

SUPPLEMENTAL BOARD BOOK OF APRIL 26, 2018



J. B. Goodwin, Chair

Leslie Bingham Escareño, Vice-Chair

Paul Braden, Member

Asusena Reséndiz, Member

Sharon Thomason, Member

Leo Vasquez, III, Member

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
GOVERNING BOARD MEETING**

**A G E N D A
8:00 AM
April 26, 2018**

**John H. Reagan Building
JHR 140, 105 W 15th Street
Austin, Texas 78701**

CALL TO ORDER

ROLL CALL

J.B. Goodwin, Chair

CERTIFICATION OF QUORUM

Pledge of Allegiance - I pledge allegiance to the flag of the United States of America, and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

Texas Allegiance - Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.

Resolution recognizing May as *Community Action Month*

Resolution recognizing May as *National Mobility Awareness Month*

CONSENT AGENDA

Items on the Consent Agenda may be removed at the request of any Board member and considered at another appropriate time on this agenda. Placement on the Consent Agenda does not limit the possibility of any presentation, discussion or approval at this meeting. Under no circumstances does the Consent Agenda alter any requirements under Tex. Gov't Code Chapter 551. Action may be taken on any item on this agenda, regardless of how designated.

ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:

EXECUTIVE

- a) Presentation, discussion, and possible action on Board meeting minutes summaries for January 18, 2018; February 22, 2018; and March 22, 2018

J. Beau Eccles
Board Secretary

LEGAL

- b) Presentation, discussion, and possible action on the adoption of an Order to Correct Clerical Mistake concerning the Agreed Final Order entered July 28, 2016, regarding Avalon Apartments (HTC #91036/ CMTS 954)
- c) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Westwind Village (HTC 97092 / HOME 537078 / CMTS 1747)
- d) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Cloverleaf Apartments (HTC 70135 / CMTS 932)
- e) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Lexington Square Apartments (HTC Exchange 1509009910 / CMTS 4493)

Jeffrey T Pender
Deputy General Counsel

COMMUNITY AFFAIRS

- f) Presentation, discussion, and possible action on the Program Year ("PY") 2018 Department of Energy ("DOE") Weatherization Assistance Program ("WAP") State Plan and Awards exclusive of the 2018 Health and Safety Plan
- g) Presentation, discussion, and possible action on approval of the Draft Program Year ("PY") 2018 Department of Energy ("DOE") Weatherization Assistance Program ("WAP") Health and Safety Plan for public comment

Michael DeYoung
Director
Community Affairs

- h) Presentation, discussion, and possible action on release of the Draft FFY 2019 Low Income Home Energy Assistance Program (“LIHEAP”) State Plan to be made available for public comment

SINGLE FAMILY OPERATIONS AND SERVICES

- i) Presentation, discussion, and possible action authorizing extensions to Neighborhood Stabilization Program 1 (“NSP1”) Contracts and Program Income (“NSP1-PI”) Reservation Agreements

Homero Cabello
Director
SF Operations & Services

BOND FINANCE

- j) Presentation, discussion, and possible action on Resolution No. 18-018 regarding the annual approval of the Department’s Investment Policy
- k) Presentation, discussion, and possible action on Resolution No. 18-019 regarding the annual approval of the Department’s Interest Rate Swap Policy

Monica Galuski
Chief Investment Officer

ASSET MANAGEMENT

- l) Presentation, discussion, and possible action to approve a Material Amendment to the Housing Tax Credit (“HTC”) Land Use Restriction Agreement (“LURA”)
04002 Cricket Hollow Apartments Willis
- m) Presentation, discussion, and possible action regarding a change in the ownership structure of the Development Owner and Developers prior to issuance of IRS Form(s)
17012 Secretariat Apartments Arlington
17225 Cascade Villas Wichita Falls
- n) Presentation, discussion, and possible action regarding a material amendment to the Housing Tax Credit (“HTC”) Application and a change in the ownership structure of the Development Owner, Developer, and Guarantors prior to issuance of IRS Form(s)
8609
17730 Blue Flame Apartments El Paso

Raquel Morales
Director
Asset Management

MULTIFAMILY FINANCE

- o) Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer
18402 Hampton Homes Texarkana
18403 HATT Scattered Sites Texarkana
18404 Robison Terrace Texarkana
18405 Williams Homes Texarkana
18406 Bright Street Texarkana
18414 Prince Hall Gardens Fort Worth
18415 Hills at Leander Leander
18416 Commons at Manor Village Manor
- p) Presentation, discussion, and possible action on the re-issuance of a Determination Notice for Housing Tax Credits with another Issuer
17421 Brookwood Apartments San Antonio
18424 Flora Lofts Dallas

Marni Holloway
Director, MF Finance

HOME AND HOMELESSNESS PROGRAMS

- q) Presentation, discussion, and possible action on awards for the 2017 HOME Investment Partnerships Program (“HOME”) Single Family Programs Homebuyer Assistance (“HBA”) and Tenant-Based Rental Assistance (“TBRA”) Notice of Funding Availability (“NOFA”)

Abigail Versyp
Director
HOME and Homelessness
Programs

RULES

- r) Presentation, discussion, and possible action regarding proposed amendments to 10 TAC Chapter 23, Single Family HOME Program Rules Subchapter F, Tenant-Based Rental Assistance Program, §23.61 concerning Tenant-Based Rental Assistance (“TBRA”) General Requirements, and directing their publication for public comment in the *Texas Register*

Abigail Versyp
Director
HOME and Homelessness
Programs

s) Presentation, discussion, and possible action on orders proposing repeal of 10 TAC Chapter 7, Subchapter A, General Provisions, and 10 TAC Chapter 7, Subchapter B, Homeless Housing and Services Program, and orders proposing new 10 TAC Chapter 7, Subchapter A, General Provisions, and 10 TAC Chapter 7, Subchapter B, Homeless Housing and Services Program and directing their publication for public comment in the *Texas Register*

Abigail Versyp
Director
HOME and Homelessness
Programs

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

- a) TDHCA Outreach Activities, (March-April)
- b) Report on the Department's Interim Balance Sheet/Statement of Net Position for the period ended February 28, 2018
- c) Report on the Department's 2nd Quarter Investment Report in accordance with the Public Funds Investment Act ("PFIA")
- d) Report on the Department's 2nd Quarter Investment Report relating to funds held under Bond Trust Indentures
- e) Report on the 2019 QAP Planning Project
- f) Report on the status of Multifamily Direct Loan Application 17510, Brook Haven Supportive Housing
- g) Quarterly Report on Texas Homeownership Division Activity

Michael Lyttle
Chief of External Affairs

David Cervantes
Chief Financial Officer

Monica Galuski
Chief Investment Officer

Marni Holloway
Director, MF Finance

Cathy Gutierrez
Director
Texas Homeownership

ACTION ITEMS

ITEM 3: REPORTS

Report on the meeting of the QAP and Multifamily Rules Committee, and possible action regarding any recommendations of that committee on items addressed at its posted meeting of Wednesday, April 25, 2018, including confirmation of the meaning of the plain wording of current statute and rule as it relates to particular scenarios

Leo Vasquez, III
Chair
QAP & MF Rules
Committee

ITEM 4: MULTIFAMILY FINANCE

- a) Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer and an Award of Direct Loan Funds
18412 Lord Road San Antonio
- b) Presentation, discussion, and possible action regarding site eligibility under 10 TAC §10.101(a)(3) of the Uniform Multifamily Rules related to the Undesirable Neighborhood Characteristics for Park Yellowstone Townhomes in Houston
- c) Presentation, discussion, and possible action on a waiver relating to 10 TAC §10.101(b)(8), related to Development Accessibility Requirements for Beckley Townhomes in Dallas
- d) Presentation, discussion, and possible action on a timely filed appeal of application termination under the Department's Multifamily Program Rules
18250 Sweetbriar Hills Apartments Jasper

Marni Holloway
Director, MF Finance

APPENDIX

Multifamily Application Logs

PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA ITEMS

EXECUTIVE SESSION

The Board may go into Executive Session (close its meeting to the public):

1. The Board may go into Executive Session Pursuant to Tex. Gov't Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee;
2. Pursuant to Tex. Gov't Code §551.071(1) to seek the advice of its attorney about ending or contemplated litigation or a settlement offer;

J.B. Goodwin
Chair

3. Pursuant to Tex. Gov't Code §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Tex. Gov't Code Chapter 551; including seeking legal advice in connection with a posted agenda item;
4. Pursuant to Tex. Gov't Code §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person; and/or
5. Pursuant to Tex. Gov't Code §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

OPEN SESSION

If there is an Executive Session, the Board will reconvene in Open Session. Except as specifically authorized by applicable law, the Board may not take any actions in Executive Session.

