

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
**TDHCA Governing Board Approved Draft of
Community Affairs Proposed Rule Changes Notice for Public Comment**

Disclaimer

Attached is a draft of the **Community Affairs Proposed Rule Changes Notice for Public Comment** that was approved by the TDHCA Governing Board on May 24, 2018. This document, including its preamble, is scheduled to be published in the June 8, 2018 edition of the *Texas Register* and that published version will constitute the official version for purposes of public comment. The version herein is informational only and should not be relied upon as the basis for public comment.

Public Comment

Public Comment Period: Starts: 8 AM Austin local time on June 8, 2018 Ends: 5 PM Austin local time on July 9, 2018

Comments received after 5 PM Austin local time on July 9, 2018 will not be accepted.

Written comments may be submitted, in hard copy/fax or electronic formats to:

Texas Department of Housing and Community Affairs
Attn: Gavin Reid
P.O. Box 13941
Austin, Texas 78711-3941
Fax: (512) 475-3935
Email: gavin.reid@tdhca.state.tx.us

Written comments may be submitted in hard copy, fax, or email formats within the designated public comment period. Those making public comment are encouraged to reference the specific draft rule, policy, or plan related to their comment as well as a specific reference or cite associated with each comment.

Please be aware that all comments submitted to the TDHCA will be considered public information.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Street Address: 221 East 11th Street, Austin, TX 78701
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The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 2, Subchapter B, §2.203 Termination and Reduction of Funding for CSBG Eligible Entities. The proposed repeal is to eliminate the rule which warrants revisions while adopting a new updated rule under separate action.

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 Timothy K. Irvine, Executive Director, has determined that for each year of the first five years the repealed section is in effect, enforcing or administering the repealed section does not have any foreseeable implications related to costs or revenues of the state or local governments.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

1. The proposed repeal will not create or eliminate a government program;
2. The proposed repeal will not require a change in the number of employees of the Department;
3. The proposed repeal will not require additional future legislative appropriations;
4. The proposed repeal will result in neither an increase nor a decrease in fees paid to the Department;
5. The proposed repeal will not create a new regulation;
6. The proposed action will repeal an existing regulation, however that regulation is being simultaneously recommended for a new rule;
7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule’s applicability; and
8. The proposed repeal will neither positively nor 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 are in effect, the public benefit anticipated as a result of the repealed section will be clarity of program requirements. There will be no economic cost to any individuals required to comply with the 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 for the proposed repeal will be from June 8, 2018, to July 9, 2018. Written comments may be mailed to the Texas Department of Housing and Community Affairs, Gavin Reid, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-3935; or email to gavin.reid@tdhca.state.tx.us. **ALL COMMENTS MUST BE RECEIVED BY 5:00 pm Austin local time, July 9, 2018.**

STATUTORY AUTHORITY. The proposed repeal is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which specifically authorizes the Department to administer community affairs programs. Except as described herein the proposed repeal affects no other code, article, or statute.

<rule>

§2.203. Termination and Reduction of Funding for CSBG Eligible Entities.

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 2, Subchapter B, §2.203 Termination and Reduction of Funding for CSBG Eligible Entities. The purpose of the proposed new section is to provide greater clarity in the process described in the rule.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, enforcing or administering the new section 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 the 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, except that it is replacing a rule being repealed simultaneously to provide for the updating and improved clarity of that rule;
6. The proposed rule will not expand an existing regulation;
7. The proposed rule will not increase the number of individuals subject to the rule’s applicability; and
8. The proposed rule will neither positively nor 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 section is in effect, the public benefit anticipated as a result of the new section will be improved clarity in the process described in the rule. There will not be any economic cost to any individuals required to comply with the new section, because the processes described by the rule have been in place through the rule found at this section being repealed.

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 for the proposed rule will be from June 8, 2018, to July 9, 2018. Written comments may be mailed to the Texas Department of Housing and Community Affairs, Gavin Reid, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-3935; or email to gavin.reid@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 pm Austin local time, July 9, 2018.

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<rule>

§2.203. Termination and Reduction of Funding for CSBG Eligible Entities.

(a) This section describes the Department's process for implementing HHS Information Memorandum 116 (Corrective Action, Termination, or Reduction of Funding) ("IM 116") and 42 U.S.C. 9915.

