of loss, the way to complete the appraisal is for the appraisal panel to decide on the amount of loss. The appraisal panel consists of the two appraisers and the umpire. Accordingly, proposed new subsection (j) establishes a deadline for the appraisal panel to decide on the amount of loss. The deadline is based on when the umpire becomes involved in the appraisal. The deadline is longer for commercial claims because losses are frequently larger or more complex than losses in residential claims.

Proposed new subsection (k) provides that TWIA and the claimant may extend the deadlines in subsections (f) or (j) by written agreement. Giving the parties the ability to extend the deadlines adds flexibility to provide more time for the appraisal when both parties agree it is appropriate. The proposed subsection also recognizes that the commissioner may extend deadlines under 28 TAC §5.4222.

The proposed amendment to redesignated subsection (l) provides that when the appraisers--rather than the parties--cannot agree on the amount of loss, and the umpire participates, an itemized decision agreed to by any two of these three is binding on the parties. In an appraisal, decisions about the amount of loss are made by appraisers and umpires, not the parties. This proposed amendment clarifies that distinction.

Proposed new subsection (m) allows the appraisers to select a new umpire if a decision is not issued within the deadlines. Allowing the appraisers to select a new umpire will help ensure the appraisal is completed in a timely manner. If the appraisers cannot agree on a new umpire, either of the appraisers may ask TDI to select one. This proposed subsection follows the same process used to select an umpire at the outset of an appraisal.

The proposed amendment to redesignated subsection (n) removes an obsolete applicability date. The subsection's applicability remains the same.

Other amendments add articles "the" or "an" before "appraisal" as appropriate to conform with current agency drafting style.

As required by HB 3310, TDI developed the proposed amendments in consultation with TWIA. TDI also received comments on a request for information posted on TDI's website on August 21, 2023. TDI considered those comments when drafting this proposal.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. David Muckerheide, assistant director, Property and Casualty Lines, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendments, other than that imposed by the statute. Mr. Muckerheide made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Mr. Muckerheide does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr. Muckerheide expects that administering the proposed amendments will have the public benefits of ensuring that TDI's rules conform to Insurance Code §2210.574, helping TWIA claimants evaluate the anticipated cost of an appraisal, and leading to the timelier resolution of TWIA appraisals. Insurance Code Chapter 2210 prescribes an appraisal as the formal method for TWIA claimants to resolve disputes about the amount of a loss for which TWIA has accepted coverage.

Mr. Muckerheide expects that the proposed amendments do impose a possible cost on TWIA. However, Insurance Code §2210.574 requires the commissioner to adopt rules establishing the period in which an appraisal must be completed. As a result, the cost associated with TWIA updating its communication materials and business processes to conform with the new deadlines does not result from the enforcement or administration of the proposed amendments. Additionally, the initial administrative cost should be offset by TWIA cost savings associated with more timely resolutions of appraisals.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does impose a possible cost on TWIA. Specifically, TWIA will face a modest, one-time administrative cost associated with these proposed amendments. However, the initial administrative cost should be offset by TWIA cost savings associated with more timely resolutions of appraisals. Even if there were no offsetting cost savings, no additional rule amendments would be required under Government Code §2001.0045 because the proposed amendments to §5.4211 are necessary to implement legislation. The proposal implements Insurance Code §2210.574, as amended by HB 3310.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rul:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will expand an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will positively affect the Texas economy by ensuring TWIA policyholders appraisal demands are resolved in a timely manner.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on December 11, 2023. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on December 11, 2023. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes amendments to §5.4211 under Insurance Code §§2210.008, 2210.574(d-1), 2210.580, and 36.001.

Insurance Code §2210.008 provides that the commissioner may adopt rules as reasonable and necessary to implement Chapter 2210.

Insurance Code §2210.574(d-1) requires the commissioner to adopt rules establishing the period in which an appraisal demand must be completed.

Insurance Code §2210.580 requires the commissioner to adopt rules regarding procedures and deadlines for payment and handling of claims.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 5.4211 implements Insurance Code §2210.574 and §2210.5741.

§5.4211. Appraisal Process.

(a) Applicability. This section and §§5.4212 - 5.4222 of this title describe the appraisal process and apply when:

(1) the association has accepted coverage for a claim, in full or in part; and

(2) the claimant disputes the amount of loss the association will pay for the accepted portion of the claim within the time allowed by Insurance Code §2210.574, concerning Disputes Concerning Amount of Accepted Coverage, or §2210.5741, concerning Replacement Cost Coverage Claim Processing.