ADJOURN

To access this agenda and details on each agenda item in the board book, please visit our website at www.tdhca.state.tx.us or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11th Street, Austin, Texas 78701, and request the information.

If you would like to follow actions taken by the Governing Board during this meeting, please follow TDHCA account (@tdhca) on Twitter.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Terri Roeber, ADA Responsible Employee, at 512-475-3959 or Relay Texas at 1-800-735-2989, at least three (3) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Elena Peinado, 512-475-3814, at least three (3) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado, al siguiente número 512-475-3814 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

NOTICE AS TO HANDGUN PROHIBITION DURING THE OPEN MEETING OF A GOVERNMENTAL ENTITY IN THIS ROOM ON THIS DATE:

Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun.

De acuerdo con la sección 30.06 del código penal (ingreso sin autorización de un titular de una licencia con una pistola oculta), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola oculta.

Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly.

De acuerdo con la sección 30.07 del código penal (ingreso sin autorización de un titular de una licencia con una pistola a la vista), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola a la vista.

NONE OF THESE RESTRICTIONS EXTEND BEYOND THIS ROOM ON THIS DATE AND DURING THE MEETING OF THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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BOARD ACTION REQUEST

HOME AND HOMELESSNESS PROGRAMS DIVISION

APRIL 26, 2018

Presentation, discussion, and possible action on orders proposing repeal of 10 TAC Chapter 7, Subchapter A, General Provisions, and 10 TAC Chapter 7, Subchapter B, Homeless Housing and Services Program, and orders proposing new 10 TAC Chapter 7, Subchapter A, General Provisions, and 10 TAC Chapter 7, Subchapter B, Homeless Housing and Services Program and directing their publication for public comment in the *Texas Register*

RECOMMENDED
ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the "Department") is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, the Department's Governing Board adopted amendments to 10 TAC Chapter 7, Subchapter A, General Provisions, and 10 TAC Chapter 7, Subchapter B, Homeless Housing and Services Program ("HHSP") on November 10, 2016, and those amendments became effective on December 4, 2016;

WHEREAS, the Department is proposing to repeal 10 TAC Chapter 7, Subchapter A, General Provisions, and 10 TAC Chapter 7, Subchapter B, HHSP and is proposing new 10 TAC Chapter 7, Subchapter A, General Provisions, and 10 TAC Chapter 7, Subchapter B, HHSP to improve compliance with federal and state requirements, and provide for consistency with other provisions of the Department's rules;

WHEREAS, the Department has received public comment on the HHSP allocation formula in previous public input processes and is addressing those comments with the changes to Subchapter B, HHSP;

NOW, therefore, it is hereby

RESOLVED, that the proposed repeal of Chapter 7, Subchapter A, General Provisions, and 10 TAC Chapter 7, Subchapter B, HHSP, and new Chapter 7, Subchapter A, General Provisions, and 10 TAC Chapter 7, Subchapter B, HHSP are approved for publication in the *Texas Register* for public comment; and

RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed amendments of 10 TAC Chapter 7, Subchapter A, General Requirements, and Subchapter B, HHSP; and directing that they be published for public comment in the *Texas Register*, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The new 10 TAC Chapter 7, Subchapter A, General Provisions, is proposed to clarify general requirements for the Emergency Solutions Grants (“ESG”) Program, Homeless Housing and Services Program (“HHSP”) and to add the Ending Homelessness (“EH Fund”) to the basic framework for administration. These three programs will be known collectively as the Homeless Programs. The new 10 TAC Chapter 7, Subchapter B, HHSP, is proposed to clarify specific requirements for HHSP.

Note that requirement changes specific to ESG, as outlined in 10 TAC Chapter 7, Subchapter C, Emergency Solutions Grants, and a new rule specifically for the EH Fund are not currently proposed. The EH Fund was created per the 85th Regular Legislative Session, per Tex. Gov’t Code §502.415 to provide grant funding to counties and municipalities for the purpose of combating homelessness. The Department plans to propose new 10 TAC Chapter 7, Subchapter C, and a new rule governing the specific use of the EH Fund during the summer of 2018. In addition, the changes to 10 TAC Chapter 7, Subchapter A, General Provisions, would not apply to the 2018 ESG Contracts (except if required by federal or state statute or regulation), since the applications under which the 2018 ESG awards are anticipated to be made were submitted under the current rule. The purpose of repealing and replacing the State Homeless Programs Rule under Subchapter A is to add clarification to the framework for the Homeless Programs’ administration, and the purpose of repealing and replacing the State Homeless Programs Rule under Subchapter B is to clarify requirements for HHSP. The ESG and EH Fund rules will be in effect by the time this rule becomes applicable to new awards.

Attached are the proposed preambles the proposed repeal, and proposed new 10 TAC Chapter 7, Subchapter A, General Provisions, and 10 TAC Chapter 7, Subchapter B, HHSP. A summary of the changes is included below.

§7.1 Purpose and Goals

Expansion of the purpose and goals of Chapter 7 to include the Ending Homelessness Fund, and addition of a rule waiver provision for the Department’s Governing Board to use at their discretion.

§7.2 Definitions

Updates to the definitions removing terms no longer in use and adding terms that will be used in Rule, the Contract, or the Notice of Funding Availability (“NOFA”).

§7.3 Construction Requirements

Inclusion of more detail on Land Use Restriction Agreements (“LURAs”) as to when a LURA would apply, how long a LURA lasts, and what is needed from the Subrecipient to enter into a LURA. Addition of details regarding inspection requirements for construction activities.

§7.4 Subrecipient Contract

Clarification to Subrecipient Contracts regarding subcontracting and subawards, amendment request timing, cost reimbursement processes for underperforming Subrecipients, process to voluntarily de-obligate unused funds before the contract end date, and restriction on using funds for sectarian or explicitly religion activities.

§7.5 Subrecipient Reporting

Updates to Subrecipient reporting including clarification on reimbursement process and one time working capital advance request processes, change of due date for the monthly reports, more detail

on submission of reports, and clarification on annual reporting requirements, which may extend over multiple Contract periods.

§7.6 Subrecipient Data Collection

Clarification that performance targets will be indicated in the Contract.

§7.7 Subrecipient Contact Information

Clarification as to when to provide updated Subrecipient contact information.

§7.8 Records Retention

More detail given on record retention periods.

§7.9 Contract Termination and Deobligation

Removal of the need for final reports.

§7.10 Inclusive Marketing

No changes to the Inclusive Marketing section.

§7.11 Compliance Monitoring

Updates to Compliance Monitoring notification process from Department to the Subrecipients, and updates to resolution process for Findings and Concerns.

Subchapter B Homeless Housing and Services Program (HHSP)

§7.21 Purpose and Use of Funds

Clarification on terminology used to describe eligibility activities.

§7.22 HHSP Subrecipient Application and Selection

Clarification that the HHSP funds will be administered within the municipalities' jurisdiction. Added a requirement for the municipality to indicate the designated entity that will administer the HHSP funds on the municipality's behalf, if applicable. The entity that will administer the funds must indicate that its governing body has given appropriate contracting authority to staff.

§7.23 Allocation of Funds and Formula

Clarification on contract award funding limits. Increasing HHSP formula to seven factors.

§7.24 General HHSP Requirements

More detail on Subrecipient written standard specifications, occupancy standards, new rent reasonableness requirements, and a new requirement to coordinate with other state homeless programs, including the Texas Health and Human Services' Healthy Community Collaborative.

§7.25 Program Income

Clarification on program income requirements, including tracking and expending program income, and that security and utility deposits are treated as grants to program participants.

