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 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, §§7.1 - 7.12. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.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.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, General Policies and Procedures for the Department's Homelessness Programs.

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 workload 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, General Policies and Procedures for the Department's Homelessness Programs.

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

8. The proposed 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 for the rule.

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 an updated and more germane rule. 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 January 30, 2026, to March 3, 2026, to receive input on the proposed repealed section. 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 homelessprograms@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin (Central) local time, MARCH 3, 2026.

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.

§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 January 16, 2026.

TRD-202600163
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 1, 2026
For further information, please call: (512) 475-3959

♦ ♦ ♦

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, §§7.1 - 7.12. The purpose of the proposed new subchapter is to update the rule to include special allocations of funds and to further clarify program requirements.

Tex. Gov't Code §2001.0045(b) does not apply to the new 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 new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, General Policies and Procedures for the Department's Homelessness Programs.

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 workload to a degree that eliminates any existing employee positions.

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

4. The proposed new rule 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 new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The proposed new rule 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 provides a regulatory framework for instances where the Department receives an additional allocation of funds for homelessness programs not contemplated by the current rule. However, this addition to the rule is necessary to ensure compliance with federal and state fund commitment deadlines.

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

8. The proposed new 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 new 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. The Department has evaluated this new rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

The Department has determined that because this rule only impacts nonprofits and units of local government by outlining administrative requirements of existing programs, 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 rule does not contemplate nor 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 rule as to its possible effects on local economies and has determined that for the first five years the new rule will be in effect the proposed new rule has no economic effect on local employment because this rule only outlines administrative requirements of existing programs; therefore, no local employment impact statement is required to be prepared for the new rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the new rule on employment in each geographic region affected by this new rule…" Considering that these programs are offered in all areas of the state, there are no "probable" effects of the new rule 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 rule is in effect, the public benefit anticipated as a result of

the new rule will be an updated and more germane rule. There will not be any economic cost to any individuals required to comply with the new rule because the processes described by the rule have already been in place through the rule found at this section being repealed.

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 rule is in effect, enforcing or administering the new rule does not have any foreseeable implications related to costs or revenues of the state or local governments because this rule only outlines administrative requirements of existing programs.

REQUEST FOR PUBLIC COMMENT AND INFORMATION RELATED TO COST, BENEFIT OR EFFECT. The Department requests comments on the rule and also requests information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis from any person required to comply with the proposed rule or any other interested person. The public comment period will be held January 30, 2026, to March 3, 2026, to receive input on the newly proposed 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 8711-3941, by fax to (512) 475-0220, or email homelessprograms@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin (Central) local time, MARCH 3, 2026.

STATUTORY AUTHORITY. The new rule(s) is/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.

§7.1. Purpose and Goals.

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

(b) The Homelessness 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 section unless the context clearly indicates otherwise. Other definitions may be found in Chapter 1 of this title, concerning Administration, Chapter 2 of this title, concerning Enforcement, or in federal or state law, including, but not limited to, 24 CFR Parts 91, 200, 576, 582, and 583, and TXGMS.

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

(7) 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*.

(8) 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.

(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 Close Out Period--The period between the final date of Contract Term and the final reporting deadline.

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

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

(13) 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.

(14) 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).

(15) 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.

(16) 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.

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

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

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

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

(26) 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.

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

(28) 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.

(29) 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.

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

(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 Homelessness Program assistance, meets a Homelessness Program's eligibility requirements, receives a Homelessness 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 (MER)--Information on Expenditures from Subrecipient to the Department.

(37) Monthly Performance Report (MPR)--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) Program Participant--An individual or Household that is assisted by a Homelessness Program.

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

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

(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) Special Allocation--Funding made available to the Department outside of its allocation cycle, authorized through federal or state legislation or other governmental action. Special Allocations provide funds for eligible activities consistent with the authorizing statute or funding notices, and may include, but are not limited to, allocations for disaster recovery, public health emergencies, or other time-limited initiatives.

(48) Special Allocation Program--A Department administered program that utilizes funds from a Special Allocation to carry out eligible activities in accordance with the terms and conditions established by the authorizing statute, regulation, or funding notice.

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

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

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

(52) 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.

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

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

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

(56) 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.

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

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

(59) 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. Construction Activities.

(a) A Subrecipient of Homelessness Program funds that constructs or rehabilitates a building or Dwelling Unit, or converts a building(s) for use as a shelter with HHSP, EH Fund, or Special Allocation Programs may be required to enter into a LURA.

(b) ESG funds that are not a Special Allocation must not be utilized for Renovation as defined in 24 CFR §576.102(a)(3).

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

(d) 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.

(e) 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 Homelessness 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 Homelessness 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, except for requests submitted during the Contract Close Out Period to extend the Contract Close Out Period; 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 subsection. In addition, the Executive Director may on appeal approve an amendment where the conditions in paragraph (2)(A) and (B) of this subsection 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 (CAPER), including, but not limited to:

(A) HMIS exports as required per HUD;

(B) Narrative outcome results for emergency transfer requests received under VAWA; and

(C) 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 Homelessness 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 Homelessness 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 section 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. Program 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) For ESG and federally funded Special Allocations, Subrecipient may not deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking.

(4) 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; and

(C) For ESG and federally funded Special Allocations, inform Program Participants in any denial, non-renewal or termination notice information on rights they may have under VAWA.

(c) Other policies and procedures:

(1) Affirmative Fair Housing Marketing Plan. Subrecipients providing project-based rental assistance under ESG or federally funded Special Allocations must have an Affirmative Fair Housing Marketing Plan created in accordance with HUD requirements (if any) 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 the Fair Housing Act and the Age Discrimination Act of 1975.

(2) Language Access Requirements. Subrecipient must follow federal regulations and guidance when interacting with Program Participants with Limited English Proficiency. In addition, consistent with Title VI of the Civil Rights Act of 1964 and the Civil Rights Restoration Act of 1987, Subrecipient must 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 that 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, VAWA, 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 of this title (relating to Appeals Process).

(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 fails 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 Homelessness 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 Homelessness 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 January 16, 2026.

TRD-202600164
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 1, 2026
For further information, please call: (512) 475-3959

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SUBCHAPTER C. EMERGENCY SOLUTIONS GRANTS (ESG)

10 TAC §§7.31 - 7.43

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 7, Subchapter C, Emergency Solutions Grants (ESG) §§7.31 - 7.43. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate 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.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the Emergency Solutions Grants 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 Emergency Solutions Grants Program.

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

8. The proposed 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 nor 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 for the rule.

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 an updated and more germane rule. 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 Department requests comments on the repeal. The public comment period will be held January 30, 2026, to March 3, 2026, to receive input on the proposed repealed section. 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 homelessprograms@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin (Central) local time, MARCH 3, 2026.

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.

§7.31. Purpose.

§7.32. Use of ESG Funds.

§7.33. Apportionment of ESG Funds.

§7.34. Continuing Awards.

§7.35. Eligible Applicants.

§7.36. General Threshold Criteria.

§7.37. Application Review and Administrative Deficiency Process.

§7.38. Competitive Award and Funding Process.

§7.39. Uniform Selection Criteria.

§7.40. Competitive Program Participant Services Selection Criteria.

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

§7.42. General Administrative Requirements.

§7.43. Program Income.

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 January 16, 2026.

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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 §§7.31 - 7.43

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 7, Subchapter C, Emergency Solutions Grants (ESG) §§7.31 - 7.43. The purpose of the proposed new subchapter is to update the rule to include special allocations of funds and to further clarify program requirements.

Tex. Gov't Code §2001.0045(b) does not apply to the new 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 new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, administration of the Emergency Solutions Grants 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 new rule does not require additional future legislative appropriations.

4. The proposed new rule 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 new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The proposed new rule 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 provides a regulatory framework for instances where the Department receives an additional allocation of funds for homelessness programs not contemplated by the current rule. However, this addition to the rule is necessary to ensure compliance with federal and state fund commitment deadlines.

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

8. The proposed new 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 new 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. The Department has evaluated this new rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

The Department has determined that [because this rule only impacts nonprofits and units of local government by outlining administrative requirements of an existing program, 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 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 new rule as to its possible effects on local economies and has determined that for the first five years the new rule will be in effect the proposed new rule has no economic effect on local employment because this rule only outlines administrative requirements of an existing program; therefore, no local employment impact statement is required to be prepared for the new rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the new rule on employment in each geographic region affected by this new rule…" Considering that these programs are offered in all areas of the state, there are no "probable" effects of the new rule 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 rule is in effect, the public benefit anticipated as a result of the new rule will be an updated and more germane rule. There

will not be any economic cost to any individuals required to comply with the new rule because the processes described by the rule have already been in place through the rule found at this section being repealed.

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 rule is in effect, enforcing or administering the new rule does not have any foreseeable implications related to costs or revenues of the state or local governments because this rule only outlines administrative requirements of an existing program.

REQUEST FOR PUBLIC COMMENT AND INFORMATION RELATED TO COST, BENEFIT OR EFFECT. The Department requests comments on the rule and also requests information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis from any person required to comply with the proposed rule or any other interested person. The public comment period will be held January 30, 2026, to March 3, 2026, to receive input on the newly proposed 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, by fax to (512) 475-0220, or email homelessprograms@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, March 3, 2026.

STATUTORY AUTHORITY. The new rule(s) is/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.

§7.31. Purpose.

(a) The purpose of this rule is to provide guidance and procedures for the Emergency Solutions Grants (ESG) and Special Allocations of ESG funding as authorized by Tex. Gov't Code §2306.053. ESG and federally-funded Special Allocation Program funds are federal funds awarded to the State of Texas by HUD and administered by the Department under this Chapter.

(b) The regulations in this subchapter, relating to ESG , govern the administration of funds and establish policies and procedures for use of ESG funds to meet the purposes contained in Title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. §§11371 - 11378) (the Act), as amended by the Homeless Emergency Assistance and Rapid Transition to Housing Act (HEARTH Act). This is also generally the case for federally-funded Special Allocation Programs administered under this Chapter.

(c) Federally-funded Special Allocation Programs are not subject to §7.33 of this title (relating to Apportionment of ESG Funds), §7.34 of this title (relating to Continuing Awards), §7.38 of this title (relating to Competitive Award and Funding Process), §7.39 of this title (relating to Uniform Selection Criteria), or §7.40 of this title (relating to Competitive Program Participant Services Section Criteria).

(d) In addition to this subchapter, a Subrecipient shall comply with the regulations applicable to the ESG and federally-funded Special Allocation programs as set forth in Chapters 1 and 2 of this title (relating to Administration and Enforcement, respectively), Subchapter A of Chapter 7 of this title (relating to General Policies and Procedures) and as set forth in 24 CFR Parts 5, 91, and 576 (the Federal Regulations). A Subrecipient must also follow all other applicable federal and state statutes and the regulations established in this chapter, relating to Homelessness Programs, as amended or supplemented.

(e) In the event that Congress, the Texas Legislature, or HUD add or change any statutory or regulatory requirements, special conditions, or waivers, concerning the use or administration of these funds, a Subrecipient shall comply with such requirements at the time they become effective.

§7.32. Use of ESG Funds.

(a) ESG Applications for provision of Program Participant services under emergency shelter, street outreach, homelessness prevention and/or rapid re-housing may include a request for funds for Homeless Management Information Systems (HMIS) activities. Applications proposing to provide only HMIS activities are not eligible for an award of funds.

(b) Subrecipient may not Subgrant funds, but may Subcontract for the provision of services. Such Subcontracts are subject to applicable procurement requirements.

(c) The Department's Governing Board of Directors, Executive Director, or his/her designee may limit activities in a NOFA, or by Contract.

(d) Program Participant services may be provided under street outreach, emergency shelter, homelessness prevention or rapid re-housing, as described in this subsection or otherwise permitted in Federal Regulations.

(e) The street outreach component may be provided to unsheltered Homeless persons as defined in 24 CFR §576.101(a). Eligible costs for Program Participants of street outreach include the following services:

(1) Engagement costs to locate, identify, and build relationships with unsheltered Homeless persons, including assessment of needs, crisis counseling, addressing urgent physical needs, provision of information and referrals;

(2) Case management costs to assess housing and service needs and coordinate delivery of services;

(3) Emergency health services to the extent that other health services are inaccessible or unavailable in the area;

(4) Emergency mental health services to the extent that other mental health services are inaccessible or unavailable in the area; and

(5) Transportation for outreach workers and Program Participants, not including the purchase or lease of vehicles.

(f) The emergency shelter component may be provided to Homeless persons per 24 CFR §576.102. Eligible emergency shelter costs are for Program Participant services and costs related to the shelter building, relocation, and operation.

(1) Eligible costs for Program Participants of emergency shelter services include:

(A) Case management to coordinate individualized services;

(B) Child care for children under the age of 13, and for disabled children under the age of 18;

(C) Education services providing instruction or training to enhance their ability to obtain and maintain housing, including but not limited to literacy, English literacy, General Educational Requirement (GED) preparation, consumer education, health education, and substance abuse prevention;

(D) Employment assistance and job training services;

(E) Outpatient health services to the extent that other health services are inaccessible or unavailable in the area;

(F) Legal services, to the extent that legal services are unavailable or inaccessible within the community, to assist with housing needs, excluding immigration and citizenship matters, matters related to mortgages, legal retainers and contingency fees;

(G) Life skills training including budgeting resources, managing money, managing a household, resolving conflict, shopping for food and need items, improving nutrition, using public transportation, and parenting;

(H) Outpatient mental health services to the extent that other mental health services are inaccessible or unavailable in the area;

(I) Outpatient substance abuse treatment services up to 30 days, excluding inpatient treatment; and

(J) Transportation for staff and Program Participants related to the provision of essential services, not including the purchase or lease of vehicles.

(2) Eligible emergency shelter costs related to the shelter building, relocation, and operation include:

(A) Certain costs for operation of emergency shelters, including provision of hotel or motel vouchers to Program Participants when no appropriate emergency shelter is available and minor or routine repairs to the shelter facility; and

(B) Assistance required under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(g) The homelessness prevention component may be provided to Homeless persons and persons At-risk of Homelessness per 24 CFR §576.103, and the rapid re-housing component may be provided to Homeless persons per 24 CFR §576.104. Homelessness prevention and rapid re-housing may be provided for up to 24 months of assistance in a 36-month period. Eligible costs for homelessness prevention and rapid re-housing include housing relocation and stabilization for financial assistance, housing relocation and stabilization services, and rental assistance.

(1) Housing relocation and stabilization for financial assistance include:

(A) Rental application fees;

(B) Security deposits (equal to not more than two month's rent) and last month's rent;

(C) Utility deposits and/or utility payments;

(D) Moving costs, such as truck rental or hiring a moving company. Payment of arrearages for temporary storage is not an eligible cost; and

(E) Costs to break a lease to effect an emergency transfer per 24 CFR §5.2005(e), if Program Participant is receiving rental assistance under ESG.

(2) Housing relocation and stabilization services include:

(A) Housing search and placement costs to assist in locating, obtaining, and retaining suitable permanent housing;

(B) Housing stability case management for assessing, arranging, coordinating and monitoring the delivery of individual services to facilitate housing stability;

(C) Mediation between the Program Participant and the landlord/owner to prevent loss of current housing;

(D) Legal services for housing needs excluding immigration and citizenship matters, matters related to mortgages, legal retainers and contingency fees; and

(E) Credit repair and resolution, excluding payment or modification of debts.

(3) Non-duplicative rental assistance may be provided for up to 24 months within any 36-month period. Late payment penalties during the term of assistance are not eligible ESG expenses. Rental assistance includes:

(A) Short-term rental assistance which is up to three months of rent, inclusive of arrearages, late fees accrued prior to the term of assistance, and last month's rent; and

(B) Medium-term rental assistance which is more than three months of rent but not more than 24 months of rent, inclusive of up to six months of arrearages, late fees accrued prior to the term of assistance, and last month's rent.

(h) Costs to participate in HMIS are eligible ESG costs. Eligible costs related to HMIS include:

(1) Hardware, software, equipment, office space, utility costs;

(2) Salary and staff costs for operation of HMIS, including technical support;

(3) HMIS training and overhead costs, including travel to HUD sponsored and approved HMIS training programs and travel costs for staff to conduct intake;

(4) HMIS participation fees charged by the HMIS lead agency; and

(5) HMIS-comparable databases for victim services providers or legal services providers.

(i) Eligible administrative costs for ESG are:

(1) General management and oversight of the ESG award, excluding cost to purchase office space;

(2) Provision of ESG training and costs to attend HUD-sponsored ESG training; and

(3) Costs to carry out required environmental reviews.

(j) Eligible activities and costs for federally funded Special Allocation Programs not included in this section may be eligible or ineligible based on federal requirements specific to the Special Allocation, as further reflected in the Contract.

§7.33. Apportionment of ESG Funds.

(a) The Department will retain funds for Administrative activities. Funds for Administrative or Program Participant services may be retained by TDHCA to Subgrant specific ESG activities, such as legal services or as operating costs for non-congregate emergency shelters funded by the Department's allocation of funds from the HOME American Rescue Plan Act.

(b) If the Department receives ESG or other funding from the U.S. Department of Housing and Urban Development (HUD) that generally incorporates the ESG statutes and regulations, but that has additional activity or geographic restrictions, the Department may elect not to use the Allocation Formula. Funds retained under subsection (a) of this section are not subject to the Allocation Formula.

(c) ESG funds not retained for the purposes outlined or excluded from the Allocation Formula in subsections (a) and (b) of this section will be made available by CoC region based on an Allocation

Formula. Allocation Formula factors noted in paragraphs (1) - (4) of this subsection will be used to calculate distribution percentages for each CoC region as follows:

(1) Fifty percent weight will be apportioned to renter cost burden for Households with incomes less than 30% Area Median Family Income (AMFI), as calculated in the HUD Comprehensive Housing Affordability Strategy;

(2) Fifty percent weight will be apportioned for the number of persons in poverty from the most recent five-year estimate of the American Community Survey released by the U.S. Census Bureau;

(3) Fifty percent weight will be apportioned to point-in-time counts, which are annual counts of sheltered and unsheltered persons experiencing homelessness on one day during the last two weeks of January as required by HUD for CoCs. If a CoC did not conduct a point-in-time count or only completed a partial point-in-time count, the results of the most recent point-in-time count conducted that covered both the sheltered and unsheltered persons experiencing homelessness will be utilized for the purposes of the Allocation Formula; and

(4) Negative 50% weight will be apportioned based on a total of all ESG funding allocated by HUD to local jurisdictions within the CoC region, and ESG funding awarded by the Department within the region from the previous fiscal year.

(d) Each CoC region is allocated a minimum amount of $100,000. This is accomplished by taking the amounts of all regions with over $100,000 during the initial allocation and redistributing a proportional share to the regions with less than $100,000. If the Department distributes by Allocation Formula less than the amount required to provide all regions with $100,000, then the funds will be split evenly among the CoC regions.

(e) Not less than 70% of ESG funding allocated to the CoC regions shall be initially withheld from competition for use by Subrecipients eligible for continuing awards as described under §7.34 of this title (relating to Continuing Awards).

(f) Those ESG funds allocated based on the formula in subsection (c) of this section will be made available for the provision of Program Participant services; they will be made available through a NOFA for both continuing awards described in subsection (e) of this section and for competitive Applications which will be released on an annual basis.

(1) Not more than 60% of total ESG funds under direct Subgrants, continuing, and competitive awards may be awarded for the provision of street outreach and emergency shelter activities. Funds will first be made available to direct Subgrants, then continuing awards. Remaining funds will be made available for competitive awards.

(2) Contract funding limits include the funding request for all Program Participant services proposed in the Application, HMIS, and Administrative funds.

(A) Funding request minimums and maximums will be noted in the NOFA.

(B) Funds awarded for HMIS are limited to 12% of the amount of funds awarded for Program Participant services.

(C) Administrative activities are limited to three percent of the amount of funds awarded for Program Participant services.

(g) ESG funds that have been deobligated by the Department or that have been voluntarily returned from an ESG Contract may be reprogrammed at the discretion of the Department, and are not included in the Allocation Formula or award process detailed in subsections (c) - (f) or (h) - (j) of this section.

(h) An ESG Applicant may have the right to appeal funding decisions per §1.7 of this title (relating to Appeals Process).

(i) The Department reserves the right to negotiate the final Contract amount and local Match requirement with an Applicant.

(j) Percentages described in this subchapter will not be rounded up to the nearest whole number.

§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 Special Allocations or Contracts for reallocated funds from prior years only, in accordance with §7.33 of this title (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 title (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 federally-funded Special Allocations) 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 title (relating to Application Review and Administrative Deficiency Process for Department NOFAs);

(3) Submitted two 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 federally-funded Special Allocations) 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 federally-funded Special Allocations);

(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 federally-funded Special Allocations);

(10) Submitted the most recent yearly report information, as required in §7.5(h)(1) of this title (relating to Subrecipient Reporting), in SAGE by the deadline established by the Department for the

report due in the period preceding the application submission deadline; and

(11) 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 title.

(h) Percentages identified in this section will not be rounded up to the nearest whole number.

§7.35. Eligible Subrecipients.

(a) An eligible Subrecipient is a Unit of Local Government as defined by HUD in CPD Notice 17-10, or a Private Nonprofit Organization, except as limited by subsection (c) of this section.

(b) For ESG-funded Special Allocation Programs, eligible Subrecipients include any entity type determined to be eligible by HUD, except as limited by subsection (c) of this section.

(c) The Department reserves the option to limit eligible Subrecipient entities in a given NOFA or in a Request for Application.

§7.36. General Threshold Criteria.

(a) Applications submitted to the Department are subject to general threshold criteria. Applications which do not meet the general threshold criteria or which cannot resolve an administrative deficiency related to general threshold criteria are subject to termination. Applicants applying directly to the Department to administer the ESG Program must submit an Application on or before the deadlines specified in the NOFA, notification of a direct Subgrant, or notification of availability of a continuing award, and must include items in paragraphs (1) - (13) of this subsection:

(1) Application materials as published by the Department including, but not limited to, program description, budget, and performance statement.

(2) An ESG budget that does not exceed the total amount available within the CoC region, other geographic limitation, Subgrant, or offer of continuing award, as applicable.

(3) A copy of the Applicant's written standards that comply with the requirements of 24 CFR §576.400 and certification of compliance with these standards. Any occupancy standard set by the Subrecipient must not conflict with local regulations or Texas Property Code §92.010.

(4) A copy of the Applicant's policy for termination of assistance that complies with the requirements of 24 CFR §576.402 and certification of compliance with these standards.

(5) A Service Area which consists of at least the entirety of one county or multiple counties within the CoC region under which Application is made, unless a CoC region does not include an entire county. When the CoC region does not encompass at least the entirety of one county, the Service Area must encompass the entire CoC region. The Service Area selected within an Application must be fully contained within one CoC region.

(6) Except for a federallyfunded Special Allocation that does not have a federal Match requirement, commitment in the budget to the provision of 100% Match, or request for a Match waiver, as applicable. Match waivers will be considered by the Department based on the rank of the Application. Applicants requesting an award of funds in excess of the minimum award amount as described in the NOFA for Program Participant services are not eligible to request or receive a Match waiver. In the event that the Match waivers requested exceed $100,000, the waivers will be considered only for the highest scoring eligible Applications, subject to availability of excess Match provided by ESG Applicants. Applicants that do not receive the waiver and are unable to provide a source of Match will be ineligible for an ESG award.

(7) Applicant certification of compliance with State and federal laws, rules and guidance governing the ESG Program as provided in the Application.

(8) Evidence of a Unique Entity Identifier (UEI) number for Applicant.

(9) Documentation of existing Section 501(c) tax-exempt status, as applicable.

(10) Completed previous participation review materials, as outlined in Chapter 1, Subchapter C of this title (relating to Previous Participation), for Applicant.

(11) Local government approval per 24 CFR §576.202(a)(2) for an Applicant that will be providing shelter activities with ESG or as ESG Match, as applicable. This documentation must be submitted not later than 30 calendar days after the Application submission deadline as specified in the NOFA, or prior to execution of a Contract for Subrecipients subject to a direct Subgrant, or continuing award. Receipt of the local government approval is a condition prior to the Department obligating ESG funding.

(12) A resolution or other governing body action from the Applicant's direct governing body which includes:

(A) Authorization of the submission of the Application;

(B) Title of the person authorized to represent the entity and who also has signature authority to execute a Contract; and

(C) Date that the resolution was passed by the governing body, which must be not older than 12 months preceding the date the Application is submitted.

(13) Applicants with an ESG Contract(s) must have submitted the most recent yearly report information, as required in §7.5(h)(1) of this title (relating to Subrecipient Reporting), in SAGE by the deadline established by the Department for the report due in the period preceding the application submission deadline.

(b) An Application must be substantially complete when received by the Department. An Application may be terminated if the Application is so unclear or incomplete that a thorough review cannot reasonably be performed, as determined by the Department. Such

Application will be terminated without being processed as an administrative deficiency. Specific reasons for a Department termination will be included in the notification sent to the Applicant but, because the termination may occur prior to completion of the full review, will not necessarily include a comprehensive list of all deficiencies in the Application. Termination of an Application may be subject to §1.7 of this title (relating to Appeals Process).

§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 administrative 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.

§7.38. Competitive Award and Funding Process.

(a) An Application may by submitted requesting funds for Program Participant services under street outreach, emergency shelter, homelessness prevention, and/or rapid re-housing. Each Application submission will include one uniform Application with information applicable across all Program Participant service types, and then information on each Program Participant service requested. Each Program Participant service reflected in an Application will be treated as a separate Application, assigned a separate Application number per service type, and will be scored and ranked separately for each service type selected. Applicants may be awarded funds for one or more Program Participant services in accordance with this section. Because each Program Participant service is reviewed separately and competes separately, an award of funds for provision of one Program Participant service does not affect an award of funds in any other Program Participant service reflected in that same Application submission.

(b) Applications submitted directly to the Department for under this section will receive points based on experience, program design, budget, previous performance, and performance measures. Applications will be scored and ranked based on selection criteria described in this subchapter.

(c) Applicants for a competitive award will be required to submit a self-score within the Application. In no event will the points awarded to the Applicant exceed the point value of the self-score in any selection criterion.

(d) Tie breakers. Each Application submitted to the Department for a competitive award shall be assigned a number between one and the total number of applications. The number assignment will be determined in a random selection process to occur immediately following the close of the application acceptance period, and Applicants will be notified of said number assignment as soon as possible thereafter. The randomly assigned numbers will be used to resolve ties, with the highest assigned number having the highest priority.

(e) Partial awards. In order to maintain funding within the Allocation Formula amounts designated for each CoC region as determined in this subchapter, an Applicant for a competitive award may be offered a partial award of their requested funds. An Applicant offered a partial award of funds must confirm their acceptance of a partial award, and submit updated information related to the reduction within seven calendar days following the date of notification. Scoring criteria may be updated based on the reduced funding request, but any changes to the scoring criteria must allow the Application to maintain its rank.

(f) Regional Funding Competition. Funding will be recommended first for Applicants within the CoC region up to the Allocation Formula amount designated for the CoC region as determined in this subchapter.

(1) Eligible Applications will be ranked in descending order by score within the CoC region which the Application proposes to serve. Subsection (d) of this section will be used to determine the priority of tied scores.

(2) ESG funds allocated to each CoC region will be awarded starting with the highest ranking Application and continue until the funds allocated for that CoC region are fully utilized, but not exceeded, or until the Applicant for the last Application to be recommended in the region declines an offer of a partial award.

(3) Applications proposing street outreach or emergency shelter will be ranked alongside all Applications in the region, however, a recommendation for a full award of an Application for street outreach

or emergency shelter will not be made through the first level of funding if funding recommendations in the CoC region for street outreach and emergency shelter will exceed 60% of the funding remaining in the CoC region after direct Subgrants and acceptance of continuing awards. Applications proposing street outreach and emergency shelter services but causing awards for such services in the region to exceed 60% of the available funding in the region, will be offered a partial award of up to the amount remaining to reach 60% for the region. If no funds remain available that would not exceed 60% at the regional level for a partial award, or if they decline such partial award, the Application will be passed over and recommendation of funding would proceed to the next highest scoring Application(s) in the region in order to fully fund the Formula Allocation amount for the region. Applications that were passed over for funding may be eligible to compete in the statewide funding competition, if no more than 60% of funds have been awarded for street outreach and emergency shelter in the total allocated funds.

(4) A partial award may be offered to the last highest ranking Application which is otherwise eligible for funding within the regional competition to ensure that the amount of funds recommended for a region does not initially exceed the amount identified in the Formula Allocation. Partial awards will be offered under the regional competition only if the funding remaining in the CoC region is more than $30,000.

(A) The Applicant or Applicants that accept an offer of a partial award may be required to amend the Application if the reduction in funds is expected to impact scored items and to adjust performance deliverables based on the reduced amount of funding. The revised score based on the partial award must still ensure the Application ranking would not be affected. If a partial award or the Applicant's subsequent adjustments results in a reduced score that alters their scoring rank within the regional competition, the opportunity to be funded from the first level of funding recommendations will not be offered to the Application.

(B) The Applicant may decline the partial award of funds and instead request to be included for consideration in the statewide competition.

(g) Statewide Funding Competition. If any funds remain after recommendations for all eligible Applications in the regional funding competition, such funds shall collapse and be made available in the statewide competition.

(1) All eligible Applications not recommended to be awarded under the regional funding competition will be ranked in descending order of score with the highest scoring unfunded Application, regardless of region, having the highest priority rank. Subsection (e) of this section will be used to determine the outcome of tied scores.

(2) Funds will be awarded in the statewide funding competition starting with the highest ranked Application and continuing until no funds remain available to award or until there are no eligible Applications left to be recommended for funding.

(3) Applications proposing street outreach or emergency shelter will be ranked alongside all Applications. If the 60% of the allocated funds has been awarded to Applications proposing street outreach and emergency shelter, Applications proposing these activities will not be recommended and will be passed over to fund Applications proposing homeless prevention or rapid re-housing.

(4) The final award in the statewide funding competition and the 60% capped street outreach and emergency shelter funding may be a partial award if an Application cannot be fully funded.

(A) An Applicant that accepts an offer of a partial award may be required to amend the Application if the reduction in funds is expected to impact scored items and to adjust performance deliverables based on the reduced amount of funding. The revised score based on the partial award must still ensure the Application's ranking would not be affected. Partial awards may only be offered if the remaining funding exceeds the minimum award amount as stated in the NOFA.

(B) The Applicant may decline a partial award of funds. Applicants that decline a partial award of funding within the statewide competition will be withdrawn from competition, as there are not sufficient remaining funds to award the Application.

(C) If a partial award or the Applicant's subsequent adjustments result in a reduced score that alters the scoring rank or an Applicant declines a partial award, the next highest ranked Application will be presented with the opportunity to be funded.

(h) If there are still funds available after the statewide funding competition, the Department may offer and recommend award amounts in excess of the funds requested and in excess of the award amount limits identified in §7.33(c) of this title (relating to Apportionment of ESG Funds), starting with the highest scoring Applications already identified to be recommended for an award, not to exceed an award more than 50% greater than their original request. The Department will provide notice of the proposed increase to the impacted Applicants. The budget and Performance targets would increase proportionally to the additional funding received. An Applicant will have the opportunity to accept or reject the recommendation for increased funding prior to final award by the Department.

(i) The Department reserves the right to negotiate the final Contract amount and local Match with a Subrecipient.

§7.39. Uniform Selection Criteria.

An Application for funding allocated in accordance with §7.33(b) of this title (relating to Apportionment of ESG Funds) and made to the Department may be awarded points under the following uniform selection criteria. The total of the score under this part will be the uniform Application score. The uniform Application score will be comprised of points awarded under each of the following criteria:

(1) Homeless participation. An Application may receive a maximum of three points for the participation of persons who are Homeless in the Applicant's program design. Points may be earned under subparagraphs (A) and (B) of this paragraph for a total of up to three points.

(A) An Application may receive a maximum of two points when at least one person who is Homeless or formerly Homeless is a member of or consults with the Applicant's policy-making entity for facilities, services, or assistance under ESG; and

(B) An Application may receive a maximum of one point when at least one person who is Homeless or formerly Homeless is employed in a paid position with duties that include constructing, renovating, maintaining, or operating the Applicant's ESG facilities, or providing services for occupants of its ESG facilities.

(2) Organizational or management experience. An Application may receive a maximum of eight points for an Applicant or its management staff's experience administering federal or State homeless programs.

(A) An Application may receive a maximum of three points for an Applicant or its management staff with at least two but less than four years of experience;

(B) An Application may receive a maximum of five points for an Applicant or its management staff with at least four but less than six years of experience; or

(C) An Application may receive a maximum of eight points for an Applicant or its management staff with six or more years of experience.

(3) Percentage of prior ESG awarded funds expended. An Application may receive a maximum of six points for the Applicant's past expenditure performance of ESG funds proportionate to the award of funds from TDHCA to the Applicant. This will apply to any and all ESG Contract(s), exclusive of federally funded Special Allocation Contracts, administered by the Applicant that were closed within 12 months prior to the date of the Application deadline established in the by the Department. Contract Expenditures will be averaged among all ESG Contracts that were closed within 12 months of the Application deadline, without requiring an amendment if the Applicant was awarded multiple Contracts. The percentage of ESG funds expended will be calculated utilizing the amount of the Contract as of its closing as stated in the Contract prior to amendments, except where the Applicant voluntarily return funds in accordance with this subchapter. Expenditure will be defined as the Applicant having reported the funds as expended. Applications may receive:

(A) Two points if the Applicant expended 91-94% of its prior ESG Contract funds as of its closing as stated in the Contract prior to amendments;

(B) Three points if the Applicant expended 95% to less than 100% of its prior ESG Contract funds as of its closing as stated in the Contract prior to amendments; or

(C) Six points if the Applicant expended 100% of its prior ESG Contract funds as of its closing as stated in the Contract prior to amendments.

(4) Contract History on Reporting and percentage of Outcomes. An Applicant may receive a maximum of twelve points for its prior timeliness of reports and performance achieved for previously awarded ESG Contract(s), exclusive of federally funded Special Allocation Contracts, that closed within 12 months prior to the date of the Application deadline established by the Department. Points may be requested under subparagraphs (A) - (E) of this paragraph, not to exceed a total of ten points. The Outcome percentages will be averaged among all prior ESG Contracts, exclusive of federally funded Special Allocation Contracts, that closed within 12 months prior to the date of the Application deadline to determine the final percentage amount for this scoring criterion. Applications may receive points as follows:

(A) Two points if the Applicant submitted the last three reports on or before the Contract end date within the reports' respective reporting deadlines;

(B) Two points if the Applicant met 100% or more of their street outreach target of persons exiting to temporary or transitional or permanent housing destination;

(C) Two points if the Applicant met 100% or more of their emergency shelter exits to permanent housing;

(D) Two points if the Applicant met 100% or more of their Homelessness prevention target for maintaining housing for three months or more;

(E) Two points if the Applicant met 100% or more of their rapid re-housing target for maintaining housing for three months or more; and

(F) Two points if the Applicant met 100% or more of their Match obligation.

(G) Twelve points if the Applicant has not previously been awarded an ESG Contract closed within 12 months prior to the date of the Application deadline.

(5) Monitoring history. Applications may receive a maximum of five points for the Applicant's previous ESG and federally funded Special Allocation program monitoring history. The Department will consider the monitoring history for three years before the date that Applications are first accepted under the NOFA when determining the points awarded under this criterion. Findings that were subsequently rescinded will not be considered Findings for the purposes of this scoring criterion. Applications may be limited to a maximum of:

(A) Five points if the Applicant has not received any monitoring Findings, including Applicants with no previous monitoring history;

(B) Not more than three points if the monitoring history has a close-out letter that included Findings, but the Findings were not related to Household eligibility or violations of procurement requirements;

(C) Not more than two points if the monitoring history has a close-out letter that included Findings related to Household eligibility;

(D) Not more than one point if the monitoring history has a monitoring close-out letter that included Findings related to violations of procurement requirements; or

(E) Zero points may be requested under this criterion if the Applicant received a Finding resulting in disallowed costs in excess of $5,000 which required repayment to the Department.

(6) Priority for certain communities. Applications may receive two points if at least one Colonia, as defined in Tex. Gov't Code §2306.083, is included in the Service Area identified in the Application. Applicants awarded points under this criterion will be contractually required to maintain a Service Area that includes at least one Colonia as identified on the Office of Attorney General's website.

(7) Previously unserved areas. Applications may receive a maximum of 10 points for provision of ESG services if at least one county in the Service Area included in the Application has not received ESG funds from the Department or directly from HUD within the previous federal funding year for services. Applications may receive a maximum (of ten points if at least one county within the Service Area as stated in the Application did not receive an award of ESG annual funds from the Department within the previous federal funding year.

(8) Percentages identified in this section will not be rounded up to the nearest whole number.

§7.40. Competitive Program Participant Services Selection Criteria.

(a) An Application for competitive funding allocated under §7.33(b) of this title (relating to Apportionment of ESG Funds), and made to the Department, may be awarded points for Program Participant services under each category. Points awarded for Program Participant services will be separately tabulated and added to the uniform Application score to determine a score for each of the Program Participant services Applications submitted. All scoring criteria that are based upon measurable future performance expectations will be measured and expected to be fulfilled by being included as a performance requirement in the Contract should the Application be awarded funds.