(b) Appraisal explanation. The association must include an explanation of the appraisal process, and the process for requesting a supplemental payment, with each notice either:

(1) accepting coverage under Insurance Code §2210.573, concerning Filing of Claim; Claim Processing; or

(2) stating the amount of the replacement cost payment the association will make in response to a request under Insurance Code §2210.5741.

(3) The explanation must include the deadlines for demanding an appraisal and requesting a supplemental payment.

(c) Appraisal demand.

(1) A claimant may demand an appraisal under Insurance Code §2210.574 or §2210.5741 by telling the association that the claimant disagrees with the amount of loss the association will pay for the accepted portion of the claim. A disagreement includes asking for additional money or telling the association that the amount may not be enough.

(2) A claimant may demand an appraisal under Insurance Code §2210.5741:

(A) at any time after the claimant receives the claim acceptance notice described in Insurance Code §2210.573(d)(1) or (2), but not later than the 30th day after the date the claimant receives the replacement cost notice described by Insurance Code §2210.5741(b);

(B) if the claimant has not demanded an appraisal on the claim under Insurance Code §2210.574; and

(C) regardless of whether repairs are complete.

(3) If the association receives an appraisal demand from a claimant, the association must, in writing, acknowledge the appraisal demand not later than the 10th day after the date of receipt.

(4) The acknowledgment of an appraisal demand must include an explanation of the:

(A) appraisal process, including that the process begins when the claimant hires an appraiser; and

(B) process for requesting a supplemental payment, including the opportunity to seek a supplemental payment before the appraisal process begins.

(d) Appraiser selection. The association and the claimant must each hire an appraiser who is independent and qualified under §5.4212 of this title (relating to Appraisal Process - Appraiser Qualifications and Conflicts of Interest).

(e) Deadline for appraisal budget disclosure and naming an umpire. Within 15 days of the date by which the appraisers are named by the parties, the appraisers must disclose their projected fees to the parties and agree on an umpire. If the appraisers cannot agree on an umpire, they may ask the department to select an umpire under subsection (h) of this section. The deadlines in this subsection may be extended as provided by subsection (k) of this section.

(f) Deadline for appraiser agreement. Except as provided by subsection (k) of this section, appraisers must agree on the amount of loss:

(1) for residential claims, within 90 days of the date by which both appraisers were named; or

(2) for commercial claims, within 120 days of the date by which both appraisers were named.

(g) [~~(e)~~] Appraiser fee information. No later than five days after hiring an appraiser, each party must tell the other party the fees to be charged by the appraiser.

(h) [~~(f)~~] Umpire selection.

(1) The appraisers must select an umpire who is independent and qualified under §5.4214 of this title (relating to Appraisal Process - Umpire Qualifications and Conflicts of Interest).

(2) If the appraisers are unable to agree on an umpire, either appraiser may ask the department to select an umpire. The appraiser must submit the request under §5.4251 of this title (relating to Requests and Submissions to the Department). The request must include the following information:

(A) the type of policy;

(B) a description of the claim and, if known, the claimed value of the covered loss;

(C) the association's claim acceptance letter, including the amount the association will pay for the loss; and

(D) any other information that the department requests.

(i) [~~(g)~~] Umpire participation. The selected umpire must participate in the resolution of the dispute if the appraisers fail to agree on a decision by the deadlines specified in subsection (e) of this section.

(j) Deadline for appraisal panel decision. Except as provided by subsection (k) of this section, the appraisal panel must decide on the amount of loss:

(1) for residential claims, within 60 days of the date by which the umpire becomes involved; or

(2) for commercial claims, within 90 days of the date by which the umpire becomes involved.

(k) Extension of deadlines. The association and the claimant may extend deadlines by written agreement of both parties. The commissioner may also extend deadlines, as provided in §5.4222 of this title (relating to Appraisal Process - Extensions of Deadlines).

(l) [~~(h)~~] Decision. If the appraisers agree on the amount of loss, their decision is binding on the parties as to the amount of loss the association will pay for the claim. If the appraisers [~~parties~~] cannot agree, and the umpire participates, an itemized decision agreed to by any two of these three is binding on the parties as to the amount of loss the association will pay for the claim. Parties may challenge the decision only as permitted by Insurance Code §2210.574.

(m) New umpire. If a decision is not issued within the deadlines established by subsection (j) of this section, or as extended by subsection (k) of this section, the appraisers may select a new umpire as described in subsection (h)(1) of this section, or either appraiser may ask the department to select a new umpire as described in subsection (h)(2) of this section.

(n) [~~(i)~~] Notice for actual cash value coverage. The association must send a notice to the claimant for each accepted claim for damage to a structure, or part of a structure, on which the claimant has only actual cash value coverage and an appraisal has not been demanded.