§7.26 Conflict of Interest

New requirements that specify that the Subrecipient must have written standards to govern the performance of its employees engaged in the award and administration of the Contracts that includes provisions to avoid conflicts of interest.

§7.27 Eligible Costs

Clarification of eligible costs for HHSP Subrecipients.

§7.28 Program Participant Eligibility and Program Participant Files

The client eligibility and income determination from Subchapter A was moved to this section of Subchapter B. Clarification for what activities program participants may qualify and income qualification requirements. More detail is provided on program participant file requirements.

§7.29 Shelter and Housing Standards

Clarification of Shelter and Housing Standards applicability and timeline.

Attachment 1: Preamble for proposed repeal of 10 TAC Chapter 7, Subchapter A, General Provisions, and Subchapter B, Homeless Housing and Services Program

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 7, §§7.1-7.14, concerning General Provisions for Homeless Programs and the repeal of 10 TAC Chapter 7, §§7001-7.1005, concerning the Homeless Housing and Services Program ("HHSP"). The purpose of the proposed repealed sections is

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repealed sections are in effect, enforcing or administering the repealed sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years a rule would be in effect:

1. The proposed rule does not create or eliminate a government program;
2. The proposed rule will not require a change in the number of employees of the Department;
3. The proposed rule will not require additional future legislative appropriations;
4. The proposed rule will result in neither an increase nor a decrease in fees paid to the Department;
5. The proposed rule will not create a new regulation;
6. The proposed rule will repeal an existing regulation;
7. The proposed rule will not increase decrease the number of individuals subject to the rule's applicability; and
8. Will neither positively or negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal of sections are in effect, the public benefit anticipated as a result of the repealed sections will be clarification of existing regulations. There will not be any economic cost to any individuals required to comply with the repealed sections because additional requirements are not added through this repeal.

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. The public comment period will be held May 11, 2018 to June 11, 2018, to receive input on the repealed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Naomi Cantu, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email naomi.cantu@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time JUNE 11, 2018.

STATUTORY AUTHORITY. The repealed sections are proposed pursuant to Texas Government 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.

Subchapter A General Provisions

§7.1 Purpose and Goals

§7.2 Definitions

- §7.3 Land Use Restriction Requirement
- §7.4 Subrecipient Contract
- §7.5 Performance and Expenditure Benchmarks
- §7.6 Subrecipient Reporting
- §7.7 Subrecipient Data Collection
- §7.8 Program Participant Eligibility
- §7.9 Income Determination
- §7.10 Subrecipient Contact Information
- §7.11 Records Retention
- §7.12 Contract Closeout
- §7.13 Inclusive Marketing
- §7.14 Compliance Monitoring

Subchapter B Homeless Housing and Services Program (HHSP)

- §7.1001 Purpose and Use of Funds
- §7.1002 Distribution of Funds and Formula
- §7.1003 General Homeless Housing and Services Program ("HHSP") Requirements
- §7.1004 Eligible Costs
- §7.1005 Shelter and Housing Standards

Attachment 2: Preamble for proposed new of 10 TAC Chapter 7, Subchapter A, General Provisions

The Texas Department of Housing and Community Affairs (the “Department”) proposes the new 10 TAC Chapter 7, §§7.1-7.11, concerning General Provisions. The purpose of the proposed new sections is to restructure the program rules to improve compliance with federal and state requirements, and to provide for consistency with other provisions of the Department’s rules.

FISCAL NOTE. Timothy K. Irvine, Executive Director, 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.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years a rule would be in effect:

1. The proposed rule does not create or eliminate a government program;
2. The proposed rule will not require a change in the number of employees of the Department;
3. The proposed rule will not require additional future legislative appropriations;
4. The proposed rule will result in neither an increase nor a decrease in fees paid to the Department;
5. The proposed rule will not create a new regulation;
6. The proposed rule will not expand an existing regulation, except that some matters previously incorporated into contract are being memorialized in the rule;
7. The proposed rule will not increase the number of individuals subject to the rule’s applicability; and
8. Will neither positively or negatively affect this state’s economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also 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 increased clarity and consistency to improve compliance with federal and state requirements. There will not be any economic cost to any individuals required to comply with the new sections, because the requirements imposed by the rule are have been in place for these programs though contractual obligations or other federal and state requirements.

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. The public comment period will be held May 11, 2018, to June 11, 2018, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Naomi Cantu, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email naomi.cantu@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time JUNE 11, 2018.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government 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.

Subchapter A General Provisions

§7.1 Purpose and Goals

§7.2 Definitions

§7.3 Construction Requirements

§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

§7.1. Purpose and Goals.

(a) The rules established herein for Chapter 7 "~~Homelessness~~the "Homeless Programs" Subchapter A "General Provisions" applies to all ~~homelessness programs~~of the Homeless Programs, unless otherwise noted. Additional program specific requirements are contained within each program subchapter.

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

(c) The Department accomplishes this mission by acting as a conduit for state and federal ~~grant~~ funds 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 September 1, 2018.

(e) The Department's Governing Board (the "Board") may waive rules subject to this Chapter for good cause to meet the purpose of the Homeless Programs described further in subsection (b) of this section. However, any waiver cannot conflict with the federal or state statutes or regulations governing any of the Homeless Programs. Waivers may not be granted for items that impact federally imposed obligation or Expenditure deadlines governing the ESG Program or state Expenditure deadlines governing HHSP.

§7.2. Definitions.

(a) To ensure a clear understanding of the terminology used in the context of the Department's ~~Homelessness programs~~Homeless Programs, a list of terms and definitions has been compiled as a reference.

(b) The words and terms in this Chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise. Other definitions may be found in Chapters 1 or 2 of this Part, or in federal or state law.

(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 that determines how much funding is available in an area or region.

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

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

(5) At-risk of homelessness/Homelessness--As defined by 24 CFR §576.2, except that Program Participants for state funds are subject to income limits set by Subrecipients that, at a minimum, do not exceed the moderate income level pursuant to Tex. Gov't Code §2306.152.

~~(3) Break in Service--Situation in which a program participant had received homeless services or housing assistance, currently receives no homelessness services or housing assistance, and is in need of homelessness services or housing assistance.~~

~~(4) Child--Household member not exceeding eighteen (18) years of age.~~

~~(5)(6) Code of Federal Regulations ("CFR")--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.~~

~~(6) Concern--A policy, practice or procedure that has not yet resulted in a Finding but if not changed will or may result in Findings, Deficiencies, and/or disallowed costs.~~

~~(7)(8) Continuum of Care ("CoC")--The Continuum of Care/CoC Program is a HUD-funded 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. HUD requires representatives of relevant organizations to form a CoC to serve a specific geographic area; the Department and the CoCs are required by HUD to coordinate relating to the ESG Program as set forth in 24 CFR §576.400. This does not include any funds given from the State to a specific CoC.~~

~~(8)(9) CoC Lead Agency--CoC collaborative applicant per 24 CFR §578.3.~~

~~(10) 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; for which the first day of the Contract term is the point at which programs funds may be considered by a Subrecipient for Expenditure, unless otherwise directed in writing by the Department.~~

~~(9)(11) Contract System--Either the Community Affairs Contract System or the Housing Contract 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) Contracted Funds--The gross amount of funds obligated by the Department to a Subrecipient as reflected in a Contract.

~~(14) Cost Reimbursement--A Contract sanction whereby reimbursement of costs incurred by the Subrecipient is made only after the Department has reviewed and approved backup documentation provided by the Subrecipient to support such costs.~~

~~(15) Declaration of Income Statement ("DIS")--A Department-approved form used only when it is not possible for an applicant a Subrecipient to obtain third party or firsthand verification of income; per 24 CFR §576.500(e)(4).~~

~~(16) Department of Housing and Urban Development ("HUD")--Federal department that provides funding for ESG.~~

~~(13) Elderly Person--~~

(A) For HHSP(17) 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.

(18) 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.

(14)(19) Ending Homelessness (“EH”) Fund--The voluntary-contribution state program established by Tex. Transportation Code §502.415.

(20) 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.

(15)(21) ESG Coordinator--CoC Lead Agency or its designee that administers a competition for funds in its CoC region and recommends ESG awards to the Department based on its competition.