(b) Street outreach. An Application proposing street outreach may receive points under the following criteria:

(1) Matching funds for street outreach. An Application may receive a maximum of three points if the Applicant commits

Matching funds equal to or greater than 110% of the total ESG funds requested for street outreach.

(2) Street outreach serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(31) of this title (relating to Definitions). An Applicant providing street outreach may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who are in one or more Homeless Subpopulation;

(B) Two points based on a minimum target of 80% of persons served who are in one or more Homeless Subpopulation;

(C) Three points based on a minimum target of 90% of persons served who are in one or more Homeless Subpopulation;

(D) Four points based on a minimum target of 95% of persons served who are in one or more Homeless Subpopulation; or

(E) Five points based on a minimum target of 100% of persons served who are in one or more Homeless Subpopulation.

(3) Street outreach exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the Application due date who exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with street outreach who exited to positive housing destinations;

(B) Three points based on 35% of persons served with street outreach who exited to positive housing destinations;

(C) Four points based on 45% of persons served with street outreach who exited to positive housing destinations; or

(D) Five points based on 55% of persons served with street outreach who exited to positive housing destinations.

(4) Street outreach staff qualifications. An Applicant may receive a maximum of six points if a member of the staff interacting with Program Participants in the street outreach component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;

(B) Two points if a member of staff is fluent in one or more languages identified in the Applicant's Language Access Plan as necessary to provide equitable, meaningful access for persons with Limited English Proficiency; and

(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Street outreach temporary/transitional/permanent housing target. An Application may receive a maximum of three points based on the percentage of persons targeted to be served with street outreach who will be placed in temporary, transitional or permanent housing. An Application may receive a maximum of:

(A) One point based on a minimum target of 35% of persons served with street outreach who will be placed in temporary housing;

(B) Two points based on a minimum target of 45% of persons served with street outreach who will be placed in temporary housing; or

(C) Three points based on a minimum target of 55% of persons served with street outreach who will be placed in temporary housing.

(6) Street outreach services. An Application may receive a maximum of five points based on the number of street outreach services provided through ESG or other funds including engagement, case management, emergency health services, emergency mental health services, and transportation services. Emergency health services and emergency mental services may only be provided by ESG funds if these services are inaccessible or unavailable within the area. An Application may receive a maximum of:

(A) Two points if the Applicant provides street outreach engagement and case management;

(B) Three points if the Applicant provides street outreach engagement and case management, and one other service;

(C) Four points if the Applicant provides street outreach engagement and case management, and two other services; or

(D) Five points if the Applicant provides street outreach engagement and case management, and three other services.

(7) Experience providing street outreach. An Application may receive a maximum of 10 points based on the Applicant's experience providing street outreach services.

(A) Two points if the Applicant has provided street outreach for up to two years;

(B) Four points if the Applicant has provided street outreach for up to four years;

(C) Six points if the Applicant has provided street outreach for up to six years;

(D) Eight points if the Applicant has provided street outreach for up to eight years; or

(E) Ten points if the Applicant has provided street outreach for 10 or more years.

(c) Emergency shelter. An Application proposing emergency shelter may receive points under the following criteria:

(1) Matching funds for emergency shelter. An Application may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for emergency shelter.

(2) Emergency shelter serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(31) of this title. An Applicant providing emergency shelter may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who are in one or more Homeless Subpopulation;

(B) Two points based on a minimum target of 80% of persons served who are in one or more Homeless Subpopulation;

(C) Three points based on a minimum target of 90% of persons served who are in one or more Homeless Subpopulation;

(D) Four points based on a minimum target of 95% of persons served who are in one or more Homeless Subpopulation; or

(E) Five points based on a minimum target of 100% of persons served who are in one or more Homeless Subpopulation.

(3) Emergency shelter exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the Application due date exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with emergency shelter who exited to positive housing destinations;

(B) Three points based on 35% of persons served with emergency shelter who exited to positive housing destinations;

(C) Four points based on 45% of persons served with emergency shelter who exited to positive housing destinations; or

(D) Five points based on 55% of persons served with emergency shelter who exited to positive housing destinations.

(4) Emergency shelter staff qualifications. An Applicant may receive a maximum of six points if a member of the staff interacting with Program Participants in the street outreach component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;

(B) Two points if a member of staff is fluent in one or more languages, other than English, identified in the Applicant's Language Access Plan as necessary to provide equitable, meaningful access for persons with Limited English Proficiency; and

(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Emergency shelter permanent housing. An Applicant may receive a maximum of three points based on the percentage of persons served with emergency shelter targeted to be placed in permanent housing. An Application may receive a maximum of:

(A) One point based on a minimum target of 35% of persons served with emergency shelter who will be placed in permanent housing;

(B) Two points based on a minimum target of 45% of persons served with emergency shelter who will be placed in permanent housing; or

(C) Three points based on a minimum target of 55% of persons served with emergency shelter who will be placed in permanent housing.

(6) Emergency shelter services. An Applicant may receive a maximum of five points based on the number of emergency shelter services provided through ESG or other funds, as listed in 24 CFR §576.102. Emergency shelter services include case management, child care, education services, employment assistance and job training, outpatient health services, legal services, life skills training, outpatient mental health services, outpatient substance abuse treatment services, and transportation. Outpatient health services, mental services, and substance abuse treatment services should only be provided by ESG funds if these services are otherwise inaccessible or unavailable within the Service Area. This selection criterion will become a contractual requirement if the Applicant is awarded a Contract. An Application may receive a maximum of:

(A) Two points if the Applicant provides case management and two of the other services;

(B) Three points if the Applicant provides case management and three of the other services;

(C) Four points if the Applicant provides case management and four of the other services; or

(D) Five points if the Applicant provides case management and five of the other services.

(7) Experience providing emergency shelter. An Application may receive a maximum of 10 points based on the Applicant's experience providing emergency shelter services.

(A) Two points if the Applicant has provided emergency shelter for up to two years;

(B) Four points if the Applicant has provided emergency shelter for up to four years;

(C) Six points if the Applicant has provided emergency shelter for up to six years;

(D) Eight points if the Applicant has provided emergency shelter for up to eight years; or

(E) Ten points if the Applicant has provided emergency shelter for 10 or more years.

(d) Homelessness prevention. An Application proposing homelessness prevention may receive points under the following criteria:

(1) Matching funds for homelessness prevention. An Application may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for homelessness prevention.

(2) Homelessness prevention serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(31) of this title. An Applicant providing homelessness prevention may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who have one or more special needs;

(B) Two points based on a minimum target of 80% of persons served who have one or more special needs;

(C) Three points based on a minimum target of 90% of persons served who have one or more special needs;

(D) Four points based on a minimum target of 95% of persons served who have one or more special needs; or

(E) Five points based on a minimum target of 100% of persons served who have one or more special needs.

(3) Homelessness prevention exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the Application due date exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with homelessness prevention who exited to positive housing destinations;

(B) Three points based on 35% of persons served with homelessness prevention who exited to positive housing destinations;

(C) Four points based on 45% of persons served with homelessness prevention who exited to positive housing destinations; or

(D) Five points based on 55% of persons served with homelessness prevention who exited to positive housing destinations.

(4) Homelessness prevention staff qualifications. An Applicant may receive a maximum of six points if a member of the staff interacting with Program Participants in the homelessness prevention component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;

(B) Two points if a member of staff is fluent in one or more languages, other than English, identified in the Applicant's Language Access Plan as necessary to provide equitable, meaningful access for persons with Limited English Proficiency; and

(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Homelessness prevention maintaining housing. An Application may receive a maximum of three points based on the percentage of persons served with Homelessness prevention who are targeted to maintain their housing for three months or more after program exit. Applications may receive a maximum of:

(A) One point based on a minimum target of 50% of persons served with homelessness prevention maintaining housing for three months;

(B) Two points based on a minimum target of (60% of persons served with homelessness prevention maintaining housing for three months; or

(C) Three points based on a minimum target of 70% of persons served with homelessness prevention maintaining housing for three months.

(6) Homelessness prevention services and rental assistance. An Application may receive a maximum of five points based on the number of homeless prevention services and type of rental assistance provided through ESG or other funds. Homeless prevention services and rental assistance include rental application fees, security deposits and last month's rent, utility payments/deposits, moving costs, housing search and placement, housing stability case management, mediation, legal services, credit repair, short-term rental assistance, and medium-term rental assistance. An Application may receive a maximum of:

(A) Two points if the Applicant provides housing stability case management and three of the other services or rental assistance;

(B) Three points if the Applicant provides housing stability case management and four of the other services or rental assistance;

(C) Four points if the Applicant provides housing stability case management and five of the other services or rental assistance; or

(D) Five points if the Applicant provides housing stability case management and six of the other services or rental assistance.

(7) Experience providing homelessness prevention or rental assistance services. An Application may receive a maximum of 10 points based on the Applicant's experience providing homelessness prevention or tenant-based rental assistance services.

(A) Two points if the Applicant has provided homelessness prevention or tenant-based rental assistance services for up to two years;

(B) Four points if the Applicant has provided homelessness prevention or tenant-based rental assistance services for up to four years;

(C) Six points if the Applicant has provided homelessness prevention or tenant-based rental assistance services for up to six years;

(D) Eight points if the Applicant has provided homelessness prevention or tenant-based rental assistance services for up to eight years; or

(E) Ten points if the Applicant has provided homelessness prevention or tenant-based rental assistance services for 10 or more years.

(e) Rapid re-housing. An Application proposing rapid re-housing may receive points under the following criteria:

(1) Matching funds for rapid re-housing. Applications may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for rapid re-housing.

(2) Rapid re-housing serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(31) of this title. Applicants providing rapid re-housing may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who are in one or more Homeless Subpopulation;

(B) Two points based on a minimum target of 80% of persons served who are in one or more Homeless Subpopulation;

(C) Three points based on a minimum target of 90% of persons served who are in one or more Homeless Subpopulation;

(D) Four points based on a minimum target of 95% of persons served who are in one or more Homeless Subpopulation; or

(E) Five points based on a minimum target of 100% of persons served who are in one or more Homeless Subpopulation.

(3) Rapid re-housing exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the Application due date exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with rapid re-housing exited to positive housing destinations;

(B) Three points based on 35% of persons served with rapid re-housing who exited to positive housing destinations;

(C) Four points based on 45% of persons served with rapid re-housing who exited to positive housing destinations; or

(D) Five points based on 55% of persons served with rapid re-housing who exited to positive housing destinations.

(4) Rapid re-housing staff qualifications. An Applicant may receive a maximum of six points if a member of the staff interacting with Program Participants in the rapid re-housing component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;

(B) Two points if a member of staff is fluent in one or more languages, other than English, identified in the Applicant's Language Access Plan as necessary to provide equitable, meaningful access for persons with Limited English Proficiency; and

(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Rapid re-housing maintaining housing. Applicants may receive a maximum of three points based on the percentage of persons served with rapid re-housing targeted to maintain their housing for three months or more after program exit. Applications may receive a maximum of:

(A) One point based on a minimum target of 50% of persons served with rapid re-housing maintaining housing for three months;

(B) Two points based on a minimum target of 60% of persons served with rapid re-housing maintaining housing for three months; or

(C) Three points based on a minimum target of 70% of persons served with rapid re-housing maintaining housing for three months.

(6) Rapid re-housing services and rental assistance. Applicants may receive a maximum of five points based on the number of rapid re-housing services and type of rental assistance provided through ESG or other funds. Rapid re-housing services and rental assistance include rental application fees, security deposits/last month's rent, utility payments/deposits, moving costs, housing search and placement, housing stability case management, mediation, legal services, credit repair, short-term rental assistance, medium-term rental assistance. Applications may receive a maximum of:

(A) Two points if the Applicant provides housing stability case management and three of the other services or rental assistance;

(B) Three points if the Applicant provides housing stability case management and four of the other components;

(C) Four points if the Applicant provides housing stability case management and five of the other components; or

(D) Five points if the Applicant provides housing stability case management and six of the other components.

(7) Experience providing rapid re-housing or tenant-based rental assistance services. Applications may receive a maximum of 10 points based on the Applicant's experience providing homeless prevention or tenant-based rental assistance services.

(A) Two points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to two years;

(B) Four points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to four years;

(C) Six points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to six years;

(D) Eight points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to eight years; or

(E) Ten points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for 10 or more years.

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

(a) The initial Contract Term for ESG funds may not exceed 12 months, unless otherwise approved by the Board for a federally-funded Special Allocation Program. 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.

(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 the expiration 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 title (relating to Apportionment of ESG Funds) 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.

§7.42. General Administrative Requirements.

(a) Subrecipient must have written policies and procedures to ensure that sufficient records are established and maintained to enable a determination that applicable federal and state requirements are met. The written standards must be applied consistently for all Program Participants. Written policies must include, but not be limited to, Inclusive Marketing outlined in §7.10 of this title (relating to Inclusive Marketing).

(b) Subrecipient must obtain the correct level of environmental clearance prior to expenditure of funds. Activities for which the Subrecipient does not properly complete the Department's environmental review process are ineligible, and funds will not be reimbursed or will be required to be repaid.

(c) Subrecipient is prohibited from charging occupancy fees for emergency shelter activities supported by funds covered by this subchapter.

(d) If a Private Nonprofit Organization Subrecipient wishes to expand the geographic scope of its emergency shelter activities after Contract execution, an updated certification of approval from the Unit of General Purpose Local Government with jurisdiction over the updated Service Area must be submitted to the Department before funds are spent on emergency shelter in those areas.

(e) Subrecipient must document compliance with the shelter and housing standards per 24 CFR §576.500(j) and (k), including but not limited to, maintaining sufficient construction and shelter inspection reports.

(f) Rental developments must comply with all construction or operational requirements governing the development or program to which funds are comingled, and must comply with local health and safety codes.

(g) Subrecipient may be required to complete Contract orientation training prior to submission of the first Monthly Expenditure Report. Subrecipient must also complete training as requested by the Department in response to Findings or other issues identified while managing the Contract.

(h) Subrecipient must develop and establish written procurement procedures that comply with federal, State, and local procurement requirements. A conflict of interest related to procurement is prohibited by 2 CFR §200.317-318 or Chapter 171 of the Local Government Code, as applicable.

(i) In instances where a potential conflict of interest exists related to a beneficiary of assistance to a Program Participant, Subrecipient must submit a request to the Department to grant an exception to any conflicts prohibited using the procedures at 24 CFR §576.404. The request submitted to the Department must include a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict, a description of how the public disclosure was made, and an attorney's opinion that the conflict does not violate State or local law. No funds will be committed to assist a Household until HUD has granted an exception.

(j) Subrecipient will comply with the requirements under 24 CFR §576.409, "Protection for victims of domestic violence, dating violence, sexual assault, or stalking."

(1) Compliance with 24 CFR §576.409 includes, but is not limited to, providing two Departmental forms called "Notice of Occupancy Rights under the Violence Against Women Act" based on HUD form 5380 and "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking," HUD form 5382, to each of the following:

(A) All applicants for short- and medium-term rental assistance at the time of admittance or denial;

(B) Program Participants of short- and medium-term rental assistance prior to execution of a Rental Assistance Agreement;

(C) Program Participants of short- and medium-term rental assistance with any notification of eviction or notification of termination of assistance; and

(D) Program Participants of short- and medium-term rental assistance either during an annual Recertification or lease renewal process, whichever is applicable.

(2) Subrecipient will adopt and follow an Emergency Transfer Plan based on HUD's model Emergency Transfer Plan, pursuant to 24 CFR §5.2005(e). Within three calendar days after Program Participants request transfers, Subrecipient will inform Program Participants of their eligibility under their Emergency Transfer Plan and keep records of all outcomes.

§7.43. Program Income.

(a) Program income is gross income received by the Subrecipient or its Affiliates directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. 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. Except as outlined in the Contract, Program income does not include interest on federal grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) Program income received and expended during the Contract Term will count toward meeting the Subrecipient's Matching requirements, per 24 CFR §576.201(f), provided the costs are eligible costs that supplement the program.

(c) Security and utility deposits paid on behalf of a Program Participant should be treated as a grant to the Program Participant. The deposit must remain with the Program Participant, and if returned, is to be returned only to the Program Participant. If the landlord or the utility service provider requires that the deposit be returned to the Subrecipient, Affiliate, Subcontractor, or Subgrantee, the deposit is program income, and must be treated as described in this subsection.

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

(e) Program income that is received after the end of the Contract Term, or not expended within the Contract Term, along with program income received two years following the end of the Contract Term must be returned to the Department within 10 calendar days of receipt. Income directly generated by a grant-supported activity after the two year period is no longer program income and may be retained by 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.

Filed with the Office of the Secretary of State on January 16, 2026.

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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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CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER E. POST AWARD AND ASSET MANAGEMENT REQUIREMENTS

10 TAC §§10.400, 10.401, 10.405 - 10.408

The Texas Department of Housing and Community Affairs (the Department) proposes amendments to 10 TAC Chapter 10, Subchapter E, §10.400 Purpose, §10.401 Housing Tax Credit and Tax Exempt Bond Developments, §10.405 Amendments and Extensions, §10.406 Ownership Transfers, §10.407 Right of First Refusal, and §10.408 Qualified Contract Requirements. The purpose of the proposed amendments is to make corrections to gain consistency across other sections of rule, clarify existing language and processes that will ensure accurate processing of post award activities, and to communicate more effectively with multifamily Development Owners regarding their responsibilities after funding or award by the Department.

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.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the amendments would be in effect, the amendments do not create or eliminate a government program, but relate to changes to an existing activity, concerning the post award activities of Low Income Housing Tax Credit (LIHTC) and other Department-funded multifamily Developments.

2. The amendments do not require a change in work that would require the creation of new employee positions, nor are the amendments significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The amendments do not require additional future legislative appropriations.

4. The amendments do not result in an increase in fees paid to the Department or in a substantial decrease in fees paid to the Department.

5. The amendments are not creating a new regulation, but propose revisions to provide additional clarification. The purpose of the amendment to §10.401(b) is to ensure that Third Party construction inspections are not altered by other parties. The amendments to §10.405 are to be consistent with the removal of the experience requirement from §11.204 of the Qualified Allocation Plan; to add amendments to Contracts; to identify when an amendment to the LURA for an expiration of an Elderly restriction can be considered non-material; to identify that a request to opt into the updated 24 CFR Part 92 (2025 HOME final rule) in accordance with §10.601(g) of this chapter pertaining to Compliance Monitoring Objectives and Applicability would be a non-material amendment to the Contract; and require Development Owners to provide an explanation when a LURA amendment pertains to a right enforceable by a tenant or other third party. The amendments to §10.406(b) are to meet the requirement in the 2025 HOME final rule that requires tenants to be notified within 30 calendar days prior to a foreclosure and to require the notification to include the rent/income requirements post foreclosure; to require a Community Housing Development Organization (CHDO) to renew their certification using the new certification package that includes the 2025 HOME final rule requirements; and to add clarification that additional notification requirements may apply under §10.607 of this Chapter pertaining to Reporting Requirements. The amendments to §10.407 are to state that the right of first refusal process will not be required when the Multifamily Direct Loan LURA requires a new Owner to be a CHDO, but the Development is subject to the 2025 HOME final rule as identified in §10.601(g) of this chapter pertaining to Compliance Monitoring Objectives and Applicability, and the Development Owner is selling or conveying the Development to another CHDO approved by the Department, and to state that if a Multifamily Direct Loan LURA requires a 60-day posting and is subject to the 20205 HOME final rule as identified in §10.601(g) of this chapter pertaining to Compliance Monitoring Objectives and Applicability, then a CHDO approved by the Department may submit an offer to purchase the property. The purpose of including §§10.400 and 10.408 are to allow public comment on these sections to meet the four-year rule review requirement specified in Tex. Gov't Code §2001.039.

6. The amendments will not repeal an existing regulation.

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

8. The amendments 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.

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 the handling of post award and asset management activities of multifamily Developments awarded funds through various Department programs. Other than in the case of a small or micro-business that is an owner or a party to one of the Department's properties, no small or micro-businesses are subject to the rule. If a small or micro-business is such an owner or participant, the new rule provides for a more clear, transparent process for doing so and do not result in a negative impact for those small or micro-busi-

nesses. There are not likely to be any rural communities subject to the amendments because this rule is applicable only to the owners or operators of properties in the Department's portfolio, not municipalities.

3. The Department has determined that because this rule relates only to the process in use for the post award and asset management activities of the Department's portfolio, 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 amendments 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 rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect there will be no economic effect on local employment, because this rule only provides for administrative processes required of properties in the Department's portfolio. No program funds are channeled through this rule, so no activities under this rule would support additional local employment opportunities. Alternatively, the rule would also not cause any negative impact on employment. Therefore, no local employment impact statement is required to be prepared for the rule.

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 no impact is expected on a statewide basis, there are also no "probable" effects of the new rule on particular geographic regions.

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 amendments are in effect, the benefit anticipated as a result of the amended sections would be increased clarity and consistency across rule sections. There will not be economic costs to individuals required to comply with the amendment.

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 amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT AND INFORMATION RELATED TO COST, BENEFIT OR EFFECT. The Department requests comments on the rule and also requests information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis from any person required to comply with the proposed rule or any other interested person. The public comment period will be held January 30, 2026, to March 3, 2026, to receive input on the proposed amended sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Lee Ann Chance, Asset Management Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email to leeann.chance@tdhca.texas.gov. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Central Time, on March 3, 2026.

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

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

§10.400. Purpose.

(a) The purpose of this subchapter is to establish the requirements governing the post award and asset management activities associated with awards of multifamily Development assistance pursuant to Tex. Gov't Code, Chapter 2306 and its regulation of multifamily funding provided through the Texas Department of Housing and Community Affairs (the Department [~~"Department"~~]) as authorized by the legislature. This subchapter is designed to ensure that Developers and Development Owners of low-income Developments that are financed or otherwise funded through the Department maintain safe, decent and affordable housing for the term of the affordability period. Therefore, unless otherwise indicated in the specific section of this subchapter, any uncorrected issues of noncompliance outside of the corrective action period or outstanding fees (related to the Development subject to the request) owed to the Department must be resolved to the satisfaction of the Department before a request for any post award activity described in this subchapter will be acted upon. Non-compliance issues that cannot be corrected will be taken into account and will be reviewed by Asset Management staff to determine if additional action is required by the Development Owner.

(b) The capitalized terms in this subchapter shall have the meaning as defined in this title in Chapter 1 relating to Administration, Chapter 2 relating to Enforcement, Chapter 10 relating to Uniform Multifamily Rules, Chapter 11 relating to the Qualified Action Plan (QAP), Chapter 12 relating to the Multifamily Housing Revenue Bond Rules, Chapter 13 relating to the Multifamily Direct Loan Rule, Tex. Gov't Code Chapter 2306, Internal Revenue Code (the Code) §42, the applicable HOME [~~Final~~] Rule, the NHTF Interim Rule, and other federal or Department rules, as applicable.

§10.401. Housing Tax Credit and Tax Exempt Bond Developments.

(a) 10% Test (Competitive HTC Only). No later than July 1 of the year following the submission of the Carryover Allocation Agreement or as otherwise specified in the applicable year's Qualified Allocation Plan, documentation must be submitted to the Department verifying that the Development Owner has expended more than 10% of the Development Owner's reasonably expected basis, pursuant to §42(h)(1)(E)(i) and (ii) of the Code and Treasury Regulations, 26 CFR §1.42-6. The Development Owner must submit, in the form prescribed by the Department, documentation evidencing paragraphs (1) - (7) of this subsection, along with all information outlined in the Post Award Activities Manual. Satisfaction of the 10% Test will be contingent upon the submission of the items described in paragraphs (1) - (7) of this subsection as well as all other conditions placed upon the Application in the Commitment. Requests for an extension will be reviewed on a case by case basis as addressed in §10.405(c) of this subchapter and §11.2 of this title, as applicable, and a point deduction evaluation will be completed in accordance with Tex. Gov't Code §2306.6710(b)(2) and §11.9(f) of this title. Documentation to be submitted for the 10% Test includes:

(1) An Independent Accountant's Report and Taxpayer's Basis Schedule form. The report must be prepared on the accounting firm's letterhead and addressed to the Development Owner or an Affiliate of the Development Owner. The Independent Accountant's Report and Taxpayers Basis Schedule form must be signed by the Development Owner. If, at the time the accountant is reviewing and preparing

their report, the accountant has concluded that the taxpayer's reasonably expected basis is different from the amount reflected in the Carryover Allocation agreement, then the accountant's report should reflect the taxpayer's reasonably expected basis as of the time the report is being prepared;

(2) Any conditions of the Commitment or Real Estate Analysis underwriting report due at the time of 10% Test submission;

(3) Evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site and a current title policy. The Development Site must be identical to the Development Site that was submitted at the time of Application submission. For purposes of this paragraph, any changes to the Development Site acreage between Application and 10% Test must be addressed by written explanation or, as appropriate, in accordance with §10.405 of this subchapter (relating to Amendments and Extensions);

(4) A current survey or plat of the Development Site, prepared and certified by a duly licensed Texas Registered Professional Land Surveyor. The survey or plat must clearly delineate the flood plain boundary lines and show all easements and encroachments;

(5) For New Construction, Reconstruction, and Adaptive Reuse Developments, a certification from a Third Party civil engineer or architect stating that all necessary utilities will be available at the Development Site and that there are no easements, licenses, royalties, or other conditions on or affecting the Development that would materially or adversely impact the ability to acquire, develop, and operate as set forth in the Application. Copies of supporting documents may be required by the Department;

(6) For the Development Owner and on-site or regional property manager, training certificate(s) from a Department approved "property owner and manager Fair Housing trainer" showing that a controlling Principal in the Development Owner structure and an on-site or regional property manager attended and passed at least five hours of Fair Housing training. For architects and engineers, training certificate(s) from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineer responsible for certifying compliance with the Department's accessibility and construction standards has attended and passed at least five hours of Fair Housing training. Certifications required under this paragraph must not be older than three years from the date of submission of the 10% Test Documentation, and must verify that all parts or phases of the offered training have been completed; two certificates supplied for the same part or phase of an offered training will not be counted towards the five hour required minimum, even if they were attended on different dates; and

(7) A Certification from the lender and syndicator identifying all known Guarantors. If identified Guarantors have changed from the Guarantors or Principals identified at the time of Application, a non-material amendment may be required in accordance with §10.405 of this subchapter (relating to Amendments and Extensions), and the new Guarantors or Principals must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(8) Evidence of submission of the CMTS Filing Agreement pursuant to §10.607(a) of this title (relating to Reporting Requirements).

(b) Construction Status Report (All Multifamily Developments). All multifamily Developments must submit a construction status report. Construction status reports shall be due by the tenth day of the month following each reporting quarter's end (January, April, July, and October) and continue on a quarterly basis until the entire Development is complete as evidenced by one of the following: Certificates of occupancy for each building, the Architect's Certificate(s) of Substantial Completion (AIA Document G704 or equivalent form) for the entire Development, the final Application and Certificate for Payment (AIA Document G702 and G703), or an equivalent form approved for submission by the construction lender and/or investor. For Competitive Housing Tax Credit Developments, the initial report is due by October 10th following the year of award (this includes Developments funded with HTC and TDHCA Multifamily Direct Loans), and for Developments awarded under the Department's Multifamily Direct Loan programs only, the initial report is due by the 90th calendar day after loan closing. For Tax Exempt Bond Developments, the initial construction status report must be submitted as part of the Post Bond Closing Documentation and is due by the 60th calendar day following closing on the bonds. A Construction Status Report not submitted by the due date will incur an extension fee in accordance with §11.901 of this title (relating to Fee Schedule). The initial report for all multifamily Developments shall consist of the items identified in paragraphs (1) - (6) of this subsection, unless stated otherwise. All subsequent reports shall contain items identified in paragraphs (4) - (6) of this paragraph and must include any changes or amendments to items in paragraphs (1) - (3) of this subsection if applicable:

(1) The executed partnership agreement with the investor or, for Developments receiving an award only from the Department's Direct Loan Program, other documents setting forth the legal structure and ownership. If identified Guarantors or Principals of a Guarantor entity were not already identified as a Principal of the Owner, Developer, or Guarantor at the time of Application, a non-material amendment must be requested in accordance with §10.405 of this subchapter, and the new Guarantors and all of its Principals, as applicable, must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee);

(2) The executed construction contract for the General Contractor, prime subcontractor(s) and Affiliates or Related Party subcontractor(s);

(3) The construction loan agreement. If the loan has not closed, the anticipated closing date must be provided and, upon closing, the agreement must be provided to the Department;

(4) The most recent Application and Certificate for Payment (AIA Document G702 and G703) certified by the Architect of Record (or equivalent form approved for submission by the construction lender and/or investor) for the General Contractor, prime subcontractor(s) and Affiliates or Related Party subcontractor(s);

(5) All Third Party construction inspection reports not previously submitted. If the lender and/or investor does not require third party construction inspection reports, the Development Owner must hire a Third Party [~~third party~~] Party inspector to perform these inspections on a quarterly basis, and the Third Party inspector, or Third Party lender or investor, must [~~and~~] submit the inspection reports to the Department. Third Party construction inspection reports must include, at a minimum, the date construction started (initial submission only), a discussion of site conditions as of the date of the site visit, current photographs of the construction site and exterior and interior of buildings, an estimated percentage of construction completion as of the date of the site visit, identification of construction delays and other relevant progress issues, if any, and the anticipated construction completion date; and

(6) Minority Owned Business Report (HTC only) showing the attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection

with the Development are Minority Owned Businesses as required and further described in Tex. Gov't Code §2306.6734.

(c) LURA Origination.

(1) The Development Owner must request origination of the HTC LURA as directed in the Post Award Activities Manual. The Department will draft a LURA for the Development Owner that will impose the income and rent restrictions identified in the Development's final underwriting report and other representations made in the Application, including but not limited to specific commitments to provide tenant services, to lease to Persons with Disabilities, and/or to provide specific amenities. After origination, the Department executed LURA and all exhibits and addendums will be sent to the Development Owner to execute and record in the real property records for the county in which the Development is located. A copy of the fully executed, recorded LURA must be returned to the Department no later than the end of the first year of the Credit Period. In general, no Housing Tax Credits are allowed to be issued for a building unless there is a properly executed and recorded LURA in effect at the end of the first year of the Credit Period. Nothing in this section negates a Development Owner's responsibility for full compliance with §42(h)(6) of the Code. The Department will not issue IRS Form(s) 8609 until it receives a copy of the fully executed, recorded LURA.

(2) LURAs for Direct Loan awardees will be prepared by the Department's Legal Division and executed at loan closing.

(d) Cost Certification (Competitive and Non-Competitive HTC, and related activities only). The Department conducts a feasibility analysis in accordance with §42(m)(2)(C)(i)(III) of the Code and Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) to make a final determination on the allocation of Housing Tax Credits. For Non-Competitive HTC Developments, the amount of tax credits reflected in the IRS Form(s) 8609 may be greater or less than the amount set forth in the Determination Notice based upon the Department's determination as of each building's placement in service. Any increase of tax credits will only be permitted if it is determined necessary by the Department, as required by §42(m)(2)(D) of the Code through the submission of the Cost Certification package. Increases to the amount of tax credits that exceed 120% of the amount of credits reflected in the Determination Notice must be approved by the Board. Increases to the amount of tax credits that do not exceed 120% of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director or designee. All credit increases are subject to the Tax-Exempt Bond Credit Increase Request Fee as described in Chapter 11, Subchapter E of this Part (relating to Fee Schedule, Appeals, and other Provisions). The requirements for cost certification include those identified in paragraphs (1) - (3) of this subsection.

(1) For Competitive HTC Developments, Development Owners must file cost certification documentation no later than January 15 following the first year of the Credit Period, as defined in §42(f)(1) of the Code. For Tax-Exempt Bond Developments, Development Owners must file cost certification documentation no later than May 15 following the first year of the Credit Period.

(2) The Department will evaluate the cost certification documentation and notify the Development Owner of any additional required documentation needed to complete the review. The Department reserves the right to request additional documents or certifications as it deems necessary or useful in the determination of the Development's eligibility for a final Housing Tax Credit allocation amount. Any communication issued to the Development Owner pertaining to the cost certification documentation may also be sent to the syndicator. In accordance with Tex. Gov't Code §2306.6724(g), IRS Form(s) 8609 will be issued no later than the 120th day following the date on which the Department receives a complete cost certification package, and the Development Owner has fulfilled any requests for information.

(3) The cost certification package must meet the conditions as stated in subparagraphs (A) - (G) of this paragraph. The Development Owner has:

(A) Provided evidence that all buildings in the Development have been placed in service by:

(i) December 31 of the year the Commitment was issued;

(ii) December 31 of the second year following the year the Carryover Allocation Agreement was executed; or

(iii) the approved Placed in Service deadline;

(B) Provided a complete final cost certification package in the format prescribed by the Department. As used herein, a complete final cost certification package means a package that meets all of the Department's criteria with all required information and exhibits listed in clauses (i) - (xxxiv) of this subparagraph, and pursuant to the Post Award Activities Manual. If any item on this list is determined to be unclear, deficient, or inconsistent with the cost certification review completed by the Department, a Request for Information (RFI) will be sent to the Development Owner. Requirements include:

(i) Owner's signed and notarized Statement of Certification verifying the CPA firm's licenses and validity, including any restrictions;

(ii) Owner Summary & Organization Charts for the Owner, Developer, and Guarantors;

(iii) Evidence of Qualified Nonprofit or CHDO Participation;

(iv) Certification and evidence of Historically Underutilized Business (HUB) Participation;

(v) Development Team List;

(vi) Development Summary with Architect's Certification;

(vii) Development Change Documentation;

(viii) As Built Survey;

(ix) A copy of the fully executed Closing Statement for each parcel of land and/or buildings purchased and included in the Development;

(x) Development Owner's Title Policy for the Development;

(xi) Title Policy Update;

(xii) Placement in Service;

(xiii) Evidence of Placement in Service;

(xiv) Architect's Certification of Completion Date and Date Ready for Occupancy (for Developments located in areas where Certificates of Occupancy (COs) are not issued by a local government or rehabilitation Developments that cannot provide COs);

(xv) Auditor's Certification of Acquisition/Rehabilitation Placement in Service Election;

(xvi) Independent Auditor's Report;

(xvii) Independent Auditor's Report of Bond Financing;

(xviii) Development Cost Schedule;

(xix) Contractor's Application for Final Payment (G702/G703) for the General Contractor, all prime subcontractors, Affiliated Contractors, and Related Party Contractors;

(xx) Additional Documentation of Offsite Costs;

(xxi) Rent Schedule;

(xxii) Utility Allowances;

(xxiii) Annual Operating Expenses;

(xxiv) 30 Year Rental Housing Operating Pro Forma;

(xxv) Current Operating Statement in the form of a trailing twelve month statement;

(xxvi) Current Rent Roll;

(xxvii) Summary of Sources and Uses of Funds;

(xxviii) Final Limited Partnership Agreement with all amendments and exhibits;

(xxix) All Loan Agreements and Promissory Notes (except for Agreements and Notes issued directly by the Department);

(xxx) Architect's Certification of Accessibility Requirements;

(xxxi) Development Owner Assignment of Individual to Compliance Training;

(xxxii) TDHCA Compliance Training Certificate (not older than two years from the date of cost certification submission);

(xxxiii) TDHCA Final Inspection Clearance Letter or evidence of submitted final inspection request to the Compliance Division (IRS Form(s) 8609 will not be issued without a TDHCA Final Inspection Clearance Letter); and

(xxxiv) Other Documentation as Required, including but not limited to conditions to be satisfied at cost certification as reflected in the Development's latest Underwriting Report;

(C) Informed the Department of and received written approval for all amendments, extensions, and changes in ownership relating to the Development in accordance with §10.405 of this subchapter (relating to Amendments and Extensions) and §10.406 of this subchapter (relating to Ownership Transfers (§2306.6713));

(D) Paid all applicable Department fees, including any past due fees;

(E) Met all conditions noted in the Department underwriting report, Determination Notice, and Commitment;

(F) Corrected all issues of noncompliance, including but not limited to noncompliance status with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject Development, as described in this chapter. Developments in the corrective action period and/or with any uncorrected issues of noncompliance outside of the corrective action period will not be issued IRS Form(s) 8609s until all events of noncompliance are corrected or otherwise approved by the Executive Director or designee; and

(G) Completed an updated underwriting evaluation in accordance with Chapter 11, Subchapter D of this Part based on the most current information at the time of the review.

§10.405. Amendments and Extensions.

(a) Amendments to Housing Tax Credit (HTC) Application or Award Prior to Land Use Restriction Agreement (LURA) recording or amendments that do not result in a change to the LURA (§2306.6712). The Department expects the Development Owner to construct or rehabilitate, operate, and own the Development consistent with the representations in the Application. The Department must receive notification of any amendments to the Application. Regardless of development stage, the Board shall re-evaluate a Development that undergoes a material change, as identified in paragraph (3) of this subsection at any time after the initial Board approval of the Development (§2306.6731(b)). The Board may deny an amendment request and subsequently may rescind any Commitment or Determination Notice issued for an Application, and may reallocate the credits to other Applicants on the waiting list.