(1) The association must send the notice not earlier than the 45th day before but not later than the 30th day before the deadline to demand an appraisal under Insurance Code §2210.574.

(2) The notice must inform the claimant that:

(A) an appraisal has not been demanded; and

(B) if the claimant disagrees with the amount the association will pay for the accepted part of the claim or thinks the amount may not be enough, the claimant must tell the association before the appraisal deadline. If the claimant does not tell the association before the deadline, the claimant cannot ask for a supplemental payment after the deadline passes.

(C) The notice must also inform the claimant of the deadline for demanding an appraisal and requesting a supplemental payment.

(3) The association is required to send the notice only one time, unless the department extends the appraisal deadline after the association sends the notice.

[~~(4) This subsection is applicable beginning June 1, 2021.~~]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Jessica Barta
General Counsel
Texas Department of Insurance
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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES
SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.29

The Texas Department of Public Safety (the department) proposes an amendment to §15.29, concerning Alternative Methods for Driver License Transactions. The proposed amendment adds applicants convicted of an offense under Penal Code, Chapter 20A, Trafficking of Persons, to those not eligible to renew or apply for a duplicate driver license or identification certificate using an alternative method and must do so in person consistent with Senate Bill 1527, 88th Leg., R.S. (2023).

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be to require individuals convicted of an offense under Penal Code, Chapter 20A, Trafficking of Persons, to renew or apply for a duplicate license or identification certificate in person.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly,

the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does not expand, limit, or repeal an existing regulation. The proposed rulemaking does increase the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Mandy Edwards, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to *DLDrulecomments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

Texas Government Code, §411.004(3); Texas Transportation Code, §521.005 and §521.057; and Code of Criminal Procedure, Article 42.016 and Article 62.060, are affected by this proposal.

§15.29. Alternative Methods for Driver License Transactions.

(a) Eligible driver license or identification certificate holders may utilize alternative methods to renew or obtain a duplicate of their Texas driver license or identification certificate.

(b) Applicants must apply in the manner provided by the department and pay the applicable fee.

(c) Alternative renewal cannot be used for any two consecutive renewal periods for the purpose of updating the digital images.

(d) Applicants listed in paragraphs (1) - (8) of this subsection are not eligible to renew or apply for a duplicate driver license or identification certificate by alternative methods:

(1) any holder of an occupational license;

(2) any driver license holder who has an administrative or card status that requires review by the department, including, but not limited to, a medical or physical condition that may affect the driver license holder's ability to safely operate a motor vehicle;

(3) any driver license holder applying for renewal that will be 79 years of age or older on the expiration of their current license;

(4) any driver license or identification certificate holder subject to the registration requirements of Code of Criminal Procedure, Chapter 62, Sex Offender Registration Program or Penal Code, Chapter 20A, Trafficking of Persons;

(5) any driver license or identification certificate holder who is suspended, canceled, revoked, or denied renewal;

(6) any driver license or identification certificate holder who does not have a verified social security number on file with the department;

(7) any driver license or identification certificate holder who does not have a digital image (e.g. photograph or signature) on file with the department; or

(8) any applicant whose lawful presence needs to be verified.

(e) The department may reject an application for an alternative transaction and require the personal appearance of the applicant at a driver license office if it has information concerning the eligibility of the applicant, including, but not limited to, medical and vision conditions.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2023.

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: December 10, 2023
For further information, please call: (512) 424-5848

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CHAPTER 35. PRIVATE SECURITY
SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §35.7

The Texas Department of Public Safety (the department) proposes amendments to §35.7, concerning Firearm Standards. The proposed amendments authorize the carrying of certain rifles by commissioned security officers and personal protection officers who are licensed Texas peace officers or honorably retired Texas peace officers and make various clarifying changes to other firearm related provisions.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be greater clarity and consistency in the regulation of the private security industry.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the

economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does expand an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC 0240, Austin, Texas 78773-0240, or by email to RSD.Rule.Comments@dps.texas.gov. Email submission only is preferred. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(a), which authorizes the Public Safety Commission to adopt rules to guide the department in its administration of Texas Occupations Code, Chapter 1702.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(a), are affected by this proposal.

§35.7. Firearm Standards.

(a) Commissioned security officers and personal protection officers may only carry firearms of a category recognized in subsection (b) of this section, and only if:

(1) The commissioned security officers and personal protection[~~the~~] officers have been formally trained in the use of the specific category of firearm being carried as required under the Act and this chapter; and

(2) The commissioned security officers and personal protection [~~the~~] officers have submitted documentation of the required training to the department (unless authorized under subsection (h) of this section).

(b) The recognized firearm categories are:

(1) SA--Any handgun, whether semi-automatic or not;

(2) NSA--Handguns that are not semi-automatic; and

(3) STG--Shotgun.