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

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

(16)(24) 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.

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

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

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

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

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

(30) Homeless or Homeless Individual--An individual as defined by 42 U.S.C. §§11371 - 11378 and 24 CFR §576.2. For HHSPstate 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.

(18)(31) Homeless Housing and Services Program (“HHSP”)--The state-funded program established under §2306.2585-Tex. Gov’t Code §2306.2585.

(19)(32) 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 client-level data and data on the provision of housing and services to homeless individuals and families and persons at-risk of homelessness.

~~(20) HMIS-Comparable Database--Database established and operated by a victim service provider or legal service provider that is comparable to HMIS and collects client level data over time (i.e.,~~

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

(34) Homeless Subpopulations--Persons experiencing Homelessness who are part of the following population categories, or as defined in the most recent Point In Time Data Collection guidance issued by HUD:

(A) Children of Parenting Youth;

(B) Parenting Youth

(C) Persons Experiencing Chronic Homelessness;

(D) Persons Experiencing Severe Mental Illness;

(E) Persons with Chronic Substance Use Disorder;

(F) Persons with HIV/AIDS;

(G) Unaccompanied Youth;

(H) Veterans; and

(I) Victims of Domestic Violence.

(35) Household--A Household is a single individual or a group of persons who apply together for assistance and who live together in one (1) Dwelling Unit, or, for persons who are not housed or in a shelter, who would live together in one (1) Dwelling Unit if they were housed, or as defined in the most recent HMIS Data Dictionary issued by HUD.

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

~~(37-~~

~~(21) Household--Any individual or group of individuals who are living together.~~

~~(22) Low Income--Income in relation to Household size and that governs income eligibility for a program:~~

~~(A) For ESG, below 30% of the Median Family Income ("MFI") as defined by HUD's 30% Income Limits for All Areas for persons receiving prevention assistance or as amended by HUD; and~~

~~(B) For all other homelessness programs, below 30% of the MFI as defined by HUD for the ESG Program, although persons may be up to, but not exceed, 50% of ESG income limits, at recertification for rapid re-housing or homelessness prevention. Households in which any member is a recipient of SSI or a Means Tested Veterans Program are categorically income eligible.~~

~~(23) Land Use Restriction Agreement ("LURA")--An agreement, regardless of its title, between the Department and the shelter property owner which is a binding covenant upon the shelter 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.~~

~~(24)(38) Local competition--ESG Coordinators running a competition for ESG funding on behalf of the Department for their respective CoC regions.~~

(39) Match--A program requirement of ESG which is governed by 24 CFR §576.201.

(40) Means-Tested Veterans Program--A program whereby applicants receive payments under Sections 415, 521, 541, or 542 of title 38, United States, or under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978.

~~(25)(41) Monthly Expenditure Report--Information on Expenditures from Subrecipients to the Department.~~

(42) Monthly Expenditure Report Guide--Document posted on the Department website which provides guidance for Subrecipients to complete a Monthly Expenditure Report.

(43) Monthly Performance Report--Information on program participants and program activities from Subrecipients to the Department.

(44) Monthly Performance Report Guide--Document posted on the Department website which provides guidance for Subrecipients to complete a Monthly Performance Report.

(45) 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.

(46) Observation--A notable policy, practice or procedure observed though the course of monitoring.

~~(26) Occupancy limits--three adults per bedroom, as defined by Tex. Prop Code §92.010. Exceptions to the occupancy limits are requirements by a state or federal fair housing law to allow a higher occupancy rate; or if an adult is seeking temporary sanctuary from family violence, as defined by Section , Family Code, for a period that does not exceed one month.~~

~~(27)(47) Office of Management and Budget ("OMB")--Office within the Executive Office of the President of the United States that oversees the performance of federal agencies and administers~~

the federal budget.

~~(2848)~~ OMB Circulars--Instructions and information issued by OMB to Federal agencies that set forth principles and standards for determining costs for federal awards and establish consistency in the management of grants for federal funds. Uniform cost principles and administrative requirements for local governments and for nonprofit organizations, as well as audit standards for governmental organizations and other organizations expending federal funds are set forth in 2 CFR Part 200, unless different provisions are required by statute or approved by OMB.

~~(29)~~ Outreach--The method that attempts to identify clients who are in need of services, alerts these clients to service provisions and benefits, and helps them use the services that are available. Outreach is utilized to locate, contact and engage potential clients.

~~(30)~~ Persons with Disabilities--Any individual who is:

~~(A)~~ a handicapped individual as defined in 29 U.S.C. §701 or has a disability under 42 U.S.C. §12131-12134;

~~(B)~~ disabled as defined in 42 U.S.C. 1382(a)(3)(A), 42 U.S.C. §423, or in 42 U.S.C. 15001; or

~~(C)~~ receiving benefits under 38 U.S.C. Chapter 11 or 15.

~~(31)~~(49) Outcome--A benefit or change achieved by a Program Participant served by the Department's homeless programs.

~~(50)~~ Performance Target--Number of persons/Households served, outcomes reached, or construction/rehabilitation/conversion that the Subrecipient commits to accomplish during the Contract Term.

~~(51)~~ 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.

~~(32)~~(52) Project--A group of eligible activities identified in an Application or Contract to the Department, and designated in HMIS or HMIS-comparable database.

~~(53)~~ Program Participant--An individual or Household that is assisted by a Homeless Program.

~~(54)~~ Program Year--Contracts with funds from a specific federal allocation (ESG) or year of a state biennium (HHSP).

~~(33)~~ Public Organization--A unit of government, as established by the Legislature of the State of Texas. Includes, but may not be limited to, cities, counties, and councils of governments. For ESG, this does not include a governmental organization such as a public housing authority or a housing finance agency.

~~(55)~~ Service Area--The city(ies), county(ies) and/or place(s) identified in the Application (as applicable), and Contract that the Subrecipient will serve.

~~(34)~~(56) Single Audit--The audit required by OMB, 2 CFR Part 200, Subpart F, or Tex. Gov't Code, Chapter 738, Uniform Grant and Contract Management, the State of Texas Single Audit Circular, as reflected in an audit report.

~~(35)~~ ~~(57)~~ State--The State of Texas or the Department, as indicated by context.

~~(36)~~(58) Subcontractor--A person or an organization with whom the Subrecipient contracts with to provide services.

~~(37)~~(59) 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.

~~(38)~~(60) Subgrantee--The legal entity to which a Subgrant is awarded and which is accountable to the Subrecipient for the use of the funds provided.

~~(39)~~(61) Subrecipient--An organization that receives federal or states funds passed through the Department to operate the ESG and/or HHSP state funded homeless programs.

~~(40)~~(62) Supplemental Security Income ("SSI")--A means tested program run by the Social Security Administration.

~~(41)~~(63) Texas Administrative Code ("TAC")--A compilation of all state agency rules in Texas.

(4264) Uniform Grant Management Standards (“UGMS”)--The standardized set of financial management procedures and definitions established by Tex. Gov’t Code Chapter 783 to promote the efficient use of public funds, by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. State agencies are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state. This includes ~~all Public Organizations~~, Housing Authorities, and Housing Finance Agencies. ~~In addition, Tex. Gov’t Code See Chapter 2405, subjects subrecipients 1, Subchapter D of federal block grants (as defined therein) to the Uniform Grant and Contract Management Standards~~this Part for additional information.

(4365) 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.

(4466) United States Code (“U.S.C.”)--A consolidation and codification by subject matter of the general and permanent laws of the United States.

(4567) United States Department of Veteran Affairs (“VA”)--Federal department that serves America’s Veterans and their families with medical care, benefits, social support, and lasting memorials promoting the health, welfare, and dignity of all Veterans in recognition of their service.

§7.3. ~~Land Use Restriction Requirement~~Construction Activities.

(a) A Subrecipient ~~that of Homeless Program funds that constructs or rehabilitates or converts a building or Dwelling Unit, or converts a building(s) for use as a shelter will~~may be required to enter into a land use restriction agreement from three to LURA. No new construction of a shelter, or construction or rehabilitation of a Dwelling Unit is allowed with ESG funds.