(b) Deficiencies may be identified through failure to resolve issues identified in an onsite monitoring review, a review of the Subrecipient's Single Audit, a review prompted by a complaint, through the Department's procedures for reviewing performance and expenditure reports, or in any other review under 42 U.S.C. §9914(a)(1)-(4).

(c) If a Deficiency is identified, the Department will review the training and technical assistance that has been provided to the Eligible Entity and determine if further training and technical assistance is warranted. If so, concurrent with the notification of the Deficiency, the Eligible Entity will be offered additional training and technical assistance that specifically focuses on the Deficiencies. After training and technical assistance has been delivered, the Eligible Entity will be provided the opportunity to submit corrective action or a plan for correction.

(d) If an entity does not respond, does not resolve the Deficiency, or does not propose a reasonable corrective action plan, the uncorrected Deficiency (or Deficiencies) will be considered a final decision in a review pursuant to the CSBG Act and cause for proceedings to terminate Eligible Entity status or reduce funding in accordance with IM 116 and 42 U.S.C. §§9908(b)(8) and 9915; such a determination will be issued in a final determination letter from the Department.

(e) If the Department determines that the development and implementation of a QIP is an appropriate requirement and/or that additional training and technical assistance are needed, that requirement will be stated in the final determination letter. The Eligible Entity will be provided 20 calendar days to submit an acceptable QIP compliant with §2.204 of this Subchapter, indicating that steps are under way and identifying dates for correction. Within 30 calendar days from the date it receives the proposed QIP, the Department will review the QIP and either approve it or specify the reasons it cannot be approved.

(f) The CSBG Act requires that a QIP be implemented not later than 60 calendar days following the notification in the final determination letter. That requirement precludes a process of extended review and feedback and iterative QIP submissions (unless the QIP has been submitted sufficiently early to allow time for such Department review); a QIP that cannot be approved within the timeframe that allows for the implementation not later than the 60 calendar day deadline will generally serve to trigger the commencement of formal legal proceedings to terminate Eligible Entity status.

(g) If it is determined and/or documented that training and technical assistance is not appropriate, that a QIP is not appropriate, the QIP has not been approved, or the processes described in subsection (d) of this section have failed to resolve the Deficiency, the Department will contact all members of the Subrecipient's Board, and request that the Department's Governing Board at the next scheduled meeting authorize staff to pursue a hearing with the State Office of Administrative Hearings ("SOAH"). If approved by the Department's Governing Board, the Department will arrange and set a date for a hearing with SOAH. If the Eligible Entity does not respond or appear for the SOAH hearing, the consideration of termination of the Eligible Entity's status will be heard at the next regularly scheduled meeting of the Department's Governing Board. An entity receiving notice of the initiation of a contested case before SOAH is reminded that they will need to read and comply with SOAH's requirements in the way they handle and respond to the matter.

(h) SOAH will issue a proposal for decision to the TDHCA Governing Board recommending whether there is cause, as defined by the CSBG Act, 42 U.S.C. §9908(c), to terminate or reduce funding to the Subrecipient. The TDHCA Governing Board will be provided the proposal for decision and it will be considered as part of any final order by the Board in the matter.

(i) If the TDHCA Governing Board determines that there is cause to terminate or reduce funding, pursuant to 42 U.S.C. §9915, the Department will notify the Subrecipient that it has the right under 42 U.S.C. §9915 to seek review of the decision by the HHS. If HHS does not overturn the decision, or if the Subrecipient does not seek HHS review, the entity's status as an Eligible Entity under the CSBG Act, and all active CSBG Contracts will be terminated on the 90th calendar day after the Board decision.

(j) Any right or remedy given to the Department by this Chapter does not preclude the existence of any other right or remedy, nor shall any action or lack of action by the Department in the exercise of any right or remedy be deemed a waiver of any other right or remedy.