(c) Commissioned security officers and personal protection officers must exercise care and sound judgment in the use and storage of their firearms.

(d) No security officer or personal protection officer may carry an inoperative, unsafe, replica, or simulated firearm in the course and scope of employment or while in uniform.

(e) No [~~commissioned~~] security officer or personal protection officer may brandish, point, exhibit, or otherwise display a firearm at any time, except as authorized by law.

(f) The discharge of a firearm by a commissioned security officer or personal protection officer while on duty or otherwise acting or purporting to act under the authority of a security officer commission or personal protection officer license shall be immediately reported to the officer's employer. The employer must notify the department of the discharge of a firearm in writing within twenty-four (24) hours of the incident. The notification to the department must include:

(1) The name of the person discharging the firearm;

(2) The name of the employer;

(3) The location of the incident;

(4) A brief description of the incident;

(5) A statement reflecting whether death, personal injury, or property damage resulted; and

(6) The name of the investigating or arresting law enforcement agency, if applicable.

(g) Firearms may only be carried in a manner consistent with the department approved training curriculum in place at the time of the commissioned security officer's or the personal protection officer's training.

(h) Notwithstanding subsection (b) of this section, a licensed Texas peace officer or an honorably retired Texas peace officer may have access to a rifle while performing services as a commissioned security officer or personal protection officer. For purposes of this subsection, a retired Texas peace officer must have documentation of his or her status as honorably retired from his or her employing agency or the Texas Commission on Law Enforcement (TCOLE). For purposes of this section, "honorably retired" means the officer:

(1) Did not retire in lieu of a disciplinary action;

(2) Was eligible to retire from the law enforcement agency or was ineligible to retire only as a result of an injury received in the course of the applicant's employment with the agency; and

(3) Is entitled to receive a pension or annuity for service as a law enforcement officer or is not entitled to receive a pension or annuity only because the law enforcement agency that employed the applicant does not offer a pension or annuity to its employees.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

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SUBCHAPTER L. TRAINING

37 TAC §35.143

The Texas Department of Public Safety (the department) proposes amendments to §35.143, concerning Training Instructor Approval. The proposed amendments implement House Bill 3424, 88th R.S. (2023), which requires applicants for a commissioned security officer license to obtain in-person classroom training in self-defense tactics. The amendments require prospective instructors to have the experience necessary to teach self-defense tactics. Additional changes include an alternative method by which prospective training instructors may qualify for approval to provide instruction and the removal of an outdated requirement relating to required hours of training that is inconsistent with the certifications otherwise required.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be greater clarity and consistency in the regulation of the private security industry.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does expand an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Texas Department of Public Safety, P.O Box 4087, MSC 0240, Austin, Texas 78773-0240, or by email to RSD.Rule.Comments@dps.texas.gov. Email submission only is preferred. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(a), which authorizes the Public Safety Commission to adopt rules to guide the department in its administration of Texas Occupations Code, Chapter 1702 and §1702.1675(f), which authorizes the Commission to adopt rules necessary to administer training requirements.

Texas Government Code, §411.004(3), and Texas Occupations Code, §1702.061(a) and §1702.1675, are affected by this proposal.

§35.143. Training Instructor Approval.

(a) An application for approval as a training instructor shall contain evidence of qualification as required by the department. Instructors may be approved for classroom, self-defense, or firearm training, or any combination of the three [~~both~~]. [~~An individual may apply for approval for one or both of these categories.~~] To qualify for classroom, self-defense, or firearm instructor approval, the applicant must submit acceptable documentation [~~certificates~~] of training for each category. [~~The classroom instructor and firearm certificates shall represent a combined minimum of forty (40) hours of department approved instruction.~~]

(b) The items detailed in this subsection may constitute proof of qualification as a classroom instructor for security officers:

(1) An instructor's certificate issued by Texas Commission on Law Enforcement (TCOLE);

(2) An instructor's certificate issued by federal, state, or political subdivision law enforcement agency approved by the department;

(3) An instructor's certificate issued by the Texas Education Agency (TEA);

(4) An instructor's certificate relating to law enforcement, private security, or industrial security issued by a junior college, college, or university; or

(5) A license to carry handgun instructor certificate issued by the department.

(c) Proof of qualification to instruct the in-person self-defense component of the security officer training course shall include documentation that the individual has instructed nonlethal self-defense for two (2) or more years. Evidence of instruction experience must include a one page detailed description of the training provided and the schedule or specific dates of classes taught.