(b) ~~For construction under the ESG Program, the term of the LURA will be ten (10) years depending on the type of renovation from the date of execution of the LURA when the cost of major rehabilitation or conversion and exceeds seventy-five percent of the value of the building prior to rehabilitation or conversion, regardless of the amount of the ESG investment. The minimum use periods established in 24 CFR §576.102(e) are applicable to both the ESG emergency shelter component and to HHSP. value of the building prior to conversion or rehabilitation must be evidenced by the submission of the most recent tax records showing the value of the property, an appraisal reflecting the value of the property prior to improvements, or other valuation method approved by the Department.~~

~~(b) For HHSP~~(c) The term of the LURA in other circumstances where construction was funded under the ESG Program shall be three years from the date of execution of the LURA.

(d)For state funds only, §2306.185-Tex. Gov’t Code §2306.185 requires certain multifamily rental developments to have, among other provisions, a 30-year land use restriction agreement.

(e) 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 use of a LURA. ~~These documents must let the Department know at least 60~~be submitted no less than ninety calendar days prior to the end of the Contract Term under which funds for the activity are provided.

(f) A Subrecipient must request a final construction inspection within 30 calendar days of construction completion. The inspection will cover the Shelter and Housing Standards, Uniform Physical Construction Standards, 2000 International Residential Code (or municipality adopted later version), Minimum Energy Efficiency Requirements for Single Family Construction Activities, and the Accessibility Standards in Chapter 1, Subchapter B, as applicable for the Homeless Program and activity.

§7.4. Subrecipient Contract.

(a) Subject to prior Board approval, the Department and a Subrecipient shall enter into and execute

a Contract for the disbursement of program funds. The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver authorized modifications and/or amendments to the Contract, as allowed by state and federal laws and rules.

~~(b) The governing body of the Subrecipient must pass a resolution authorizing its Executive Director or his/her designee to have signature authority to enter into Contracts, sign amendments, and review and approve reports. All Contract actions including extensions, amendments or revisions must be ratified by the governing body at the next regularly scheduled meeting. Minutes relating to this resolution must be on file at the Subrecipient level.~~

~~(c) Within 45 days following the conclusion of a Contract issued by the Department, the Subrecipient shall provide a final expenditure and final performance report regarding funds expended under the terms of the Contract.~~(b) Subrecipient may subcontract for the delivery of client assistance without obtaining Department's prior approval, but must obtain the Department's written permission before subgranting federal funds.

(c) The Subrecipient is responsible for ensuring that the performance rendered under all subcontracts, subgrants and other agreements are rendered so as to comply with Homeless Program requirements, as if such performance rendered were rendered by Subrecipient. Department maintains the right to monitor and require 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 ~~Community Affairs contract system.~~Contract System.

(e) Amendments and Extensions to Contracts.

~~(1) Amendments and extension requests must be submitted in writing by the Subrecipient and except~~Except for amendments that only move funds within budget categories, ~~amendments will not be granted~~the Department reserves the right to deny amendment requests if any of the following circumstancesconditions exist:

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

(B) 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;

(C) if the funds associated with the Contract will reach their federal or state expiration date within forty-five (45) calendar days of the request;

(D) if the Subrecipient is delinquent in the submission of their Single Audit or their Single Audit Certification form required by §1.403 in Chapter 1 of this Part;

(E) 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;

(F) for amendments adding funds (not applicable to amendments for extending time), if the Department has cited the Subrecipient for violations within §7.411 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;

(G) the Contract has expired; or

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

~~(2) Within 30 calendar days of a Subrecipient's request for a Contract amendment or extension request the request will be processed or denied in writing. If denied, the applicable reason from this subsection (c) will be cited. The Subrecipient may appeal the decision to the Executive Director consistent with Chapter 1, §1.7, of this Title~~Denial of an amendment may be subject to §1.7 of this Part, regarding Staff Appeals.

~~(f) For ESG:~~

~~(1) The Department reserves the right to deobligate funds and redistribute funds for failure to abide by terms~~use a Cost Reimbursement method of the Contract.

~~(2) The Department reserves the right to negotiate the final grant amounts and local match with~~

Subrecipients.

~~§7.5. Performance and Expenditure Benchmarks.~~

- ~~(a) The Department may incorporate performance and expenditure benchmarks into each Contract.~~
- ~~(b) Performance and expenditure benchmarks will be based on budgets, timelines, and performance measures approved by the Department in writing before the start of the Contract period.~~
- ~~(c) Benchmarks may be adjusted for good cause by the Department. If Subrecipient does not concur with adjustments to benchmarks, they may Appeal this decision consistent with §1.7 of this Title, relating to Staff Appeals.~~
- ~~(d) Department staff will periodically review Subrecipients' progress in meeting benchmarks. If payment whereby reimbursement of costs incurred by a Subrecipient is out of compliance with performance or expenditure benchmarks, the Department may deobligate made only after the Department has reviewed and approved backup documentation provided by the Subrecipient to support such costs for all or a portion of funds if at any remaining funds under the Contract, in accordance with the notice provisions in the Contract.time the following apply:~~

§7.6(1) Department determines that Subrecipient has maintained cash balances in excess of need.

- (2) Department identifies significant deficiency in the cash controls or financial management system used by Subrecipient, or
- (3) Subrecipient fails to comply with the reporting requirements in §7.5 and §7.6 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) The Subrecipient may be reimbursed for the amount of actual cash disbursements as reflected in Monthly Expenditure Reports, with the exception of a one-time working capital advance.
- (b) Subrecipient may request a one-time working capital advance for 30 calendar day cash needs up to eight percent of the Contract amount or an advance of \$5,000, whichever is greater. In order to request an advance payment, Subrecipient must submit to Department a properly completed Monthly Expenditure Report that includes a request for advance funds. If the advance is not utilized, funds will be returned to the Department within 60 calendar days.
- (c) Subrecipients must submit a ~~monthly performance~~Monthly Performance Report and ~~expenditure report~~a Monthly Expenditure Report through the ~~Community Affairs~~Contract System not later than the ~~fifteenth (15th)~~last day of each month ~~following the reported~~which reflects performance and expenditures conducted in the prior month ~~of the contract period~~. Reports are required even if a fund reimbursement or advance is not being requested.
- (b) For ~~monthly performance~~ reports, the data to be reported will be indicated in the Contract. ~~Clients~~Program Participants that are assisted continuously as ~~one~~a Contract ends and a new Contract begins in the same program will count as new ~~clients~~Program Participants for the new Contract. However, the start of a new Contract does not require new eligibility determination or documentation for ~~clients~~Program Participants, except as required by federal rule for ESG.
- (e) 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.

~~(d) Within 45 days from the end of the Contract, the Subrecipient must provide a final expenditure and final performance report regarding all funds expended under the terms of the contract.~~

~~(e) Failure of a Subrecipient to provide a final expenditure and final performance report of funds expended under the terms of the contract reports within the Contract term may be sufficient reason for the Department to deny any future Contract to the Subrecipient until resolved to the satisfaction of the Department.~~ deobligate funds for which a Monthly Expenditure Report has not been submitted.

(g) If 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 Subrecipient on Cost Reimbursement method of payment, and initiate proceedings to terminate any active Contract.

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

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

(A) HMIS exports as required HUD; and

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

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

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

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

§7.76. Subrecipient Data Collection.

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

§7.8. Client Eligibility.