(1) Requesting an amendment. The Department shall require the Applicant to file a formal, written request for an amendment to the Application. Such request must include a detailed explanation of the amendment request and other information as determined to be necessary by the Department, and the applicable fee as identified in Chapter 11, Subchapter E of this title (relating to Fee Schedule, Appeals, and other Provisions) in order to be received and processed by the Department. Department staff will evaluate the amendment request to determine if the change would affect an allocation of Housing Tax Credits by changing any item that received points, by significantly affecting the most recent underwriting analysis, or by materially altering the Development as further described in this subsection.

(2) Notification Items. The Department must be notified of the changes described in subparagraphs (A) - (F) of this paragraph. The changes identified are subject to staff agreement based on a review of the amendment request and any additional information or documentation requested. Notification items will be considered satisfied when an acknowledgment of the specific change(s) is received from the Department and include:

(A) Changes to Development Site acreage required by the City or other local governmental authority, or changes resulting from survey discrepancies, as long as such change does not also result in a modification to the residential density of more than 5%;

(B) Minor modifications to the site plan that will not significantly impact development costs, including, but not limited to, relocation or rearrangement of buildings on the site (as long as the number of residential and non-residential buildings remains the same), and movement, addition, or deletion of ingress/egress to the site;

(C) Increases or decreases in net rentable square footage or common areas that do not result in a material amendment under paragraph (4) of this subsection;

(D) Changes in amenities that do not require a change to the recorded LURA and do not negatively impact scoring, including changes to outdated amenities that could be replaced by an amenity with equal benefit to the resident community;

(E) Changes in Developers or Guarantors (notifications for changes in Guarantors that are also the General Contractor or are only providing guaranties during the construction period are not required) with no new Principals (who were not previously checked by Previous Participation review [~~that retain the natural person(s) used to meet the experience requirement in Chapter 11 of this title (relating to Qualified Allocation Plan)~~]); and

(F) Any other amendment not identified in paragraphs (3) and (4) of this subsection.

(3) Non-material amendments. The Executive Director or designee may administratively approve all non-material amendments, including, but not limited to:

(A) Any amendment that is determined by staff to exceed the scope of notification acknowledgement, as identified in paragraph (2) of this subsection but not to rise to a material alteration, as identified in paragraph (4) of this subsection;

(B) Changes in Developers or Guarantors (excluding changes in Guarantors that are also the General Contractor or are only providing guaranties during the construction period) not addressed in §10.405(a)(2)(E). Changes in Developers or Guarantors will be subject to Previous Participation requirements as further described in Chapter 11 of this title and the credit limitation described in §11.4(a) of this title; and

(C) For Exchange Developments only, requests to change elections made on line 8(b) of the IRS Form(s) 8609 to group buildings together into one or more multiple building projects. The request must include an attached statement identifying the buildings in the project. The change to the election may only be made once during the Compliance Period.

(4) Material Amendments [~~amendments~~]. Amendments considered material pursuant to this paragraph must be approved by the Board. When an amendment request requires Board approval, the Development Owner must submit the request and all required documentation necessary for staff's review of the request to the Department at least 45 calendar days prior to the Board meeting in which the amendment is anticipated to be considered. Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting (§2306.6717(a)(4)). Material Amendment requests may be denied if the Board determines that the modification proposed in the amendment would materially alter the Development in a negative manner or would have adversely affected the selection of the Application in the Application Round. Material alteration of a Development includes, but is not limited to:

(A) A significant modification of the site plan;

(B) A modification of the number of Units or bedroom mix of Units;

(C) A substantive modification of the scope of tenant services;

(D) A reduction of 3% or more in the square footage of the Units or common areas;

(E) A significant modification of the architectural design of the Development;

(F) A modification of the residential density of at least 5%;

(G) A request to implement a revised election under §42(g) of the Code prior to filing of IRS Form(s) 8609;

(H) Exclusion of any requirements as identified in Chapter 11, Subchapter B of this title (relating to Site and Development Requirements and Restrictions) and Chapter 11, Subchapter C of this title (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules); or

(I) Any other modification considered material by the staff and therefore required to be presented to the Board as such.

(5) Amendment requests will be denied if the Department finds that the request would have changed the scoring of an Application in the competitive process such that the Application would not have received a funding award or if the need for the proposed modification was reasonably foreseeable or preventable by the Applicant at the time the Application was submitted, unless good cause is found for the approval of the amendment.

(6) This section shall be administered in a manner that is consistent with §42 of the Code. If a Development has any uncorrected issues of noncompliance outside of the corrective action period (other than the provision being amended) or otherwise owes fees to the Department, such non-compliance or outstanding payment must be resolved to the satisfaction of the Department before a request for amendment will be acted upon.

(7) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants identified in the Application and Credit Underwriting Analysis Report at the time of award and as approved by the Board, the procedure described in subparagraphs (A) and (B) of this paragraph will apply to the extent such request is not prohibited based on statutory and/or regulatory provisions:

(A) For amendments that involve a reduction in the total number of Low-Income Units, or a reduction in the number of Low-Income Units at any rent or income level, as approved by the Board, evidence noted in either clause (i) or (ii) of this subparagraph must be presented to the Department to support the amendment:

(i) In the event of a request to implement (rent to a household at an income or rent level that exceeds the approved AMI limits established by the minimum election within the Development's Application or LURA) a revised election under §42(g) of the Code prior to an Owner's submission of IRS Form(s) 8609 to the IRS, Owners must submit updated information and exhibits to the Application as required by the Department; or

(ii) For all other requests for reductions in the total number of Low-Income Units or reductions in the number of Low-Income Units at any rent or income level, prior to issuance of IRS Form(s) 8609 by the Department, the lender and syndicator must submit written confirmation that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request; however, any affirmative recommendation to the Board is contingent upon concurrence from Department staff that the Unit adjustment is necessary for the continued financial feasibility of the Development; and

(B) If it is determined by the Department that the loss of low-income targeting points would have resulted in the Application not receiving an award in the year of allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for 24 months from the time that the amendment is approved.

(b) Amendments to Contracts and LURAs. Department approval shall be required for any amendment to a LURA in accordance with this section. An amendment request shall be submitted in writing, containing a detailed explanation of the request, the reason the change is necessary, the good cause for the change, financial information related to any financial impact on the Development, information related to whether the necessity of the amendment was reasonably foreseeable at the time of application, and other information as deter-

mined to be necessary by the Department, along with any applicable fee as identified in Chapter 11, Subchapter E of this title (relating to Fee Schedule, Appeals, and other Provisions). The Department may order or require the Development Owner to order a Market Study or appraisal at the Development Owner's expense. If a Development has any uncorrected issues of noncompliance outside of the corrective action period (other than the provision being amended) or otherwise owes fees to the Department, such non-compliance or outstanding payment must be resolved to the satisfaction of the Department[,] before a request for amendment will be acted upon. The Department will not approve changes that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), 24 CFR Part 93 (NHTF Interim Rule), Chapter 1 of this title (relating to Administrative Requirements), Chapter 11 of this title (relating to Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), Chapter 13 of this title (relating to Multifamily Direct Loan Rule), Tex. Gov't Code, Chapter 2306, and the Fair Housing Act. For Tax-Exempt Bond Developments, compliance with their Regulatory Agreement and corresponding bond financing documents. Prior to staff taking a recommendation to the Board for consideration, the procedures described in paragraph (3) of this subsection must be followed.

(1) Non-Material LURA Amendments. The Executive Director or designee may administratively approve all LURA amendments not defined as Material LURA Amendments pursuant to paragraph (2) of this subsection. A non-material LURA amendment may include but is not limited to:

(A) HUB participation removal. Removal of a HUB participation requirement will only be processed as a non-material LURA amendment after the issuance of IRS Form(s) 8609 and requires that the Department find that:

(i) The HUB is requesting removal of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(ii) the participation by the HUB has been substantive and meaningful, or would have been substantive or meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operating of affordable housing; and

(iii) where the HUB will be replaced as a general partner or special limited partner that is not a HUB and will sell its ownership interest, an ownership transfer request must be submitted as described in §10.406 of this subchapter;

(B) A change resulting from a Department work out arrangement as recommended by the Department's Asset Management Division;

(C) A change in the Right of First Refusal period as described in amended §2306.6726 of the Tex. Gov't Code;

(D) Where the Board has approved a de minimis modification of the Unit Mix or bedroom mix of Units to increase the Development's accessibility;

(E) In accordance with HOMEFires, Vol. 17 No. 1 (January 2023, as may be amended from time to time) bifurcation of the term of a HOME or NSP LURA with the Department that requires a longer affordability period than the minimum federal requirement, into a federal and state affordability period;

(F) A change in Target Population if the Elderly restrictions in the LURA expired at the end of the Compliance Period or the Federal Affordability Period (as applicable), and the amendment is requested within one year of expiration and contains a certification from the Development Owner that the Development still qualifies as Elderly;

(G) Amendments necessary to opt into the 2025 HOME final rule in accordance with §10.601(g) of this chapter, relating to the 2025 HOME final rule; or
A correction of error.

(2) Material LURA Amendments. Development Owners seeking LURA amendment requests that require Board approval must submit the request and all required documentation necessary for staff's review of the request to the Department at least 45 calendar days prior to the Board meeting at which the amendment is anticipated to be considered. Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting (§2306.6717(a)(4)). The Board must consider the following material LURA amendments:

(A) Reductions to the number of Low-Income Units;

(B) Changes to the income or rent restrictions;

(C) Changes to the Target Population;

(D) The removal of material participation by a Nonprofit Organization as further described in §10.406 of this subchapter;

(E) The removal of material participation by a HUB prior to filing of IRS Form(s) 8609;

(F) Any amendment that [affects] pertains to a right enforceable by a tenant or other third party under the LURA; or

(G) Any LURA amendment deemed material by the Executive Director.

(3) Prior to staff taking a recommendation to the Board for consideration, the Development Owner must provide reasonable notice and hold a public hearing regarding the requested amendment(s) at least 20 business days prior to the scheduled Board meeting where the request will be considered. A Development Owner is [Owners will be] required to submit a copy of the notification with the amendment request. If the amendment pertains to a right enforceable by a tenant or other third party, the Development Owner must explain why performance of the original condition is impossible or demonstrate that Development would no longer be financially feasible, in accordance with the rules adopted in Chapter 11 Subchapter D of this part relating to Underwriting and Loan Policy. If a LURA amendment is requested prior to issuance of IRS Form(s) 8609 by the Department, notification must be provided to the recipients described in subparagraphs (A) - (E) of this paragraph. If an amendment is requested after issuance of IRS Form(s) 8609 by the Department, notification must be provided to the recipients described in subparagraph (A) - (B) of this paragraph. Notifications include:

(A) Each tenant of the Development;

(B) The current lender(s) and investor(s);

(C) The State Senator and State Representative of the districts whose boundaries include the Development Site;

(D) The chief elected official for the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction); and

(E) The county commissioners of the county in which the Development Site is located (if the Development Site is located outside of a municipality).

(4) Contents of Notification. The notification must include, at a minimum, all of the information described in subparagraphs (A) - (D) of this paragraph:

(A) The Development Owner's name, address and an individual contact name and phone number;

(B) The Development's name, address, and city;

(C) The change(s) requested; and

(D) The date, time, and location of the public hearing where the change(s) will be discussed.

(5) Verification of public hearing. Minutes of the public hearing and attendance sheet must be submitted to the Department within three business days after the date of the public hearing.

(6) Approval. Once the LURA Amendment has been approved administratively or by the Board, as applicable, Department staff will provide the Development Owner with a LURA amendment for execution and recording in the county where the Development is located. For some Programs, a Contract Amendment or amendment to the Loan Documents may also be needed, in the determination of the Department's Legal Division.

(c) HTC Extensions. Extensions must be requested if the original deadline associated with Carryover, the 10% Test (including submission and expenditure deadlines), construction status reports, or cost certification requirements will not be met. Extension requests submitted at least 30 calendar days in advance of the applicable original deadline will not be required to submit an extension fee as described in §11.901 of this title. Any extension request submitted fewer than 30 days in advance of the applicable original deadline or after the original deadline will not be processed unless accompanied by the applicable fee. Extension requests will be approved by the Executive Director or designee, unless, at staff's discretion it warrants Board approval due to extenuating circumstances stated in the request. The extension request must specify a requested extension date and the reason why such an extension is required. If the Development Owner is requesting an extension to the Carryover submission or 10% Test deadline(s), a point deduction evaluation will be completed in accordance with Tex. Gov't Code, §2306.6710(b)(2), and §11.9(f) of this title (relating to Factors Affecting Scoring and Eligibility in current and future Application Rounds). Therefore, the Development Owner must clearly describe in their request for an extension how the need for the extension was beyond the reasonable control of the Applicant/Development Owner and could not have been reasonably anticipated. Carryover extension requests will not be granted an extended deadline later than December 1st of the year the Commitment was issued.

§10.406. Ownership Transfers (§2306.6713).

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice and a completed Ownership Transfer packet, if applicable, to the Department at least 45 calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Except as otherwise provided herein, the Executive Director's prior written approval of any such transfer is required. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section.

(b) Exceptions. The exceptions to the ownership transfer process in this subsection are applicable.

(1) A Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new Principals, or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(2) Transfers that are the result of an involuntary removal of the general partner by the investment limited partner do not require advance approval, but must be reported to the Department as soon as possible due to the sensitive timing and nature of this decision. In the event the investment limited partner has proposed a new general partner or will permanently replace the general partner, a full Ownership Transfer packet must be submitted.

(3) Changes to the investment limited partner, non-Controlling limited partner, or other non-Controlling partners affiliated with the investment limited partner do not require Executive Director approval. A General Partner's acquisition of the interest of the investment limited partner does not require Executive Director approval, unless some other change in ownership is occurring as part of the same overall transaction.

(4) Changes resulting from foreclosure do not require advance approval but acquiring parties must notify the Department as soon as possible of the revised ownership structure and ownership contact information.

(5) Changes resulting from a deed-in-lieu of foreclosure do not require Executive Director approval. However, advance notification must be provided to both the Department and to the tenants at least 30 days prior to finalizing the transfer. This notification must include information regarding the applicable rent/income requirements post deed-in-lieu of foreclosure.

(6) Changes resulting from a foreclosure do not require Executive Director approval. However, a Development that is subject to the 2025 HOME final rule as described in §10.601(g) of this chapter must provide advance notification to both the Department and to all households at least 30 days prior to the foreclosure sale. This notification must include information regarding the applicable rent/income requirements post foreclosure.

(c) General Requirements.

(1) Any new Principal in the ownership of a Development must be eligible under §11.202 of Subchapter C (relating to Ineligible Applicants and Applications). In addition, Persons and Principals will be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(2) Changes in Developers or Guarantors must be addressed as non-material amendments to the application under §10.405 of this Subchapter.

(3) To the extent an investment limited partner or its Affiliate assumes a Controlling interest in a Development Owner, such acquisition shall be subject to the Ownership Transfer requirements set forth herein. Principals of the investment limited partner or Affiliate will be considered new Principals and will be reviewed as stated under paragraph (1) of this subsection.

(4) Simultaneous transfer or concurrent offering for sale of the General Partner's and Limited Partner's control and interest will be subject to the Ownership Transfer requirements set forth herein and will trigger a Right of First Refusal, if applicable.

(5) Any initial operating, capitalized operating, or replacement reserves funded with an allocation from the HOME American Rescue Plan (HOME-ARP) and Special Reserves required by the Department must remain with the Development.

(d) Transfer Actions Warranting Debarment. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure or the Department at risk for financial exposure as a result of non-compliance, staff will refer the matter to the Enforcement Committee for debarment consideration pursuant to §2.401 of this title (relating to Enforcement, Debarment from Participation in Programs Administered by the Department). In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), prior to recommending any new financing or allocation of credits.

(e) Transfers Prior to 8609 Issuance or Construction Completion. Prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs), an Applicant may request a change to its ownership structure to add Principals or to remove Principals provided not all controlling Principals identified in the Application will be removed. The party(ies) reflected in the Application as having Control must remain in the ownership structure and retain Control, unless approved otherwise by the Executive Director. A development sponsor, General Partner or Development Owner may not sell the Development in whole or voluntarily end their Control prior to the issuance of 8609s. In addition, for Competitive HTC Developments, changes in the ownership structure for the addition of a public facility corporation, a housing finance corporation, or a public housing authority prior to the issuance of 8609s that will result in a 100% property tax exemption that was not previously reflected in the Application, require a resolution of support from the municipality, or if the Development is not within a municipality or its Extra Territorial Jurisdiction (ETJ), a resolution of support from the commissioners court.

(f) Nonprofit Organizations. If the ownership transfer request is to replace a nonprofit organization within the Development ownership entity, the replacement nonprofit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Nonprofit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Nonprofit Organization that meets the requirements of §42(h)(5) of the Code and Tex. Gov't Code §2306.6706, if applicable, and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

(2) If the LURA requires ownership or material participation in ownership by a nonprofit organization or CHDO, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA. If the transferee has been certified as a CHDO by TDHCA prior to 2016 or has not previously been certified as a CHDO by TDHCA, a new CHDO certification package must be submitted for review. If the transferee was certified as a CHDO by TDHCA after 2016, provided no new federal guidance or rules concerning CHDO have been released and the proposed ownership structure at the time of review meets the requirements in 24 CFR Part 92, the CHDO may instead submit a CHDO Self-Certification form with the Ownership Transfer package. However, for ownership transfers that occur on or after April 30, 2026, the Department will require the CHDO to renew their certification using the new certification package that will include the 2025 HOME final rule requirements.

(3) Exceptions to paragraphs (1) and (2) of this subsection may be made on a case by case basis if the Development (for MFDL) is past its Federal Affordability Period or (for HTC Developments) is past its Compliance Period, was not reported to the IRS as part of the Department's Nonprofit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1) - (5) of this subchapter. The Board must find that:

(A) The selling nonprofit is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(B) The participation by the nonprofit was substantive and meaningful during the full term of the Compliance Period but is no longer substantive or meaningful to the operations of the Development; and

(C) The proposed purchaser is an affiliate of the current Owner or otherwise meets the Department's standards for ownership transfers.

(g) Historically Underutilized Business (HUB) Organizations. If a HUB is the general partner or special limited partner of a Development Owner and it determines to sell its ownership interest, after the issuance of IRS Form(s) 8609, the purchaser of that partnership interest or the general or special limited partner is not required to be a HUB as long as the LURA does not require it or the procedure described in §10.405(b)(1) of this chapter (relating to Non-Material LURA Amendments) has been followed and approved. The removal of a HUB requirement prior to filing of IRS Form(s) 8609 is subject to the procedure described in §10.405(b)(2) of this Chapter (relating to Material LURA Amendments).

(h) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances pertaining to the transfer and the effects of approval or denial. Documentation must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

(1) A written explanation outlining the reason for the request;

(2) Ownership transfer information, including but not limited to the type of sale, terms of any new financing introduced as a result of the transfer, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;

(3) Pre- and post-transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §11.204(12)(B) of Subchapter C of this title (relating to Required Documentation for Application Submission);

(4) A list of the names and contact information for transferees and Related Parties;

(5) Previous Participation information for any new Principal as described in §11.204(12)(C) of this title (relating to Required Documentation for Application Submission);

(6) Agreements among parties associated with the transfer;

(7) Owners Certifications with regard to materials submitted as further described in the Post Award Activities Manual;

(8) Detailed information describing the organizational structure, experience, and financial capacity of any party holding a controlling interest in any Principal or Controlling entity of the prospective Development Owner;

(9) Evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least 30 calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30-day period has expired. Additional notification requirements may apply under 10 TAC §10.607, relating to Reporting Requirements; and

(10) Any required exhibits and the list of exhibits related to specific circumstances of transfer or Ownership as detailed in the Post Award Activities Manual.

(i) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §11.202 of this title (relating to Ineligible Applicants and Applications).

(j) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) In cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) In cases where the general partner is being replaced if the award of credits was made at least five years prior to the transfer request date.

(k) Penalties, Past Due Fees, and Underfunded Reserves. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring) and Subchapter G of this chapter (relating to Affirmative Marketing Requirements and Written Policies and Procedures). The Development Owner on record with the Department will be liable for any penalties or fees imposed by the Department (even if such penalty can be attributable to the new Development Owner) unless an ownership transfer has been approved by the Department. In the event a transferring Development has a history of uncorrected UPCS or NSPIRE violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PNA or SCR, the prospective Development Owner may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Owner as a condition to approving the Transfer. A PNA or SCR may be requested if one has not already been received under §10.404 of this section (relating to Reserve Accounts).

(l) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by the corresponding ownership transfer fee as outlined in §11.901 of this title (relating to Fee Schedule).

§10.407. Right of First Refusal.

(a) General. This section applies to Development Owners that agreed to offer a Right of First Refusal (ROFR) to a Qualified Entity or as applicable a Qualified Nonprofit Organization, as memorialized in the applicable LURA. For the purposes of this section, a Qualified Nonprofit Organization also includes an entity 100% owned by a Qualified Nonprofit Organization pursuant to §42(h)(5)(C) of the Code and operated in a similar manner. The purpose of this section is to provide administrative procedures and guidance on the process and valuation of properties under the LURA. All requests for ROFR submitted to the Department, regardless of existing regulations, must adhere to this process.

(1) The Development Owner may market the Property for sale and enter into an agreement to sell the Property to a Qualified Entity, or as applicable a Qualified Nonprofit Organization without going through the ROFR process outlined in this section, unless otherwise restricted or prohibited and only in the following circumstances:

(A) The LURA includes a 90-day ROFR and the Development Owner is selling to a Qualified Nonprofit Organization;

(B) The LURA includes a two-year ROFR and the Development Owner is selling to a Qualified Nonprofit Organization that meets the definition of a Community Housing Development Organization (CHDO) under 24 CFR Part 92, as approved by the Department; [~~or~~]

(C) The LURA includes a 180-day ROFR, and the Development Owner is selling to a Qualified Entity that meets the definition of a CHDO under 24 CFR Part 92, or to an entity that includes a CHDO as one of its controlling members, as approved by the Department, or to the public housing authority or public facility corporation that owns the fee title to the Development Owner's leasehold estate; or

(D) The Multifamily Direct Loan LURA requires a new Owner to be a qualified CHDO or has a ROFR Period for purchase by a CHDO, [~~but~~] and the Development is subject to the 2013 or 2025 HOME final rule, and the Development Owner is selling or conveying the Development to another CHDO approved by the Department. The entity will have to be structured in accordance with the applicable HOME rule, and the requirements in Chapter 13 of this title.

(2) A ROFR request must be made in accordance with the LURA for the Development. If there is a conflict between the Development's LURA and this subchapter, every effort will be made to harmonize the provisions. If the conflict cannot be resolved, requirements in the LURA will supersede this subchapter. If there is a conflict between the Development's LURA and Tex. Gov't Code Chapter 2306, every effort will be made to harmonize the provisions. A Development Owner may request a LURA amendment to make the ROFR provisions in the LURA consistent with Tex. Gov't Code Chapter 2306 at any time.

(3) If a LURA includes the ROFR provision, the Development Owner may not request a Preliminary Qualified Contract (if such opportunity is available under the applicable LURA and §10.408 of this Subchapter) until the requirements outlined in this section have been satisfied.

(4) The Department reviews and approves all ownership transfers pursuant to §10.406 of this subchapter. Thus, if a proposed purchaser is identified by the Owner in accordance with paragraph (1) of this subsection or in the ROFR process, the Development Owner and proposed purchaser must complete the ownership transfer process. A Development Owner may not transfer a Development to a Qualified Nonprofit Organization or Qualified Entity that is considered an ineligible entity under the Department's rules. In addition, ownership transfers to a Qualified Entity or as applicable a Qualified Nonprofit Organization pursuant to the ROFR process are subject to Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(5) Satisfying the ROFR requirement does not terminate the LURA or the ongoing application of the ROFR requirement to any subsequent Development Owner.

(6) If there are multiple buildings in the Development, the end of the 15th year of the Compliance Period will be based upon the date the last building(s) began their credit period(s). For example, if five buildings in the Development began their credit periods in 2007 and one in 2008, the 15th year would be 2022. The ROFR process is triggered upon:

(A) The Development Owner's determination to sell the Development to an entity other than as permitted in paragraph (1) of this subsection; or

(B) The simultaneous transfer or concurrent offering for sale of a General Partner's and limited partner's interest in the Development Owner's ownership structure.

(7) The ROFR process is not triggered if a Development Owner seeks to transfer the Development to a newly formed entity:

(A) That is under common control with the Development Owner; and

(B) The primary purpose of the formation of which is to facilitate the financing of the rehabilitation of the Development using assistance administered through a state financing program.

(8) This section applies only to a Right of First Refusal memorialized in the Department's LURA. This section does not authorize a modification of any other agreement between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity. The enforceability of a contractual agreement between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity may be impacted by the Development Owner's commitments at Application and recorded LURA.

(b) Right of First Refusal Offer Price. There are two general expectations of the ROFR offer price identified in the outstanding LURAs. The descriptions in paragraphs (1) and (2) of this subsection do not alter the requirements or definitions included in the LURA but provide further clarification as applicable:

(1) Fair Market Value is established using either a current appraisal (completed within three months prior to the ROFR request and in accordance with §11.304 of this title (relating to Appraisal Rules and Guidelines)) of the Property or an executed purchase offer that the Development Owner would like to accept. In either case the documentation used to establish Fair Market Value will be part of the ROFR property listing on the Department's website. The purchase offer must contain specific language that the offer is conditioned upon satisfaction of the ROFR requirement. If a subsequent ROFR request is made within six months of the previously approved ROFR posting, the lesser of the prior ROFR posted value or new appraisal/purchase contract amount must be used in establishing Fair Market Value;

(2) Minimum Purchase Price, pursuant to §42(i)(7)(B) of the Code, is the sum of the categories listed in subparagraphs (A) and (B) of this paragraph:

(A) The principal amount of outstanding indebtedness secured by the project (other than indebtedness incurred within the five year period immediately preceding the date of said notice); and

(B) All federal, state, and local taxes incurred or payable by the Development Owner as a consequence of such sale. If the Property has a minimum Applicable Fraction of less than one, the offer must take this into account by multiplying the purchase price by the applicable fraction and the fair market value of the non-Low-Income Units. Documentation submitted to verify the Minimum Purchase Price calculation will be part of the ROFR property listing on the Department's website.

(c) Required Documentation. Upon establishing the ROFR offer price, the ROFR process is the same for all types of LURAs. To proceed with the ROFR request, documentation must be submitted as directed in the Post Award Activities Manual, which includes:

(1) ROFR fee as identified in §11.901 of this title (relating to Fee Schedule);

(2) A notice of intent to the Department;

(3) Certification that the Development Owner has provided, to the best of their knowledge and ability, a notice of intent to all additional required persons and entities in subparagraph (A) of this paragraph and that such notice includes, at a minimum the information in subparagraph (B) of this paragraph;

(A) Copies of the letters or emailed notices provided to all persons and entities listed in clauses (i) to (vi) of this subparagraph as required by this paragraph and applicable to the Development at the time of the submission of the ROFR documentation must be attached to the Certification:

(i) All tenants and tenant organizations, if any, of the Development;

(ii) Mayor of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);

(iii) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(iv) Presiding officer of the Governing Body of the county in which the Development is located;

(v) The local housing authority, if any; and

(vi) All prospective buyers maintained on the Department's list of prospective buyers.

(B) Letters must include, at a minimum, all of the information required in clauses (i) to (vii) of this subparagraph and must not contain any statement that violates Department rules, statute, Code, or federal requirements:

(i) The Development's name, address, city, and county;

(ii) The Development Owner's name, address, individual contact name, phone number, and email address;

(iii) Information about tenants' rights to purchase the Development through the ROFR;

(iv) The length of the ROFR posting period;

(v) The ROFR offer price;

(vi) A physical description of the Development, including the total number of Units and total number of Low-Income Units; and

(vii) Contact information for the Department staff overseeing the Development's ROFR application.

(4) Documentation evidencing any contractual ROFR between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity, along with evidence that such Qualified Nonprofit Organization or Qualified Entity is in good standing in the state of its organization;

(5) Documentation verifying the ROFR offer price of the Property:

(A) If the Development Owner receives an offer to purchase the Property from any buyer other than a Qualified Entity or Qualified Nonprofit Organization that the Development Owner would like to accept, the Development Owner may execute a sales contract, conditioned upon satisfaction of the ROFR requirement, and submit the executed sales contract to establish fair market value; or

(B) If the Development Owner chooses to establish fair market value using an appraisal, the Development Owner must submit an appraisal of the Property completed during the last three months prior to the date of submission of the ROFR request, establishing a value for the Property in compliance with Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) in effect at the time of the request. The appraisal should take into account the existing and continuing requirements to operate the Property under the LURA and any other restrictions that may exist. Department staff will review all materials within 30 calendar days of receipt. If, after the review, the Department does not agree with the fair market value proposed in the Development Owner's appraisal, the Department may order another appraisal at the Development Owner's expense; or

(C) If the LURA requires valuation through the Minimum Purchase Price calculation, submit documentation verifying the calculation of the Minimum Purchase Price as described in subsection (b)(2) of this section regardless of any existing offer or appraised value;

(6) Description of the Property, including all amenities;

(7) Copies of all documents imposing income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Property;

(8) A current title commitment or policy not older than six months prior to the date of submission of the ROFR request or the most recent title policy along with a title endorsement or nothing further certificate not older than six months prior to the date of submission of the ROFR request;

(9) The most recent Physical Needs Assessment, pursuant to Tex. Gov't Code §2306.186(e) conducted by a Third-Party. If the PNA/SCR identifies the need for critical repairs that significantly impact habitability and tenant safety, the identified repairs and replacements must be resolved to the satisfaction of the Department before the Development will be considered eligible to proceed with a Right of First Refusal Request;

(10) Copy of the monthly operating statements, including income statements and balance sheets for the Property for the most recent 12 consecutive months (financial statements should identify amounts held in reserves);

(11) The three most recent consecutive annual operating statements (audited would be preferred);

(12) Detailed set of photographs of the Property, including interior and exterior of representative units and buildings, and the Property's grounds;

(13) Current and complete rent roll for the Property; and

(14) If any portion of the land or improvements is leased for other than residential purposes, copies of the commercial leases.

(d) Posting and offers. Within 30 business days of receipt of all required documentation, the Department will review the submitted documents and notify the Development Owner of any deficiencies. During that time, the Department will notify any Qualified Entity or as applicable any Qualified Nonprofit Organization identified by the Development Owner as having a contractual ROFR of the Development Owner's intent to sell. Once any deficiencies are resolved and the Development Owner and Department come to an agreement on the ROFR offer price of the Property, the Department will list the Property for sale on the Department's website and notify entities registered to the email list maintained by the Department of the availability of the Property at a price as determined under this section. The Department will notify the Development Owner when the Property has been listed. The ROFR posting period commences on the date the Property is posted for sale on the Department's website. During the ROFR posting period, a Qualified Nonprofit Organization or Qualified Entity can submit an offer to purchase as follows:

(1) if the LURA requires a 90-day [~~90 day~~] ROFR posting period with no priority for any particular kind of Qualified Nonprofit Organization or tenant organization, any Qualified Nonprofit Organization or tenant organization may submit an offer to purchase the property; or

(2) If the LURA requires a two-year [~~two year~~] ROFR posting period, a Qualified Nonprofit Organization may submit an offer to purchase the Property as follows:

(A) During the first six months of the ROFR posting period, only a Qualified Nonprofit Organization that is a Community Housing Development Organization (CHDO) under 24 CFR Part 92, or that is 100% owned by a CHDO, as approved by the Department, may submit an offer;

(B) During the next six months of the ROFR posting period, only a Qualified Nonprofit Organization as described by Tex. Gov't Code §2306.6706, or that is 100% owned by Qualified Nonprofit Organization as described by Tex. Gov't Code §2306.6706, or a tenant organization may submit an offer; and

(C) During the final 12 months of the ROFR posting period, any Qualified Nonprofit Organization may submit an offer; or

(3) If the LURA requires a 180-day ROFR posting period, a Qualified Entity may submit an offer to purchase the Property consistent with the subparagraphs of this paragraph.

(A) During the first 60 days of the ROFR posting period, only a Qualified Entity that is:

(i) a CHDO under 24 CFR Part 92, or to an entity that includes a CHDO as one of its controlling members or general partners, as approved by the Department, may submit an offer. In accordance with 24 CFR Part 92, Developments committed HOME CHDO funding on or after August 23, 2013, and still within the Federal Affordability Period must have a CHDO or its wholly owned entity (as applicable) as its only controlling entities and no other entities are eligible;

(ii) if the public housing authority or public facility corporation owns the fee title to the Development Owner's leasehold estate:

(I) a public housing authority; or

(II) a public facility corporation created by a public housing authority under Chapter 303, Local Government Code; or

(iii) controlled by an entity described by either clause (i) or (ii) of this subparagraph.

(B) During the second 60 days of the ROFR posting period, only a Qualified Entity as described by Tex. Gov't Code §2306.6706, or that is controlled by Qualified Entity as described

by Tex. Gov't Code §2306.6706, or a tenant organization such may submit an offer.

(C) During the final 60 days of the ROFR posting period, any Qualified Entity may submit an offer.

(4) If the Multifamily Direct Loan LURA for a property funded out of the CHDO set-aside and subject to the 2025 HOME final rule requires a 60-day ROFR posting period, a CHDO approved by the Department may submit an offer to purchase the property.
If the LURA does not specify a required ROFR posting timeframe or is unclear on the required ROFR posting timeframe and the required ROFR value is determined by the Minimum Purchase Price method, any Development that received a tax credit allocation prior to September 1, 1997, is required to post for a 90-day ROFR period, and any Development that received a tax credit allocation on or after September 1, 1997, and until September 1, 2015, is required to post for a two year ROFR, unless the LURA is amended under §10.405(b), or after September 1, 2015, is required to post for a 180-day ROFR period as described in Tex. Gov't Code, §2306.6726.

(e) Acceptance of offers. A Development Owner may accept or reject any offer received during the ROFR posting period; provided however, that to the extent the LURA gives priority to certain classifications of Qualified Nonprofit Organizations or Qualified Entities to make offers during certain portions of the ROFR posting period, the Development Owner can only negotiate a purchase contract with such classifications of entities during their respective periods. For example, during the CHDO priority period, the Development Owner may only accept an offer from and enter into negotiations with a Qualified Nonprofit Organization or Qualified Entity in that classification. A property may not be transferred under the ROFR process for less than the Minimum Purchase Price, but if the sequential negotiation created by statute yields a higher price, the higher price is permitted.

(f) Satisfaction of ROFR.

(1) A Development Owner that has posted a Property under the ROFR process is deemed to have satisfied the ROFR requirements in the following circumstances:

(A) The Development Owner does not receive any bona fide offers at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation) from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period;

(B) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, the failure is determined to not be the fault of the Development Owner, and the Development Owner received no other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period;

(C) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Qualified Nonprofit Organization or Qualified Entity is not approved by the Department during the ownership transfer review due to issues identified during the Previous Participation Review process pursuant to Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), and the Development Owner received no other bona fide offers at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation) from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period; or

(D) An offer from a Qualified Nonprofit Organization or Qualified Entity is received at a price below the posted ROFR offer price, and the Development Owner received no other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period at or above the posted ROFR offer price; or

(2) A Development Owner with a LURA that identifies a specific Qualified Nonprofit Organization or Qualified Entity to be the beneficiary of the ROFR will satisfy the ROFR if:

(A) The identified beneficiary is in existence and conducting business;

(B) The Development Owner offers the Development to the identified beneficiary pursuant to the terms of the ROFR;

(C) If the ROFR includes a priority for a certain type of Qualified Entity (such as a CHDO) to have the first opportunity make an offer to acquire the Development, the identified beneficiary meets such classification; and

(D) The identified entity declines to purchase the Development in writing, and such evidence is submitted to and approved by the Department.

(g) Non-Satisfaction of ROFR. A Development Owner that has posted a Property under the ROFR process does not satisfy the ROFR requirements in the following circumstances:

(1) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), and the Development Owner does not accept the offer;

(2) The LURA identifies a specific Qualified Nonprofit Organization or Qualified Entity to be the beneficiary of the ROFR, and such entity no longer exists or is no longer conducting business and the Development Owner received other bona fide offers at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation) from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period and fails to accept any of such other offers;

(3) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, the failure is determined to not be the fault of the Development Owner, the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period and then fails to accept any of such other offers;

(4) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, and such failure is determined to be the fault of the Development Owner;

(5) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer

price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Qualified Nonprofit Organization or Qualified Entity is not approved by the Department during the ownership transfer review due to issues identified during the Previous Participation Review process pursuant to Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period and fails to accept any of such other offers; or

(6) An offer from a Qualified Nonprofit Organization or Qualified Entity is received at a price below the posted ROFR offer price, the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), and the Development Owner fails to accept any of such offers.

(h) Activities Following ROFR.

(1) If a Development Owner satisfies the ROFR requirement pursuant to subsection (f)(1) - (2) of this section, it may request a Preliminary Qualified Contract (if such opportunity is available under §10.408 of this Subchapter) or proceed with the sale to an entity that is not a Qualified Nonprofit Organization or Qualified Entity at or above the ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation).