(d) [~~(c)~~] The items listed in this subsection may constitute proof of qualification as a firearm training instructor, if the reflected [~~reflecting~~] training is completed within two (2) years of the date of the application:

(1) A handgun instructor's certificate issued by the National Rifle Association;

(2) A firearm instructor's certificate issued by TCOLE; [~~or~~]

(3) A firearm instructor's certificate issued by a federal, state, or political subdivision law enforcement agency approved by the department; or [~~.~~]

(4) Documentation establishing that the applicant regularly instructs others in the use of handguns and has graduated from a handgun instructor school that uses a nationally accepted course designed to train persons as handgun instructors.

(e) [~~(d)~~] Proof of qualification as an alarm systems training instructor shall include proof of completion of an approved training course on alarm installation.

(f) [~~(e)~~] Proof of qualification as a personal protection officer instructor shall include, but not be limited to:

(1) A firearm instructor's certificate issued by TCOLE along with proof that the individual has instructed nonlethal self-defense or nonlethal defense of a third party for three (3) or more years. Evidence of instruction experience must include a one page detailed description of the training provided and the schedule or specific date of classes taught.

(2) An instructor's certificate issued by federal, state, or political subdivision law enforcement academy along with proof that the individual has instructed nonlethal self-defense or nonlethal defense of a third party for three (3) or more years. Evidence of instruction experience must include a one page detailed description of the training provided and the schedule or specific dates of classes taught.

(3) An instructor's certificate issued by TEA along with proof that the individual has instructed nonlethal self-defense or nonlethal defense of a third party for three (3) or more years. Evidence of instruction experience must include a one page detailed description of the training provided and the schedule or specific dates of classes taught.

(4) An instructor's certificate relating to law enforcement, private security or industrial security issued by a junior college, college or university along with proof that the individual has instructed nonlethal self-defense or nonlethal defense of a third party for three (3) or more years. Evidence of instruction experience must include a one page detailed description of the training provided and the schedule or specific dates of classes taught.

(5) Evidence of successful completion of a department approved training course for personal protection officer instructors.

(g) [~~(f)~~] Notice shall be given in writing to the department within fourteen (14) days after a change in address of the approved instructor.

(h) [~~(g)~~] In addition to summary actions under the Act, based on criminal history disqualifiers, the department may revoke or suspend an instructor's approval or deny the application or renewal thereof upon evidence that:

(1) The instructor or applicant has violated any provisions of the Act or this chapter;

(2) The qualifying instructor's certificate has been revoked or suspended by the issuing agency;

(3) A materially [~~material~~] false statement was made in the application; or

(4) The instructor does not meet the qualifications set forth in the provisions of the Act and this chapter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2023

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 2. ENVIRONMENTAL REVIEW OF TRANSPORTATION PROJECTS

The Texas Department of Transportation (department) proposes the repeal of §2.132 concerning Gulf Intracoastal Waterway Projects and new §§2.351 - 2.364 concerning Gulf Intracoastal Waterway Projects.

EXPLANATION OF PROPOSED AMENDMENTS

The purpose of this rulemaking is to reorganize and clarify the rules of the Texas Transportation Commission (commission) concerning the requirements for state participation in dredge disposal plans and projects for the beneficial use of dredged materials related to the Gulf Intracoastal Waterway. The rulemaking also removes references in the rules to the Gulf Intracoastal Waterway Advisory Committee, which has been abolished.

Section 2.132, Gulf Intracoastal Waterway Projects, is repealed and the substance of that section is revised and moved to new Subchapter J of Chapter 2, which consists of new §§2.351 - 2.364.

New §2.351, Definitions, provides the defined terms used in Subchapter J.

New §2.352, Maintenance and Sponsorship of GIWW, is derived from §2.132(b) and clarifies that the State of Texas is the non-federal sponsor of the GIWW and the commission serves as the state's designee.

New §2.353, Disposal Plans, is a non-substantive revision of §2.132(c)(1) and (2).

New §2.354, State Participation in Beneficial Use Project, is a non-substantive revision of §2.132(c)(3).

New §2.355, Interagency Coordination, is derived from §2.132(a)(2) and (c)(4). The section clarifies that the U.S. Army Corps of Engineers is responsible for overseeing and initiating coordination of projects for the beneficial use of dredged material.

New §2.356, Investigation of Proposed Disposal Plan or Beneficial Use Project, is derived from §2.132(c)(5). The section recognizes that investigations will be led by the interagency coordination team rather than the department and that membership of interagency coordination team is determined by the U.S. Army Corps of Engineers.

New §2.357, Preparation of Environmental Review Document and Public Participation, is a non-substantive revision of §2.132(d).

New §2.358, Notification of and Assistance to Property Owners, is a non-substantive revision of §2.132(f)(1)(A)-(C). The new section clarifies that the department gives notification and assistance to the owners of real property that is being acquired for a dredged material placement area and if requested, meets with other affected real property owners.