~~(a) For ESG, clients must satisfy the eligibility requirements as defined in 24 CFR Parts 91 and 576, by meeting the appropriate definition of homelessness, at risk of homelessness in 24 CFR 576.2, including applicable income requirements. Subrecipients must document eligibility of the clients.~~

~~(b) For HHSP, clients must satisfy the eligibility requirements by meeting the appropriate definition of homelessness or at risk of homelessness in this chapter including applicable income requirements. Subrecipients must document eligibility of the clients; however, in accordance with subsection (a) of §7.9 of this Subchapter, documentation of income for certain individuals is not required to be collected.~~

~~(c) If a client has a break in service, the Subrecipient must document eligibility before providing services. For HHSP, if the client is currently receiving homeless services or housing assistance through ESG, the Subrecipient would not need to document further their eligibility for HHSP.~~

~~(d) If Subrecipients provide medium-term rental assistance for a period greater than six months, prior to clients being assisted with the seventh month of rental assistance, the client (with the exception of client households who are protected or have a household member that is an affiliated individual covered under the Violence Against Women Reauthorization Act of 2013 ("VAWA 2013"), or are client households being served with programs funded by the Family Violence~~

~~Prevention and Services Act (“FVPSA”)) must have applied for rental assistance benefits, such as Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program and been placed on one or more waiting lists, if waiting lists are open. If waiting lists are closed, the Subrecipient will check every six (6) months for opening of the lists for programs in the city (HHSP) or county (ESG).~~

~~§7.9. Income Determination.~~

~~(a) For ESG and HHSP, Subrecipients must use the income determination method outlined in 24 CFR §5.609, must use the list of income included in HUD Handbook 4350, and must exclude from income those items listed in HUD's Updated List of Federally Mandated Exclusions from Income, as may be amended from time to time. For HHSP, Households who were income eligible under a prior definition, retain that eligibility until recertification. For HHSP, there is no procedural requirement to verify income for persons living on the street (or other places not fit for human habitation), living in emergency shelter, entering transitional housing (housing that is limited to 24 months or less of occupancy), or starting rapid re-housing.~~

~~(b) If a federal or state requirement provides an updated definition of income or method for calculating income, the Department will provide written notice to Subrecipients about the implementation date for the new requirements.~~

~~(c) If proof of income is unobtainable, the applicant must complete and sign a DIS.~~

~~(d) For ESG recertification must be done in accordance with 24 CFR §576.401. For HHSP, recertification must be done for rapid re-housing and homelessness prevention the lesser of every twelve months or in accordance with the entity's written policies.~~

~~§7.10(b) The Performance Targets shall be indicated in the Contract.~~

§7.7. Subrecipient Contact Information.

(a) In accordance with §1.22 of this ~~Title~~Part (relating to Providing Contact Information to the Department), Subrecipients will notify the Department and provide contact information for ~~key management staff (that approve the Contract or submit/approve reports in the Contract System, including, but not limited to Executive Director, Chief Financial Officer, Program Director/Manager/Coordinator or any other person, regardless of title, generally performing such duties) new hires within 30 days of such occurrence.~~ The notification will be sent to the Department by updating its Contract System access request information.

(b) Subrecipients will notify the Department and provide contact information for subgrants or subcontracts, ~~where clients must apply for services or for HMIS/HMIS-comparable databases~~subcontractors, within 30 calendar days of, subgrants or Subcontracts. the effective date of Subcontract. Contact information for the ~~organizations~~entities with which the Subrecipients ~~partner,~~ subgrant or subcontract must be provided to the Department, including: organization name, name and title of authorized person who entered into the subgrant or subcontract, phone number, e-mail address, and service area for any program type of services provided.

~~(c) Within 30 calendar days of contact information changes, including entering into subcontracts or agreements for service delivery, Subrecipients will notify the Department of contact information used for the public to receive assistance through Homeless Programs. The contact information for the public should include, but is not limited to: organization name, phone number to receive assistance, email to receive assistance, type of assistance offered, and service area that the assistance is offered.~~

~~(d) The Department will rely solely on the contact information supplied by the Subrecipient as indicated in the Department's web-based Community Affairs 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. ~~Correspondence from the Department may be directly uploaded to the Subrecipient's CA contract account using a secure electronic document attachment system. Once uploaded, notification of the attachment will be sent electronically to the email address listed in the CA contract system.~~ 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.

§7.418. Records Retention.

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

(b) Record retention for ~~construction/rehabilitation/conversion/construction~~ of emergency shelters or ~~multifamily housing developments~~ Dwelling Units must be retained until the ~~greater of ten (10) years after the date that the funds are first obligated~~ expiration of the LURA.

(c) For ESG, retention for ~~rehabilitation/conversion/construction~~ 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 UGMS, as applicable except if any litigation, claim, negotiation, audit, monitoring, inspection or other action has started before the expiration of the LURA 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.

§7.12. Contract Closeout.

(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, and retained by Subrecipient for a period of three years from the expiration of the Contract except if any litigation, claim, negotiation, audit, monitoring, inspection or other action has started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

§7.9. Contract Termination and Deobligation.

(a) When a Contract is terminated; or voluntarily relinquished, the procedures described in this subsection will be implemented. The terminology of a "terminated" Subrecipient below is intended to include the Subrecipient that is voluntarily terminating their Contract, but does not include Contracts naturally reaching the end of their Contract Term.

(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 ~~one~~ one 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 job 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 ~~client~~ 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 ~~current client~~ Program Participant files. Current and active case management files also must be inventoried.

(4) Within 60 calendar days following the Subrecipient due date for preparing and boxing client files, Department staff will retrieve the ~~client~~ files.

(5) The terminated Subrecipient will prepare and submit no later than 30 calendar days from the date the Department retrieves the ~~client~~ files, a final report containing a full accounting of all funds

expended under the Contract.

(6) A ~~final monthly expenditure report~~ Monthly Expenditure Report and a ~~final monthly performance report~~ 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.

(7) 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.

(8) 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.

(9) 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 UGMS, 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~~ 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 Part (relating to Single Audit Requirements) for more information.

(10) Subrecipients 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.

§7.4310. Inclusive Marketing.

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

(b) Participant selection criteria:

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

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

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

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

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

(C) Inform program participants in any denial, non-renewal or termination notice, include information on rights they may have under VAWA (for ESG only, in accordance with the Violence Against Women Reauthorization Act of 2013 ("VAWA") protections). Subrecipients may not deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking.

(c) Other policies and procedures:

(1) Affirmative Fair Housing Marketing Plan. Subrecipients providing project-based rental assistance must have an Affirmative Fair Housing Marketing Plan created in accordance with HUD

requirements to direct specific marketing and outreach to potential tenants who are considered "least likely" to know about or apply for housing based on an evaluation of market area data. Subrecipients must comply with HUD's Affirmative Fair Housing Marketing and the Age Discrimination Act of 1975.

(2) Language Access Plan. Subrecipients that interact with program participants or clients must create a Language Access Plan for Limited English Proficiency ("LEP") Requirements. Consistent with Title VI and Executive Order 13166, Subrecipients are also required to take reasonable steps to ensure meaningful access to programs and activities for LEP persons.

(3) Affirmative Outreach. If it is unlikely that outreach will reach persons of any particular race, color, religion, sex, age, national origin, familial status, or disability who may qualify for those facilities and services, the Subrecipient must establish policies and procedures that target outreach to those persons. The Subrecipients 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. Subrecipients must make known that use of the facilities, assistance, and services are available to all on a nondiscriminatory basis.

(4) Reasonable Accommodation. The Subrecipient must comply with state and federal fair housing and antidiscrimination laws. ~~Subrecipients'~~ Subrecipient's policies and procedures must address ~~reasonable accommodation~~ Reasonable Accommodation, including, but not limited to, consideration of ~~reasonable accommodations~~ Reasonable Accommodations requested to ~~complete the application process~~ apply for assistance. See Chapter 1 Subchapter B for more information.

§7.4411. Compliance Monitoring.

(a) Purpose and Overview

(1) This section provides the procedures that will be followed for monitoring for compliance with the programs in 10 TAC Chapter 7.

(2) Any entity administering any or all of the programs detailed in 10 TAC Chapter 7 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 the programs under this Chapter.

(3) Any entity administering any or all of the programs provided for in subsection (a) 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 ~~chief executive officer~~ Contract contact at the email address most recently provided to the Department by the Subrecipient or Subgrantee. In general, a thirty (30) 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 §7.10 of this chapter (relating to Subrecipient Contact Information) and §1.22 of this title (relating to Providing Contact Information to the Department).

(3) Upon request, Subrecipients or Subgrantees 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 client files with all required documentation;

(I) Applicable human resources records;

(J) Monitoring reports from other funding entities;

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

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

(c) Post Monitoring Procedures.