(2) Following notice that the ROFR requirement has been met, if the Development Owner does not post the Property for Qualified Contract in accordance with §10.408 of this Subchapter or sell the Property to an entity that is not a Qualified Nonprofit Organization or Qualified Entity within 24 months of the Department's written indication that the ROFR has been satisfied, the Development Owner must follow the ROFR process for any subsequent transfer.

(3) If the Department determines that the ROFR requirement has not been met during the ROFR posting period, the Owner may not re-post under this provision at a ROFR offer price that is higher than the originally posted ROFR offer price until 24 months has expired from the Department's written indication that the ROFR has not been satisfied. The Development Owner may market the Property for sale and sell the Property to a Qualified Nonprofit Organization or Qualified Entity during this 24-month [~~24 month~~] period in accordance with subsection (a)(1) of this section.

(i) Sale and closing.

(1) Prior to closing a sale of the Property, the Development Owner must obtain Department approval of the transfer through the ownership transfer process in accordance with §10.406 of this Subchapter (relating to Ownership Transfers (§2306.6713)). The request should include, among other required transfer documents outlined in the Post Award Activities Manual, the final sales contract with all amendments.

(2) If the closing price is materially less than the ROFR offering price or the terms and conditions of the sale change materially from what was submitted in the ROFR posting, in the Department's sole determination, the Development Owner must go through the ROFR process again with a revised ROFR offering price equal to the reduced closing price or adjusted terms and conditions based upon the revised terms, before disposing of the Property.

(j) Appeals. A Development Owner may appeal a staff decision in accordance with §11.902 of this title (relating to Appeals Process).

§10.408. Qualified Contract Requirements.

(a) General. Pursuant to §42(h)(6) of the Code, after the end of the 14th year of the Compliance Period, the Development Owner of a Development utilizing Housing Tax Credits can request that the allocating agency find a buyer at the Qualified Contract Price. If a buyer cannot be located within one year, the Extended Use Period will expire. This section of this subchapter provides the procedures for the submittal and review of a Qualified Contract Request.

(b) Eligibility. Development Owners who received an award of credits on or after January 1, 2002, are not eligible to request a Qualified Contract prior to the 30 year anniversary of the date the property was placed in service (§2306.185); if the property's LURA indicates a commitment to an Extended Use Period beyond 30 years, the Development Owner is not eligible to request a Qualified Contract until the expiration of the Extended Use Period. Development Owners awarded credits prior to 2002 may submit a Qualified Contract Request at any time after the end of the year preceding the last year of the Initial Affordability Period, provided it is not precluded by the terms of the LURA, following the Department's determination that the Development Owner is eligible. The Initial Affordability Period starts concurrently with the credit period, which begins at placement-in-service or is deferred until the beginning of the next tax year, if there is an election. Unless the Development Owner has elected an Initial Affordability Period longer than the Compliance Period, as described in the LURA, this can commence at any time after the end of the 14th year of the Compliance Period. References in this section to actions which can occur after the 14th year of the Compliance Period shall refer, as applicable, to the year preceding the last year of the Initial Affordability Period, if the Development Owner elected an Initial Affordability Period longer than the Compliance Period.

(1) If there are multiple buildings placed in service in different years, the end of the Initial Affordability Period will be based upon the date the last building placed in service. For example, if five buildings in the Development began their credit periods in 2005 and one began in 2006, the 15th year would be 2020.

(2) If a Development received an allocation in multiple years, the end of the Initial Affordability Period will be based upon the last year of a multiple allocation. For example, if a Development received its first allocation in 2004 and a subsequent allocation and began the credit period in 2006, the 15th year would be 2020.

(c) Preliminary Qualified Contract Request. All eligible Development Owners must file a Preliminary Qualified Contract Request.

(1) In addition to determining the basic eligibility described in subsection (b) of this section, the pre-request will be used to determine that:

(A) The Development does not have any uncorrected issues of noncompliance outside the corrective action period;

(B) There is a Right of First Refusal (ROFR) connected to the Development that has been satisfied; and

(C) The Compliance Period under the LURA has expired; and

(2) In order to assess the validity of the pre-request, the Development Owner must submit:

(A) Preliminary Request Form;

(B) Qualified Contract Pre-Request fee as outlined in §11.901 of this title (relating to Fee Schedule);

(C) Copy of all regulatory agreements or LURAs associated with the Property (non-TDHCA); and

(D) Copy of a Physical Needs Assessment (PNA), conducted by a Third Party, that is no more than 12 months older than the request date. If the PNA identifies the need for critical repairs that significantly impact habitability and tenant safety, the identified repairs and replacements must be resolved to the satisfaction of the Department before the Development will be considered eligible to submit a Qualified Contract Request.

(3) The pre-request will not bind the Development Owner to submit a Qualified Contract Request and does not start the One Year Period (1YP). A review of the pre-request will be conducted by the Department within 90 days of receipt of all documents and fees described in paragraph (2) of this subsection. If the Department determines that this stage is satisfied, a letter will be sent to the Development Owner stating that they are eligible to submit a Qualified Contract (QC) Request.

(d) Qualified Contract Request. A Development Owner may file a QC Request any time after written approval is received from the Department verifying that the Development Owner is eligible to submit the Request.

(1) Documentation that must be submitted with a Request is outlined in subparagraphs (A) - (P) of this paragraph:

(A) A completed application and certification;

(B) The Qualified Contract price calculation worksheets completed by a licensed Third-Party certified public accountant (CPA). The CPA shall certify that they have reviewed annual partnership tax returns for all years of operation, loan documents for all secured debt, and partnership agreements. They shall also certify that they are not being compensated for the assignment based upon a predetermined outcome;

(C) A thorough description of the Development, including all amenities;

(D) A description of all income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Development;

(E) A current title report;

(F) A current appraisal with the effective date within six months of the date of the QC Request and consistent with Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy);

(G) A current Phase I Environmental Site Assessment (and Phase II, if necessary) with the effective date within six months of the date of the QC Request and consistent with Chapter 11, Subchapter D of this title;

(H) A copy of the most recent Physical Needs Assessment of the property conducted by a Third Party, if different from the assessment submitted during the preliminary qualified contract request, consistent with Chapter 11, Subchapter D of this title;

(I) A copy of the monthly operating statements for the Development for the most recent 12 consecutive months;

(J) The three most recent consecutive annual operating statements (audited would be preferred) for the Development;

(K) A detailed set of photographs of the Development, including interior and exterior of representative units and buildings, and the property's grounds;

(L) A current and complete rent roll for the Development;

(M) A certification that all tenants in the Development have been notified in writing of the request for a Qualified Contract. A copy of the letter used for the notification must also be included;

(N) If any portion of the land or improvements is leased, copies of the leases;

(O) The Qualified Contract Fee as identified in §11.901 of this title (relating to Fee Schedule); and

(P) Additional information deemed necessary by the Department.

(2) Unless otherwise directed by the Department pursuant to subsection (g) of this section, the Development Owner shall contract with a broker to market and sell the Property. The Department may, at its sole discretion, notify the Owner that the selected Broker is not approved by the Department. The fee for this service will be paid by the seller, not to exceed 6% of the QC Price.

(3) Within 90 days of the submission of a complete Request, the Department will notify the Development Owner in writing of the acceptance or rejection of the Development Owner's QC Price calculation. The Department will have one year from the date of the acceptance letter to find a Qualified Purchaser and present a QC. The Department's rejection of the Development Owner's QC Price calculation will be processed in accordance with subsection (e) of this section and the 1YP will commence as provided therein.

(e) Determination of Qualified Contract Price. The QC Price calculation is not the same as the Minimum Purchase Price calculation for the ROFR. The CPA contracted by the Development Owner will determine the QC Price in accordance with §42(h)(6)(F) of the Code taking the following into account:

(1) Outstanding indebtedness secured by, or with respect to, the building;

(2) Distributions to the Development Owner of any and all cash flow, including incentive management fees, capital contributions not reflected in outstanding indebtedness or adjusted investor equity, and reserve balance distributions or future anticipated distributions, but excluding payments of any eligible deferred developer fee. These distributions can only be confirmed by a review of all prior year tax returns for the Development;

(3) All equity contributions will be adjusted based upon the lesser of the consumer price index or 5% for each year, from the end of the year of the contribution to the end of year fourteen or the end of the year of the request for a QC Price if requested at the end of the year or the year prior if the request is made earlier than the last month of the year; and

(4) These guidelines are subject to change based upon future IRS Rulings and/or guidance on the determination of Development Owner distributions, equity contributions and/or any other element of the QC Price.

(f) Appeal of Qualified Contract Price. The Department reserves the right, at any time, to request additional information to document the QC Price calculation or other information submitted. If the documentation does not support the price indicated by the CPA hired by the Development Owner, the Department may engage its own CPA to perform a QC Price calculation and the cost of such service will be paid for by the Development Owner. If a Development Owner disagrees with the QC Price calculated by the Department, a Development Owner may appeal in writing in accordance with §11.902 of this title (relating to Appeals Process). A meeting will be arranged with representatives of the Development Owner, the Department and the CPA contracted by the Department to attempt to resolve the discrepancy.

The 1YP will not begin until the Department and Development Owner have agreed to the QC Price in writing. Further appeals can be submitted in accordance with §11.902 of this title (relating to Appeals Process) and Tex. Gov't Code §2306.0321 and §2306.6715.

(g) Marketing of Property. By submitting a Request, the Development Owner grants the Department the authority to market the Development and provide Development information to interested parties. Development information will consist of pictures of the Development, location, amenities, number of Units, age of building, etc. Development Owner or broker contact information will also be provided to interested parties. The Development Owner is responsible for providing staff any requested information to assist with site visits and inspections. Marketing of the Development will continue until such time that a Qualified Contract is presented or the 1YP has expired. Notwithstanding subsection (d)(2) of this section, the Department reserves the right to contract directly with a Third Party in marketing the Development. Cost of such service, including a broker's fee, will be paid for by the existing Development Owner. The Department must have continuous cooperation from the Development Owner. Lack of cooperation will cause the process to cease and the Development Owner will be required to comply with requirements of the LURA for the remainder of the Extended Use Period. Responsibilities of the Development Owner include but are not limited to the items described in paragraphs (1) - (3) of this subsection. The Development Owner must:

(1) Allow access to the Property and tenant files;

(2) Keep the Department informed of potential purchasers; and

(3) Notify the Department of any offers to purchase.

(h) Presentation of a Qualified Contract. If the Department finds a Qualified Purchaser willing to present an offer to purchase the property for an amount at or above the QC Price, the Development Owner may accept the offer and enter into a commercially reasonable form of earnest money agreement or other contract of sale for the property and provide a reasonable time for necessary due diligence and closing of the purchase. If the Development Owner chooses not to accept the QC offer that the Department presents, the QC request will be closed and the possibility of terminating the Extended Use Period through the Qualified Contract process is eliminated; the Property remains bound by the provisions of the LURA for the remainder of the Extended Use Period. If the Development Owner decides to sell the development for the QC Price pursuant to a QC, the purchaser must complete all requirements of an ownership transfer request and be approved by the Department prior to closing on the purchase, but the consummation of such a sale is not required for the LURA to continue to bind the Development for the remainder of the Extended Use Period.

(1) The Department will attempt to procure a QC only once during the Extended Use Period. If the transaction closes under the contract, the new Development Owner will be required to fulfill the requirements of the LURA for the remainder of the Extended Use Period.

(2) If the Department fails to present a QC before the end of the 1YP, the Department will file a release of the LURA and the Development will no longer be restricted to low-income requirements and compliance. However, in accordance with §42(h)(6)(E)(ii) of the Code, for a three-year period commencing on the termination of the Extended Use Period, the Development Owner may not evict or displace tenants of Low-Income Units for reasons other than good cause and will not be permitted to increase rents beyond the maximum tax credit rents. Additionally, the Development Owner should submit to the Department a request to terminate the LURA and evidence, in the form of a signed certification and a copy of the letter, to be approved by the Department, that the tenants in the Development have been notified in writing that the LURA will be terminated and have been informed of their protections during the three-year time frame.

(3) Prior to the Department filing a release of the LURA, the Development Owner must correct all instances of noncompliance at the Development.

(i) Compliance Monitoring during Extended Use Period. For Developments that continue to be bound by the LURA and remain affordable after the end of the Compliance Period, the Department will monitor in accordance with the applicable requirements in Subchapters F and G of this chapter (relating to Uniform Multifamily Rules).

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 January 15, 2026.

TRD-202600136
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 1, 2026
For further information, please call: (512) 475-3959

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SUBCHAPTER F. COMPLIANCE MONITORING

10 TAC §§10.601, 10.607, 10.611, 10.613, 10.614, 10.621, 10.622, 10.625

The Texas Department of Housing and Community Affairs (the Department) proposes amendments to §10.601 Compliance Monitoring Objectives and Applicability; §10.607 Reporting Requirements; §10.611 Determination, Documentation and Certification of Annual Income; §10.613 Lease Requirements; §10.614 Utility Allowances; §10.621 Property Condition Standards; §10.622 Special Rules Regarding Rents and Rent Limit Violations; and §10.625 Events of Noncompliance. The amendments will add new program requirements to developments that are subject to the new HOME Final rule. Additionally, the amendments will clarify that non-operable elevators must be reported to the Department within 24 hours and rent payment made on time and in full must be accepted.

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 a rule in compliance with the new HOME Final rule. 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 AND INFORMATION RELATED TO COST, BENEFIT OR EFFECT. The Department requests comments on the proposed amendment and also requests information related to the cost, benefit, or effect of the proposed amendment, including any applicable data, research, or analysis from any person required to comply with the proposed amendment or any other interested person. The public comment period will be held from January 30, 2026 to March 3, 2026, to receive comments on the proposed action. 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, or email wendy.quackenbush@tdhca.texas.gov. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local (Central) time, March 3, 2026.

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.

§10.601. Compliance Monitoring Objectives and Applicability.

(a) The objectives of the Department in performing regular monitoring of affordable rental housing are:

(1) To provide for monitoring that meets applicable requirements of:

(A) The U.S. Department of Housing and Urban Development (HUD);

(B) The U.S. Department of the Treasury (Treasury);

(C) The Internal Revenue Service (the IRS); and

(D) Applicable state laws and rules;

(2) To enable the Department to report information to HUD, Treasury, the IRS, and the Governing Board, as required, regarding the condition and operations of such developments;

(3) To enable the Department to communicate with responsible persons regarding the condition and operation of their developments and understand clearly, with a documented record, how they are performing in meeting their obligations;

(4) To identify matters of noncompliance so that they can be appropriately addressed and to assist in targeting issues that may require compliance assistance education;

(5) To ensure that responsible persons understand the compliance status of their developments and the implications of such status;

(6) To articulate and communicate clear standards to promote the maintenance and operation of such developments in a manner that meets the high standards of the Department's affordable rental programs; and

(7) To provide a transparent system whereby all interested parties, including residents, community organizations, local governmental entities, and the affordable housing industry, may find accountability, consistency, and an awareness of the high quality standards of affordable housing in the State of Texas.

(b) This subchapter applies to the monitoring of affordable rental housing under the programs described in paragraphs (1) - (11) of this subsection:

(1) The Housing Tax Credit Program (HTC);

(2) The HOME Investment Partnerships Program (HOME), inclusive of HOME Match Units;

(3) The Tax Exempt Bond Program, inclusive of 501c3 bonds (Bond);

(4) The Texas Housing Trust Fund Program (HTF, SHTF, or THTF), inclusive of Preservation;

(5) The Tax Credit Assistance Program (TCAP);

(6) The Tax Credit Exchange Program (Exchange);

(7) The Neighborhood Stabilization Program (NSP);

(8) Section 811 Project Rental Assistance (811 PRA or 811) Program;

(9) Tax Credit Assistance Program Repayment Funds (TCAP RF);

(10) The National Housing Trust Fund (NHTF)

(11) HOME American Rescue Plan (HOME-ARP); and

(12) Emergency Rental Assistance (ERA).

(c) Monitoring activity evaluates the physical condition of the Developments and whether they are being operated in documented compliance with program requirements.

(d) The results of the Department's monitoring activities will be documented and, communicated to the owner in writing within 90 days of the monitoring visit.

(e) The Department may contract with an independent third party to monitor a Development during its construction or rehabilitation and during its operation for compliance with any conditions imposed by the Department in connection with the award of any Department funds, including allocations of housing tax credits, and appropriate state and federal laws, rules, regulations, orders, and other applicable legal requirements.

(f) The capitalized terms or phrases used herein are defined in this title. Any other capitalized terms in this subchapter shall have the meaning as defined in Tex. Gov't Code Chapter 2306, Internal Revenue Code (the Code) §42, the HOME Final Rule, and other federal or

Department rules, as applicable. Defined terms, when not capitalized, are to be read in context and construed according to common usage.

(g) A Development with one or more HOME, TCAP-RF or HOME Match Units is subject to the 2025 HOME Final rule if a Contract with the Department is executed by both Parties on or after April 30, 2026; a Development with HOME, TCAP-RF and HOME Match Units with a Contract or a LURA executed prior to April 30, 2026, that has executed the applicable amendment(s) to opt-in the entirety of rule (to the extent allowed under federal or state law determined by the Department's Legal Division) are also subject to the HOME Final Rule. A Development with one or more NSP Units with a Contract executed on or after April 30, 2026, may be subject to elements of the HOME Final rule as further described in the Department's Consolidated Plan Amendment, and as outlined in the Contract and the LURA. A Development with one or more NSP Units with a Contract executed prior to April 30, 2026, that also has one or more Units subject to the 2025 HOME Final Rule may be allowed to opt into elements of the HOME Final rule, as determined by the Department's Legal Division.

§10.607. Reporting Requirements.

(a) The Department requires reports to be submitted electronically through CMTS and in the format prescribed by the Department. The Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms must be emailed to cmts.requests@tdhca.texas.gov for:

(1) 9% Housing Tax Credit Developments - no later than the 10% Test;

(2) 4% Housing Tax Credit Developments - no later than Post Bond Closing Documentation Requirements;

(3) For all other rental Developments - no later than September 1st of the year following the award; or

(4) For all rental Developments that have received Department approval of Ownership transfer - no later than 10 days following the completion of Ownership transfer.

(b) Each Development is required to submit an Annual Owner's Compliance Report (AOCR). Depending on the Development, some or all of the Report must be submitted. The first AOCR is due the second year following the award in accordance with the deadlines set out in subsection (e) of this section. Example 607(1): A Development was allocated Housing Tax Credits in July 2022. The first report is due April 30, 2024, even if the Development has not yet commenced leasing activities.

(c) The AOCR is comprised of four parts:

(1) Part A "Owner's Certification of Program Compliance." All Owners must annually certify compliance with applicable program requirements. The AOCR Part A shall include answers to all questions required by the U. S. Department of the Treasury to be addressed, including those required by Treasury Regulation 1.42-5(b)(1) or the applicable program rules;

(2) Part B "Unit Status Report." All Developments must annually report and certify the information related to individual household income, rent, certification dates and other necessary data to ensure compliance with applicable program regulations. In addition, Owners are required to report on the race and ethnicity, family composition, age, use of rental assistance, disability status, and monthly rental payments of individuals and families applying for and receiving assistance or if the household elects not to disclose the information, such election;

(3) Part C "Housing for Persons with Disabilities." The Department is required to establish a system that requires Owners of state or federally assisted housing Developments with 20 or more housing Units to report information regarding housing Units designed for persons with disabilities. The certified answers to the questions on Part C satisfy this requirement; and

(4) Part D "Form 8703." Tax exempt bond properties funded by the Department must file Form 8703 each calendar year of the qualified project period. The form is due to the IRS by March 31 after the close of the calendar year for which the certification is made. The Department requires Tax Exempt Bond Development Owners to submit a copy of the filed Form 8703 for the preceding calendar year.

(d) The Owner is required to report certain financial information to the Department electronically through CMTS. If supplemental information is required, it must be uploaded to the Development's CMTS account. "Annual Owner's Financial Certification" (formerly Part D of the AOCR). Developments funded by the Department must annually provide and certify to the data represented in the Annual Owner's Financial Certification (AOFC).

(e) Parts A, B, C, and D of the AOCR and the AOFC must be provided to the Department no later than April 30th of each year, reporting data current as of December 31st of the previous year (the reporting year).

(f) Periodic Unit Status Reports. All Developments must submit a Quarterly Unit Status Report to the Department through the Compliance Monitoring and Tracking System. Quarterly reports are due in January, April, July, and October on the 10th day of the month. The report must report occupancy as of the last day of the previous month for the reporting period. For example, the report due October 10th should report occupancy as of September 30th of the preceding month. The first quarterly report is due on the first quarterly reporting date after leasing activity commences. Failure to report occupancy timely will result in a finding of noncompliance.

(g) Owners are encouraged to continuously maintain current resident data in the Department's CMTS. Under certain circumstances, such as in the event of a natural disaster, the Department may alter the reporting schedule and require all Developments to provide current occupancy data through CMTS.

(h) All rental Developments funded or administered by the Department will be required to submit an accurate Unit Status Report prior to a monitoring review and/or a physical inspection.

(i) Housing Tax Credit and Tax Credit Exchange Developments must submit IRS Form(s) 8609 with Part II complete through CMTS by the second monitoring review. If an owner elects to group buildings together into one or more multiple building projects, the owner must attach a statement identifying the buildings within the project.

(j) Within six (6) months but at least 90 days prior to the end of the Affordability Period and/or the end of the Land Use Restriction Term, the Owner must provide written notice to the current tenants and applicants. If the Development Owner has been approved for new funding, through the Department, and/or awarded new credits such notice is not required. The Notice must contain the following: proposed new rents, any rehabilitation plans and information on how to access the Departments Vacancy Clearinghouse to locate other affordable housing options.

(k) For Developments subject to the 2025 HOME Final Rule, within five (5) business days of a change to the Development Owner or management company, the new Owner or management company shall issue a written notice to all households of such a change.

§10.611. Determination, Documentation, and Certification of Annual Income.

(a) For all rental programs administered by the Department, annual income shall be determined by the Development Owner consistent with the Section 8 Program administered by HUD, using the definitions of annual income described in 24 CFR §5.609 as further described in the HUD Handbook 4350.3, as amended from time to time. For the Housing Tax Credit program, where there is a conflict between the HUD Handbook 4350.3 and the IRS Guide for Completing IRS Form 8823, the IRS guidance will be controlling. For the BOND program, documentation of income and assets shall be determined in accordance with the HUD Handbook 4350.3 or the IRS guidance for the §42 Housing Tax Credit program (if applicable). At the time of program designation as a low income household, Owners must certify and document household income. In general, all low income households must be certified prior to move in. Certification and documentation of household income is an Owner's responsibility, even if the Owner is using the services of a manager or management company to handle tenant intake and leasing. Accordingly, Owners should ensure that they hire competent and properly trained managers or management companies and that they exercise appropriate oversight of any managers or management companies.

(b) For every certification, requiring verification of income and assets, of a household residing in a HOME, NHTF, NSP, TCAP RF, or HOME-ARP assisted Unit, Owners must examine at least two months (60 days) of source documents evidencing annual income (e.g., wage statement, interest statement, unemployment compensation). Qualified populations in HOME-ARP Units may not need to meet an income requirement upon move-in, but will have their income verified to determine rental portion of payment.

(c) Department administered programs are permitted to utilize the Section 8 Verification of income process, available on the Department website, for the verification of household income at initial or subsequent annual certifications for households currently utilizing a tenant based Housing Choice Voucher or project-based Housing Choice Voucher issued under 24 CFR Part 983. This permission is removed if any entity that is in the Control of the operation of the Development or is in any way associated with the certifying Housing Authority. [~~This permission is only granted for households that currently are utilizing a Housing Choice Voucher.~~] No other means tested verifications are allowable.

(d) A household's lowest designation, as recorded on the Income Certification, at the time of move in, cannot be increased unless the household was found to never have income qualified for the Unit, no longer income qualifies for the Unit, or program rules required the change. In addition, a household's low income status cannot be removed because of an increase in income at recertification unless the increase causes the Unit to go over income as defined in §10.615 of this subchapter (relating to Elections under IRC §42(g) and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments), IRC §42(g), or the HOME Final Rule.

(e) For all programs, for every certification that requires verification of income and assets, those verifications must be dated within 120 days of the certification effective date. The only exceptions are lifetime benefits (e.g. pension, annuities, Social Security).

§10.613. Lease Requirements.

(a) Eviction and/or termination of a lease. HTC, TCAP, and Exchange Developments must specifically state in the lease or in an addendum attached to the lease that evictions or terminations of tenancy for other than good cause are prohibited. To terminate tenancy, the Owner must serve written notice to the tenant specifying the grounds for the action. For nonpayment of rent, HTC, TCAP, Exchange, and NHTF Developments require a thirty (30) day written notice. If the CARES Act is modified to eliminate the 30-day notice requirement, HUD or Treasury requirements will supersede this 30-day notice requirement for nonpayment of rent.

(b) HOME, ERA, TCAP RF, NHTF, NSP, and HOME-ARP Developments are prohibited from evicting low income residents or refusing to renew a lease except for serious or repeated violations of the terms and conditions of the lease, for violations of applicable federal, state or local law, for completion of the tenancy period for Transitional Housing (if applicable), for households that were found to never have income qualified for the highest income designation under the program or for other good cause. It must be specifically stated in the lease or in an addendum attached to the lease that evictions or non-renewal of leases for other than good cause are prohibited (24 CFR §92.253 and 24 CFR §93.303). Owners must also comply with all other lease requirements and prohibitions stated in 24 CFR §92.253 or 24 CFR §93.303, as applicable. To terminate or refuse to renew tenancy in HOME, TCAP RF, NSP, and HOME-ARP Developments, the Owner must serve written notice to the tenant specifying the grounds for the action at least 30 days before the termination of tenancy. For HOME-ARP, Owners may not terminate the tenancy or refuse to renew the lease of the Qualifying Household in any Unit that is supported by capitalized operating costs because of the household's inability to pay rent of more than 30 percent of the qualifying household's income toward rent during the longer of the federal affordability period or the time period identified in the Contract.

(c) In accordance with the Violence Against Women Act, an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking against the documented victim of such actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as a serious or repeated violation of a lease or good cause for termination of tenancy of the victim(s). Additionally, it shall not be construed as a serious or repeated violation of a lease or action eligible for termination of tenancy if a person has opposed any act or practice made unlawful by the Violence Against Women Act 2022, or because that person testified, assisted, or participated in any matter covered by the Violence Against Women Act 2022.

(d) A Development must use a lease or lease addendum that requires households to report changes in student status; this does not apply for NHTF Units when NHTF Units are fixed and not layered with HTC or another program with a student rule, or when NHTF Units are floating but under the LURA cannot be layered with HTC or another program with a student rule.

(e) Owners of HTC, TCAP, [~~and~~] Exchange Developments and Developments subject to the 2025 HOME Final Rule are prohibited from locking out or threatening to lock out any Development resident, except by judicial process, unless the exclusion is necessary for the purpose of performing repairs or construction work, or in cases of emergency. Owners are further prohibited from seizing or threatening to seize the personal property of a resident except by judicial process unless the resident has abandoned the premises. These prohibitions must be included in the lease or lease addendum.

(f) For HOME, TCAP, TCAP RF, NHTF, 811 PRA, NSP, ERA and HOME-ARP Developments, properties that were initially built for occupancy prior to 1978 must include in their lease or lease addendum a Lead Warning Statement. To demonstrate compliance, the Department will monitor that all households at HOME, TCAP, TCAP RF, NHTF, NSP, ERA, and HOME-ARP Developments have signed the Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards. (24 CFR §92.355, 24 CFR §93.361 and §570.487(c), and Section 1018 of Title X, as applicable). The addendum and disclosure are not required if all lead has been certified to have been cleared from the Development in accordance with 24 CFR §35.130, and the Owner has the required certification in its on-site records.

(g) An Owner may bifurcate a lease to terminate the tenancy of an individual who is a tenant or lawful occupant and engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against another lawful occupant living in the Unit or other affiliated individual as defined in the VAWA 2022 and as further described in 24 CFR §5.2003 or subsequent federal regulation, and also for HOME ARP QP households persons described under 22 U.S.C. 7102 [~~2013~~].

(h) All NHTF, TCAP RF, NSP, HOME, ERA, and HOME-ARP Developments for which the Contract [~~contract~~] is executed on or after December 16, 2016, must use the Department created VAWA lease addendum which provides the ability for the tenant to terminate the lease without penalty if the Department determines that the tenant qualifies for an emergency transfer under 24 CFR §5.2005(e). 811 PRA Units are prohibited from using the expired 2005 VAWA lease addendum. After OMB approval of a VAWA lease addendum, all 811 PRA households must have a valid and executed VAWA lease addendum. For the 811 PRA program certain addenda for the HUD model lease may be required such as Lead Based Paint Disclosure form, house rules, and pet rules. No other attachments to the lease are permissible without approval from the Department's 811 PRA staff.

(i) Leasing of HOME, TCAP RF, or NHTF Units to an organization that, in turn, rents those Units to individuals is not permissible for Developments with Contracts [~~contracts~~] dated on or after August 23, 2013. Leases must be between the Development and an eligible household. NSP and HOME-ARP Developments may only utilize Master Leases, if specifically allowed in the Development's LURA.

(j) Housing Tax Credit, TCAP, and Exchange Units leased to an organization through a supportive housing program where the owner receives a rental payment for the Unit regardless of physical occupancy will be found out of compliance if the Unit remains vacant for over 60 days. The Unit will be found out of compliance under the Event of Noncompliance "Violation of the Unit Vacancy Rule."

(k) It is a Development Owner's responsibility at all times to know what it has agreed to provide by way of common amenities, Unit amenities, and services.

(l) A Development Owner shall post in a common area of the leasing office a copy and provide each household, during the application process and upon a subsequent change to the items described in paragraph (2) of this subsection, the brochure made available by the Department, A Tenant Rights and Resources Guide, which includes:

(1) Information about Fair Housing and tenant choice;

(2) Information regarding common amenities, Unit amenities, and services;

(3) A certification that a representative of the household must sign prior to, but no more than 120 days prior to, the initial lease execution acknowledging receipt of this brochure;

(4) In the event this brochure is not provided timely or the household does not certify to receipt of the brochure, correction will be achieved by providing the household with the brochure and receiving a signed certification that it was received; and

(5) A Development Owner must state in the Tenant Rights and Resources Guide if part or all of the Development Site is located in the 100 year floodplain. Developments where all or part of the Development Site is located in a 100 year floodplain where the latest award from the Department is after 2019, under a Project-Based Voucher HAP Contract or 811 PRA Use Agreement with the Department, within any federal affordability period (including a HOME Match affordability period), that have a loan with the Department with an outstanding loan balance, or that has flood insurance as a contractual requirement or requirement in its LURA must maintain flood insurance, and provide evidence to the Department upon request.

(m) For Section 811 PRA Units, Owners must use the HUD Model lease, HUD form 92236-PRA.

(n) Except as identified in federal or state statute or regulation for Direct Loans, or as otherwise identified in this Chapter, the Department does not determine if an Owner has good cause or if a resident has violated the lease terms. Challenges to evictions or terminations of tenancy must be determined by a court of competent jurisdiction or an agreement of the parties (including an agreement made in arbitration), and the Department will rely on that determination.

(o) A Development subject to the 2025 HOME Final Rule must comply with all provisions outlined within this section and the following:

(1) Surety bonds, security deposit insurance, and instruments similar to surety bonds or security deposit insurance may not be used in lieu of or in addition to a security deposit for any Unit in a Development with floating Units or for fixed Units in the Designated Units. All security deposits must be fully refundable and may not be greater than two months' rent.

(2) A Designated Unit must use the HOME tenancy addendum published by HUD. If HUD does not publish a tenancy addendum, then the Department's version must be used.

(3) Leases for Designated Units:

(A) A copy of the lease template must be submitted to the Department prior to being implemented or upon any revision;

(B) The lease must provide more than one method to communicate directly with the Owner and the property management, including in person, by telephone, email or through a web portal;

(C) For a Development with one or more floating Units, if the Development is not using the same lease template for all Units in the Development, the lease must provide the provisions that will go into effect upon the Unit becoming a Designated Unit; and

(D) The lease must provide the following Department contact information: mail: TDHCA P.O. Box 13941 Austin, Texas 78711 phone: (512) 475-3800 email:info@tdhca.texas.gov.

(4) All Notices to Vacate must be submitted to the Department no later than 14 days after the notice is issued (in the case of a 30-day notice). In cases where a shorter Notice to Vacate is issued due to imminent threats to other tenants, employees, or property, a copy of the notice must be provided to the Department upon issuance.

(p) For all Developments that have or had direct loan funds from the Department, surety bonds, security deposit insurance, and instruments similar to surety bonds or security deposit insurance may not be used in lieu of or in addition to a security deposit for any Unit in a Development with floating Units or for fixed Units in the Designated Units.

§10.614. Utility Allowances.

(a) Purpose. The purpose of this section is to provide the guidelines for calculating a Utility Allowance under the Department's multifamily programs. The Department will cite noncompliance and/or not approve a Utility Allowance if it is not calculated in accordance with this section. An Owner is [~~Owners are~~] required to comply with the provisions of this section as well as any existing federal or state program guidance.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. Other capitalized terms used in this section herein have the meanings assigned in Chapters 1, 2, 10, 11, 12, and 13 [~~and 12~~] of this title.

(1) Building Type. The HUD Office of Public and Indian Housing (PIH) characterizes building and unit configurations for HUD programs. The Department will defer to the guidance provided by HUD found at: http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11608.pdf (or successor Uniform Resource Locator (URL)) when making determinations regarding the appropriate building type(s) at a Development.

(2) Power to Choose. The Public Utility Commission of Texas database of retail electric providers in the areas of the state where the sale of electricity is open to retail competition: http://www.powertochoose.org/ (or successor URL). In areas of the state where electric service is deregulated, the Department will verify the availability of residential service through Power to Choose. If the Utility Provider is not listed as a provider of residential service in the Development's ZIP code for an area that is deregulated, the request will not be approved. It is the Owner's responsibility to ensure that a Development in a deregulated area, but within the boundaries of a regulated municipality, is using the appropriate provider.

(3) Component Charges. The actual cost associated with the billing of a residential utility. Each Utility Provider may publish specific utility service information in varying formats depending on the service area. Such costs include, but are not limited to:

(A) Rate(s). Any cost incurred for the actual unit of measure for the utility (e.g., base cost per kilowatt hour for electricity, TDU delivery charges, rate per gallon of water, etc.);

(B) Fees. The cost associated with a residential utility that is incurred regardless of the amount of the utility the household consumes (e.g., Customer Charge);

(C) Taxes. Taxes for electricity and gas are regulated by the Texas Comptroller of Public Accounts and can be found http://comptroller.texas.gov/ (or successor URL). Local Utility Providers have control of the tax structure related to water, sewer and trash. To identify if taxes are imposed for these utilities, obtain documentation directly from the Utility Provider.

(4) Multifamily Direct Loan (MFDL). Funds provided through the HOME, NSP, NHTF, TCAP RF, HOME-ARP, ERA, or other program available through the Department, local political subdivision, or administrating agency for multifamily development that require a Utility Allowance. MFDLs may also include deferred forgivable loans or other similar direct funding, regardless if it is required to be repaid. Housing Tax Credits, Tax Exempt Bonds, CDBG, and Project Based Vouchers are not MFDLs.

(5) Renewable Source. Energy produced from energy property described in IRC §48 or IRC §45(d)(1) through (4), (6), (9), or (11). The manner in which a resident is billed is limited to the rate at which the local Utility Provider would have charged the residents for the utility if that entity had provided it to them, and as may be further limited by the Texas Utilities Code or by regulation.

(6) Submetered Utility. A utility purchased from or through a local Utility Provider by the building Owner where the resident is billed directly by Owner of the building or to a third party billing company and the utility is:

(A) Based on the residents' actual consumption of that utility and not an allocation method or Ratio Utility Billing System (RUBS);

(B) The rate at which the utility is billed does not exceed the rate incurred by the building Owner for that utility; and

(C) Tenants receiving a tenant-based Housing Choice Voucher or residing in a Housing Tax Credit Development may not be charged a service fee for submetered utilities. For MFDL Developments where tenants are being charged a service fee for submetered utilities, the fee must either be included in the Utility Allowance or be included in the gross rent calculation as a mandatory fee.

(7) Utility Allowance. An estimate of the expected monthly cost of any utility for which a resident is financially responsible, other than telephone, cable television, or internet. A utility allowance is considered implemented once the Unit Status Report is updated and rents are restricted.

(A) For HTC, TCAP, Exchange buildings, Bonds, and THTF include:

(i) Utilities paid by the household directly to the Utility Provider;

(ii) Submetered Utilities; and

(iii) Renewable Source Utilities.

(B) For a Development with an MFDL, unless otherwise prescribed in the program's Regulatory Agreement, include all utilities regardless of how they are paid.

(8) Utility Provider. The company that provides residential utility service (e.g., electric, gas, water, wastewater, and/or trash) to the buildings. If the Utility Provider offers more than one rate plan, the plan selected must be available to all households in the building.