New §2.359, Public Meeting, is a non-substantive revision of §2.132(f)(1)(D) and (2). The new section clarifies that the department may hold one or more public meetings on a proposed dredged material placement area and clarifies where notice of all meetings held under the section must be published.

New §2.360, Procedures for State Acquisition of Real Property, is a non-substantive revision of §2.132(e)(1). The new section clarifies that the procedures provided by the section apply to a proposal to use the real property as a dredged material placement area. It also clarifies where notice of a plan, proposal, or project to which the section applies must be published.

New §2.361, Commission approval, is derived from §2.132(a)(5) and (e)(2). The new section replaces the requirement that a beneficial use project demonstrate "substantial" local support with a requirement that the project demonstrate local support evidenced by an official document from the governing body with jurisdiction over the project. The definition of "jurisdiction" is deleted, and its substance is integrated into the section to clarify the way in which local support is to be shown. The new section does not include the limitation of current §2.132(e)(2)(B)(vi)(I) and (II), which prohibits the department from contributing more than 50 percent of the difference between the federal share and the cost of a beneficial use project, because such a limitation is unnecessarily restrictive. The new section expressly provides that it applies to a proposal to use the real property as a dredged material placement area.

New §2.362, Agreement to Participate in Beneficial Use Project, is a non-substantive revision of §2.132(e)(3).

New §2.363, Participation in Existing Beneficial Use Project, provides the procedure for state participation in an existing beneficial use project. There is no corresponding provision in §2.132.

New §2.364, Prohibition on Use of Funds, is a non-substantive revision of §2.132(e)(2)(B)(vi)(III).

FISCAL NOTE

Stephen Stewart, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of the department's or commission's enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Geir Eilif Kalhagen, Director, Maritime Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Mr. Kalhagen has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be the clarification and alignment of the administrative code with current dredged material management processes.

COSTS ON REGULATED PERSONS

Mr. Kalhagen has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Kalhagen has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will have no effect on government growth. He expects that during the first five years that the rule would be in effect:

(1) it would not create or eliminate a government program;

(2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;

(3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;

(4) it would not require an increase or decrease in fees paid to the agency;

(5) it would not create a new regulation;

(6) it would not expand, limit, or repeal an existing regulation;

(7) it would not increase or decrease the number of individuals subject to its applicability; and

(8) it would not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

Mr. Kalhagen has determined that a written takings impact assessment is not required under Government Code, §2007.043.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The department determined that this rulemaking relates to actions subject to the Texas Coastal Management Program (CMP) under the Coastal Coordination Act of 1991, as amended (Natural Resources Code, §33.201 et seq.), because it concerns the department's rules on acquisition of sites for the placement or disposal of dredge material from, or the expansion, relocation, or alteration of, the Gulf Intracoastal Waterway. The department reviewed this action for consistency with the CMP goals and policies under the rules promulgated by the Coastal Coordination Council, which were transferred to the General Land Office effective December 1, 2022 (see 31 TAC §26.25, Policies for Dredging and Dredged Material and Placement). The department has determined that the action is consistent with applicable CMP goals and policies.

A CMP policy applicable to this rulemaking is that dredging and the disposal and placement of dredged material shall avoid and

otherwise minimize adverse effects to coastal areas. The proposed rules are essentially a non-substantive revision of existing rules that does not change dredged material management policies.

Another CMP policy applicable to this rulemaking is to maximize the number of Beneficial Use of Dredged Material (BUDM) projects. This rulemaking removes unnecessary impediments to funding and implementing BUDM projects.

Another CMP policy applicable to this rulemaking is to encourage collaborative partnerships between federal and non-federal interests in order to plan, fund, and implement BUDM projects. This rulemaking clarifies the relationship between federal and non-federal interests in planning for BUDM projects.

A copy of this rulemaking will be submitted to the General Land Office for its comments on the consistency of the proposed rulemaking with the CMP. The department requests that the public also give comment on whether the proposed rulemaking is consistent with the CMP. Written comments on the consistency of this rulemaking with the CMP may be submitted at the public hearing on this rulemaking held as provided in the PUBLIC HEARING section of this preamble or may be submitted as provided in the SUBMITTAL OF COMMENTS section of this preamble.

SUBMITTAL OF COMMENTS

Written comments on the repeal of §2.132 and new §§2.351-2.364 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Maritime Rules." The deadline for receipt of comments is 5:00 p.m. on December 11, 2023. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

SUBCHAPTER F. REQUIREMENTS FOR SPECIFIC TYPES OF PROJECTS AND PROGRAMS

43 TAC §2.132

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §51.009, which requires the commission to establish eligibility criteria for a project to beneficially use dredge material.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, Chapter 51.