(1) In general, within 30 calendar days of the last day of the monitoring visit, a written monitoring report will be prepared for the Subrecipient describing the monitoring assessment and any corrective actions, if applicable. The monitoring report will be emailed ~~and sent through the U.S. Postal Service to the Board Chair and the Subrecipient's and Subgrantee Executive Director~~ designated Contract contact, as applicable. 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 Chief 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 ~~with notice to Subgrantees (if applicable)~~. ~~If the Subrecipient supplies evidence establishing continual compliance that negates the finding of noncompliance, the issue of noncompliance will be rescinded.~~ If the Subrecipient's response satisfies all ~~findings~~ Findings and ~~concerns~~ Concerns noted in the monitoring letter, the issue of noncompliance will be noted as ~~corrected~~. ~~In some circumstances, the Subrecipient may be unable to secure documentation to correct a finding. In those instances, if there are mitigating~~

~~circumstances, the Department may note the finding is not corrected but close the issue with no further action required.~~ resolved. If the Subrecipient's response does not correct all findings noted, the ~~close-out~~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, Staff Appeals Process, in Chapter 1 of this Title.

(C) The Subrecipient may request Alternative Dispute Resolution (“ADR”). The Subrecipient may send a proposal to the Department's Dispute Resolution Coordinator to initiate ADR pursuant to §1.17 of this title.

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

Attachment 3: Preamble for proposed new 10 TAC Chapter 7, Subchapter B, Homeless Housing and Services Program

The Texas Department of Housing and Community Affairs (the “Department”) proposes the new 10 TAC Chapter 7, §§7.21-7.29, concerning Homeless Housing and Services Program. The purpose of the proposed new sections is to restructure the program rules to improve compliance with federal and state requirements, and to provide for consistency with other provisions of the Department’s rules.

FISCAL NOTE. Timothy K. Irvine, Executive Director, 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.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years a rule would be in effect:

1. The proposed rule does not create or eliminate a government program;
2. The proposed rule will not require a change in the number of employees of the Department;
3. The proposed rule will not require additional future legislative appropriations;
4. The proposed rule will result in neither an increase nor a decrease in fees paid to the Department;
5. The proposed rule will not create a new regulation;
6. The proposed rule will not expand an existing regulation, except that some matters previously incorporated into contract are being memorialized in the rule;
7. The proposed rule could increase the number of individuals subject to the rule’s applicability in that at least one city previously ineligible for funding is anticipated now to meet the minimum population threshold for funding. The regulation clarifies the source of the population data used to consider the eligibility of a city, while the minimum population figure is set by state statute; and
8. Will neither positively or negatively affect this state’s economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also 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 increased clarity and consistency to improve compliance with federal and state requirements. There will not be any economic cost to any individuals required to comply with the new sections, because the requirements imposed by the rule are have been in place for these programs though contractual obligations or other federal and state requirements.

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. The public comment period will be held May 11, 2018 to June 11, 2018, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Naomi Cantu, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email naomi.cantu@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time JUNE 11, 2018.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government

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.

Subchapter B Homeless Housing and Services Program (HHSP)

§7.21 Purpose and Use of Funds

§7.22 HHSP Subrecipient Application and Selection

§7.23 Allocation of Funds and Formula

§7.24 General HHSP Requirements

§7.25 Program Income

§7.26 Conflict of Interest

§7.27 Eligible Costs

§7.28 Program Participant Eligibility and Program Participant Files

§7.29 Shelter and Housing Standards

§7.21. Purpose and Use of Funds.

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

(b) HHSP eligible activities are:

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

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

(3) Construction/~~Conversion/Rehabilitation~~rehabilitation/conversion of buildings or Dwelling Unit (including administrative facilities) to serve persons experiencing Homelessness or ~~at~~At-risk of Homelessness, ~~or house persons experiencing homelessness;~~

(4) Essential services for Homeless Households experiencing or ~~at~~Households At-risk of Homelessness to find or maintain housing stability;

(5) Homelessness ~~Prevention~~prevention to provide financial assistance to ~~individuals~~Homeless Households or ~~families at~~Households At-risk of Homelessness;

(6) Homelessness ~~Assistance~~assistance to provide financial assistance provided to ~~individuals~~Homeless Households or ~~families experiencing~~Households At-risk of Homelessness;

(7) Operation of emergency shelters or administrative facilities to serve ~~persons experiencing~~Homeless Households or ~~at~~Households At-risk of Homelessness; and

(8) Other local programs to ~~assist individuals~~assist Homeless Households or ~~families experiencing~~Households At-risk of Homelessness ~~or at risk of Homelessness~~, if approved by the Department in writing in advance of the Expenditure.

~~-Distribution of Funds~~**§7.22. HHSP Subrecipient Application and Formula Selection.**

(a) ~~Pursuant~~Any written information provided to the authority of Tex. Gov't Code §2306.2585, HHSP is availableDepartment in order to anyexecute a Contract is part of the Application, including but not limited to the information in this subsection.

(b)The municipality in Texas with a population of 285,500may apply to administer the funding directly or designate a Private Nonprofit Organization or more. HHSP other governmental entity to apply to administer the funds in the municipality in accordance with Tex. Gov't Code §2306.2585(a).

(1) Designation of administering entity. The municipality that is designating an entity to administer the funds within their jurisdiction shall provide notification to the Department within sixty (60)

calendar days of notification of the allocated amount. The notification must be in the form of a resolution or other city council action from the municipality's governing body, and should indicate whether that the municipality is designating another entity to administer the funds on behalf of the municipality. The municipality may designate the other entity for one or two years, as desired by the municipality. If designated for two years, the requirement that the resolution or council action be submitted within 60 calendar days of notification of allocated amount will be considered met for the second year since the council action was approved."

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

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

(2) proposed budget;

(3) proposed performance targets; and

(4) activity descriptions.

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

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

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

biennially **7.23. Allocation of Funds and Formula.**

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

(b) HHSP funds will be awarded upon appropriation from the legislature, and will be made available to any of those municipalities subject to the requirements of this rule and be distributed in accordance with the formula set forth in subsection (b)c of this section (relating to Formula). ~~The Department may redistribute formula funded allocations among the eligible municipalities if a Subrecipient is unable to expend the funds within 120 days of the close of the biennium.~~

(~~b~~c) Formula. Any funds made available for HHSP shall be distributed in accordance with a ~~formula~~ an Allocation Formula that is calculated each ~~biennium~~ year that takes into account the proportion of the following factors:

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

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

(3) ~~veteran populations, defined as that percentage of the municipality's population composed of~~ population of Homeless persons, as determined by the most recent publicly available Point-In-Time Counts submitted to HUD by the CoCs in Texas or by the Texas Homeless Network;

(4) population of Homeless veterans, as determined by the most recent available 1 Year ACS data;

publicly available Point-In-Time Counts submitted to HUD by the CoCs in Texas or by the Texas Homeless Network;

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

~~(5) population of Homeless persons, defined as that percentage of the municipality's population comprised of Homeless persons~~Unaccompanied Youth, Parenting Youth, and Children of Parenting Youth, as determined by the most recent publicly available Point-In-Time Counts submitted to HUD by the CoCs in Texas or by the Texas Homeless Network;

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

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

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

~~(1) 20~~Thirty percent weight for population;

~~(2) 25~~Thirty percent weight for poverty populations;

~~(3) 25~~Twenty percent weight for ~~veteran populations;~~ the Homeless population;

~~(4) 5~~Five percent weight for population of ~~Persons with Disabilities; and~~ Homeless Veterans;

~~(5) 25~~Five percent weight for ~~the population of Homeless population.~~ Unaccompanied Youth, Parenting Youth, and Children of Parenting Youth;

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

~~(7) Five~~ percent weight for instances of family violence.

§7.24. General Homeless Housing and Services Program ("HHSP") Requirements.

(a) Each municipality or entity that had in effect as of January 1, 2012, a Contract with the Department to administer HHSP funds will remain a designated entity to receive HHSP funds in its municipality, whether that entity is the municipality itself or another entity. The Department may add to or change those entities at its discretion based on consideration of the factors enumerated in paragraphs (1)–(4) of this subsection. If the Department proposes to add or change any such entity(ies) it will publish notice thereof on its website at least twenty (20) days prior to such addition or change. If the proposal is to add an entity, the notice will include any proposed sharing of funding with other HHSP providers in the affected municipality. Subrecipient must have written policies and procedures to ensure that sufficient records are established and maintained to enable a determination that HHSP requirements are met.