(c) Methods. The following options are available to establish a Utility Allowance for all programs except most Developments funded with MFDL funds, which are addressed in subsection (d) of this section. A Development with HOME-ARP Units or Units subject to the 2025 HOME Final Rule, and that does not have Units subject to the 2013 HOME Rule, may use methods in this subsection or subsection (d) of this section, but cannot combine two methods in one building.

(1) Rural Housing Services (RHS) buildings or buildings with RHS assisted residents. The applicable Utility Allowance for the Development will be determined under the method prescribed by the RHS (or successor agency). No other utility method described in this section can be used by RHS buildings or buildings with RHS assisted residents.

(2) HUD-Regulated buildings layered with any Department program. If neither the building nor any resident in the building receives RHS rental assistance payments, and the rents and the Utility Allowances of the building are regulated by HUD (HUD-regulated building), the applicable Utility Allowance for all rent restricted Units in the building is the applicable HUD Utility Allowance. No other utility method described in this section can be used by HUD-regulated buildings. Unless further guidance is received from the U.S. Department of Treasury or the Internal Revenue Service (IRS), the Department considers Developments awarded an MFDL (e.g., HOME) to be HUD-Regulated buildings.

(3) Other Buildings. For all other rent-restricted Units, Development Owners must use one of the methods described in subparagraphs (A) - (E) of this paragraph:

(A) Public Housing Authority (PHA). The Utility Allowance established by the applicable PHA for the Housing Choice Voucher Program. The Department will utilize the Texas Local Government Code, Chapter 392 to determine which PHA is the most applicable to the Development.

(i) If the PHA publishes different schedules based on Building Type, the Owner is responsible for implementing the correct schedule based on the Development's Building Type(s). Example 614(1): The applicable PHA publishes a separate Utility Allowance schedule for Apartments (5+ units), one for Duplex/Townhomes and another for Single Family Homes. The Development consists of 20 buildings, 10 of which are Apartments (5+ units) and the other 10 buildings are Duplexes. The Owner must use the correct schedule for each Building Type.

(ii) In the event the PHA publishes a Utility Allowance schedule specifically for energy efficient units, and the Owner desires to use such a schedule, the Owner must demonstrate that the building(s) meet the housing authority's specifications for energy efficiency once every five years.

(iii) If the applicable PHA allowance lists flat fees for any utility, those flat fees must be included in the calculation of the Utility Allowance if the resident is responsible for that utility.

(iv) If the individual components of a Utility Allowance are not in whole number format, the correct way to calculate the total allowance is to add each amount and then round the total up to the next whole dollar. Example 614(2): Electric cooking is $8.63, Electric Heating is $5.27, Other Electric is $24.39, Water and Sewer is $15. The Utility Allowance in this example is $54.00. If the PHA schedule reflects a rounded amount, then the PHA method of rounding should be used.

(v) If an Owner chooses to implement a methodology as described in subparagraph (B), (C), (D), or (E) of this paragraph, for Units occupied by Section 8 voucher holders, the Utility Allowance remains the applicable PHA Utility Allowance established by the PHA from which the household's voucher is received.

(vi) If the Development is located in an area that does not have a municipal, county, or regional housing authority that publishes a Utility Allowance schedule for the Housing Choice Voucher Program, Owners must select an alternative methodology, unless the building(s) is located in the published Housing Choice Voucher service area of:

(I) A Council of Government created under Texas Local Government Code, Chapter 303, that operates a Housing Choice Voucher Program;

(II) The Department's Housing Choice Voucher Program; or

(III) Another PHA which publishes a separate utility allowance schedule specific to the Development's location.

(B) Written Local Estimate. The estimate must come from the local Utility Provider, be signed by the Utility Provider representative, and specifically include all Component Charges for providing the utility service.

(C) HUD Utility Schedule Model. The HUD Utility Schedule Model and related resources can be found at http://www.huduser.gov/portal/resources/utilallowance.html (or successor URL). Each item on the schedule must be displayed out two decimal places. The total allowance must be rounded up to the next whole dollar amount. The Component Charges used can be no older than those in effect 60 days prior to the beginning of the 90 day period described in subsection (f)(3) of this section related to Effective Dates.

(i) The allowance must be calculated using the MS Excel version available at http://www.huduser.org/portal/resources/utilmodel.html (or successor URL), as updated from time to time, with no changes or adjustments made other than entry of the required information needed to complete the model.

(ii) In the event that the zip code for the Development is not listed in "Location" tab of the workbook, the Department will default to the PHA code from the PHA that is closest in distance to the Development using online mapping tolls (e.g. Google Maps). If neither the zip code nor the PHA code is listed, a zip code that borders the Development's zip code will be used The Department will obtain the PHA codes from https://www.hud.gov/sites/dfiles/PIH/documents/PHA_Contact_Report_TX.pdf (or successor Uniform Resource Locator (URL)).

(iii) Green Discount. If the Owner elects any of the Green Discount options for a Development, documentation to evidence that the units and the buildings meet the Green Discount standard as prescribed in the model is required for the initial approval and every subsequent annual review. Energy Star certifications will require the certificates for each Unit at the time of the initial Utility Allowance review and a letter from a properly licensed engineer annually thereafter. The engineer letter will be accepted for a period of five (5) years and must be updated thereafter.

(I) In the event the allowance is being calculated for an application of Department funding (e.g., 9% Housing Tax Credits), upon request, the Department will provide both the Green Discount and the non-Green Discount results for application purposes.

(II) At lease up, the owner may use the utility allowance taking into consideration the green discount if they obtain written documentation from a qualified professional (e.g., a qualified energy efficiency consultant) indicating that the Units and buildings will meet the qualifications for the Green Discount within six months of the placed in service date or for MFDL within six months of the construction completion date.

(iv) Do not take into consideration any costs (e.g., penalty) or credits that a consumer would incur because of their actual usage. Example 614(3): The Electric Fact Label for ABC Electric Utility Provider provides a Credit Line of $40 per billing cycle that is applied to the bill when the usage is greater than 999 kWh and less than 2000 kWh. Example 614(4): A monthly minimum usage fee of $9.95 is applied when the usage is less than 1000 kWh in the billing cycle. When calculating the allowance, disregard these types of costs or credits.

(D) Energy Consumption Model. The model must be calculated by a properly licensed mechanical engineer. The license of the engineer must be submitted along with the model. The individual must not be related to the Owner within the meaning of §267(b) or §707(b) of the Code. The utility consumption estimate must, at minimum, take into consideration specific factors that include, but are not limited to, Unit size, building type and orientation, design and materials, mechanical systems, appliances, characteristics of building location, and available historical data. Component Charges used must be no older than those in effect 60 days prior to the beginning of the 90 day period described in subsection (f)(3) of this section related to Effective Dates; and

(E) An allowance based upon an average of the actual use of similarly constructed and sized Units in the building using actual utility usage data and Component Charges, provided that the De-

velopment Owner has the written permission of the Department. This methodology is referred to as the "Actual Use Method." For a Development Owner to use the Actual Use Method they must:

(i) Provide a minimum sample size of usage data for at least five Continuously Occupied Units of each Unit Type or 20% of each Unit Type, whichever is greater. If there are less than five Units of any Unit Type, data for 100% of the Unit Type must be provided; and

(ii) Upload the information in subclauses (I) - (IV) of this clause to the Development's CMTS account no later than the beginning of the 90 day period after which the Owner intends to implement the allowance, reflecting data no older than 60 days prior to the 90 day implementation period described in described in subsection (f)(3) of this section related to Effective Dates.

(I) An Excel spreadsheet listing each Unit for which data was obtained to meet the minimum sample size requirement of a Unit Type, the number of bedrooms, bathrooms and square footage for each Unit, the household's move-in date, the utility usage (e.g., actual kilowatt usage for electricity) for each month of the 12 month period for each Unit for which data was obtained, and the Component Charges in place at the time of the submission;

(II) All documentation obtained from the Utility Provider (or billing entity for the utility provider) and/or copies of actual utility bills gathered from the residents, including all usage data not needed to meet the minimum sample size requirement and any written correspondence from the utility provider;

(III) The rent roll showing occupancy as of the end of the month for the month in which the data was requested from the utility provider; and

(IV) Documentation of the current Utility Allowance used by the Development.

(iii) Upon receipt of the required information, the Department will determine if the Development Owner has provided the minimum information necessary to calculate an allowance using the Actual Use Method. If so, the Department shall calculate the Utility Allowance for each bedroom size using the guidelines described in subclauses (I) - (V) of this clause;

(I) If data is obtained for more than the sample requirement for the Unit Type, all data will be used to calculate the allowance;

(II) If more than 12 months of data is provided for any Unit, only the data for the most current 12 will be averaged;

(III) The allowance will be calculated by multiplying the average units of measure for the applicable utility (i.e., kilowatts over the last 12 months by the current rate) for all Unit Types within that bedroom size. For example, if sufficient data is supplied for 18 two bedroom/one bath Units, and 12 two bedroom/two bath Units, the data for all 30 Units will be averaged to calculate the allowance for all two bedroom Units;

(IV) The allowance will be rounded up to the next whole dollar amount. If allowances are calculated for different utilities, each utility's allowance will be rounded up to the next whole dollar amount and then added together for the total allowance; and

(V) If the data submitted indicates zero usage for any month, the data for that Unit will not be used to calculate the Utility Allowance.

(iv) The Department will complete its evaluation and calculation within 45 days of receipt of all the information requested in clause (ii) of this subparagraph;

(d) In accordance with 24 CFR §§92.252 and 93.302, for an MFDL in which the Department is the funding source, the Utility Allowance will be established in the following manner:

(1) For Developments with fixed MFDL Units, only one utility allowance may be used in buildings with MFDL units. For Developments with floating MFDL Units, only one utility allowance may be used for the entire Development.

(2) For Developments that, as a result of funding, must calculate the Utility Allowance under HUD Multifamily Notice H-2015-4, as revised from time to time, the applicable Utility Allowance for all rent restricted Units in the building is the applicable Utility Allowance calculated under that Notice. No other utility method described in this section can be used.

(3) Other Buildings. The Utility Allowance may be initiated by the Owner using the methodologies described in subsection (c)(3)(B), (C), (D), or (E) of this section related to Methods. Buildings for which the only source of MFDL funding is HOME-ARP and which contain no Units subject to the 2013 HOME Rule [~~HOME-Match Units~~] may calculate the Utility Allowance using the methodology described in subsection (c)(3)(A) of this section. A Development that is subject to the 2025 HOME Final Rule may also use the methodology described in subsection (c)(3)(A) of this section, if the Development does not also contain Units subject to the 2013 HOME rule. The methodology must be annually reviewed and approved by the Department.

(4) If a request is not received by October 1st, the Department will calculate the Utility Allowance using the HUD Utility Schedule Model. For property specific data, the Department will use:

(A) The information submitted in the Annual Owner's Compliance Report;

(B) Monitor Review Questionnaires submitted with prior monitoring reviews; or

(C) The owner may be contacted and required to complete the Utility Allowance Questionnaire. In such case, a five day period will be provided to return the completed questionnaire.

(D) Utilities will be evaluated in the following manner:

(i) For regulated utilities, the Department will contact the Utility Provider directly and apply the Component Charges in effect no later than 60 days before the allowance will be effective.

(ii) For deregulated utilities:

(I) The Department will use the Power to Choose website and search available Utility Providers by ZIP code;

(II) The plan chosen will be the median cost per kWh based on average price per kWh for the average monthly use of 1000 kWh of all available plans; and

(III) The actual Component Charges from the plan chosen in effect no later than 60 days before the allowance will be effective will be entered into the Model.

(E) The Department will notify the Owner contact in CMTS of the new allowance and, if requested, provide the backup for how the allowance was calculated. The owner will be provided a five day period to review the Department's calculation and note any errors. Only errors related to the physical characteristics of the building(s) and utilities paid by the residents will be reconsidered; the utility plan and Utility Provider selected by the Department and Component Charges used in calculating the allowance will not be changed. During this five

day period, the owner also has the opportunity to submit documentation and request use of any of the available Green Discounts.

(F) The allowance must be implemented for rent due in all program Units thirty days after the Department notifies the Owner of the allowance.

(5) Buildings in which there are Units under an MFDL program are considered HUD-Regulated buildings and the applicable Utility Allowance for all rent restricted Units in the building is the Utility Allowance calculated under the MFDL program. If the Department is the awarding entity, no other utility method described in this section can be used. If the Department is not the awarding jurisdiction, Owners are required to obtain, annually, the Utility Allowance established by the awarding jurisdiction, and to document all efforts to obtain such allowance to evidence due diligence in the event that the jurisdiction is nonresponsive. In such an event, provided that sufficient evidence of due diligence is demonstrated, the Department, in its sole discretion, may allow for the use of the methods described in subsection (c)(3)(B), (C), (D) or (E) of this section related to Methods to calculate and establish its utility allowance.

(e) Acceptable Documentation. For the Methods where utility specific information is required to calculate the allowance (e.g., base charges, cost per unit of measure, taxes) Owners should obtain documentation directly from the Utility Provider and/or Regulating State Agency. Any Component Charges related to the utility that are published by the Utility Provider and/or Regulating State Agency must be included. In the case where a utility is billed to the Owner of the building(s) and the Owner is billing residents through a third party billing company, the Component Charges published by the Utility Provider and not the third party billing company will be used.

(f) Changes in the Utility Allowance. An Owner may not change Utility Allowance methods, start or stop charging residents for a utility without prior written approval from the Department. Example 614(5): A Housing Tax Credit Development has been paying for water and sewer since the beginning of the Compliance Period. In year eight, the Owner decides to require residents to pay for water and sewer. Prior written approval from the Department is required. Any such request must include the Utility Allowance Questionnaire found on the Department's website and supporting documentation. Developments may not start or stop charging residents for a utility during a lease term.

(1) The Department will review all requests, with the exception of the methodology prescribed in subsection (c)(3)(E) of this section related to Methods, within 90 days of the receipt of the request.

(2) If the Owner fails to post the notice to the residents and simultaneously submit the request to the Department by the beginning of the 90 day period, the Department's approval or denial will be delayed for up to 90 days after Department notification. Example 614(6): The Owner has chosen to calculate the electric portion of the Utility Allowance using the written local estimate. The annual letter is dated July 5, 2022, and the notice to the residents was posted in the leasing office on July 5, 2022. However, the Owner failed to submit the request to the Department for review until September 15, 2022. Although the Notice to the Residents was dated the date of the letter from the utility provider, the Department was not provided the full 90 days for review. As a result, the allowance cannot be implemented by the owner until approved by the Department.

(3) Effective dates. If the Owner uses the methodology as described in subsection (c)(3)(A) of this section related to Methods, no posting is required, and any changes to the allowance can be implemented immediately, but must be implemented for rent due at least 90 days after the change. For methodologies as described in subsection (c)(3)(B), (C), (D) and (E) of this section related to Methods, the allowance cannot be implemented until the estimate is submitted to the Department and is made available to the residents by posting in a common area of the leasing office at the Development. This action must be taken by the beginning of the 90 day period in which the Owner intends to implement the Utility Allowance. Nothing in this section prohibits an Owner from reducing a resident's rent prior to the end of the 90 day period when the proposed allowance would result in a gross rent issue. Figure: 10 TAC §10.6214(f)(3) (No change.)

(g) Requirements for Annual Review.

(1) RHS and HUD-Regulated Buildings. Owners must demonstrate that the utility allowance has been reviewed annually and in accordance with the RHS or HUD regulations.

(2) Buildings using the PHA Allowance. Owners are responsible for periodically determining if the applicable PHA released an updated schedule to ensure timely implementation. When the allowance changes or a new allowance is made available by the PHA, it can be implemented immediately, but must be implemented for rent due 90 days after the PHA published effective date.

(3) Written Local Estimate, HUD Utility Model Schedule and Energy Consumption Model. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than October 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review. At the same time the request is submitted to the Department, the Owner must post, at the Development, the Utility Allowance estimate in a common area of the leasing office where such notice is unobstructed and visible in plain sight. The Department will review the request for compliance with all applicable requirements and reasonableness. If, in comparison to other approved Utility Allowances for properties of similar size, construction and population in the same geographic area, the allowance does not appear reasonable or appears understated, the Department may require additional support and/or deny the request. With the exception of MFDL developments, if an Owner fails to submit for annual review during the calendar year, the Development's Utility Allowance will default to the applicable PHA allowance. If the Development is located in an area that does not have a PHA, the Development fails to have a properly calculated Utility Allowance. The Utility Allowance for MFDL Developments that fail to submit for annual review will be calculated pursuant to subsection (d) of this section.

(4) Actual Use Method. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than August 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review. With the exception of MFDL developments, if an Owner fails to submit for annual review during the calendar year, the Development's Utility Allowance will default to the applicable PHA allowance. If the Development is located in an area that does not have a PHA, the Development fails to have a properly calculated Utility Allowance. The Utility Allowance for MFDL Developments that fail to submit for annual review will be calculated using the HUD Utility Model Schedule.

(h) For Owners participating in the Department's Section 811 Project Rental Assistance (PRA) Program, the Department's 811 division staff will approve the Utility Allowance for all 811 Units. On an annual basis, the Owner is responsible for submitting a Utility Allowance to the Department's 811 division for review. Once approved, the 811 division will provide the Owner with a property-specific rent schedule containing the approved Utility Allowance. The allowance

listed on the rent schedule only applies to 811 PRA Units, not the entire building, and is the only allowance approved for use on 811 PRA Units. Failure to obtain an updated rent schedule for changes in utility allowances and gross rents will result in noncompliance and will require the Department to monitor tenant rents using the current approved rent schedule.

(i) Combining Methods. In general, Owners may combine any methodology described in this section for each utility service type paid directly by the resident and not by or through the Owner of the building (e.g., electric, gas). For example, if residents are responsible for electricity and gas, an Owner may use the appropriate PHA allowance to determine the gas portion of the allowance and use the Actual Use Method to determine the electric portion of the allowance. RHS and certain HUD-Regulated buildings (e.g., buildings with MFDL funds) are not allowed to combine methodologies.

(j) The Owner shall maintain and make available for inspection by the resident all documentation, including, but not limited to, the data, underlying assumptions and methodology that was used to calculate the allowance. Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling Unit of the resident at the convenience of both the Owner and resident.

(k) Utility Allowances for Applications.

(1) If the application includes RHS assisted buildings or tenants, the utility allowance is prescribed by the RHS program. No other method is allowed.

(2) If the application includes HUD-Regulated buildings for HUD programs other than an MFDL program the applicable Utility Allowance for all rent restricted Units in the building is the applicable HUD Utility Allowance. No other utility method is allowed.

(3) If the application includes MFDL funds from the Department, Applicants may calculate the utility allowance in accordance with subsection (c)(3)(B), (C), (D) or (E) of this section related to Methods. A Development with HOME-ARP Units that is subject to the 2025 HOME Final Rule may use subsection (c)(3)(A) of this section, if the Development does not also contain one or more Units subject to the 2013 HOME Final Rule. Applicants must submit their utility allowance to the Compliance Division prior to full application submission. In the event that the application has an MFDL from the Department, and receives federal funds from a unit of local government, the Department will require the use of the allowance approved by the Department. [~~HOME-ARP may use subsection (c)(3)(A) of this section.~~]

(4) If the application includes federal funds from a unit of local government but no MFDL from the Department, Applicants are required to request in writing the Utility Allowance from the awarding jurisdiction. If the awarding jurisdiction does not respond or requests the Department calculate the allowance, the Department will establish the initial Utility Allowance in accordance with subsection (d)(3) of this section.

(5) For all other applications, Applicants may calculate the utility allowance in accordance with subsection (c)(3)(A), (B), (C), (D), or (E) of this section related to Methods. If using the method described in subsection (c)(3)(B), (C), (D), or (E) of this section, applicants must submit their utility allowance to the Compliance Division prior to full application submission.

(A) Upon request, the Compliance Division will calculate or review an allowance for application. The request must be submitted to the Compliance Division no later than 21 days, but no earlier than 90 days, from when the application is due.

(B) Example 614(7): An application for a 9% HTC is due March 1, 2022. The applicant would like Department approval to use an alternative method by February 15, 2022. The request must be submitted to the Compliance Division no later than January 25, 2022, three weeks before February 15, 2022.

(C) Example 614(8): An Applicant intends to submit an application for a 4% HTC with Tax Exempt Bonds on August 11, 2022, and would like to use an alternative method. Because approval is needed prior to application submission, the request can be submitted no earlier than May 13, 2022, (90 days prior to August 11, 2022) and no later than July 21, 2022, (21 days prior to August 11, 2022).

(D) Any requests for new resources (either additional funds or tax credits) on a Development with an existing Department LURA must use the method that is in effect on the existing Development. If the Owner wishes to change or if for an MFDL application is required to change the methods for the purposes of the application, a request for the existing Development must first be submitted to the Compliance Division for approval.

(6) All Utility Allowance requests related to applications of funding must:

(A) Be submitted directly to UA-Application@tdhca.texas.gov. Requests not submitted to this email address will not be recognized.

(B) Include the "Utility Allowance Questionnaire for Applications" along with all required back up based on the method. If back-up is not submitted the Utility Allowance will be calculated using the HUD Utility Schedule Model as described in subsection (d)(3) of this section.

(l) If Owners want to change to a utility allowance other than what was used for underwriting the Owner must submit Utility Allowance documentation for Department approval, at minimum, 90 days prior to the commencement of leasing activities. The Owner is not required to review the utility allowances, or implement new utility allowances, until the building has achieved 90% occupancy for a period of 90 consecutive days or the end of the first year of the Credit Period (if applicable), whichever is earlier. Once a request to change the utility allowance is approved or implemented, the utility allowance used at underwriting is no longer valid.

(m) Department review and approval of Renewable Sources (e.g. solar):

(1) Methods outlined in subsection (c)(3)(A), (B), (C), (D) and (E) of this section are allowable if the Utility Provider or PHA publishes a rate plan or schedule specific to Renewable Sources. The method outlined in subsection (c)(3)(E) of this section is allowable only after occupancy is established as outlined in subsection (c)(3)(E) of this section;[.]

(2) Only buildings benefitting from Renewable Sources can use a Renewable Source utility allowance;[.]

(3) Tenants (not Owners) must benefit from the Renewable Source in a manner that is not a discount or credit. To evidence the benefit, 20% of current tenant bills must be submitted with the request; and[.]

(4) An Owner [~~Owners~~] must submit both the Renewable Source allowance and the non-Renewable Source allowance for approval regardless of methodology or current occupancy. If the Renewable Source is damaged or inoperable for more than 30 days, the non-Renewable Source allowance must be implemented. At the time of the first review or the first annual utility allowance review, whichever is first, the Owner must be able to demonstrate with tenant bills that

the tenants are benefitting from the Renewable Source; otherwise the non-Renewable allowance must be used.

(n) The Department reserves the right to outsource to a third party the review and approval of all or any Utility Allowance requests to use the Energy Consumption Model or when review requires the use of expertise outside the resources of the Department. In accordance with Treasury Regulation §1.42-10(c) any costs associated with the review and approval shall be paid by the Owner.

(o) All requests described in this subsection must be complete and uploaded directly to the Development's CMTS account using the "Utility Allowance Documents" in the type field and "Utility Allowance" as the TDHCA Contact. The Department will not be able to approve requests that are incomplete and/or are not submitted correctly.

§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) 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 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 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 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 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 inspection report and score. The request must be accompanied by evidence that supports the claim, 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) 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 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 for modernization work in progress must include proof the work was contracted before any notice of inspection was issued by the Department.

(i) Examples of items that cannot be adjusted include, but are not limited to:

(1) Deficiencies that were repaired or corrected during or after the inspection; or

(2) Deficiencies recorded with no associated point loss (for example, inoperable smoke detectors) or deficiencies for survey purposes only (for example, fair housing accessibility).

(j) All Life-Threatening and Severe deficiencies must be corrected within 24 hours. Project Owner's Certification That All Life Threatening and Severe Deficiencies Have Been Corrected must be completed and uploaded to CMTS within 72 hours (three Department business days).

(k) An Owner must report to the Department any non-operable elevators within 24 hours using the Department's form, which is posted on the website.

§10.622. Special Rules Regarding Rents and Rent Limit Violations.

(a) Rent or Utility Allowance Violations of the maximum allowable limit for the HTC, TCAP, and Exchange programs. Under the HTC, TCAP, and Exchange programs, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees, cannot exceed the maximum applicable limit (as determined by the minimum set-aside elected by the Owner) published by the Department. If it is determined that an HTC Development, during the Compliance Period, collected rent in excess of the rent limit established by the minimum set-aside, the Owner must correct the violation by reducing the rent charged. The Department will report the violation as corrected on January 1st of the year following the violation. The refunding of overcharged rent does not avoid the disallowance of the credit by the IRS.

(b) Rent or Utility Allowance Violations of additional rent restrictions under the HTC, TCAP, and Exchange programs. If Owners agreed to additional rent and occupancy restrictions, the Department will monitor to confirm compliance. If noncompliance is discovered, the Department will require the Owner to refund or credit the affected residents the amount of rent that was overcharged. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household's account. In the absence of a household's election, a full refund check must be presented to the household within thirty days.

(c) Rent Violations of the maximum allowable limit due to application fees. Under the HTC, TCAP, and Exchange programs, Owners may not charge tenants any overhead costs as part of the application fee. Owners must only charge the actual cost for application fees as supported by invoices from the screening company the Owner uses.

(1) The amount of time Development staff spends checking an applicant's income, credit history, and landlord references may be included in the Development's application fee. Development Owners may add up to $5.50 per Unit for their other out-of-pocket costs for processing an application without providing documentation. The $5.50 will be adjusted annually based on the Cost of Living increased published by the Social Security Administration. Example 622(1): A Development's out-of-pocket cost for processing an application is $17.00 per adult. The property may charge $22.50 for the first adult and $17.00 for each additional adult.

(2) Documentation of Development costs for application processing or screening fees must be made available during monitoring reviews or upon request. The Department will review application fee documentation during monitoring reviews. If the Development pays a flat monthly fee to a third party for credit or criminal background checks, Owners must calculate the appropriate fee to be charged applicants by using the total number of applications processed, not just approved applications. Developments that pay a flat monthly fee must determine the appropriate application fee at least annually based on the prior year's activity. If the Department determines from a review of the documentation that the Owner has overcharged residents an application fee or collected impermissible deposits, the noncompliance will be reported to the IRS on Form 8823 under the category "gross rent(s) exceeds tax credit limits." The noncompliance will be corrected on January 1st of the next year.

(3) Owners are not required to refund the overcharged fee amount. To correct the issue, Owners must reduce the application fee for prospective applicants. Once the fee is reduced for prospective applicants, the Department will report the affected Units back in compliance on January 1st of the year after they were overcharged the application fee or an impermissible deposit.

(4) Throughout the Affordability Period, Owners may not charge a deposit or any type of fee (other than an application fee) for a household to be placed on a waiting list.

(d) Rent or Utility Allowance Violations on MFDL programs. The amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees and any rental assistance (unless otherwise described in the LURA) cannot exceed the designated applicable limit published by the Department. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund or credit the affected residents the amount of rent that was overcharged. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household's account. In the absence of a household's election, a full refund check must be presented to the household within thirty days.

(e) Rent or Utility Allowance Violations on HTC, TCAP, and Exchange Developments after the Compliance Period, HTC, TCAP, and Exchange Developments for three years after the LURA is released as a result of a foreclosure or deed in lieu of foreclosure (as applicable), BOND Developments, and THTF Developments. The amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees cannot exceed the designated applicable limit published by the Department. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund or credit the affected residents the amount of rent that was overcharged. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In the absence of a tenant election, a full refund check must be presented to the household within thirty days.

(f) Trust Account to be established. If the Owner is required to refund rent under subsection (b), (d) or (e) of this section and cannot locate the resident, the excess monies must be deposited into a trust account for the household. If the violation effects multiple households, the Owner may set up a single account with all of the unclaimed funds. The account must remain open for the shorter of a four year period, until all funds are claimed, or the expiration of the Extended Use Agreement. If funds are not claimed after the required period, the unclaimed funds must be remitted to the Texas Comptroller of Public Accounts Unclaimed Property Holder Reporting Section to be disbursed as required by Texas unclaimed property statutes. All unclaimed property remissions to the Comptroller must be broken out by individuals and particular amounts.

(g) Rent Adjustments for HOME, TCAP RF, and HOME-ARP Units [~~Developments~~]:

(1) 100% HOME/TCAP-RF/HOME-ARP assisted Developments and that contain no HTC Units. If a household's income exceeds 80% at recertification, the Owner must charge a gross rent equal to 30% of the household's adjusted income;

(2) HOME/TCAP-RF/HOME-ARP Units in Developments with any Market Rate Units and where the Unit is not layered with HTC. If a household's income exceeds 80% at recertification, the Owner must charge a gross rent equal to the least [~~lesser~~] of 30% of the household's adjusted income, the comparable Market rent, or the rent being charged for the same Unit Type on a Market Rate Unit; and

(3) HOME/TCAP-RF/HOME-ARP Units [~~Developments~~] layered with HTC Units [~~other Department affordable housing programs~~]. If a household's income exceeds 80% at recertification, the Owner [~~owner~~] must charge a gross rent equal to or less than the applicable HTC limit [~~the lesser of 30% of the household's adjusted income or the rent allowable under the other Program~~].

(h) Rent Adjustments for HOME-ARP Qualified Populations:

(1) Units restricted for occupancy by Qualifying Populations with incomes equal to or less than 50% will have gross rents equal to the lesser of 30% of the adjusted income of the household, or the Low HOME rent limit with adjustments for number of bedrooms in the unit.

(2) Units restricted for occupancy by Qualifying Populations with incomes greater than 50% of median income but at or below 80% of the median income must pay rent not greater than the rent specified in 24 CFR §92.252(a), high HOME rent.

(3) Units restricted for occupancy by Qualifying Populations with incomes greater than 80% of median income will follow the rent adjustments of subsection (g) of this section.

(i) Employee Occupied Units (HTC, TCAP, Exchange, and HTF [~~THTF~~] Developments). IRS Revenue Rulings 92-61, 2004-82 and Chief Counsel Advice Memorandum POSTN-111812-14 provide guidance on employee occupied units. In general, employee occupied units are considered facilities reasonably required for the project(s) and not residential rental units. Since the building's applicable fraction is calculated using the residential rental units/space in a building, employee occupied units are taken out of both the numerator and the denominator.

(j) Owners of HOME, NSP, TCAP-RF, NHTF, and HOME-ARP must comply with §10.403 of this chapter (relating to Review of Annual HOME, NSP, TCAP-RF, and National Housing Trust Fund Rents) which requires annual rent review and approval by the Department's Asset Management Division or Department-procured vendor. Failure to do so will result in an Event of Noncompliance.

(k) Owners are not permitted to increase the household portion of rent more than once during a 12 month period, even if there are increases in rent limits or decreases in utility allowances, unless the Unit or household is governed by a federal housing program that requires such changes or the household transfers to a Unit with additional Bedrooms. If it is determined that the Development increases rent more than once in a 12-month period, the Department will require the Owner to refund or credit the affected household. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In the absence of a tenant election, a full refund check must be presented to the household.

(l) If an Owner is increasing a household's rent $75 or more per month, the Owner is required to provide the household a 75-day written notice of such increase, unless the Unit or household is governed by a federal housing program that allows for such a change. If an Owner increases the household's rent $75 or more without providing a 75-day notice, any amounts in excess of $75 per month must be refunded or credited to the affected household(s). The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In absence of a tenant election, a full refund check must be presented to the household.

(m) A Development subject to the 2025 HOME Final Rule that contains one or more floating Units must provide all households a 60-day written notice before implementing any rent increase. A Development with Units subject to the 2025 HOME Final Rule with one or more fixed Units must provide a 60-day written notice to the Designated Units. If an Owner increases the household's rent without providing a 60-day notice, any increases must be refunded or credited to the affected household(s). The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In absence of a tenant election, a full refund check must be presented to the household.

(n) [~~(m)~~] An Owner [~~Owners~~] must provide an option to pay rent in a manner that does not involve additional out of pocket costs to the household.

(o) An Owner may not refuse to accept rental payment made on time and in full.

(p) An Owner that controls utilities, may not stop service on utilities during the longer of the required period identified by the applicable federal program, or as directed by state law.

§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 whether 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 January 15, 2026.

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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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SUBCHAPTER G. AFFIRMATIVE MARKETING REQUIREMENTS AND WRITTEN POLICIES AND PROCEDURE

10 TAC §10.802

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 10, Subchapter G, Section 10.802 Written Policies and Procedures. The purpose of the proposed repeal is to eliminate an outdated rule and replace it simultaneously with a new rule that addresses new federal HOME regulations.

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 has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to changes to an existing activity: the administration of the HOME Program.

2. The repeal does not require a change in work that creates new employee positions nor does it create savings that would allow for a reduction in employee positions.

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

4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The repeal is not considered to expand an existing regulation.

7. The repeal does not increase the number of individuals subject to the rule's applicability.

8. The repeal 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 has evaluated the repeal and determined that the 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 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 repeal as to its possible effects on local economies and has determined that for the first five years the 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.

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 repeal is in effect, the public benefit anticipated as a result of the changed sections would be an updated and more germane rule. 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 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 Department requests comments on the repeal of the rule. The public comment period will be held January 30, 2026 to March 3, 2026, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Housing Resource Center, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email Jeremy.stremler@tdhca.texas.gov. ALL COMMENTS AND INFORMATION MUST BE RECEIVED BY 5:00 p.m. Central time March 3, 2026.

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

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

§10.802. Written Policies and Procedures.

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 January 16, 2026.

TRD-202600161
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 1, 2026
For further information, please call: (512) 475-3959

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10 TAC §10.802

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 10, Subchapter G, §10.802 Written Policies and Procedures. The purpose of the proposed new section is to bring the rule up to date by including updates from the new federal HOME final rule and clarifying and correcting language.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for repeal because there are no additional costs associated with this action. No additional funds will be needed to implement this rule.

The Department has analyzed this 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 has determined that, for the first five years the new sections would be in effect:

1. The rule does not create or eliminate a government program but relates to changes to an existing activity: the administration of the HOME Program.

2. The rule does not require a change in work that creates new employee positions nor does it create savings that would allow for a reduction in employee positions.

3. The new section will not require additional future legislative appropriations.

4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new section is not creating a new regulation.

6. The new section does expand on an existing regulation.

7. The new section does not increase the number of individuals subject to the rule's applicability.

8. The new section 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 has evaluated the new section and determined that it 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 new section 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 new section as to its possible effects on local economies and has determined that for the first five years the new section 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.

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 section is in effect, the public benefit anticipated as a result of the new section would be a rule compliant with the federal regulations for the HOME Program. There will not be economic costs to individuals required to comply with the new 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 new section is in effect, enforcing or administering the sections will have no economic costs.

REQUEST FOR PUBLIC COMMENT AND INFORMATION RELATED TO COST, BENEFIT OR EFFECT. The Department requests comments on the rule and also requests information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis from any person required to comply with the proposed rule or any other interested person. The public comment period will be held from January 30, 2026 to March 3, 2026. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Housing Resource Center, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to Jeremy.stremler@tdhca.texas.gov. ALL COMMENTS AND INFORMATION MUST BE RECEIVED BY 5:00 p.m. Central time, March 3, 2026.

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

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

§10.802. Written Policies and Procedures.

(a) The purpose of this section is to outline the policies and/or procedures of the Department (also called tenant section criteria) that are required to have written documentation. If an Owner fails to have such Written Policies and Procedures, or fails to follow their Written Policies and Procedures it will be handled as an Event of Noncompliance as further provided in §10.803 of this subchapter (relating to Compliance and Events of Noncompliance).

(1) Owners must inform applicants/tenants in writing, at the time of application, or at the time of other actions described in this section, that such policies/procedures as described in this section are available, and that the Owner will provide copies upon request to applicants/tenants or their representatives.

(2) The Owner must have all policies and related documentation required by this section and the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation" available in the leasing office and anywhere else where applications are taken; Developments that accept electronic applications must maintain on their website these Written Policies and Procedures and the same noted forms.

(3) All policies must have an effective date. Any changes made to the policies require a new effective date, and a notice regarding the availability of new policies must be communicated to tenants in writing. Acceptable forms of notification in writing are:

(A) Written notice to each household through an active communications portal or online rental payment portal, if either are used at the Development;

(B) written notice via hard copy placed on the door to each occupied Unit;

(C) a notice online on the Development's website, if the Development has one; or

(D) a hard copy notice posted in the leasing office's public area for at least 30 calendar days.

(4) In general, policies addressing credit, criminal history, and occupancy standards cannot be applied retroactively. Tenants who already reside in the Development or applicants on the waitlist at the time new or revised tenant selection criteria are applied, and who are otherwise in good standing under the lease or waitlist, must not receive notices of termination or non-renewal based solely on their failure to meet the new or revised tenant selection criteria or be passed over on the waitlist. However, criteria related to program eligibility may be applied retroactively when a market rate development receives a new award of tax credits, federal, or state funds and a household is not eligible under the new program requirements, or when prior criteria violate federal or state law.

(b) Tenant Selection Criteria. A Development Owner must maintain current and prior versions of the written Tenant Selection Criteria, for the longer of the records retention period that applies to the program, or for as long as tenants who were screened under the historical criteria are occupying the Development.