§2.132. Gulf Intracoastal Waterway Projects.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 26, 2023.

TRD-202303942
Becky Blewett
Deputy General Counsel
Texas Department of Insurance
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For further information, please call: (512) 486-5600

SUBCHAPTER J. GULF INTRACOASTAL WATERWAY PROJECTS

43 TAC §§2.351 - 2.364

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §51.009, which requires the commission to establish eligibility criteria for a project to beneficially use dredge material.

§2.351. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Beneficial use--The productive and positive use of dredged material as proposed by the U.S. Army Corps of Engineers.

(2) Disposal plan--A plan that evaluates and identifies preferred alternative dredge material placement areas to accommodate the U.S. Army Corps of Engineers' dredging needs along the GIWW.

(3) Gulf Intracoastal Waterway (GIWW)--The main channel, not including tributaries or branches, of the shallow draft navigation channel running from the Sabine River southward along the Texas coast to the Brownsville Ship Channel near Port Isabel.

§2.352. Maintenance and Sponsorship of GIWW.

(a) The U.S. Army Corps of Engineers is responsible for maintaining the GIWW.

(b) The State of Texas, under Transportation Code, Chapter 51, is the nonfederal sponsor of the GIWW, and the commission is the state's designee.

§2.353. Disposal Plans.

(a) The department may participate in the development of a disposal plan for dredged material.

(b) Legislative approval is required for any substantive change to the disposal plan developed for the Laguna Madre reach of the GIWW dated October 11, 2002.

§2.354. State Participation in a Beneficial Use Project.

(a) The department may participate in the development of a beneficial use project for dredged material.

(b) The department will accept from the U.S. Army Corps of Engineers proposals for beneficial use projects in one or more of the following categories:

(1) habitat development;

(2) beach nourishment;

(3) aquaculture;

(4) parks and recreation;

(5) agriculture, forestry, and horticulture;

(6) strip mine reclamation and solid waste management;

(7) shoreline stabilization and erosion control;

(8) construction and industrial use; or

(9) material transfer, such as transfer for fill, dikes, levees, parking lots, roads.

(c) The U.S. Army Corps of Engineers will submit a proposal in writing to the executive director or the executive director's designee. The proposal will include:

(1) a description of the proposed beneficial use project and anticipated benefits;

(2) a map delineating the location or locations of the proposed beneficial use project;

(3) a proposed project schedule including an anticipated completion date;

(4) a detailed estimate of the project cost, including an estimate of the U.S. Army Corps of Engineers' financial contributions to the project; and

(5) a plan addressing the operation and maintenance of the facility created by or benefiting from the beneficial use project.

§2.355. Interagency Coordination.

(a) The interagency coordination team is a group established by the U.S. Army Corps of Engineers to review proposed federal development projects related to the GIWW. The department is a member of the team. The team's duties include advising on the determinations of consistency with the Texas Coastal Management Program.

(b) The department will coordinate with appropriate state and federal agencies to develop a proposal for disposal plans or beneficial use projects.

§2.356. Investigation of Proposed Disposal Plan or Beneficial Use Project.

(a) The interagency coordination team described by §2.355(a) of this subchapter (relating to Interagency Coordination) will investigate disposal plans and beneficial use projects and evaluate the environmental and operational suitability of each.

(b) The department or U.S. Army Corps of Engineers will lead any field investigations. The agencies that are members of the interagency coordination team will be requested to participate in field investigations and to provide to the department written evaluations of the disposal plans and beneficial use projects investigated.

(c) The interagency coordination team will discuss with the department any proposed disposal plans or beneficial use projects.

§2.357. Preparation of Environmental Review Document and Public Participation.

After a disposal plan or beneficial use project related to the GIWW has been proposed, the department will assist with:

(1) the preparation of the environmental review document by the U.S. Army Corps of Engineers under 42 U.S.C. §4321 et seq. and applicable federal rules; and

(2) any public participation process conducted by the U.S. Army Corps of Engineers.

§2.358. Notification of and Assistance to Property Owners.

(a) Before a public hearing under §2.360 of this subchapter (relating to Procedures for State Acquisition of Real Property), the department will:

(1) provide to each public or private owner of real property to be acquired notice of the environmental and operational suitability of the property for the proposed disposal plan, use as a dredged material placement area, or beneficial use project;

(2) offer to meet with such an owner to answer questions about the proposed disposal plan, dredged material placement area, or beneficial use project related to the proposed acquisition; and

(3) notify the owner of any public meeting or public hearing on the proposed disposal plan, dredged material placement area, or beneficial use project.