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of Chapter 2, Subchapter B, §2.204, Contents of a Quality Improvement Plan. The proposed repeal is to eliminate the rule which warrants revisions while adopting a new updated rule under separate action.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that for each year of the first five years the repealed section is in effect, enforcing or administering the repealed section 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 the repeal would be in effect:

1. The proposed repeal will not create or eliminate a government program;
2. The proposed repeal will not require a change in the number of employees of the Department;
3. The proposed repeal will not require additional future legislative appropriations;
4. The proposed repeal will result in neither an increase nor a decrease in fees paid to the Department;
5. The proposed repeal will not create a new regulation;
6. The proposed action will repeal an existing regulation, however that regulation is being simultaneously recommended for a new rule;
7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule’s applicability; and
8. The proposed repeal will neither positively nor 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 are in effect, the public benefit anticipated as a result of the repealed section will be clarity of program requirements. There will be no economic cost to any individuals required to comply with the 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 for the proposed repeal will be from June 8, 2018, to July 9, 2018. Written comments may be mailed to the Texas Department of Housing and Community Affairs, Gavin Reid, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-3935; or email to gavin.reid@tdhca.state.tx.us. **ALL COMMENTS MUST BE RECEIVED BY 5:00 pm Austin local time, July 9, 2018.**

STATUTORY AUTHORITY. The proposed repeal is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which specifically authorizes the Department to administer community affairs programs. Except as described herein the proposed repeal affects no other code, article, or statute.

<rule>

§2.204. Contents of a Quality Improvement Plan.

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 2, Subchapter B, §2.204, Contents of a Quality Improvement Plan. The purpose of the proposed new section is to correct several incorrect citations in the rule.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, enforcing or administering the new section 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 the 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, except that it is replacing a rule being repealed simultaneously to provide for the updating and improved clarity of that rule;
6. The proposed rule will not expand an existing regulation;
7. The proposed rule will not increase the number of individuals subject to the rule’s applicability; and
8. The proposed rule will neither positively nor 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 section is in effect, the public benefit anticipated as a result of the new section will be improved clarity in the process described in the rule. There will not be any economic cost to any individuals required to comply with the new section, because the processes described by the rule have been in place through the rule found at this section being repealed.

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 for the proposed rule will be from June 8, 2018, to July 9, 2018. Written comments may be mailed to the Texas Department of Housing and Community Affairs, Gavin Reid, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-3935; or email to gavin.reid@tdhca.state.tx.us. **ALL COMMENTS MUST BE RECEIVED BY 5:00 pm Austin local time, July 9, 2018.**

STATUTORY AUTHORITY. The proposed rule is proposed pursuant to Tex. Gov’t Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which specifically authorizes the Department to administer community affairs programs. Except as described herein the proposed rule affects no other code, article, or statute.

<rule>

§2.204. Contents of a Quality Improvement Plan.

If a QIP is required of a Subrecipient under §2.203(e) of this Subchapter, it must be developed compliant with the guidance in this section. While each QIP developed by a Subrecipient is unique and must be responsive to the specific Deficiencies identified, all of the items in paragraphs (1) through (3) of this section, at a minimum, must be addressed.

(1) A QIP must initially provide a clear and explicit acknowledgement of each of the Deficiencies that have prompted the need for such a plan, and must be described in sufficient detail to affirm that the Subrecipient's board and management have a solid grasp of the needed improvement.

(2) Although commencement of the implementation of a QIP is specified in statute (42 USC §9915(a)(4)) the timeline for completion is important. The QIP must set forth an aggressive but achievable timeline that plans for implementation of the planned remedies to be actively underway not later than the sixtieth day after the day on which the Department notified the Subrecipient of a final determination consistent with §2.203(c) of this Subchapter. The timeline should take into account the possible impact on achievement of benchmarks, plans, and other objectives. As a general rule the Subrecipient should not expect to receive an extension of any timeframes described herein.

(3) The QIP must be specific. A general statement, such as "the Subrecipient will ensure it has a compliant tripartite board" or "the Subrecipient will obtain a compliant Single Audit" will not suffice. Many such matters involve multiple steps from analysis and planning at the management level, to board presentation and approval, to procurement, to contracting, to execution under the Contract, often with follow-on requirements. If any of the steps will also require expenditure of funds, it may also be necessary to review and update the budget and possibly other matters, such as plans. Specificity must include at a minimum addressing the following questions:

(A) Whom within the Subrecipient's staff will do what specific steps/tasks, when will they do it, and what resources will they need?

(B) If staff is to be redirected or released from existing duties, how will those duties be covered?

(C) How will the agency ensure the Deficiency does not reoccur?