(1) The criteria identified by a Development must be reasonably related to an applicant's ability to perform under the lease (for a Development with MFDL funding this means to pay the rent, not to damage the housing, and not to interfere with the rights and quiet enjoyment of other tenants) and include at a minimum:

(A) Requirements that determine an applicant's basic eligibility for the Development, including any preferences, restrictions (such as the Occupancy Standard Policy), the Waitlist Policy, Changes in Housing Designation Policy, low income unit designations utilized, and any other tenancy requirements. Any restrictions on student occupancy and any exceptions to those restrictions, as documented in the tenant file as provided for in 10 TAC §10.612(b)(2) of this chapter (relating to Tenant File Requirements) must be stated in the policies;

(B) Applicant screening criteria, including what applicant attributes are screened and what scores or findings would result in ineligibility;

(C) The following statement: Screening criteria will be applied in a manner consistent with all applicable laws, including the Texas and Federal Fair Housing Acts, the Federal Fair Credit Reporting Act, program guidelines, and TDHCA's rules;

(D) Specific age requirements if the Development is operating as an Elderly Property either under the Housing for Older Persons Act of 1995 as amended (HOPA), or the age related eligibly criteria required by its use of federal funds.

(2) The criteria must not:

(A) Include preferences for admission, unless it is in a recorded LURA which has been approved by the Department (preferences are required to be in a LURA when a Development has federal or state funding, except for the preference allowed by paragraph (3) of this subsection), is required by a program in which the Owner is participating which requires the preference, or is allowed by paragraph (3) of this subsection. Owners that include preferences in their leasing criteria due to other federal financing must provide to the Department either written approval from HUD, USDA, or VA for such preference, or identify the statute, written agreement, or federal guidance documentation that permits the adoption of this preference;

(B) Exclude an individual or family from admission to the Development solely because the household participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1-437), or other federal, state, or local government rental assistance program. If an Owner adopts a minimum income standard for households participating in a voucher program, it is limited to the greater of a monthly income of 2.5 times the household's share of the total monthly rent amount or $2,500 annually; or

(C) In accordance with VAWA, deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking.

(3) If the Development is funded with HOME, HOME ARP, TCAP RF, NHTF, or NSP funds, in accordance with 24 CFR §93.356 and 24 CFR §92.359, the criteria may have a preference for persons who have experienced domestic violence, dating violence, sexual assault, or stalking.

(4) Occupancy Standard Policy.

(A) If the Development restricts the number of occupants in a Unit in a more restrictive manner than found in Section 92.010 of the Texas Property Code, the Occupancy Standard Policy must allow at least two persons per Bedroom plus one additional person per Unit. An Efficiency Unit that is greater than 600 square feet, must also have an Occupancy Standard Policy of at least three persons per Unit. In an SRO or in an Efficiency that is less than 600 square feet, the Occupancy Standard Policy must allow at least two persons per Unit. Supportive housing or transitional housing Developments where all Units in the Development are SROs or Efficiencies, are not required by the Department to have an Occupancy Standard Policy, except as required for the 811 PRA Program or as reflected in the Development's LURA.

(B) A Development may adopt a more restrictive standard than described in subparagraph (A) of this paragraph, if the Development is required to utilize a more restrictive standard by a local governmental entity, or a federal funding source. However, the Development must have this information available onsite for Department review.

(C) Except for an Elderly Development that meets the requirements of the Housing for Older Persons Act exception under the Fair Housing Act, the Occupancy Standard Policy must state that children that join the household after the start of a lease term will not cause a household to be in violation of the lease.

(c) Reasonable Accommodations Policy. Owners must maintain a written Reasonable Accommodations policy. The policy must be maintained at the Development. Owners are responsible for ensuring that their employees and contracted third party management companies are aware of and comply with the reasonable accommodation policy.

(1) The policy must provide:

(A) Information on how an applicant or current resident with a disability may request a reasonable accommodation;

(B) How transfers related to a reasonable accommodation will be addressed; and

(C) A timeframe in which the Owner will respond to a request that is compliant with §1.204(b)(3) and (d) of this title (relating to Reasonable Accommodations).

(2) The policy must not:

(A) Require a household to make a reasonable accommodation request in writing;

(B) Require a household whose need is readily apparent to provide third party documentation of a disability;

(C) Require a household to provide specific medical or disability information other than the disability verification that may be requested to verify eligibility for reasonable accommodation;

(D) Exclude a household with person(s) with disabilities from admission to the Development because an accessible unit is not currently available; or

(E) Require a household to rent a unit that has already been made accessible.

(d) Waitlist Policy. Owners must maintain a written waitlist policy, regardless of current Unit availability. The policy must be maintained at the Development. The policy must include procedures the Development uses in:

(1) Opening, closing, and selecting applicants from the waitlist, including but not limited to the requirements in §10.615(b) of this title (relating to Elections under IRC §42(g) and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments);

(2) Determining how lawful preferences are applied; and

(3) Procedures for prioritizing applicants needing accessible Units in accordance with 24 CFR §8.27, and Chapter 1, Subchapter B of this title (relating to Accessibility and Reasonable Accommodations).

(e) Changes in Household Designation Policy. This is applicable if a Development has adopted a policy in accordance with §10.611(c) of this subchapter (relating to Determination, Documentation and Certification of Annual Income).

(f) Denied Application Policies. Owners must maintain a written policy regarding the procedures they will follow when denying an application and when notifying denied applicants of their rights.

(1) The policy must address the manner by which rejections of applications will be handled, including timeframes and appeal procedures, if any.

(2) Within seven days after the determination is made to deny an application, the owner must provide any rejected or ineligible applicant that completed the application process a written notification of the grounds for rejection. The written notification must include:

(A) The specific reason for the denial and reference the specific leasing criteria upon which the denial is based;

(B) Contact information for any third parties that provided the information on which the rejection was based and information on the appeals process, if one is used by the Development. An appeals procedure is required for HOME Developments that are owned by Community Housing Development Organizations, and Units at Developments that lease Units under the Department's Section 811 PRA program. The appeals process must provide a 14-day period for the applicant to contest the reason for the denial, and comply with other requirements of the HUD Handbook 4350.3 4-9; and

(C) The TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation."

(3) The Development must keep and may periodically be requested to submit to the Department a log of all denied applicants that completed the application process to include:

(A) Basic household demographic and rental assistance information, if requested during any part of the application process; and

(B) The specific reason for which an applicant was denied.

(4) If an 811 applicant is being denied, within three calendar days of the denial the Department's 811 PRA Program point of contact must be notified and provided with a copy of the written notice that was provided to the applicant.

(g) Non-renewal and/or Termination Notices. A Development Owner must maintain a written policy regarding procedures for providing households non-renewal and termination notices.

(1) The Owner must provide in any non-renewal or termination notice, a specific and lawful reason for the termination or non-renewal.

(2) The notification must:

(A) Be delivered as required under applicable program rules and the lease. For HOME, HOME ARP, TCAP RF, NHTF, NSP, HTC, TCAP, ERA, and Exchange Developments, see 10 TAC §10.613(a) - (b) of this chapter (relating to Lease Requirements). For Section 811 PRA, see 24 CFR §247.4(a) - (f);

(B) Include the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation." To avoid providing applicants and residents with duplicate information, TDHCA administered Developments layered with other federal funds are permitted to amend the TDHCA VAWA forms to incorporate requirements of other funders. However, none of the information included in the TDHCA created form may be omitted;

(C) State how a person with a disability may request a reasonable accommodation in relation to such notice;

(D) Include information on the appeals process if one is used by the Development (this process is required under some LURAs, for HOME Developments that are owned or sponsored by Community Housing Development Organizations, and for 811 PRA units); and

(E) For Units subject to the 2025 HOME Final Rule as identified in §10.601(g), of this chapter relating to 2025 HOME Final Rule applicability,

(i) Such notice should be provided in a translated format when needed to ensure meaningful access for limited English proficient (LEP) persons; and

(ii) Be provided to TDHCA within the timeframe identified in §10.613(o)(4) if this chapter, relating to Notices to Vacate.

(h) At the time of application Owners must provide each adult in the household the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation." To avoid providing applicants and residents with duplicate information, TDHCA administered Developments layered with other federal funds are permitted to amend the TDHCA VAWA forms to incorporate requirements of other funders. However, none of the information included in the TDHCA created form may be omitted.

(i) Policies and procedures will be reviewed periodically by the Department's Fair Housing staff, as a result of complaints, or through an owner initiated written policies and procedures review. Owners may request a review of the written policies and procedures for a portfolio of Developments by submitting a request to fair.housing@tdhca.state.tx.us. After review by the Department, an Owner may make non-substantive changes to the policies.

(j) A Development Owner must allow applicants to submit applications via mail and at the Development site or leasing office; if the Development is electronically equipped, the Development may also allow applications to be submitted via email, website form, or fax. The Development's tenant selection criteria must state available alternate means of submission and include address, email, or other necessary contact information on the form or its attached leasing criteria.

(k) If the Development has ever been funded via Direct Loan or has HOME Match units, the Development's written policies and procedures must list at least two methods to contact the Development.

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 January 16, 2026.

TRD-202600162

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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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 Department requests comments on the proposed repeal. The public comment period will be held January 30, 2026, through March 3, 2026, 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 March 3, 2026.

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 January 15, 2026.

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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 gain consistency with federal rules.

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 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 1,363 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 ten. 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 apartment 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 Department, and changed 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 are not required by changes to federal law 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 AND INFORMATION RELATED TO COST, BENEFIT OR EFFECT. The Department requests comments on the rule and also requests information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis from any person required to comply with the proposed rule or any other interested person. The public comment period will be held January 30, 2026, through March 3, 2026, to receive input on the proposed action. Comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Priscilla Stevenson at priscilla.stevenson@tdhca.texas.gov. ALL COMMENTS AND INFORMATION MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, March 3, 2026.

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) through (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 described 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) Build America, Buy America (BABA) Waiver. If the Applicant intends to request a waiver of BABA, such request must be submitted no later than the date on which the Application is submitted. The Department will submit this waiver request to HUD. This waiver, if granted by HUD the earlier of 90 days before the NHTF Commitment deadline or one year from Board Award, will not require the Development to receive a new Application Acceptance Date;

(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). A CHDO's service area may not be the entire state; however, a CHDO that services the entire state, minus one Metropolitan Area, may qualify.

(3) 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, and that all deficiencies have been corrected. It includes the construction term, but could be longer.

(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. The restrictions on Qualified Units combined with Project Based Vouchers subject to the 2013 HOME Final Rule also apply to HOME Match Units subject to the 2013 HOME Final Rule. Unless otherwise identified by the provisions in the NOFA, TCAP RF and matching contribution on TCAP-RF, 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) through (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 or subsequent HUD written guidance;

(D) Waived or reduced fees or taxes from cities or counties not related to the Applicant in connection with the proposed Development. In accordance with 24 CFR §92.219(b)(2)(iv), this form of Match is not available for a Development that is not assisted with HOME funds; 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. For Developments subject to the 2013 HOME final rule, unless 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 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 the 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 under 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 subregional 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 in 10 TAC §11.7 of this title (relating to Tie Breaker Factors) will be used to determine the Application's rank, unless another priority is described in the NOFA.

(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 oversubscription, 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 determine 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, unless another tie-breaker is described in the NOFA.

§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 loans, 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; the Department may extend the Development Period without extending the construction term if the first lien permanent lender does not extend its loan term, or if the Development Period is approved by the Board to be over 36 months;

(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 permanent loan term generally commences following the end of the construction term;

(4) Loans shall be secured with a deed of trust with a lien position, and for loans with monthly or annual payment provisions, a repayment 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. Requests for funding at loan closing must be received by the Department at least 45 days prior to the closing.

(c) Criteria for Construction Only Loans. MFDL Loans through the Department must adhere to the following criteria as identified in paragraphs (1) - (2) of this subsection if being requested as construction only loans:

(1) 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; and

(2) Loans shall be secured with a deed of trust 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.

(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.

(f) 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 10 TAC §11.306 of this title (relating to Environmental Site Assessment Rules and Guidelines) and 10 TAC §11.306 of this title (relating to Scope of Work and Cost Review Guidelines) 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 (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After September 1, 1998, and before February 1, 2003) 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 and Match Units may only float among the Units as described in the Direct Loan Contract and Direct Loan LURA. The possibility of a designation of a Direct Loan Unit or Match Unit must be reflected in the Household's lease.

(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 un-

der 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).

(h) Designation of Direct Loan Units and HOME Match Units. For a Development with fixed Units the Contract and the LURA will describe the Direct Loan Units and HOME Match Units by Unit Number or Property Address, as applicable. For a Development with floating Units the Contract and the LURA will describe the Direct Loan Units and HOME Match Units by Unit Type and Income and Rent Restrictions, as applicable, and the Owner must designate the Units as further described in §13.11(c)(11) of this Chapter (relating to Post-Award Requirements).

§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. This includes required environmental clearance for FHA and HUD funding. If the NOFA is still open, a new Application Acceptance Date may be given if this Benchmark is not met.

(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 or the Department may terminate the award.

(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, unless a shorter timeline is necessitated by the federal funding source. 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 an NSPIRE inspection will not satisfy the Closed Final Development Inspection Letter required by this subsection.

(11) Initial Occupancy. Initial occupancy and for floating Units designation of NHTF Units by and for eligible households shall occur within 120 days, or for all other MFDL assisted Units or HOME Match Units, 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 120 days or 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 soft 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;

(G) Developer Fee disbursement shall be limited by subparagraph (I) of this paragraph and is further conditioned upon clauses (i) - (iii), 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 the 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.

(J) All of the items described in clauses (i) - (ix) of this subparagraph are required in order to approve the final draw request. The Executive Director or authorized designee may for good cause allow for the final draw to be released prior to the receipt of the items unless prohibited by state or federal statute. Such allowances are not guaranteed:

(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 that the Department's Notice to Proceed 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.

(K) 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;

(L) The final draw request must be submitted within the Development Period;

(M) 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 for good cause; and

(N) If allowed by NOFA, requests for draws to be disbursed at the time of closing (i.e., table funding) must be received by the Department at least 45 days prior to the closing of the MFDL loan.

(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 con-

struction 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 oversubsidized. 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, 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)(10) 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 generally 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 under 10 TAC §13.11(c)(1) - (8) of this chapter (relating to Post-Award Requirements) based on documentation that there is good cause for the extension and the extension would not 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 where no Ownership Transfer is Occurring. Re-subordination of the Direct Loan in conjunction with refinancing may be approved post-closing, provided the conditions in subparagraphs (A) - (F) 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, but this is not required if the Borrower is proposing to apply at least $35,000 a Unit to property improvements;

(D) The loan documents do not state that the MFDL lien is due upon refinance;

(E) 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 (relating to Underwriting Rules and Guidelines); 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

(F) 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 proposed 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 workout 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 and the conditions in (c)(2) of this section are met:

(1) The assignment or assumption is not prohibited by the Contract, Loan Documents, or regulations and the loan documents do not state that the MFDL loan is due upon sale, transfer, or refinance;

(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 associated 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 any 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 January 15, 2026.

TRD-202600141

Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 1, 2026
For further information, please call: (512) 475-3959

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TITLE 25. HEALTH SERVICES

PART 15. COUNCIL ON CARDIOVASCULAR DISEASE AND STROKE

CHAPTER 1051. RULES

25 TAC §1051.1

The Texas Council on Cardiovascular Disease and Stroke proposes an amendment to §1051.1, concerning Conduct of Meetings.

BACKGROUND AND PURPOSE

The purpose of the proposal is to make necessary revisions to the rule identified during the four-year rule review required by Texas Government Code §2001.039. The amendment to the rule specifies voting eligibility, clarifies the role the Texas Department of State Health Services (DSHS) has in providing administrative support to the Texas Council on Cardiovascular Disease and Stroke (Council), and updates public participation best practices.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §1051.1 updates the language to indicate that DSHS will be responsible for publishing a notice of each meeting. In addition, the language is updated to indicate DSHS will provide notice of the public meeting to Council members. The proposed amendment also clarifies language regarding voting and reflects public participation best practices.

FISCAL NOTE

Suzanne, Hildebrand, Council Chair, 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

The Council has determined that during the first five years that the rule will be in effect:

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of DSHS employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to DSHS;

(5) the proposed rule will not create a new regulation;

(6) the proposed rule will not expand, limit, or repeal existing regulations;

(7) the proposed rule will not change the number of individuals subject to the rule; and

(8) the proposed rule will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Suzanne Hildebrand, Council Chair, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule does not apply to small or micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Suzanne Hildebrand, Council Chair, has determined that for each year of the first five years the rule is in effect, the public benefit will be a clarified understanding of how the Texas Council on Cardiovascular Disease and Stroke meetings are conducted.

Suzanne Hildebrand has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the proposed rule amendment merely clarifies the existing rule.

TAKINGS IMPACT ASSESSMENT

The Council 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, including information related to the cost, benefit, or effect of the proposed rule, as well as any applicable data, research, or analysis, may be submitted to cardio@dshs.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 Section 1051.1" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Health and Safety Code §93.012 which provides that the Texas Council on Cardiovascular Disease and Stroke will adopt rules for the conduct of its meetings.

The amendment affects Texas Health and Safety Code Chapter 93.

§1051.1. Procedures [~~Conduct of Meetings~~].

(a) Applicable law. The Texas Council on Cardiovascular Disease and Stroke (council) is created by Texas Health and Safety Code, Chapter 93.

(b) Officers. Council members will elect a vice-chair each fall.

[~~(b) Officers and their duties.~~]

[~~(1) The governor shall designate a member of the council as the presiding officer of the council to serve in that capacity at the will of the governor.~~]

[~~(2) The presiding officer shall preside at all council meetings at which he or she is in attendance, call meetings in accordance with this section, assist in the preparation of the agenda, appoint subcommittees or workgroups of the council as necessary and with council consensus, cause proper reports to be made to the governor, lieutenant governor and speaker of the house and serve as spokesperson for the council. The presiding officer may serve as an ex-officio member of any subcommittee or workgroup of the council. The presiding officer may invite guests or speakers.~~]

[~~(3) The members of the council shall elect a vice-chairman each year.~~]

[~~(4) The vice-chairman shall perform the duties of the presiding officer in the absence or disability of the presiding officer. Should the office of the presiding officer become vacant, the vice-chairman shall serve until a successor is appointed.~~]

(c) Notice of Meetings.

[~~(1) The council shall meet at least quarterly. A meeting may be called with the agreement of Department of State Health Services staff and the presiding officer.~~]

(1) [~~(2)~~] Each meeting of the council must [~~shall~~] be announced and conducted in accordance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

(2) The Texas Department of State Health Services (DSHS) must publish notice of each meeting as required by the Texas Open Meetings Act.

(3) DSHS will provide the notice to each council member at least seven days before the public meeting.

[~~(3) A simple majority of the members of the council shall constitute a quorum for the purpose of transacting official business.~~]

[~~(4) The council is authorized to transact official business only when in a legally constituted meeting with a quorum present.~~]

[~~(5) Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.~~]

[~~(6) Any action taken by the council must be approved by a majority vote of the public members present once quorum is established. Each public member shall have one vote. A public member may not authorize another individual to represent the member by proxy.~~]

(d) Transaction of Business.

(1) The council is authorized to transact official business only when in a legally constituted meeting with a quorum present.

(2) A simple majority of the members of the council constitutes a quorum for the purpose of transacting official business.

(3) Any action taken by the council must be approved by a majority vote of the voting members present once quorum is established. Each voting member will have one vote.

(4) A member may not authorize another individual to represent the member by proxy.

(e) Public Participation. Members of the public may submit a request to provide public comment at council meetings at least 48 hours before the beginning of a meeting to the chair. Information on how to submit a request is on the publicly posted agenda. Health or confidential information must not be in the comments. The chair has the option to allow or refuse public comment. If the chair allows public comment, the chair decides the manner and time limits of public comment.

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 January 13, 2026.

TRD-202600108
Suzanne Hildebrand
Council Chair
Council on Cardiovascular Disease and Stroke
Earliest possible date of adoption: March 1, 2026
For further information, please call: (512) 695-3846

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 293. WATER DISTRICTS
SUBCHAPTER C. SPECIAL REQUIREMENTS FOR GROUNDWATER CONSERVATION DISTRICTS

30 TAC §293.23

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to 30 Texas Administrative Code (TAC) §293.23.

Background and Summary of the Factual Basis for the Proposed Rules

The purpose of this rule proposal is to implement the provisions of House Bill (HB) 2080, passed during the 89th Legislature's Regular Session in 2025. This bill provides additional information and requirements regarding TCEQ's process for reviewing a petition for inquiry filed by an affected person pertaining to the actions of a groundwater conservation district (GCD).

HB 2080 amended Texas Water Code (TWC) §36.3011(d) and added §36.3011 (d-1), (d-2), (d-3), (e-1), (e-2), (e-3), and (e-4). Specifically, HB 2080 amended TWC §36.3011(d) to require the recording secretary of a review panel to be an employee of the commission. HB 2080 also adds §36.3011(d-1) clarifying that the review panel is an advisory board and not a governmental body. TWC §36.3011(d-2) requires TCEQ to reimburse a member appointed to the review panel for actual expenses incurred. TWC §36.3011(d-3) requires the records and documents of the recording secretary to be provided to the executive director and specifies that these records are public information. TWC §36.3011(e-1) requires the executive director to provide notice of review panel public meetings and public hearings. TWC §36.3011(e-2) states that the review panel may request technical assistance related to the petition from the Texas Water Development Board (TWDB) and that if assistance is requested, the deadline for the review is extended. TWC §36.3011(e-3) states that a member of the review panel can request legal advice and assistance on a matter pertaining to the petition from the TCEQ's Office of Public Interest Counsel (OPIC). Lastly, TWC §36.3011(e-4) states that subsections (e-2) and (e-3) do not prohibit members of the review panel from using their own technical consultants or legal counsel.

Section by Section Discussion

The proposed amendment to §293.23, Petition Requesting Commission Inquiry, updates subsection (g) to implement HB 2080. Specifically, it amends paragraph §293.23(g) to clarify that the panel is an advisory board and not a governmental body. It also amends subsection §293.23(g)(2) to require that the recording secretary be a TCEQ employee and to specify that records maintained by the recording secretary must be provided to the executive director and are public documents. Section §293.23(g)(3) is amended to include notice requirements for meetings or hearings held by the review panel. The proposal also adds subsection §293.23(g)(5) to require the commission to reimburse review panel members for actual expenses incurred while engaging in activities on behalf of the panel. Reimbursable expenses will be limited to those associated with meals, travel, and lodging. Once the Commission appoints a panel, information about reimbursable expenses and the process for getting reimbursed will be provided and will generally follow agency procedures.

The proposed amendment also adds §293.23(g)(6) which extends the timeframe for the commission's review of the petition if the review panel seeks technical assistance from TWDB. The proposed amendment also adds §293.23(g)(7) to specify that the review panel may request legal assistance from the commission's OPIC. Lastly, the proposed amendment adds §293.23(g)(8) which clarifies that the review panel is not prohibited from seeking technical assistance or legal advice from entities other than TWDB and OPIC.

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit will be rule language that is consistent with state law, specifically HB 2080 from the 89th Regular Legislative Session (2025). The proposed rulemaking is not anticipated to result in fiscal implications for individuals or businesses during the first five-year period the proposed rule is in effect.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect

rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation, and it does not create, expand, repeal, or limit this 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 should not impact positively or negatively the state's economy.

Written comments concerning the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "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."

First, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The purpose of this rulemaking is to amend existing rules to implement HB 2080, 89th Texas Legislature (2025), which provided revised requirements for TCEQ's review of a petition filed by an affected person pertaining to the actions of a GCD.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rule would not 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. It is not anticipated that the cost of complying with the proposed rule will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed rule will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: "1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the regulation of groundwater conservation districts; 2) does not exceed any express requirements of state law related to the regulation of groundwater conservation districts; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency.

Since this proposed rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule," this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this rulemaking and performed an analysis of whether the proposed rule would constitute a taking. Texas Government Code, §2007.002(5), defines a taking as either: 1) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Sections 17 or 19, Article I, Texas Constitution; or 2) a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The commission determined that the proposed rule would not constitute a taking as that term is defined under Texas Government Code, §2007.002(5). Specifically, the proposed rule would not affect any landowner's rights in private real property, and there are no burdens that would be imposed on private real property by the proposed amendments to 30 TAC § 293.23. The

proposed amendments solely address the review of the duties of a groundwater conservation district.

Consistency with the Coastal Management Program

The commission reviewed the amended rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program (CMP).

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a hybrid virtual and in-person public hearing on this proposal in Austin on February 24, 2026 at 2:00 p.m. in building E, room 201S at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing at 1:30 p.m.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Friday, February 20, 2026. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Monday, February 23, 2026, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://events.teams.microsoft.com/event/9ca36b32-14f2-4295-b5f6-94987017d629@871a83a4-a1ce-4b7a-8156-3bcd93a08fba

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Vanessa Onyskow-Lang, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov*. Electronic comments may be submitted at: *https://tceq.commentinput.com/comment/search*. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2026-001-293-OW. The comment period closes on March 3, 2026. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Cindy Hooper, Rule Project Manager, Water Availability Division, (512) 239-4271.

Statutory Authority

These amendments are proposed under the authority granted to the commission in Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; §5.013, which establishes the commission's authority over groundwater; §5.103 and §5.105, which establish the commission's general authority to adopt rules; and §36.3011, which establishes the commission's authority to, upon petition by an affected person, select a review panel to review activities regarding the management planning or rules of a groundwater conservation district.

These proposed amendments implement House Bill 2080, 89th Texas Legislature (2025).

§293.23. Petition Requesting Commission Inquiry.

(a) Purpose and applicability. This section provides procedures for commission review of a petition filed by an affected person requesting an inquiry into a groundwater conservation district's (GCD) activities regarding management planning or rules; commission appointment of the review panel; review panel actions; and executive director actions under Texas Water Code (TWC), §36.3011. An affected person means, with respect to a management area:

(1) an owner of land in the management area;

(2) a GCD or subsidence district in or adjacent to the management area;

(3) a regional water planning group with a water management strategy in the management area;

(4) a person who holds or is applying for a permit from a district in the management area; or

(5) a person with a legally defined interest in groundwater in the management area.

(b) Petition requesting commission inquiry. An affected person may file a petition with the commission to request an inquiry for any of the reasons in paragraphs (1) - (9) of this subsection:

(1) a district fails to submit its management plan to the executive administrator of the Texas Water Development Board;

(2) a district fails to participate in the joint planning process under TWC, §36.108;

(3) a district fails to adopt rules;

(4) a district fails to adopt the applicable desired future conditions adopted by the management area at a joint meeting;

(5) a district fails to update its management plan before the second anniversary of the adoption of desired future conditions by the management area;

(6) a district fails to update its rules to implement the applicable desired future conditions before the first anniversary of the date the district updated its management plan with the adopted desired future conditions;

(7) the rules adopted by a district are not designed to achieve the adopted desired future conditions;

(8) the groundwater in the management area is not adequately protected by the rules adopted by a district; or

(9) the groundwater in the management area is not adequately protected due to the failure of a district to enforce substantial compliance with its rules.

(c) The petition must include supporting documentation for each of the individual reasons the affected person identifies in subsection (b) of this section demonstrating that a commission inquiry is necessary.

(d) The petition must include a certified statement from the affected person that describes why the petitioner believes that a commission inquiry is necessary.

(e) The petitioner shall provide a copy of the filed petition to all GCDs within and adjacent to the GMA within five days of the date the petition was filed. Within 21 days of filing the petition, the petitioner shall file with the chief clerk of the commission an affidavit or other evidence, such as a return receipt for certified mail service, that a copy of the petition was mailed to each GCD within and adjacent to the petitioner's GMA.

(f) Any GCD that is within and adjacent to the GMA that is the subject matter of the petition may file a response to the validity of the specific claims raised in the petition. The responding entity shall file its response with the chief clerk of the commission within 35 days of the date that the petition is filed, and shall also on the same day serve the petitioner, the executive director, the public interest counsel, and any other GCD in and adjacent to the GMA. The chief clerk shall accept a response that is filed after the deadline but shall not process the late documents. The chief clerk shall place the late documents in the file for the petition.

(g) Commission review of petition. The commission shall review the petition and any timely filed responses, no sooner than 35 days, but not later than 90 days after the date the petition was filed. The commission may dismiss the petition if it finds that the evidence required by subsections (c) and (d) of this section is not sufficient to show that the items contained in subsection (b)(1) - (9) of this section exist. If the commission does not dismiss the petition, it shall appoint a review panel to prepare a written report. A review panel established under this section is an advisory body to the commission and not a governmental body under Chapter 551 or 552, Government Code.

(1) The review panel shall consist of five members.

(A) The commission shall appoint one of the members to serve as the chairman of the review panel. The chairman shall schedule and preside over the proceedings and meetings of the panel.

(B) A director or general manager of a district that is not an affected person as defined by subsection (a) of this section and is not the subject of the petition may be appointed to the review panel.

(C) The commission may not appoint more than two members of the review panel from any one district.

(2) The commission shall appoint a disinterested person to serve as a nonvoting recording secretary for the review panel. The recording secretary must [~~may~~] be an employee of the commission. The recording secretary shall record and document the proceedings of the review panel. The records and documents of the recording secretary of the proceedings of the review panel must be provided to the executive director and are public information under Chapter 552, Texas Government Code.

(3) The commission may direct the review panel to conduct public hearings at a location in the groundwater management area to take evidence on the petition. The executive director shall provide notice of any public meeting or public hearing the review panel is directed to conduct not later than the seventh day before the date of a public meeting or public hearing. The executive director shall provide notice by:

(A) Posting notice on the commission's Internet website; and

(B) Delivering notice by regular mail to:

(i) the district that is the subject of the petition;

(ii) the petitioner; and

(iii) the county clerk of each county in the district that is the subject of the petition.

(4) In accordance with TWC, §36.3011, the review panel shall review the petition and any evidence relevant to the petition and consider and adopt a report to the commission.

(5) The commission shall reimburse a member appointed to the review panel for actual expenses incurred while engaging in activities on behalf of the review panel.

(A) To be eligible for reimbursement, a review panel member must file with the executive director a signed verified statement which shall include any relevant receipts describing the expenses incurred.

(B) A member appointed to the review panel is not entitled to a fee of office or other compensation for serving on the review panel.

(6) The commission or the review panel may submit a written request to the executive administrator of the Texas Water Development Board for assistance on a technical issue related to the petition. A deadline under subsections (g), (h), and (i) of this section is extended by 120 days if a request for technical assistance is submitted to the executive administrator during the review phase under that subsection.

(7) On request from a member of the review panel, the office of public interest counsel of the commission shall provide legal advice and assistance to the review panel. The office of public interest counsel:

(A) may not participate as a party in an inquiry under this section; and

(B) has no duty or responsibility to represent the public interest or otherwise in an inquiry except as provided by this subsection.

(8) Paragraphs (6) and (7) of this subsection do not prohibit a member of the review panel from using the member's own technical consultant or legal counsel.

(h) Review panel report. The review panel's report must be submitted to the executive director no later than 120 days after the review panel was appointed by the commission. The review panel's report shall include:

(1) if a public hearing is conducted, a summary of evidence taken on the petition;

(2) a list of findings and recommended actions appropriate for the commission to take under TWC, §36.303 and §293.22(e) of this title (relating to Noncompliance Review and Commission Action) and the reasons it finds those commission actions appropriate; and

(3) any other information the panel considers appropriate for commission consideration.

(i) Commission action on review panel report. The executive director or the commission shall take action to implement any or all of the review panel's recommendations if a cause contained in subsection

(b)(1) - (9) of this section applies. The executive director shall, no later than 45 days after the date the review panel report was received, recommend to the commission or initiate any action considered necessary under TWC, §36.303 and §293.22(b) - (h) of this title.

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 January 15, 2026.

TRD-202600135
Amy L. Browning
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0682

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 16. COMPTROLLER GRANT PROGRAMS

SUBCHAPTER C. TEXAS OPIOID ABATEMENT FUND PROGRAM

34 TAC §§16.200 - 16.203, 16.205, 16.206, 16.208, 16.212, 16.214, 16.215, 16.217 - 16.219, 16.222, 16.223

The Comptroller of Public Accounts proposes amendments to §16.200, concerning definitions; §16.201, concerning opioid abatement strategies; §16.202, concerning grant issuance plan; §16.203, concerning notice and applications; §16.205, concerning engage in business in Texas; §16.206, concerning peer review panel members; §16.208, concerning grant application review; §16.212, concerning grant requirements; §16.214, concerning conflicts of interest; code of ethics; §16.215, concerning reporting; §16.217, concerning extensions and amendments; §16.218, concerning noncompliance; §16.219, concerning monitoring grant award performance and expenditures; and §16.222, concerning hospital district allocations. The comptroller proposes the amendments to simplify the council's operations, align the rules with the council's experiences and with Senate Bill 1901, 89th Legislature, R.S., 2025, and clarify requirements related to grant issuance plans, notices of funding availability (NOFA), grant applicants, grant agreements, peer review panels, conflicts of interest, and distributions to hospital districts. The comptroller also proposes new §16.223, concerning grants to certain political subdivisions.

The legislation enacted within the last four years that provides the statutory authority for the rules is Senate Bill 1901, 89th Legislature, R.S., 2025.

The amendments to §16.200 authorize the director to determine the size of peer review panels.

The amendments to §16.201 remove the requirement that the council rank abatement strategies in order of priority for grant funding.

The amendments to §16.202 clarify the requirements for grant issuance plans, authorize the council to modify the allocation of funding to regional healthcare partnership regions, and remove the requirement that the council rank the parameters related to funding for targeted interventions.

The amendments to §16.203 clarify the requirements for NOFAs, authorize the director to require a grant applicant to submit additional information, and remove the requirement that grant applications must comply with the applicable NOFA and statutory requirements, which is already required by the NOFAs and grant agreements.

The amendments to §16.205 clarify the requirement that a grant applicant "engage in business" in the state.

The amendments to §16.206 clarify the requirements regarding the location of peer review panel members.

The amendments to §16.208 authorize the director to determine the size of peer review panels.

The amendments to §16.212 clarify that grant applicants must comply with applicable provisions of the Texas Grant Management Standards and the State of Texas Procurement and Contract Management Guide.

The amendments to §16.214 add a conflict of interest standard consistent with Government Code, §403.5041, added by Senate Bill 1901, 89th Legislature, R.S., 2025, and clarify that the council may adopt a code of ethics for council members and peer review panel members.

The amendments to §16.215 provide that the director will receive periodic reports from grant recipients and that the director or the council may determine the requirements of such reports.

The amendments to §16.217 authorize the director to approve amendments to grant agreements without further action of the council.

The amendments to §16.218 provide that the director may monitor and address any noncompliance by a grant recipient and removes the force majeure provision, which is addressed in the applicable grant agreements.

The amendments to §16.219 provide that the director shall monitor the performance of grant recipients.

The amendments to §16.222 clarify when unclaimed or disclaimed distributions to hospital districts may be cancelled and reallocated to other hospital districts.

New §16.223 provides the council with authority to award non-competitive grants to political subdivisions, including streamlined, targeted grants to small counties and municipalities whose distributions under Government Code, §403.506(c)(1), are too small to fund meaningful opioid abatement.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed new rule and amendments are in effect, the new and amended rules will not create or eliminate a government program; will not require the creation or elimination of 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 increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed new rule and amendments would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed new rule and amendments would benefit the public by improving the clarity and implementation of the section. There would be no anticipated economic cost to the public. The proposed new rule and amendments would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal or information related to the cost, benefit, or effect of the proposal, including any applicable data, research or analysis, to Katy Fallon-Brown, Director, Opioid Abatement Fund Council, P.O. Box 13528 Austin, Texas 78711 or to the email address: OAFC.Public@cpa.texas.gov. The comptroller must receive your comments or other information no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Government Code, §403.511, which authorizes the comptroller to adopt rules to implement Government Code, Chapter 403, Subchapter R, concerning the statewide opioid settlement agreement.

The amendments implement Government Code, Chapter 403, Subchapter R, concerning statewide opioid settlement agreements.

§16.200. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Authorized official--The individual, including designated alternates, named by a grant applicant or grant recipient, who is authorized to act for the grant applicant or grant recipient in submitting the grant application and executing the grant agreement and associated documents or requests.

(2) Comptroller--The Texas Comptroller of Public Accounts.

(3) Council--The Texas Opioid Abatement Fund Council established by Government Code, §403.503, to manage the distribution of money allocated to the council from the Opioid Abatement Trust Fund, established by Government Code, §403.506 in accordance with a statewide opioid settlement agreement. A reference in this subchapter to the council includes the director and program staff members unless the provision indicates otherwise.

(4) Council member--An appointed member of the council.

(5) Director--The program staff member designated by the comptroller to serve as the director for the council who performs duties as necessary to manage the day-to-day operations of the council. This term includes the director's designees.

(6) Grant agreement--A legal agreement executed by a grant recipient and the director, on behalf of the council, setting forth the terms and conditions for a grant award approved by the council.

(7) Grant applicant--A person or entity that has submitted through an authorized official an application for a grant award under this subchapter.

(8) Grant application--A written proposal submitted by a grant applicant to the director in the form required by the council that, if successful, will result in a grant award.