~~(1) whether an entity to be removed and replaced was compliantly and efficiently administering its contract;~~

~~(2) the specific plans of any new entity to build facilities to provide shelter or services to homeless populations, and/or to provide any specific programs to serve the homeless;~~

~~(3) the capacity of any new entity to deliver its planned activities; and~~

~~(4) any public comment and comment by state or local elected officials.~~

~~(b) The final decision to add or change entities will be approved by the Department's Governing Board (the "Board").~~

(c) A municipality or entity receiving HHSP funds is subject to the Department's Previous Participation Rule, found in §1.302 of this title. In addition to the considerations of the Previous Participation Rule, a municipality or entity receiving HHSP funds may not:

~~(1) have failed to fully expend funds with respect to any previous HHSP award(s) except as approved by the Executive Director of the Department after review of unique circumstances and reported to the Board; or~~

~~(2) be in breach, after notice and a reasonable opportunity to cure, of any contract with the Department.~~

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

7.1004(b) Subrecipients must have written standards for providing HHSP assistance to Program Participants. The written standards must be applied consistently for all Program Participants. The written standards must include, but not be limited to Inclusive Marketing outlined in §7.11 of this Chapter.

(c) Rent restriction. Rental assistance cannot be provided unless the rent complies with the standard of rent reasonableness established in the Subrecipient's written policies and procedures.

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

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

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

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

(h) Subrecipient will coordinate to the greatest extent possible with other state-funded homeless programs including, but not limited to, the Texas Health and Human Services' Health Community Collaborative.

§7.25. Program Income.

(a) Program income has the definition in UGMS.

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

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

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

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

§7.26. Conflict of Interest.

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

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

(c) The officers, employees, and agents, including consultants, officers, or elected or appointed

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

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

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

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

§7.27. Eligible Costs.

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

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

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

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

(2) Development, such as:

(A) land acquisition ~~costs~~;

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

(C) lot clearance and site preparation;

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

(E) accessibility features to site and building, ~~local rehabilitation standards~~;

(F) essential improvements, and energy-related improvements;

(G) abatement of lead-based paint hazards;

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

(I) non-luxury general property improvements, ~~site improvements and utility connections, lot clearing and site preparations.~~

(3d) Essential services costs are associated with finding and maintaining stable housing, and include,

but are not ~~be~~ limited to, costs for:

- (1) out-patient medical services;
- (2) child care;
- (3) education services;
- (4) legal services;
- (5) mental health services;
- (6) local transportation assistance;
- (7) drug and alcohol rehabilitation; and
- (8) job training.

~~(4e) Homelessness Prevention costs include rental and utility assistance (including reasonable deposits), motel stay costs, and local transportation assistance. An individual or family at risk of prevention and homelessness may receive Homelessness Prevention, Case Management, and Essential Services assistance costs are associated with housing relocation, stabilization and assistance costs. Staff time entering information into HMIS or HMIS-comparable database related to homelessness prevention and homeless assistance is also an eligible Homelessness Prevention cost.~~

~~(5) Homelessness Assistance costs include costs associated with rapidly re-housing the individual or family with rental. Homeless prevention and homelessness assistance costs include, but are not limited to, hotel or motel costs; transitional housing; rental and utility assistance; rental arrears; utility reconnection fees; reasonable and customary security and utility assistance (including reasonable deposits) or motel stay; and moving costs, and local transportation assistance. An individual or family experiencing homelessness may receive Homelessness Assistance, Case Management, and Essential Services. Staff time entering information into HMIS or HMIS-comparable database is also an eligible Homelessness Assistance cost.~~

~~(6f) Operation costs include rent, utilities, supplies and equipment purchases, food pantry supplies, and other related costs necessary to operate an emergency shelter or administrative offices serving individuals experiencing or at-risk of homelessness.~~

§7.28. Program Participant Eligibility and Program Participant Files.

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

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

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

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

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

- (1) meet the income eligibility requirements, if such limits are implemented in the Subrecipient's policies and procedures and required to be reviewed at recertification; and
- (2) lack sufficient resources and support networks necessary to retain housing without assistance.

(f) Break in service. The Subrecipient must document eligibility before providing services after a break in service. A break in service occurs when a previously assisted household has exited the program and is no longer receiving services through Homeless Programs. Upon reentry into HHSP, the Household is required to complete a new intake application and provide updated source

documentation, if applicable. The Subrecipient would not need to document further eligibility for HHSP if the Program Participant is currently receiving assistance through ESG.

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

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

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

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

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

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

(6) Copies of all leases and rental assistance agreements for the provision of rental assistance, documentation of payments made to owners~~1005~~ for the provision of rental assistance, and supporting documentation for these payments, including dates of occupancy by Program Participants;

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

(8) Documentation that applicable waiting lists have been checked for availability at least every six (6) months as required for Program Participants who have been assisted for more than twenty-four (24) months with rental assistance; and

(9) Documentation that the Dwelling Unit for Program Participants receiving rental assistance complies with the Housing Standards in this Chapter.

§7.29. Shelter and Housing Standards.

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

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

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

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

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

- (5) Water supply. The shelter's water supply must be free of contamination.
- (6) Sanitary facilities. Each program participant in the shelter must have access to sanitary facilities that are in proper operating condition and are adequate for personal cleanliness and the disposal of human waste.
- (7) Thermal environment. The shelter must have any necessary heating/cooling facilities in proper operating condition.
- (8) Illumination and electricity. The shelter must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the shelter.
- (9) Food preparation. Food preparation areas, if any, must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.
- (10) Sanitary conditions. The shelter must be maintained in a sanitary condition.
- (11) Fire safety. There must be at least one working smoke detector in each occupied unit of the shelter. Where possible, smoke detectors must be located near sleeping areas. The fire alarm system must be designed for hearing-impaired residents. All public areas of the shelter must have at least one working smoke detector. There must also be a second means of exiting the building in the event of fire or other emergency.

(b) Minimum standards for housing for occupancy. ~~Housing assisted under HHSP funds cannot help a program participant remain in or move into housing that does not~~ must meet the minimum habitability standards ~~below within 30 calendar days after the term of assistance begins.~~ HHSP funds may assist a ~~program participant~~ Program Participant in returning the ~~home~~ Dwelling Unit to the minimum habitability standard in cases where the ~~program participant~~ Program Participant is the responsible party for ensuring such conditions. ~~In order to ensure continuity of housing, the Subrecipient may provide assistance to a program participant pending a completed housing inspection within 30 days of the assistance being provided. This allowance applies whether the program participant is the responsible party for ensuring such standards or another party is the responsible party. Should the housing not meet the minimum habitability standards 30 days after the initial assistance, no further assistance may be provided to maintain the program participant in that housing.~~

- (1) Structure and materials. The structures must be structurally sound to protect residents from the elements and not pose any threat to the health and safety of the residents.
- (2) Space and security. Each resident must be provided adequate space and security for themselves and their belongings. Each resident must be provided an acceptable place to sleep.
- (3) Interior air quality. Each room or space must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of residents.
- (4) Water supply. The water supply must be free from contamination.
- (5) Sanitary facilities. Residents must have access to sufficient sanitary facilities that are in proper operating condition, are private, and are adequate for personal cleanliness and the disposal of human waste.
- (6) Thermal environment. The ~~housing~~ Dwelling Unit must have any necessary heating/cooling facilities in proper operating condition.
- (7) Illumination and electricity. The structure must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the structure.
- (8) Food preparation. All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.
- (9) Sanitary conditions. The housing must be maintained in a sanitary condition.
- (10) Fire safety.
 - (A) There must be a second means of exiting the building in the event of fire or other emergency.
 - (B) Each ~~unit~~ Dwelling Unit must include at least one battery-operated or hard-wired smoke

detector, in proper working condition, on each occupied level of the unit. Smoke detectors must be located, to the extent practicable, in a hallway adjacent to a bedroom. If the unit is occupied by hearing impaired persons, smoke detectors must have an alarm system designed for hearing-impaired persons in each bedroom occupied by a hearing-impaired person.

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

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

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