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 6, Community Affairs Programs: Chapter A, §6.1 Purpose and Goals, §6.2 Definitions, §6.3 Subrecipient Contract, §6.7 Subrecipient Reporting Requirements, §6.8 Applicant/Customer Denials and Appeal Rights; Subchapter B, §6.205 Limitations on Use of Funds, §6.206 CSBG Needs Assessment, Community Action Plan, and Strategic Plan, §6.207 Subrecipient Requirements, §6.213 Board Responsibility, §6.214 Board Meeting Requirements; Subchapter C, §6.301 Background and Definitions, §6.304 Deobligation and Reobligation of CEAP Funds, §6.307 Subrecipient Requirements for Customer Eligibility Criteria and Establishing Priority for Eligible Households, §6.309 Types of Assistance and Benefit Levels, §6.312 Payments to Subcontractors and Vendors; Subchapter D, §6.403 Definitions, §6.405 Deobligation and Reobligation of Awarded Funds, §6.406 Subrecipient Requirements for Establishing Priority for Eligible Households and Customer Eligibility Criteria, §6.407 Program Requirements, §6.412 Mold-Like Substances, §6.414 Eligibility for Multifamily Dwelling Units, and §6.415 Health and Safety and Unit Deferral. The proposed repeal is to eliminate portions of the rule that warrant revisions while adopting new updated rules under separate action.

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 do 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 the repeals would be in effect:

- The proposed repeals will not create or eliminate a government program;
- The proposed repeals will not require a change in the number of employees of the Department;
- The proposed repeals will not require additional future legislative appropriations;
- The proposed repeals will result in neither an increase nor a decrease in fees paid to the Department;
- The proposed repeals will not create a new regulation;
- The proposed action will repeal existing regulations, however those regulation are being simultaneously recommended for new rules;
- The proposed repeals will not increase nor decrease the number of individuals subject to the rule’s applicability; and
- The proposed repeals will neither positively nor 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 repeals are in effect, the public benefit anticipated as a result of the repealed sections will be clarity of program requirements. There will be no economic cost to any individuals required to comply with the repeals.

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 for the proposed repeal will be from June 8, 2018, to July 9, 2018. Written comments may be mailed to the Texas Department of Housing and Community Affairs, Gavin Reid, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-3935; or email to gavin.reid@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 pm Austin local time, July 9, 2018.

STATUTORY AUTHORITY. The proposed repeal is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which specifically authorizes the Department to administer community affairs programs. Except as described herein the proposed repeal affects no other code, article, or statute.

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Subchapter A. General Provisions.

§6.1. Purpose and Goals.

§6.2. Definitions.

§6.3. Subrecipient Contract.

§6.7. Subrecipient Reporting Requirements.

§6.8. Applicant/Customer Denials and Appeal Rights.

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STATUTORY AUTHORITY. The proposed repeal is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which specifically authorizes the Department to administer community affairs programs. Except as described herein the proposed repeal affects no other code, article, or statute.

Subchapter B. Community Services Block Grant.

§6.205. Limitations on Use of Funds.

§6.206. CSBG Needs Assessment, Community Action Plan, and Strategic Plan.

§6.207. Subrecipient Requirements.

§6.213. Board Responsibility.

§6.214. Board Meeting Requirements.

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STATUTORY AUTHORITY. The proposed repeal is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which specifically authorizes the Department to administer community affairs programs. Except as described herein the proposed repeal affects no other code, article, or statute.

Subchapter C. Comprehensive Energy Assistance Program.

§6.301. Background and Definitions.

§6.304. Deobligation and Reobligation of CEAP Funds.

§6.307. Subrecipient Requirements for Customer Eligibility Criteria and Establishing Priority for Eligible Households.

§6.309. Types of Assistance and Benefit Levels.

§6.312. Payments to Subcontractors and Vendors.

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STATUTORY AUTHORITY. The proposed repeal is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which specifically authorizes the Department to administer community affairs programs. Except as described herein the proposed repeal affects no other code, article, or statute.

Subchapter D. Weatherization Assistance.

§6.403. Definitions.

§6.405. Deobligation and Reobligation of Awarded Funds.

§6.406. Subrecipient Requirements for Establishing Priority for Eligible Households and Customer Eligibility Criteria.

§6.407. Program Requirements.

§6.412. Mold-Like Substances.