(9) Grant award--Funding awarded by the council pursuant to a grant agreement providing money to the grant recipient to carry out a grant project in accordance with statutes, rules, regulations, and guidance provided by the council.

(10) Grant recipient--A grant applicant that receives a grant award under this subchapter.

(11) NOFA--Notice of funding availability.

(12) Peer review--The review process performed by the peer review panel and used to provide guidance and recommendations to the council in making decisions for grant awards. The process involves the consistent application of standards and procedures to produce a fair, equitable, and objective evaluation of grant applications, based on the evidence-based opioid abatement strategies developed by the council under Government Code, §403.509, as well as other relevant requirements of the NOFA and the grant application.

(13) Peer review panel--A group of experts in the field of opioid abatement who are selected to conduct peer review of grant applications. A peer review panel may consist of one or more members as determined by the director [~~council~~].

(14) Peer review panel member--A member of the peer review panel.

(15) Program staff member--A member of the comptroller's staff assigned by the comptroller to provide assistance to the council. This term includes the director.

(16) Statewide opioid settlement agreement--A settlement agreement and related documents entered into by this state through the attorney general, political subdivisions that have brought a civil action for an opioid-related harm claim against an opioid manufacturer, distributor, or retailer, and opioid manufacturers, distributors, or retailers relating to illegal conduct in the marketing, promotion, sale, distribution, and dispensation of opioids that provide relief for this state and political subdivisions of this state.

§16.201. Opioid Abatement Strategies.

(a) The council shall determine and approve one or more evidence-based opioid abatement strategies that are eligible for grant funding. To be approved as eligible for funding, a strategy must be:

(1) an opioid abatement strategy provided in the opioid abatement settlement agreements;

(2) supported with evidence-based data; and

(3) in compliance with all applicable state and federal law.

(b) For each strategy approved as an eligible strategy, the council shall categorize the strategy as:

(1) treatment and coordination of care;

(2) prevention and public safety;

(3) recovery support services; or

(4) workforce development and training.

[~~(c) Within each category, the council shall rank each strategy in order of priority for grant funding.~~]

[~~(d) The council may, from time to time, review and amend the list of eligible strategies, the categorization of strategies, or the ranking of strategies within each category.~~]

§16.202. Grant Issuance Plan.

(a) The council shall adopt an annual [~~a~~] grant issuance plan [~~that allocates grant funds among one or more grant cycles~~].

(b) The grant issuance plan shall include:

[~~(1) the number and order of grant cycles;~~]

(1) [~~(2)~~] the category or categories, and one or more eligible strategies within each category, that may [~~will~~] be eligible for grant funding [~~during each grant cycle~~];

(2) [~~(3)~~] the total annual amount of grant funds allocated [~~to each grant cycle~~];

(3) [~~(4)~~] the parameters for the regional component, including the amounts allocated for regional funding [~~of each grant cycle~~];

(4) [~~(5)~~] the parameters for the targeted intervention component, including the amounts allocated for targeted interventions [~~of each grant cycle~~]; and

(5) [~~(6)~~] any other information or council-mandated requirements necessary to implement the grant issuance plan[~~, such as any matching or volunteer requirements, any limitations to the types of eligible applicants, or other requirements~~].

[~~(c) Grant awards made each grant cycle will include one or more of the categories listed in §16.201(b) of this subchapter.~~]

[~~(d) The council shall designate one or more eligible strategies within each category for each grant cycle in accordance with the priority ranking adopted under §16.201(c) of this subchapter.~~]

(c) [~~(e)~~] Each grant issuance plan [~~cycle~~] will be divided into two main funding components:

(1) Of the funds allocated pursuant to a grant issuance plan [~~cycle,~~] 75% shall be allocated among the regional healthcare partnership regions. Unless the council provides for a different method to allocate funding in the annual plan, the funding provided under this section shall be allocated to the regional healthcare partnership regions using the following percentages [~~regional allocations~~]:

(A) Each region's allocation will be determined using the following regional allocations:

(i) 5.515633% allocated to region 1.

(ii) 7.813739% allocated to region 2.

(iii) 17.455365% allocated to region 3.

(iv) 3.902955% allocated to region 4.

(v) 2.542550% allocated to region 5.

(vi) 9.845317% allocated to region 6.

(vii) 7.285670% allocated to region 7.

(viii) 3.495025% allocated to region 8.

(ix) 9.594819% allocated to region 9.

(x) 9.457202% allocated to region 10.

(xi) 1.372268% allocated to region 11.

(xii) 3.390769% allocated to region 12.

(xiii) 0.749727% allocated to region 13.

(xiv) 1.749546% allocated to region 14.

(xv) 2.596578% allocated to region 15.

(xvi) 1.363928% allocated to region 16.

(xvii) 3.325101% allocated to region 17.

(xviii) 5.741368% allocated to region 18.

(xix) 1.827600% allocated to region 19.

(xx) 0.974842% allocated to region 20.

(B) Within each region and provided there are a sufficient number of eligible grant applicants, no single grant recipient will receive 100% of the funds allocated to a respective region.

(2) Of the funds allocated pursuant to a grant issuance plan [~~cycle~~], 25% shall be allocated for council-directedtargeted interventions. The council shall establish parameters for the authorized uses of the targeted intervention component [~~of each grant cycle.~~].

[~~(A)~~] The parameters may include:

(A) [~~(i)~~] a limitation to one or more geographic areas based on opioid incidence information; and

(B) [~~(ii)~~] a limitation to one or more eligible strategies based on opioid incidence information.

[~~(B) The council shall rank the parameters relating to geographic areas and eligible strategies in order of priority for grant funding. For example, if the council limits targeted intervention grants to, in order of priority, locations A, B, C, and D and to, in order of priority, strategies X and Y, the council shall also specify whether a grant application from location A for strategy Y is a higher priority than a grant application from location B for strategy X.~~]

(d) [~~(f)~~] The council may, as necessary [~~from time to time~~], review and amend the annual grant issuance plan.

§16.203. Notice and Applications.

(a) The [~~For each grant cycle in the grant issuance plan adopted under §16.202 of this subchapter, the~~] council shall provide notice of competitive grant opportunities by publishing NOFAs [~~, as necessary, publish a NOFA~~] on the Electronic State Business Daily [~~Texas.gov eGrants~~] website and the comptroller's website.

(b) The NOFA may include:

(1) the amount of any grant funds available for grant awards for each regional healthcare partnership region under the regional component;

(2) the amount of any grant funds available for grant awards and any limitations on the number of grant awards under the targeted intervention component;

(3) the strategy or strategies that are eligible for grant funding [~~and the order of priority for grant funding~~];

(4) the minimum and maximum amount of grant funds available for each grant application;

(5) any limitations on the geographic distribution of grant funds [~~under the regional component and under the targeted intervention component~~];

(6) eligibility requirements;

(7) grant application requirements;

(8) grant award and evaluation criteria; and

[~~(9) the date by which grant applications must be submitted to the council;~~]

[~~(10) the anticipated date of grant awards;~~]

[~~(11) any preferred criteria relevant to the grant application;~~]

[~~(12) parameters for allowable costs reimbursable under the grant awards; and~~]

(9) [~~(13)~~] any other [~~necessary~~] information necessary to implement the grant or grant issuance plan.

(c) All grant applications submitted under this subchapter must comply with the requirements contained in this subchapter and in the relevant NOFA published by the council.

(d) Grant applicants must apply for a grant award using the procedures, forms, and certifications prescribed by the council.

(e) During the review of a grant application, the director [~~a program staff member~~] may require a grant applicant to submit additional information necessary to complete the review. Such requests for information do not serve as notice that the council intends to fund a grant application; however, failure to respond to requests for additional information may impact the ability to review and evaluate the grant application.

(f) Grant applications shall[~~:~~]

[~~(1)~~] seek to remediate the opioid crisis in this state by using efficient and cost-effective methods that are directed to regions of this state experiencing opioid-related harms.[~~; and~~]

[~~(2) satisfy the requirements set forth in this subchapter; Government Code, Chapter 403, Subchapter R; and the relevant NOFA published by the council~~].

§16.205. Engage in Business in Texas.

(a) Except as addressed by a NOFA, to be eligible to receive a grant award, a grant applicant must engage in business in the state of Texas by:

(1) maintaining employees in the state of Texas; or

(2) having a fixed place of business in the state of Texas.[~~; or~~]

[~~(3) providing any service in the state of Texas, whether or not the individuals performing the service are residents of the state~~].

(b) Grant applicants responding to a NOFA may be located outside the state of Texas when the grant application is submitted and reviewed; however, the grant applicant must demonstrate that it engages in business in the state of Texas as a condition of the grant award.

(c) A grant recipient's failure to engage in business in the state of Texas is a violation of these rules for the purpose of §16.218 of this subchapter.

§16.206. Peer Review Panel Members.

(a) To minimize the potential for conflicts of interest in the peer review of grant applications, the council shall give preference to [~~may select and compensate~~] individuals who live and work outside of the state of Texas to serve as peer review panel members[~~, unless a special need justifies selecting one or more individuals living or working in Texas~~].

[~~(b) If an individual who lives or works in Texas is selected to serve as a peer review panel member, the director must provide an explanation of the special need and how any potential for conflict of interest will be mitigated to the council at the time the peer review panel member is selected.~~]

(b) [~~(c)~~] A peer review panel member shall immediately disclose to the director a present relationship with a grant applicant or any benefit the peer review panel member has received or knows the member will receive from a grant applicant.

(c) [~~(d)~~] A peer review panel member who has a present relationship with a grant applicant, or has received or knows the member will receive any benefit from a grant applicant, may not review that grant application.

§16.208. Grant Application Review.

(a) The grant application review process shall consist of the following:

(1) initial screening;

(2) director review or, if required, peer review; and

(3) council review and approval.

(b) Initial screening.

(1) The director shall review each grant application to determine whether the grant application complies with the requirements contained in this subchapter and the relevant NOFA published by the council. Grant applications that do not meet these requirements may not be eligible for a grant award and will not be submitted for further review under this section. The council may participate in the initial screening of any grant application.

(2) Following the initial screening, the director shall submit each grant application that meets the requirements described in subsection (b)(1) of this section for review under subsection (c) of this section.

(c) Director review or peer review.

(1) Each grant application that is submitted for review under subsection (b)(2) of this section shall be reviewed by the director or a peer review panel.

(A) If the total amount of the grant is greater than $750,000, the grant application shall be reviewed by a peer review panel.

(B) If the total amount of the grant is $750,000 or less, the grant application may be reviewed by the director or a peer review panel.

(2) Applications shall be scored based on the application's merit and the criteria in the relevant NOFA published by the council. The reviewer shall submit this information to the director.

(3) Scores, rankings and other information submitted for the council's consideration are recommendations and are advisory only.

(4) For each NOFA, the director [~~council~~] will determine the number of members that will serve on the peer review panels for any grant applications subject to peer review.

(d) Council review and approval.

(1) Upon completion of the evaluation described in subsection (c) of this section, the director shall compile a ranked order list of grant applications and submit it to the council for consideration. If an application is reviewed by more than one person, the final evaluation score is determined by averaging together all reviewers' scores.

(2) For each application, the director shall submit to council members:

(A) the grant application's final overall evaluation score;

(B) the grant application's ranking;

(C) a summary of the grant application;

(D) other information submitted by the reviewers for the council's consideration; and

(E) any other information required for the council's consideration of the grant application.

(3) In making grant award decisions, the council:

(A) shall ensure that grant funds are allocated fairly and spent to remediate the opioid crisis in this state by using efficient and cost-effective methods in accordance with the opioid strategies approved by the council under Government Code, §403.509(a)(1) and §16.201 of this subchapter, and the grant issuance plan adopted by the council under §16.202 of this subchapter; and

(B) may consider factors including:

(i) a grant applicant's experience;

(ii) a grant project's estimated timeline;

(iii) matching funds or sustainability plan, if any;

(iv) cost effectiveness, efficacy and overall impact of the grant project;

(v) geographic location of the grant project;

(vi) community partnerships; and

(vii) any additional factors listed in the relevant NOFA published by the council.

(4) The council shall vote on grant applications in accordance with Government Code, Chapter 403, Subchapter R. The council may determine the voting procedures for grant applications and may vote on multiple grant applications at one time.

(5) All grant funding decisions are final and are not subject to appeal.

(6) The approval of a grant award shall not obligate the council to make any additional, supplemental, or other grant award.

§16.212. Grant Requirements.

(a) Grant recipients must comply with:

(1) the terms and conditions of the grant agreement;

(2) the requirements of Government Code, Chapter 403, Subchapter R;

(3) the applicable [~~relevant~~] provisions of the Texas Grant Management Standards and the State of Texas Procurement and Contract Management Guide, or their successors, adopted in accordance with Texas law; and

(4) all applicable state or federal statutes, rules, regulations, or guidance applicable to the grant award.

(b) A grant recipient is the entity legally and financially responsible for compliance with the grant agreement, and state and federal laws, rules, regulations, and guidance applicable to the grant award.

(c) Grant funds may not be used for costs that will be reimbursed by another funding source. The director may require a grant applicant or grant recipient to demonstrate through accounting records that funds received from another funding source are not used for costs that will be reimbursed by the council.

§16.214. Conflicts of Interest; Code of Ethics.

(a) All council members, peer review panel members, and program staff members shall avoid acts which are improper or give the appearance of impropriety in the disposition of funds administered by the council.

(b) A council member shall recuse himself or herself from participating in the review, discussion, deliberation, or vote on a grant application if the council member knows that the council member or a person who is related to the council member within the first degree of affinity or consanguinity has a professional or financial interest in an entity that is directly receiving or applying to receive money from the council.

(c) [~~(b)~~] The council may [~~shall~~] adopt a code of ethics to provide guidance related to the ethical conduct required of council members and [~~,~~] peer review panel members[~~, and program staff members~~].

(d) [~~(c)~~] Any [~~The~~] code of ethics adopted by the council shall be distributed to each council member and [~~,~~] peer review panel member, as applicable [~~and program staff member~~].

§16.215. Reporting.

(a) Grant recipients must submit [~~to a program staff member designated by the director~~] periodic reports for each funded grant project for the duration of the grant agreement to the director. The frequency, format and requirements of the reports shall be determined at the discretion of the director or at the direction of the council.

(b) At the director's sole discretion and at any time, the director, upon reasonable notice, may request any additional data and reporting information that the director deems necessary to substantiate that grant funds are being used for the intended purpose and that the grant recipient has complied with the terms, conditions, and requirements of the grant agreement.

§16.217. Extensions and Amendments.

(a) The director may, without further action of the council, approve:

(1) a grant recipient's written request for a no cost time extension of the termination date of the grant agreement to permit the grant recipient additional time to complete the work of the grant project if the grant recipient is in good fiscal and programmatic standing, and

(2) any amendment to a grant agreement.

(b) A written request for a no cost time extension must include:

(1) a timeline of events beginning on the date of grant award;

(2) a detailed explanation why the grant project is not expected to be completed within the grant term; and

(3) if applicable, supporting documentation demonstrating extenuating circumstances.

(c) The director may approve one or more no cost time extensions. The duration of each no cost time extension may be no longer than six months from the termination date of the grant agreement, unless the director finds that special circumstances justify authorizing additional time to complete the work of the grant project.

(d) Approval of a no cost time extension request must be supported by a finding of good cause and the grant agreement shall be amended to reflect the change.

(e) The director's decision to grant or deny a no cost time extension request or an amendment to a grant agreement is final and is not subject to appeal.

§16.218. Noncompliance.

(a) If the director [~~council~~] has reason to believe that a grant recipient has violated any term or condition of the grant recipient's grant agreement or any applicable laws, rules, regulations, or guidance relating to the grant award, the director shall provide written notice of the allegations to the grant recipient and provide the grant recipient with an opportunity to respond to the allegations.

(b) If the director [~~council~~] finds that a grant recipient has failed to comply with any term or condition of a grant agreement, or

any applicable laws, rules, regulations, or guidance relating to the grant award, the director [~~council~~] may:

(1) require the grant recipient to refund the grant award or a portion of the grant award;

(2) withhold grant award amounts to a grant recipient pending correction of the deficiency;

(3) disallow all or part of the cost of the activity or action that is not in compliance;

(4) terminate the grant award in whole or in part;

(5) bar the grant recipient from future consideration for grant funds under this subchapter; or

(6) exercise any other legal remedies available at law.

[~~(c) A grant recipient shall not be required to forfeit grant funds received if it fails to perform due to acts of war, terrorism, natural disaster declared by the governor of this state, an act of God, force majeure, a catastrophe, or such other occurrence over which the grant recipient has no control.~~]

§16.219. Monitoring Grant Award Performance and Expenditures.

The director [~~council~~] shall monitor grant awards to ensure that grant recipients comply with applicable financial, administrative, and programmatic terms and conditions and exercise proper stewardship over grant award funds. Such terms and conditions include requirements set forth in the grant agreement, and applicable laws, rules, regulations, or guidance relating to the grant award.

§16.222. Hospital District Allocations.

(a) The council shall make periodic distributions of money allocated to hospital districts under Government Code, §403.508(a)(2).

(b) The council shall distribute money under subsection (a) of this section when, based on the total amount of money to be distributed, the smallest amount of the money that would be allocated to an individual hospital district equals at least $1,000. Additionally, the council may, at the council's discretion, distribute money under subsection (a) of this section when, based on the total amount of money to be distributed, an individual hospital district would receive less than $1000.

(c) The total amount of each distribution of money under subsection (a) of this section shall be determined by the council.

(d) The initial distribution of money under subsection (a) of this section shall be allocated as follows:

(1) to the hospital districts listed in subsection (f) of this section in the dollar amounts listed in that subsection; and

(2) the remainder to the hospital districts listed in subsection (g) of this section in amounts determined by multiplying the percentages listed in that subsection by the remaining amount to be distributed.

(e) Any subsequent distributions of money under subsection (a) of this section shall be allocated to the hospital districts listed in subsection (g) of this section in amounts determined by multiplying the percentages listed in that subsection by the amount to be distributed.

(f) Group One:
Figure: 34 TAC §16.222(f) (No change.)

(g) Group Two:
Figure: 34 TAC §16.222(g) (No change.)

(h) Amounts allocated under subsections (d)(2) and (e) of this section may be rounded down to the nearest whole dollar. Any remaining money caused by rounding shall be retained for future allocation to hospital districts under this section.

(i) Prior to, and as a condition of, receiving a distribution of money under subsection (a) of this section, a hospital district listed in subsection (f) or (g) of this section must, for each distribution:

(1) submit to the director a resolution from the hospital district's governing body that:

(A) designates, by name and title, an authorized official who has the authority to act on behalf of the hospital district in all matters related to the distribution, including the authority to sign all official documents related to the distribution;

(B) affirms that the hospital district will use all money received by the hospital district under this section:

(i) to remediate the opioid crisis, including providing assistance in one or more of the categories described in §16.201(b) of this subchapter; or

(ii) if a court order or settlement agreement requires the money to be used for one or more specific purposes, for a permissible use provided by that court order or settlement agreement; and

(C) affirms that, in the event of loss or misuse of grant funds, the hospital district shall return all funds to the council;

(2) submit to the director in a form acceptable to the director:

(A) the authorized official's title, mailing address, telephone number, and email address;

(B) the hospital district's physical address; and

(C) any other documents or information required by the director, including any documents or information required for the secure transfer of money to the hospital district or required by a court order or settlement agreement that applies to all or a portion of the money being distributed;

(3) if there is a change of authorized official, submit to the director a new resolution from the hospital district's governing body that contains the information required under paragraph (1) of this subsection;

(4) notify the director as soon as practicable of any change in the information provided under paragraph (2) of this subsection;

(5) be in compliance with subsection (j) of this section for any prior distributions; and

(6) be in compliance with the reporting requirements in subsection (l) of this section for any prior distributions.

(j) Money received by a hospital district under this section must be used by the hospital district for the purposes described in subsection (i)(1)(B) of this section.

(k) If a hospital district does not satisfy the requirements to receive a distribution under subsection (i) of this section, does not deposit distributed money before the second anniversary of the date on which the money was distributed, or submits in writing to the council a document indicating that the hospital district affirmatively forfeits or refuses to accept the money, the distribution to that hospital district, and any future distributions to that hospital district, may be cancelled and, if cancelled, the money shall be retained by the council for future allocation to hospital districts under this section.

(l) A hospital district that receives a distribution of money under this section must submit periodic reports to the director to ensure

that the hospital district complies with subsection (j) of this section. The frequency, format, and requirements of the reports shall be determined at the discretion of the director.

(m) The council may monitor a hospital district that receives money under this section to ensure that the hospital district complies with subsection (j) of this section.

(n) If the council finds that a hospital district has failed to comply with the requirements of subsection (j) of this section, the council may do one or more of the following:

(1) instruct the director to provide the hospital district written notice of the alleged failure to comply;

(2) provide the hospital district with an opportunity to respond;

(3) require the hospital district to cure the failure to comply to the satisfaction of the council;

(4) require the hospital district to refund to the council all or a portion of the money received by the hospital district under this section; and

(5) exercise any other legal remedies available at law.

(o) Money refunded to the council under subsection (n) of this section shall be retained by the council for future allocation to hospital districts under this section.

(p) Except as otherwise provided in this section, this section and §16.200 of this subchapter are the only provisions in this subchapter that apply to the allocation of money to hospital districts under Government Code, §403.508(a)(2).

§16.223. Grants to Certain Political Subdivisions.

(a) The council may award non-competitive grants to a political subdivision of this state that participated in the statewide opioid settlement agreement defined in Government Code, §403.501(5).

(b) A grant to a political subdivision under subsection (a) of this section is not subject to §16.203 or §16.208 of this subchapter, unless otherwise determined by the council.

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 January 15, 2026.

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Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: March 1, 2026
For further information, please call: (512) 475-2220

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34 TAC §§16.207, 16.213, 16.216

The Comptroller of Public Accounts proposes the repeal of §16.207, concerning authorized officials, §16.213, concerning use of council's grant management system, and §16.216, concerning grant reduction or termination. The comptroller repeals these sections because they are no longer necessary or are adequately addressed through the applicable grant agreements or notices of funding availability.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed repeal is in effect, the repeal: will not create or eliminate a government program; will not require the creation or elimination of 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 increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed rules repeal would have no fiscal impact on the state government, units of local government, or individuals. The proposed repeal would benefit the public by improving the clarity and organization of the chapter. There would be no anticipated economic cost to the public. The proposed repeal would have no fiscal impact on small businesses or rural communities.

You may submit comments on the proposal or information related to the cost, benefit, or effect of the proposal, including any applicable data, research or analysis, to Katy Fallon-Brown, Director, Opioid Abatement Fund Council, P.O. Box 13528 Austin, Texas 78711 or to the email address: OAFC.Public@cpa.texas.gov. The comptroller must receive your comments or other information no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeals are proposed under Government Code, §403.511, which authorizes the comptroller to adopt rules to implement Government Code, Chapter 403, Subchapter R, concerning the statewide opioid settlement agreement.

The repeals implement Government Code, Chapter 403, Subchapter R, concerning statewide opioid settlement agreements.

§16.207. Authorized Officials.

§16.213. Use of Council's Grant Management System.

§16.216. Grant Reduction or Termination.

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 G. SHERIFF IMMIGRATION LAW ENFORCEMENT GRANT PROGRAM

34 TAC §§16.550 - 16.556

The Comptroller of Public Accounts proposes new §16.550, concerning definitions; §16.551, concerning applications; §16.552, concerning comptroller review; §16.553, concerning grant agreement; §16.554, concerning authorized uses of grant funds; §16.555, concerning reporting and compliance; and §16.556, concerning fiscal year 2026 application period.

These new sections will be located in 34 TAC Chapter 16, new Subchapter G, Sheriff Immigration Law Enforcement Grant Program.

The legislation enacted in the last four years that provides statutory authority is Senate Bill 8, 89th Legislature, R.S., 2025. Senate Bill 8 establishes a new grant program to assist sheriffs participating in immigration law enforcement agreements.

Section 16.550 provides definitions.

Section 16.551 describes the application process.

Section 16.552 describes comptroller review.

Section 16.553 describes the requirements for grant agreements.

Section 16.554 describes the authorized uses of grant funds and limitations on uses of grant funds.

Section 16.555 describes reporting requirements and available remedies for noncompliance.

Section 16.556 describes the Fiscal Year 2026 application period.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed new rules are in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of 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 increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed new rules would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed new rules would benefit the public by fulfilling a statutory requirement and establishing a program. There would be no economic cost to the public. The proposed new rules would have no fiscal impact on small businesses or rural communities.

You may submit comments on the proposal or information related to the cost, benefit, or effect of the proposal, including any applicable data, research or analysis, to Russell Gallahan, Manager, Local Government & Transparency, P.O. Box 13528 Austin, Texas 78711 or to the email address: sheriff.grants@cpa.texas.gov. The comptroller must receive your comments or other information no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under Government Code, §753.104, which requires the comptroller to adopt rules to implement a new grant program to assist sheriffs participating in immigration law enforcement agreements.

The new sections implement Government Code, §753.104.

§16.550. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Applicant--A sheriff of a county that operates a jail or contracts with a private vendor to operate a jail who applies for a grant.

(2) Biennium--A two-year period that runs from September 1 of an odd-numbered year through August 31 of the next odd-numbered year.

(3) Deputy sheriff--A person appointed as deputy sheriff pursuant to Local Government Code, §85.003.

(4) Equipment--This term includes any tangible or nontangible item necessary to perform duties required under an immigration law enforcement agreement including safety equipment, computers, firearms, vehicles and software. This term does not include office supplies such as pens, paper, and office furniture.

(5) Fiscal year--The twelve consecutive calendar months when an applicant tracks its finances for budget and accounting purposes.

(6) Grant--A grant awarded under Government Code, Chapter 753, Subchapter C, to a sheriff who has entered into an immigration law enforcement agreement.

(7) Grant agreement--An agreement between the comptroller and a grant recipient that governs the terms of a grant.

(8) Grant reporting costs--Costs related to generating and delivering reports required under this subchapter.

(9) Grant recipient--A sheriff who receives a grant under this subchapter.

(10) Immigration law enforcement agreement--An agreement described in Government Code, § 753.001 and §753.051.

(11) Reporting costs--Costs related to generating and delivering reports required under the immigration law enforcement agreement.

(12) Sheriff--A person elected or appointed as the county sheriff who is responsible for carrying out the duties of the office described in Local Government Code, Chapters 85, 291 and 351.

§16.551. Application.

(a) In order to receive a grant award payment under this subchapter, an applicant must timely submit a completed application.

(b) An applicant must submit the application electronically on a website established by the comptroller for that purpose. The application must include all information the comptroller deems necessary to make an award determination, including:

(1) a copy of the immigration law enforcement agreement; and

(2) a copy of a resolution from the county commissioner's court wherein the commissioners court pledges to not reduce the amount of funds provided or appropriated to the sheriff's office in response to the sheriff's receipt of grant funds under this subchapter.

(c) A sheriff is eligible to apply for a grant if the sheriff has entered into an immigration law enforcement agreement and is eligible for the grant amount as described under Government Code, §753.103.

(d) The comptroller accepts only one application per applicant within a biennium.

(e) The sheriff must electronically sign the application and certify that all information in the application is true and correct.

§16.552. Comptroller Review.

(a) The comptroller shall review the application for completeness. The comptroller may require the applicant to submit any additional information deemed necessary to make an award determination. The applicant must submit the required information within 14 calendar days of its request by the comptroller.

(b) The comptroller may reject an application for any of the following reasons:

(1) an applicant has not timely met, to the comptroller's satisfaction, the eligibility and application requirements;

(2) an applicant failed to timely comply with the comptroller's request for information under subsection (a) of this section; or

(3) the application submitted is incomplete or does not otherwise comply with this subchapter as determined by the comptroller.

§16.553. Grant Agreement.

(a) Funding of grant agreements is contingent on the comptroller receiving sufficient legislative appropriations, without which the comptroller may be unable to execute a grant agreement. Determinations regarding grant award payment amounts will depend on the amount of funding available at the time the application is approved and could result in partial or no funding awarded.

(b) The comptroller shall notify the grant recipient of the grant award amount and provide a grant agreement for signature within 30 days of that notification.

(c) Award and funding decisions are made in the comptroller's sole discretion and are not appealable or subject to protest.

(d) A grant agreement must require the comptroller to disburse funds as soon as practicable and must require funds to be expended during the grant period. Funds subject to a binding encumbrance may be considered expended if the grant recipient is legally obligated to expend the funds under a binding contract to purchase allowable goods or services. For example, anticipated contracts, contracts under negotiation, and the earmarking or budgeting of funds for a specified purpose are not binding encumbrances.

(e) Grant award payments are subject to Government Code, §§ 403.055, 403.0551 and 753.103. The most recent federal decennial census will determine the population used for the funding tiers.

(f) The sheriff must electronically sign the grant agreement.

§16.554. Authorized uses of Grant Funds.

(a) Grant funds may only be used for the following:

(1) compensation for persons performing duties under the immigration law enforcement agreement;

(2) reporting costs, which are limited to three percent of the total grant amount;

(3) grant reporting costs, which are limited to three percent of the total grant amount;

(4) equipment and related services for peace officers and other persons related to the immigration law enforcement agreement, including the cost of repairing equipment that was not purchased using grant funds;

(5) attendance by a person at any training or other event required under the immigration law enforcement agreement;

(6) costs to the county for confining inmates under the authority granted under the immigration law enforcement agreement;

(7) overtime pay for persons employed at the sheriff's office who, during periods of training required by the immigration law enforcement agreement, perform the duties of persons obtaining that training;

(8) indirect costs, as described in the Texas Grant Management Standards, which:

(A) are limited to five precent of the total grant amount; and

(B) exclude costs for business functions of the office, including software, trainings, and licenses; and

(9) pre-award costs expended on or after the effective date of the immigration law enforcement agreement and prior to the effective date of the grant agreement.

(b) Grant funds may not be used for:

(1) reporting costs in excess of three percent of the total grant amount;

(2) grant reporting costs in excess of three percent of the total grant amount;

(3) indirect costs, as described in the Texas Grant Management Standards, in excess of five percent of the total grant amount and indirect costs for business functions of the office including software, trainings, and licenses;

(4) costs associated with participating in the immigration law enforcement agreement for which the grantee may be reimbursed by the federal government; and

(5) costs incurred prior to the effective date of the immigration law enforcement agreement.

(c) Grant funds may only be used for the state purpose of assisting sheriffs participating in immigration law enforcement agreements.

(d) For compensation for persons performing duties under the agreement as described by subsection (a)(1) of this section, the costs associated with providing compensation include:

(1) the salary amount as indicated on the county's budget submitted under section 16.555 (Reporting and Compliance) of this subchapter; and

(2) any additional compensation costs legally permissible and allowable by county policy, including overtime pay.

(e) Funds must be expended within the term of the grant agreement.

§16.555. Reporting and Compliance.

(a) A grant recipient must submit a compliance report using the comptroller's electronic form each fiscal year as required by the grant agreement. The report must certify compliance and provide detailed information on the expenditure of grant funds.

(b) The comptroller may request supporting documentation regarding expenditures and any other information required to substantiate that the grant recipient complied with the grant agreement and this subchapter. The grant recipient must submit the documentation within 14 calendar days of the request.

(c) Grant recipients must comply with:

(1) the grant agreement terms and conditions;

(2) Government Code, Chapter 753, Subchapter C requirements, as applicable; and

(3) all state and federal statutes, rules, regulations, and guidance applicable to the grant award, including this subchapter.

(d) If the comptroller finds that a grant recipient has failed to comply with any requirement described in subsection (c) of this section, the comptroller may:

(1) require the grant recipient to cure the failure to comply to the comptroller's satisfaction;

(2) require the grant recipient to return some or all of the grant;

(3) withhold funds from the current grant or future grants awarded to grant recipient until the deficiency is corrected;

(4) disallow all or part of the cost of the activity or purchase that does not comply;

(5) terminate the grant agreement in whole or in part;

(6) bar the grant recipient from future consideration for grants under this subchapter; or

(7) exercise any other legal remedies available at law.

(e) The grant recipient or an official of the county who is authorized to bind the county must electronically sign the compliance report and certify that all information in the compliance report is true and correct.

§16.556. Fiscal Year 2026.

(a) Notwithstanding anything to the contrary in this subchapter, the first application period for all applicants in Fiscal Year 2026 will consist of a thirty-day period beginning on the later of January 1, 2026 or the date the application is first made available.

(b) For grants awarded during Fiscal Year 2026, funds may be used to reimburse costs incurred on or after October 1, 2025, provided the costs were incurred on or after the effective date of the immigration law enforcement agreement. Any pre-award costs, corresponding receipts, invoices or other related information must be submitted with the application.

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 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

SUBCHAPTER E. SPECIAL CATEGORIES OF CONTRACTING

DIVISION 1. STATE SUPPORT SERVICES - MAIL AND PRINTING

34 TAC §20.381

The Comptroller of Public Accounts proposes amendments to §20.381, concerning policy and purpose.

No legislation was enacted within the last four years that provides the statutory authority for the amendments.

The comptroller amends subsection (a) to remove passive voice and unnecessary language and clarify the comptroller's role for providing interagency mail and messenger services between state agencies in Travis County.

The comptroller amends subsection (b) to remove passive voice and streamline language. The revised language provides that mail and messenger service will not deliver personal mail. In addition, the revised subsection states that mail and messenger service will not deliver packages weighing more than 70 pounds.

The comptroller amends subsection (c) to remove passive voice and simplify language, and state when the mail and messenger service will deliver state warrants.

The comptroller amends subsection (d) to remove passive voice and streamline language, and states that mail will be delivered to and from the United States Postal Service upon agreement of the state agency and the comptroller.

The comptroller amends subsection (e) to remove passive voice and unnecessary language and provides the mail and messenger service will process and meter outgoing mail for state agencies upon agreement of the state agency and the comptroller. This section is also amended to state each state agency shall pay for its own postage and obligations if there is a deficit.

The comptroller amends subsection (f) to delete passive voice and simplify language. In paragraph (1), the comptroller raises the threshold at or below which an agency may rely on a written justification of mail equipment purchases and service contracts from $10,000 to $25,000. In paragraph (2), the comptroller raises the corresponding threshold above which an agency must present a detailed analysis of costs and benefits for mail equipment purchases and service contracts from $10,000 to $25,000. The $25,000 threshold aligns with the requirement for posting of a solicitation in Government Code, §2155.083, along with other formal procurement requirements.

The comptroller amends subsection (g) to delete passive voice and unnecessary language, and to specify how state agencies may pay for postage on a meter rented under a term contract. The subsection provides that the comptroller may establish statewide contracts for postage meter machine rentals. And the subsection provides that state agencies that use these statewide contracts may purchase and pay for postage separately, in accordance with the requirements of United States Postal Service Domestic Mail Manual.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amendments are in effect, the amended rule: will not create or eliminate a government program; will not require the creation or elimination of 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 increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy. This proposal amends an existing rule.

Mr. Reynolds also has determined that the proposed rule amendments would have no fiscal impact on the state government, units of local government, or individuals. The proposed amendments would benefit the public by improving the clarity and implementation of the section. There would be no anticipated economic cost to the public. The proposed amendments would have no fiscal impact on small businesses or rural communities.

You may submit comments on the proposal or information related to the cost, benefit, or effect of the proposal, including any

applicable data, research or analysis, to Gerard MacCrossan P.O. Box 13528 Austin, Texas 78711 or to the email address: Gerard.MacCrossan@cpa.texas.gov. The comptroller must receive your comments or other information no later than 30 days from the date of publication of the proposal in the *Texas Register*.

A public hearing will be held to receive comments on the proposed amendments. There is no physical location for this meeting. The meeting will be held at 10:00 a.m., Central Time, on Tuesday, February 10, 2026. To access the online public meeting by web browser, please enter the following URL into your browser: https://txcpa.webex.com/txcpa/j.php?MTID=mc5da036d94cb39fac7c45cfeacf72d09. To join the meeting by computer or cell phone using the Webex app, use the access code 24868453987 and password SPDRULES. Persons interested in providing comments at the public hearing may contact Mr. Gerard MacCrossan, Comptroller of Public Accounts, at Gerard.MacCrossan@cpa.texas.gov or by calling (512) 463-4468 by February 9, 2026.

These amendments are proposed under Government Code, §2176.110 which provides that the comptroller shall adopt rules for state agencies to implement Government Code, Chapter 2176 regarding mail, and under Government Code, §2113.103(c) which provides that the comptroller by rule shall adopt procedures for the payment of postage by an agency renting a postage meter machine.

These amendments implement Government Code, Chapter 2176 and Government Code, §2113.103.

§20.381. Mail and Messenger Services.

(a) The comptroller [~~provides and~~] operates an interagency mail and messenger service to deliver unstamped or non-metered mail [~~written communications~~] and packages between the [~~legislature,~~] state agencies [~~and legislative agencies located~~] in Travis County.