(b) Before a public hearing under §2.360 of this subchapter, the department also will hold meetings on the proposed disposal plan, dredged material placement area, or beneficial use project related to the proposed acquisition with the owners of property adjacent to the property being acquired and with other affected property owners, if those owners request such a meeting.

§2.359. Public Meeting.

(a) The department may hold one or more public meetings on a proposed disposal plan, dredged material placement area, or beneficial use project.

(b) The department will publish notice of a public meeting under this section in a newspaper having general circulation in each county in which the proposed disposal plan, dredged material placement area, or beneficial use project is located and post the notice on the department's website.

§2.360. Procedures for State Acquisition of Real Property.

(a) If the commission proposes the acquisition of real property necessary to enable it to meet its responsibilities as the nonfederal sponsor of the GIWW, or if the commission proposes to participate in the cost of a project to beneficially use dredge material that requires the acquisition of an interest in real property, the commission, through the department, will hold a public hearing to receive evidence and testimony concerning the desirability of the disposal plan, the proposal to use the real property as a dredged material placement area under an existing disposal plan, or the beneficial use project.

(b) The department will publish notice of the plan, proposal, or project and the date, time, and place of the public hearing at least once a week for three successive weeks before the hearing in a newspaper of general circulation of each county in which any part of a proposed dredge material disposal site, channel alteration, or beneficial use project would be located.

(c) The department also will:

(1) publish notice of the hearing in at least one edition of the Texas Register; and

(2) post notice of the hearing on the department's website.

(d) The department will display the U.S. Army Corps of Engineers' environmental documents and findings at the public hearing.

(e) Comments, testimony, or evidence may be given in person or in writing during the public hearing or may be submitted in writing to the department during the prescribed public comment period.

§2.361. Commission approval.

(a) After a public hearing under §2.360 of this subchapter (relating to Procedures for State Acquisition of Real Property), the commission may approve and implement the proposed disposal plan, property use as a dredged material placement area, or beneficial use project, including the acquisition of real property, if it determines that the plan, property use, or project can be accomplished without an unjustifiable waste of publicly or privately owned natural resources or a permanent

and substantial adverse impact on the environment, wildlife, or fisheries.

(b) To approve and implement a beneficial use project, in addition to the determination required under subsection (a) of this section, the commission must determine that the project:

(1) is proposed by the U.S. Army Corps of Engineers;

(2) is for one or more beneficial use activities having a direct relationship to the GIWW;

(3) has local support;

(4) is limited to a logical unit of work and capable of being implemented and completed within a reasonable time as determined by the department; and

(5) is consistent with the Texas Coastal Management Program.

(c) Local support under subsection (b)(3) of this section is shown by a resolution or other official document that is adopted or approved by the governing body of the city or county with jurisdiction over the area in which the project is located or, if the project area is located in more than one jurisdiction, by the governing body of the city or county within which a majority of the area of the project is located, with the adoption or approval occurring after that governing body has consulted with the other jurisdictions. The jurisdiction of a city is the area within the incorporated city limits and the extraterritorial jurisdiction of the city. The jurisdiction of a county is the area within the boundaries of the county that is not within the jurisdiction of the cities located in the county.

§2.362. Agreement to Participate in Beneficial Use Project.

If the commission approves the department's participation in a beneficial use project, the commission will enter into an agreement with the U.S. Department of the Army to participate in the cost of the project.

§2.363. Participation in Existing Beneficial Use Project.

(a) The department, with the commission's approval and in accordance with this section, may participate financially in an existing beneficial use project.

(b) The U.S. Army Corps of Engineers will submit proposals in writing to the executive director or the executive director's designee. A proposal must include:

(1) a description of the beneficial use project and its benefits;

(2) a map delineating the location of the beneficial use project;

(3) a proposed project schedule that includes an anticipated completion date;

(4) a detailed estimate of the project cost and an estimate of each amount contributed to the project by the U.S. Army Corps of Engineers and each other participating entity;

(5) a plan addressing the operations and maintenance of the facility created by or benefiting from the beneficial use project; and

(6) existing documentation related to the operational and environmental suitability of the project and existing results of field investigations, if available.

(c) The commission may approve participation under this section if it determines that the project:

(1) can be accomplished without:

(A) an unjustifiable waste of publicly or privately owned natural resources; and

(B) a permanent and substantial adverse impact on the environment, wildlife, or fisheries; and

(2) will result in one or more beneficial use activities having a direct relationship of function or impact to the GIWW.

§2.364. Prohibition on Use of Funds.

Funds provided by the department under this subchapter may not be used for maintenance or operation of a beneficial use project.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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