(b) The Mail and messenger service will not deliver personal mail that is not associated to an individual's job function. The mail and messenger service will not deliver packages weighing more than 70 pounds. [~~No personal mail will be carried by the mail and messenger service. No package that exceeds 70 pounds will be delivered by the mail and messenger service.~~]

(c) The mail and messenger service, upon agreement by the state comptroller and the agency, will deliver state warrants. [~~State warrants may be delivered by the mail and messenger service upon agreement by the state comptroller and the agency concerned.~~]

(d) The mail and messenger service, upon agreement of the state agency and the comptroller, will deliver mail to and from the United States Postal Service. [~~Mail may be delivered to and from the United States Post Office upon the agreement of the state agency and the comptroller.~~]

(e) The mail and messenger service, upon agreement of the state agency and the comptroller, will [~~may~~] process and meter outgoing mail for state agencies [~~upon agreement of the state agency and the comptroller~~]. Each state agency shall pay for its own [~~must furnish funds to cover amounts of~~] postage to be metered.

(1) No mail will [~~shall~~] be metered for a state agency in excess of funds provided by the agency, unless approved by the comptroller [~~so as to avoid undue delays in processing mail~~]. A state agency with a [~~Any~~] deficit in its [~~an agency's~~] postage account shall [~~be~~] promptly reimburse [~~reimbursed to~~] the comptroller.

(2) The mail and messenger service will provide each state agency utilizing the metered mail service with a monthly report showing the amounts of postage used and volume of mail metered.

(3) State agencies that [~~who~~] use the comptroller's outgoing mail service [~~for the purpose of postage meter rental requirements and cost effective mailing requirements~~] will be [~~considered to be~~] in compliance with Government Code, Chapter 2176 and Government Code, §2113.103.

(f) A state agency located in Travis County shall [~~is required to~~] consult [~~with~~] the comptroller before renting, purchasing, upgrading, or selling mail processing equipment; contracting with a private entity for mail processing services; or taking any action that will significantly affect the agency's first class mail practices.

(1) For mail equipment or [~~private entity~~] service contracts $25,000 [~~$10,000~~] and under, a state agency shall submit a written justification to the comptroller stating why the equipment or service is needed and what benefits are expected to be received.

(2) For mail equipment or [~~private~~] service contracts over $25,000 [~~$10,000~~], a state agency shall submit a detailed life-cycle [~~cost benefit~~] analysis to the comptroller that includes all expected costs and benefits over the life of the equipment or service. The analysis shall be in a format prescribed by the comptroller.

(3) For any action that will significantly affect its first class mail practices, a state agency shall provide a written statement of the need for the action and anticipated benefits. Significant actions affecting the first class mail practices [~~of an agency~~] include[~~, but are not limited to, the following~~]:

(A) creation or elimination of internal mail processing functions, organization, or staff; and

(B) addition or elimination of [~~any specific~~] mail processing activities such as metering, presorting, folding, inserting [~~folding/inserting~~], or labeling.

(4) The comptroller shall provide a written response to the state agency indicating whether or not it agrees with the intended action and any suggested alternatives.

(g) The comptroller may establish [~~establishes~~] statewide term contracts for postage meter machine rentals [~~when in the best interest of the state~~]. State agencies that use these [~~Postage for~~] statewide [~~term~~] contracts [~~is purchased separately by state agencies and cooperative purchasing members. State agencies~~] may purchase and pay for postage separately, in accordance with the requirements of United States Postal Service Domestic Mail Manual. State agencies that use the comptroller's statewide contracts for postage meter machine rentals will be in compliance with Government Code, §2113.103.

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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Don Neal
General Counsel, Operations and Support Legal Services
Comptroller of Public Accounts
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PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 75. HAZARDOUS PROFESSION DEATH BENEFITS

34 TAC §§75.1 - 75.3

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code Ch. 75, concerning Hazardous Profession Death Benefits, by amending §75.1 (Filing of Claims), §75.2 (Additional Benefit Claims), and §75.3 (Adjustments to Payments).

ERS administers a constitutional trust fund as set forth in Article XVI, §67, Texas Constitution; Title 8, Tex. Gov't Code; and 34 Texas Administrative Code, §§61.1 *et seq.* ERS also administers benefits for the survivors of peace officers, fire fighters, and other similar public servants under Tex. Gov't Code Ch. 615.

Sections 75.1 - 75.3, concerning Hazardous Profession Death Benefits, are proposed to be amended in order to simplify and clarify the process for submitting an application for benefits.

GOVERNMENT GROWTH IMPACT STATEMENT

ERS has determined that during the first five-year period the amended rules will be in effect:

(1) the proposed amendments will not eliminate a government program;

(2) implementation of the proposed amendments will not require the creation of new employee positions or eliminate existing employee positions;

(3) implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed amendments will not require an increase or decrease in fees paid to the agency;

(5) the proposed amendments will not create a new rule or regulation;

(6) the proposed amendments will not expand an existing rule or regulation and will not repeal an existing rule or regulation;

(7) the proposed amendments will not increase or decrease the number of individuals subject to the rules' applicability; and

(8) the proposed amendments will not positively or adversely affect the state's economy.

Mr. Bernie Hajovsky, Director of Customer Benefits, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government or local economies as a result of enforcing or administering the rules; and small businesses, micro-businesses, and rural communities will not be affected.

The proposed amendments to the rule will clarify and simplify the process for submitting an application for benefits. The proposed amendments do not constitute a taking. Mr. Hajovsky has also determined that, to his knowledge, there are no known anticipated economic effects to persons who are required to comply with the rule as proposed, and the proposed amendments do not impose a cost on regulated persons.

Mr. Hajovsky also determined that for each year of the first five years the amended rules are in effect, the public benefit anticipated as a result of adopting and complying with the rules is that the process for submitting an application for benefits will be clarified and simplified.

Comments on the proposed amendments may be submitted to Cynthia C. Hamilton, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Hamilton at *general.counsel@ers.texas.gov*. The deadline for receiving comments is Monday, March 2, 2026, at 10:00 a.m.

The amendments are proposed under Tex. Gov't Code §615.002, which provides authorization for the ERS Board of Trustees to adopt rules necessary for the administration of Tex. Gov't Code Ch. 615.

No other statutes are affected by the proposed amendments and rules.

§75.1. Filing of Claims.

(a) An adult survivor or a person with authority to act on behalf of a survivor may initiate an application for benefits under Tex. Gov't Code, Chapter 615, except that for benefits payable to survivors or members of Texas military forces under Tex. Gov't Code § 615.024, the system will make a determination regarding the payment of benefits based on information provided by the Texas Military Department, and the documentation requirements generally applicable to applications for benefits, as described in this chapter, will not apply to members of Texas military forces.

[~~(a) Claims for benefits under Texas Government Code, Chapter 615, may be initiated by the deceased employee's department, any applicant for benefits, if an adult, or by the representative of any minor children for whom benefits are being claimed.~~]

(b) The executive director or the executive director's designee, in his or her sole discretion, may waive any of the documentation requirements set forth in this chapter and may require any additional information, including sworn affidavits, necessary to establish the validity of a claim.

[~~(b) No claim for benefits on behalf of a child born after the death of the law enforcement officer or fire fighter will be paid, unless it is accompanied by a certificate of the attending physician that the child was conceived during the decedent's lifetime.~~]

(c) The following documents [~~or copies of the documents shall be submitted in an application for benefits under Texas Government Code, Chapter 615, unless the executive director or designee waives their submission~~] must accompany an application for benefits:

(1) a sworn statement, on a form prescribed by the system, that provides information related to eligibility for benefits and is executed by each survivor who is applying to receive a lump sum or the survivor's legal representative;

[~~(1) a sworn statement from the person making the claim giving the date of death, the name and address of the surviving spouse, if there is one, and the names, addresses, and birth dates of all surviving children of the decedent. If the decedent left no surviving spouse or children, the names and addresses of surviving parents of the decedent shall be provided. The names and addresses of any persons caring for minors who may be eligible for benefits shall be given;~~]

(2) a certified copy of the death certificate;

(3) a certified copy of the autopsy report, [~~only~~] if an autopsy has been performed [~~requested by the system~~];

(4) [a ~~copy of the marriage certificate showing marriage between the~~] for a surviving spouse: [~~and the deceased;~~]

(A) a copy of a marriage license or an equivalent government record showing a formal marriage between the survivor and the decedent;

(B) a declaration of informal marriage, if one was filed; or

(C) for an informal marriage without a declaration, documentation that proves the survivor and the decedent:

(i) intended to have a present, immediate, and permanent marital relationship and did in fact agree to be married;

(ii) at the time of the decedent's death, had been living together in Texas as spouses; and

(iii) consistently represented to others that they were married (with occasional introductions as spouses being insufficient).

(5) a certified copy of the birth certificate for [~~of~~] each surviving child [~~of the deceased~~];

[~~(6) affidavits from any witnesses detailing the facts of the fatality;~~]

(6) [~~(7)~~] [~~certified~~] copies of official [~~any investigative~~] reports regarding the death;

(7) [~~(8)~~] a sworn statement from the employer or the employer's authorized representative that includes the decedent's official job description as an attachment and describes: [~~of the department detailing the facts and circumstances of the fatality, and any information relied upon in making the sworn statement. The employer's or department representative's sworn statement must also include facts showing that, at the time of the fatal injury, the deceased held a position covered by the terms of Texas Government Code, Chapter 615, and that the death resulted from a personal injury sustained in the line of duty, as provided by Government Code §615.021;~~]

(A) the circumstances surrounding the fatality, including the type of work being performed at the time of death, if the decedent was on duty at the time of death, and other duty-related information that is relevant to the claim;

(B) the specific position held by the decedent at the time of death;

(C) the dates of the decedent's employment;

(D) contact information for the decedent's next of kin and other emergency contact information in the employer's possession; and

(E) a description of the sources of information used to prepare the sworn statement.

(8) [~~(9)~~] for a surviving parent who applies for benefits, a certified copy of the decedent's birth certificate[~~, if benefits are being claimed for parents~~];

(9) [~~(10)~~] documentation [~~a certification~~] from the appropriate authority which demonstrates [~~as follows~~]:

(A) if the decedent was a [~~paid~~] law enforcement officer, as described [~~defined~~] in Tex. Gov't [~~Texas Government~~] Code, §615.003(1), [a ~~certification from the Texas Commission on Law Enforcement Officer Standards and Education~~] that the decedent was a commissioned peace officer certified by the Texas Commission on Law Enforcement [~~that commission~~];

(B) if the decedent was a fire protection professional [~~paid fireman~~], as described [~~defined~~] in Tex. Gov't [~~Texas Government~~] Code, §615.003(10) or §615.003(11), [~~a certification from the Commission on Fire Protection Personnel Standards and Education~~] that the decedent was certified by the Texas Commission on Fire Protection [~~that commission, or a certification from the head of the state agency or political or legal subdivision of the state for whom the decedent worked that aircraft crash and rescue fire fighting were the decedent's principal duties at the time of his or her death~~];

(C) if the decedent was a member of an organized volunteer fire department, as described [~~defined~~] in Tex. Gov't [~~Texas Government~~] Code, §615.003(12), [~~a certification from the head of the organized volunteer fire department~~] that the decedent was a member of an organized volunteer fire department that conducted [~~conducts~~] a minimum of two drills each month, with each drill being at least two hours long, and the decedent rendered fire-fighting [~~fire fighting~~] services without remuneration;

(D) if the decedent was a [~~paid~~] probation officer, as described [~~defined~~] in Tex. Gov't [~~Texas Government~~] Code, §615.003(2), [~~a certification from the district judge or district judges who appointed the decedent or for whom the decedent worked~~] that the decedent had the qualifications and duties described [~~set out~~] in Tex. Gov't Code § 76.002 and § 76.005 [~~the Texas Code of Criminal Procedure, Article 42.12, §10, 1965, as amended~~];

(E) if the decedent was a [~~paid~~] parole officer, as described [~~defined~~] in Tex. Gov't [~~Texas Government~~] Code, §615.003(3), [~~a certification from the executive director of the Board of Pardons and Paroles~~] that the decedent was a parole [~~an~~] officer [~~of the division of parole supervision and had~~] with the qualifications and duties described [~~set out~~] in Tex. Gov't Code § 508.001 and § 508.113 [~~the Texas Code of Criminal Procedure, Article 42.12, §§26-29, 1965, as amended~~];

(F) if the [~~applicant alleges that the~~] decedent was a jailer or guard as described [~~within the protected class defined as supervisory personnel in a county jail~~] in Tex. Gov't [~~Texas Government~~] Code, §615.003(7), [~~a certification by the sheriff~~] that the decedent was appointed by the sheriff [~~as jailer or guard of a county jail~~] and performed a security, custodial [~~custody~~], or supervisory function over the admittance, confinement, or discharge of prisoners, and [~~a certification from the Texas Commission on Law Enforcement Officer Standards and Education~~] that the decedent was certified by the Texas Commission on Law Enforcement [~~that commission~~];

(G) if [~~the applicant alleges that~~] the decedent was an individual who performed [~~within the protected class defined as performing~~] emergency medical services or operated [~~operation of~~] an ambulance as described in Tex. Gov't [~~Texas Government~~] Code, §615.003(13), [~~a certification by the Texas Department of Health~~] that the decedent was certified as at least an "emergency care attendant"; or [~~emergency care attendant;~~]

(H) if [~~the applicant alleges that~~] the decedent was [~~within the protected class defined as~~] a chaplain as described in Tex. Gov't [~~Texas Government~~] Code, §615.003(14), [~~a certification by the firefighting unit, law enforcement agency, Texas Department of Criminal Justice, or a political subdivision of this state~~] that the decedent was employed or formally designated as a chaplain by a specified fire department or law enforcement agency or by the Texas Department of Criminal Justice.

[~~(11) all newspaper or other media accounts, if any, of the fatality;~~]

(10) [~~(12)~~] for decedent's non-biological children, a copy of a transcript of the federal income tax return for [~~filed by~~] the decedent for [~~in~~] the year preceding the year of the decedent's [~~prior to~~] death[~~, if benefits are being claimed for surviving children~~]; and

(11) [~~(13)~~] copies of [~~all~~] documents submitted in connection with a claim for workers' compensation benefits [~~by or on behalf of the decedent or the decedent's beneficiary~~] and [~~all notices of~~] decisions related to the [~~a workers' compensation~~] claim, if requested by the system [~~a workers' compensation claim has been made related to the illness or injury that resulted in the decedent's death~~].

[~~(d) The executive director or designee may require any additional information or affidavits as are necessary to establish the validity of the claim].~~

(d) [~~(e)~~] For [~~Payment on behalf of~~] a survivor who is a minor child: [~~will be made only to a surviving natural parent with custody of the child, to a surviving adoptive parent with custody of the child, or to a court-appointed guardian of the child's estate.~~]

(1) monthly payments will be paid to the duly qualified or appointed guardian of the child or if no guardian exists, another legal representative of the child; and

(2) lump-sum payments will be paid to a duly appointed guardian of the child's estate or a management trust created under Estates Code Chapter 1301.

(e) Proof of the appointment of a guardian of a child's estate or the creation of a management trust will not be required before the system provides notice of the approval of an application for a lump-sum payment to a minor child, but payment may not be remitted until all steps necessary for the appointment of the guardian or the creation of the management trust are completed. Guardianship and trust documents must reflect that the court was aware of the approximate amount of the lump-sum benefit when making the decision to appoint a guardian or create a management trust.

§75.2. Additional Benefit Claims.

(a) In addition to the documents required under §75.1 of this chapter, the following documents must accompany a surviving spouse's [~~shall be submitted in an~~] application for benefits under Tex. Gov't Code Chapter 615, Subchapter F[~~, unless the executive director or the executive director's designee waives their submission~~]:

(1) a sworn statement from the surviving spouse, on a form prescribed by the system, that attests to the surviving spouse's eligibility for spousal benefits; and [~~person making the claim that:~~]

(A) the decedent, on the date of death, was not receiving and was not eligible to receive an annuity under an employee retirement plan;]

(B) the surviving spouse, if any, has not remarried;]

(C) the surviving spouse, if any, is not retired and is not eligible to retire under an employee retirement plan; and]

(D) the surviving spouse, if any, is not receiving and is not eligible to receive social security benefits; and]

(2) an itemized statement of funeral expenses incurred, if the application includes a claim for payment of funeral expenses.

(b) If the decedent died before September 1, 2022, then except as provided by subsection (e) of this section, an annuity payable to a surviving spouse who is eligible for benefits under Tex. Gov't Code Chapter 615, Subchapter F, shall be computed as provided by Tex. Gov't Code §814.105 as if the decedent, on the date of death:

(1) was employed by the Texas Department of Public Safety at the lowest salary provided by the General Appropriations Act for a peace officer position, if the decedent held a peace officer position on the date of death, or by the Texas Department of Criminal Justice at the lowest salary provided by the General Appropriations Act for a custodial personnel position, if the decedent held a custodial personnel position on the date of death;

(2) had accrued 10 years of service credit in the applicable position; and

(3) was eligible to retire without regard to any age requirement.

(c) If the decedent died on or after September 1, 2022, then except as provided by subsection (e) of this section, a surviving spouse who is eligible for benefits under Tex. Gov't Code Chapter 615, Subchapter F, is entitled to receive the greater of an annuity computed as provided by subsection (b) of this section or an annuity computed as provided by Tex. Gov't Code §820.053 as if the decedent, on the date of death:

(1) was employed by the Texas Department of Public Safety at the lowest salary provided by the General Appropriations Act for a peace officer position, if the decedent held a peace officer position on the date of death, or by the Texas Department of Criminal Justice at the lowest salary provided by the General Appropriations Act for a custodial personnel position, if the decedent held a custodial personnel position on the date of death;

(2) had accrued 10 years of service credit in the applicable position;

(3) was eligible to retire without regard to any age requirement; and

(4) was not eligible for the additional benefit provided by Tex. Gov't Code §820.053(a)(2)(B).

(d) For purposes of subsection (c) of this section, the system shall:

(1) include gain sharing interest in the computation of an annuity under Tex. Gov't Code §820.053;

(2) determine which annuity computation would result in the greater annuity at the time the annuity is first paid; and

(3) allow the surviving spouse to reject the system's determination and elect to receive the lesser annuity by providing written notice of the election, which shall be irrevocable, to the system before any payment is made.

(e) In lieu of an amount computed under subsection (b) or (c) of this section, an annuity shall be paid in the amount the decedent would have been eligible to receive under the decedent's employee retirement plan if the decedent had been eligible to retire at the age and with the service attained on the last day of the month of the decedent's death if:

(1) the surviving spouse [~~person making the claim~~] requests payment of the amount computed under this subsection before any payment computed under subsection (b) or (c) of this section is made;

(2) an authorized representative of the employee retirement plan in which the decedent was a participant certifies the amount computed under this subsection; and

(3) the amount computed under this subsection is greater than the amounts computed under subsections (b) and (c) of this section.

(f) The reduction factors applied to a death benefit plan administered by the system shall be applied in the same manner to an annuity computed under subsection (b) or (c) of this section.

(g) As a condition of receipt of an annuity under Tex. Gov't Code Chapter 615, Subchapter F, an eligible surviving spouse shall agree to annually certify the spouse's eligibility under subsection (a)(1)(B) - (D) of this section and to notify the system of any change in circumstances affecting the spouse's continued eligibility. Failure to comply with this requirement or to provide the agreed certification is a basis for suspension of annuity payments until compliance occurs.

(h) The amount reimbursed for funeral expenses under Tex. Gov't Code Chapter 615, Subchapter F, may [~~shall~~] not exceed the lesser of $6,000 or the amount of funeral expenses actually incurred.

~~[(i) The executive director or the executive director's designee may require additional information or affidavits as necessary to establish the validity of any claim under this section.]~~

§75.3. Adjustments to Payments.

Beginning on September 1, 2020, and on each September 1 thereafter, any lump sum payment payable to eligible survivors under Tex. Gov't Code §615.022(d) [~~Section 615.022(d), Texas Government Code,~~] shall be adjusted annually by an amount equal to the percentage change in the Consumer Price Index for All Urban Consumers for the previous calendar year. The annual adjustment will be an amount as reported by the system's consulting actuary and approved by the executive director.

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 January 12, 2026.

TRD-202600086
Cynthia Canfield Hamilton
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Earliest possible date of adoption: March 1, 2026
For further information, please call: (512) 867-7288

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 704. PREVENTION AND EARLY INTERVENTION SERVICES

The Department of Family and Protective Services (DFPS) proposes the repeal of Title 40, Texas Administrative Code (TAC), Chapter 704, relating to Prevention and Early Interventions Services.

BACKGROUND AND PURPOSE

In 2023, Senate Bill 24 of the 88th Regular Legislative Session transferred the Prevention and Early Intervention (PEI) Services Division from DFPS to the Health and Human Services Commission (HHSC). Chapter 704 contains the rules previously adopted by DFPS to govern the former PEI Division. As DFPS no longer oversees this program, the rules in Chapter 704 are no longer necessary.

FISCAL NOTE

Lea Ann Biggar, *Chief Financial Officer*, has determined that for each year of the first five years the repeals are in effect, there will be no fiscal implications to state or local government.

GOVERNMENT GROWTH IMPACT STATEMENT

DFPS has determined that during the first five years that the section(s) will be in effect:

(1) the repeals will not create or eliminate a government program;

(2) implementation of the repeals will not affect the number of employee positions;

(3) implementation of the repeals will not require an increase in future legislative appropriations;

(4) the repeals will not affect fees paid to the agency;

(5) the repeals will not create a new rule;

(6) the repeals will not expand, limit, or repeal an existing rule;

(7) the repeals will not increase the number of individuals subject to the rule; and

(8) the repeals will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Ms. Biggar has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as the rule repeals do not apply to small or micro-businesses, or rural communities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons required to comply with the repeals as proposed.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 generally requires that state agencies offset the cost to regulated persons of a new rule by repealing or amending another rule. However, DFPS is exempt under §2001.0045(c).

PUBLIC BENEFIT

Ms. Biggar, Chief Financial Officer, has also determined that for each year of the first five years the repeals are in effect, the public benefit anticipated is clarity in the Texas Administrative Code by removing outdated rules.

REGULATORY ANALYSIS

DFPS determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225 and does not require a regulatory analysis.

TAKINGS IMPACT ASSESSMENT

DFPS has determined that the proposed repeals do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

DFPS invites comments on the proposed rule to repeal Chapter 704. DFPS requests information related to the cost, benefit, or effect of the proposed new, amended, and repealed rules, including any applicable data, research, or analysis. To be considered, comments, questions, and information must be submitted no later than 30 days after the date of this issue to the *Texas Register*.

Electronic comments and questions may be submitted to Lauren Villa, Policy Attorney at Lauren.Villa@dfps.texas.gov or RULES@dfps.texas.gov. Hard copy comments may be submitted to the DFPS Rules Coordinator, Legal Services Sanjuanita Maltos, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030.

SUBCHAPTER A. PURPOSE AND DEFINITIONS

40 TAC §704.1, §704.3

STATUTORY AUTHORITY

The repeals are proposed under Texas Human Resources Code §40.027 which provides that DFPS shall oversee the development of rules relating to matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department. Additionally, SB 24 (88th Regular Legislative Session) transferred the statutory provisions governing PEI from the Family Code and Human Resources Code into a new Human Resources Code Chapter 137 to be administered by HHSC.

CROSS REFERENCE TO STATUTES

The repeal of Chapter 704 implements SB 24 (88th Regular Legislative Session) which transferred provisions governing PEI from Family Code Chapter 265 into new Human Resources Code Chapter 137 for administration by HHSC and amended related provisions in Human Resources Code Chapter 40 and Government Code Chapter 531.

§704.1. What is the purpose of this chapter?

§704.3. How are the key terms in this chapter defined?

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 January 16, 2026.

TRD-202600167
Sanjuanita Maltos
Rules Coordinator
Department of Family and Protective Services
Earliest possible date of adoption: March 1, 2026
For further information, please call: (512) 945-5978

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SUBCHAPTER C. PREVENTION AND INTERVENTION PRIMARY RESPONSIBILITIES

40 TAC §§704.201, 704.203, 704.205, 704.207, 704.209

STATUTORY AUTHORITY

The repeals are proposed under Texas Human Resources Code §40.027 which provides that DFPS shall oversee the development of rules relating to matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department. Additionally, SB 24 (88th Regular Legislative Session) transferred the statutory provisions governing PEI from the Family Code and Human Resources Code into a new Human Resources Code Chapter 137 to be administered by HHSC.

CROSS REFERENCE TO STATUTES

The repeal of Chapter 704 implements SB 24 (88th Regular Legislative Session) which transferred provisions governing PEI from Family Code Chapter 265 into new Human Resources Code Chapter 137 for administration by HHSC and amended related provisions in Human Resources Code Chapter 40 and Government Code Chapter 531.

§704.201. What is the Prevention and Early Intervention (PEI) Division and what are its primary responsibilities?

§704.203. How does PEI carry out its primary responsibilities?

§704.205. How does PEI select entities to receive funds for prevention and early intervention programs?

§704.207. How can a member of the public obtain more information on specific PEI initiatives or funding opportunities?

§704.209. How does PEI generally administer grants?

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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Sanjuanita Maltos
Rules Coordinator
Department of Family and Protective Services
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SUBCHAPTER G. INFANT MORTALITY PREVENTION AND EDUCATION PROGRAM

40 TAC §704.601, §704.603

STATUTORY AUTHORITY

The repeals are proposed under Texas Human Resources Code §40.027 which provides that DFPS shall oversee the development of rules relating to matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department. Additionally, SB 24 (88th Regular Legislative Session) transferred the statutory provisions governing PEI from the Family Code and Human Resources Code into a new Human Resources Code Chapter 137 to be administered by HHSC.

CROSS REFERENCE TO STATUTES

The repeal of Chapter 704 implements SB 24 (88th Regular Legislative Session) which transferred provisions governing PEI

from Family Code Chapter 265 into new Human Resources Code Chapter 137 for administration by HHSC and amended related provisions in Human Resources Code Chapter 40 and Government Code Chapter 531.

§704.601. What is the Infant Mortality Prevention Education Program?

§704.603. What is PEI's role in implementation of the Infant Mortality Education Program?

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 H. COMMUNITY-BASED FAMILY SERVICES GRANT PROGRAM

40 TAC §704.701, §704.703

STATUTORY AUTHORITY

The repeals are proposed under Texas Human Resources Code §40.027 which provides that DFPS shall oversee the development of rules relating to matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department. Additionally, SB 24 (88th Regular Legislative Session) transferred the statutory provisions governing PEI from the Family Code and Human Resources Code into a new Human Resources Code Chapter 137 to be administered by HHSC.

CROSS REFERENCE TO STATUTES

The repeal of Chapter 704 implements SB 24 (88th Regular Legislative Session) which transferred provisions governing PEI from Family Code Chapter 265 into new Human Resources Code Chapter 137 for administration by HHSC and amended related provisions in Human Resources Code Chapter 40 and Government Code Chapter 531.

§704.701. What is the Community-Based Family Services Grant Program?

§704.703. What is PEI's role in the implementation and administration of the Community-Based Family Services Grant Program?

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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Sanjuanita Maltos
Rules Coordinator
Department of Family and Protective Services
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SUBCHAPTER I. CHILDREN'S TRUST FUND

40 TAC §704.801, §704.803

STATUTORY AUTHORITY

The repeals are proposed under Texas Human Resources Code §40.027 which provides that DFPS shall oversee the development of rules relating to matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department. Additionally, SB 24 (88th Regular Legislative Session) transferred the statutory provisions governing PEI from the Family Code and Human Resources Code into a new Human Resources Code Chapter 137 to be administered by HHSC.

CROSS REFERENCE TO STATUTES

The repeal of Chapter 704 implements SB 24 (88th Regular Legislative Session) which transferred provisions governing PEI from Family Code Chapter 265 into new Human Resources Code Chapter 137 for administration by HHSC and amended related provisions in Human Resources Code Chapter 40 and Government Code Chapter 531.

§704.801. How is the state plan for expending Children's Trust Fund (CTF) funds developed?

§704.803. How does PEI establish funding priorities for the CTF program?

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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Sanjuanita Maltos
Rules Coordinator
Department of Family and Protective Services
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For further information, please call: (512) 945-5978

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 819. CIVIL RIGHTS DIVISION

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 819, relating to the Civil Rights Division:

Subchapter C. Equal Employment Opportunity Reports, Training, and Reviews, §819.25

Subchapter G. Texas Fair Housing Act Provisions, §819.112

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

TWC's Civil Rights Division (CRD) enforces state and federal employment and fair housing laws, investigates claims of employment and housing discrimination, and provides discrimination training to employers and training on fair-housing best practices.

The purpose of the proposed Chapter 819 rule change is to:

--align the rules relating to employment discrimination training with current federal guidance provided in Executive Order 14281, issued on April 23, 2025; and

--clarify the definition of "Disability" as it relates to Texas Property Code, Chapter 301, and its use in Chapter 819, Subchapters G - L.

Rule Review

Texas Government Code, §2001.039, requires a state agency to review and consider for readoption each of its rules every four years. In accordance with the statute, TWC has reviewed Chapter 819, Civil Rights Division, and proposes readoption of the rules as amended.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER C. EQUAL EMPLOYMENT OPPORTUNITY REPORTS, TRAINING, AND REVIEWS

TWC proposes the following amendments to Subchapter C:

§819.25. Compliance Employment Discrimination Training

Section 819.25 is amended to conform with Executive Order 14281 by removing §819.25(c)(1) through (4) relating to disparate treatment and disparate impact training. Consequently, existing §819.25(c)(5) through (8) is renumbered as §819.25(c)(1) through (4).

SUBCHAPTER G. TEXAS FAIR HOUSING ACT PROVISIONS

TWC proposes the following amendments to Subchapter G:

§819.112. Definitions

Section 819.112 is amended to clarify the definition of "Disability" as it is used in Chapter 819, Subchapters G - L. The change removes unnecessary language from the definition.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to modify rule language to conform with federal guidance provided in Executive Order 14281 and to clarify the definition of "disability" as it relates to Texas Property Code, Chapter 301.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

--will not create or eliminate a government program;

--will not require the creation or elimination of employee positions;

--will not require an increase or decrease in future legislative appropriations to TWC;

--will not require an increase or decrease in fees paid to TWC;

--will not create a new regulation;

--will not expand, limit, or eliminate an existing regulation;

--will not change the number of individuals subject to the rules; and

--will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the

proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Bryan Snoddy, Director, Civil Rights Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to conform with federal guidance and to clarify the rule language.

PART IV. COORDINATION ACTIVITIES

Federal law governs many of CRD's activities. This rulemaking is in direct response to a federal executive order. The public will have an opportunity to comment on the proposed rule changes as set forth below.

PART V. REQUEST FOR IMPACT INFORMATION

TWC requests, from any person required to comply with the proposed rule or any other interested person, information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis. Please submit the requested information to no later than March 2, 2026.

PART VI. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to and must be received no later than March 2, 2026.

SUBCHAPTER C. EQUAL EMPLOYMENT OPPORTUNITY REPORTS, TRAINING, AND REVIEWS

40 TAC §819.25

PART VII. STATUTORY AUTHORITY

The rule is proposed under:

--Texas Labor Code, §21.003(a)(7), which provides TWC the specific authority to establish rules relating to employment discrimination;

--Texas Property Code, §301.062, which provides TWC the specific authority to establish rules relating to fair housing practices; and

--Texas Labor Code §301.0015(a)(6), which provides TWC the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rule relates to Title 2, Texas Labor Code, Chapter, 21, and Title 15, Texas Property Code, Chapter 134.

§819.25. Compliance Employment Discrimination Training.

(a) For purposes of this section, the term "complaint with merit" shall mean a complaint that is resolved, either by a cause finding or through withdrawal of the complaint with a remedy favorable to the complainant, such as a negotiated settlement, withdrawal with benefits, or conciliation.

(b) State agencies receiving three or more complaints with merit within a fiscal year shall provide compliance employment discrimination training. The training may be provided by the Agency or by another entity or person approved by the Agency.

(c) CRD's minimum standards for the content of compliance employment discrimination training shall include, but not be limited to, requiring participants to:

[~~(1) distinguish between disparate treatment and disparate impact;~~]

[~~(2) identify the elements of a complaint involving disparate treatment and disparate impact;~~]

[~~(3) explain the defenses available to an employer resulting from both statute and case law involving disparate treatment and disparate impact;~~]

[~~(4) explain the burden of proof requirements for disparate treatment and disparate impact;~~]

(1) [~~(5)~~] identify criteria for accurately measuring compliance with applicable laws;

(2) [~~(6)~~] define the different types of employment discrimination;

(3) [~~(7)~~] identify the appropriate action to be taken in a situation involving a potential case of employment discrimination; and

(4) [~~(8)~~] describe strategies for prevention of employment discrimination.

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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Les Trobman
General Counsel
Texas Workforce Commission
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SUBCHAPTER G. TEXAS FAIR HOUSING ACT PROVISIONS

40 TAC §819.112

The rule is proposed under:

--Texas Labor Code, §21.003(a)(7), which provides TWC the specific authority to establish rules relating to employment discrimination;

--Texas Property Code, §301.062, which provides TWC the specific authority to establish rules relating to fair housing practices; and

--Texas Labor Code §301.0015(a)(6), which provides TWC the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rule relates to Title 2, Texas Labor Code, Chapter, 21, and Title 15, Texas Property Code, Chapter 134.

§819.112. Definitions.

The following words and terms, when used in Subchapter G, Texas Fair Housing Act Provisions; Subchapter H, Discriminatory Housing Practices; Subchapter I, Texas Fair Housing Act Complaints and

Investigations [~~Appeals~~] Process; Subchapter J, Fair Housing Deferral to Municipalities; Subchapter K, Fair Housing Administrative Hearings and Judicial Review; and Subchapter L, Fair Housing Fund, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accessible or readily accessible to and usable by--Means a public or common use area can be approached, entered, and used by individuals with disabilities, as set forth in Texas Property Code, §301.025(c)(3). Compliance with the appropriate requirements of the American National Standards Institute (ANSI) for buildings and facilities providing accessibility and usability for persons having physical disabilities, commonly cited as ANSI A117.1, satisfies this requirement.

(2) Accessible building entrance--A building entrance that is accessible by individuals with disabilities, as set forth in Texas Property Code, §301.025(c). Compliance with the appropriate requirements of ANSI for buildings and facilities providing accessibility and usability for persons having physical disabilities, commonly cited as ANSI A117.1, satisfies this requirement.

(3) Accessible route--A route that is accessible by individuals with disabilities, as set forth in Texas Property Code, §301.025(c). Compliance with the appropriate requirements of ANSI for buildings and facilities providing accessibility and usability for persons having physical disabilities, commonly cited as ANSI A117.1, satisfies this requirement.

(4) Building--A structure, facility, or the portion thereof that contains or serves one or more dwelling units.

(5) Common use areas--Rooms, spaces, or elements inside or outside of a building that are made available for the use of residents or the guests of a building. These areas include, but are not limited to, hallways, lounges, lobbies, laundry rooms, refuse rooms, mailrooms, recreational areas, and passageways among and between buildings.

(6) Complaint--A written statement made under oath stating that an unlawful housing practice has been committed, setting forth the facts on which the complaint is based, and received within one year of the date the alleged unlawful housing practice occurred or terminated, whichever is later, and for which CRD shall initiate an investigation.

(7) Controlled substance--Any drug or other substance or immediate precursor as defined in the Controlled Substances Act, 21 U.S.C. §802 or the Texas Controlled Substances Act, Texas Health and Safety Code, Chapter 481.

(8) Disability--A mental or physical impairment that substantially limits at least one major life activity, a record of such an impairment, or being regarded as having such an impairment. The term does not include current illegal use of or addiction to any drug or illegal or controlled substance[~~; and reference to "an individual with a disability" or perceived as "disabled" does not apply to an individual based on that individual's sexual orientation or because that individual is a transvestite~~].

(A) Physical or mental impairment includes:

(i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(ii) any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus infection, intellectual disability, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

(B) Major life activity means a function such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(C) A record of having such an impairment means a history of, or misclassification as having, a mental or physical impairment that substantially limits one or more major life activity.

(D) Being regarded as having an impairment means having:

(i) a physical or mental impairment that does not substantially limit one or more major life activity but that is treated by another person as constituting such a limitation;

(ii) a physical or mental impairment that substantially limits one or more major life activity only as a result of the attitudes of others toward such impairment; or

(iii) none of the impairments in subparagraph (A) of this paragraph but is treated by another person as having such an impairment.

(9) Discriminatory housing practice--An action prohibited by Texas Fair Housing Act, Subchapter B, or conduct that is an offense under Texas Fair Housing Act, Subchapter I.

(10) Entrance--Any access point to a building or portion of a building used by residents for the purpose of entering the building.

(11) Exterior--All areas of the premises outside of an individual dwelling unit.

(12) Ground floor--Within a building, any floor with an entrance on an accessible route. A building may have more than one ground floor.

(13) Interior--The spaces, parts, components, or elements of an individual dwelling unit.

(14) Modification--Any change to the public or common use areas of a building or any change to a dwelling unit.

(15) Premises--The interior or exterior spaces, parts, components, or elements of a building, including individual dwelling units and the public and common use areas of a building.

(16) Public use areas--Interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

(17) Site--A parcel of land bounded by a property line or a designated portion of a public right of way.

(18) Texas Fair Housing Act--Texas Property Code, Chapter 301.

(19) United States Fair Housing Act--Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

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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