§6.414. Eligibility for Multifamily Dwelling Units.

§6.415. Health and Safety and Unit Deferral.

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 6, Community Affairs Programs: Chapter A, §6.1 Purpose and Goals, §6.2 Definitions, §6.3 Subrecipient Contract, §6.7 Subrecipient Reporting Requirements, §6.8 Applicant/Customer Denials and Appeal Rights; Subchapter B, §6.205 Limitations on Use of Funds, §6.206 CSBG Needs Assessment, Community Action Plan, and Strategic Plan, §6.207 Subrecipient Requirements, §6.213 Board Responsibility, §6.214 Board Meeting Requirements; Subchapter C, §6.301 Background and Definitions, §6.304 Deobligation and Reobligation of CEAP Funds, §6.307 Subrecipient Requirements for Customer Eligibility Criteria and Establishing Priority for Eligible Households, §6.309 Types of Assistance and Benefit Levels, §6.312 Payments to Subcontractors and Vendors; Subchapter D, §6.403 Definitions, §6.405 Deobligation and Reobligation of Awarded Funds, §6.406 Subrecipient Requirements for Establishing Priority for Eligible Households and Customer Eligibility Criteria, §6.407 Program Requirements, §6.412 Mold-Like Substances, §6.414 Eligibility for Multifamily Dwelling Units, and §6.415 Health and Safety and Unit Deferral. The purpose of the proposed new sections is to improve clarity, to remedy discrepancies between rules, to correct identified areas of concern, and to provide changes needed to address findings identified by the U.S. Department of Health and Human Services (“HHS”).

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 the rule would be in effect:

1. The proposed rules do not create or eliminate a government program;
2. The proposed rules will not require a change in the number of employees of the Department;
3. The proposed rules will not require additional future legislative appropriations;
4. The proposed rules will result in neither an increase nor a decrease in fees paid to the Department;
5. The proposed rules will not create new regulations, except that they are replacing rules being repealed simultaneously to provide for the updating and improved clarity of those rules;
6. The proposed rules will not expand an existing regulation;
7. The proposed rules will not increase the number of individuals subject to the rule’s applicability; and
8. The proposed rules will neither positively nor 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 improved clarity in the processes described in the rule, resolution of discrepancies between rules, correction to identified areas of concern, and changes needed to address findings identified by HHS. There will not be any economic cost to any individuals required to comply with the new sections, because the processes described by the rules have been in place through the rules found at the sections being repealed.

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 for the proposed rules will be from June 8, 2018, to July 9, 2018. Written comments may be mailed to the Texas Department of Housing and Community Affairs, Gavin Reid, Rule Comments, P.O. Box 13941, Austin, Texas

78711-3941, by fax to (512) 475-3935; or email to gavin.reid@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 pm Austin local time, July 9, 2018.

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<rule>

§6.1. Purpose and Goals.

(a) The rules established herein are for CSBG, LIHEAP, and DOE-WAP. Additional program specific requirements are contained within each program subchapter and Chapters 1 and 2 of this Title.

(b) Programs administered by the Community Affairs ("CA") Division of the Texas Department of Housing and Community Affairs (the "Department") support the Department's statutorily assigned mission.

(c) The Department accomplishes its mission chiefly by acting as a conduit for federal grant funds and other assistance for housing and community affairs programs. Ensuring program compliance with the state and federal laws that govern the CA 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) In instances of a disaster, the Department may pursue waivers or explore flexibilities as addressed in CSBG IM -154 (and any other subsequent guidance or similar guidance for LIHEAP or DOE WAP) through HHS or DOE within the CA programs in order to serve low income Texans.

§6.2. Definitions.

(a) To ensure a clear understanding of the terminology used in the context of the CSBG, LIHEAP, and DOE-WAP programs of the Community Affairs Division, 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. Refer to Subchapters B, C, and D of this chapter for program specific definitions.

(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) Awarded Funds--The amount of funds or proportional share of funds committed by the Department's Board to a Subrecipient or service area.

(3) Categorical Eligible/Eligibility--A method where a Subrecipient must deem a Household to be eligible for benefits if that Household includes at least one member that receives:

(A) SSI payments from the Social Security Administration; or

(B) Means Tested Veterans Program payments. See §6.2(b)(30).

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

(5) 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) Community Action Agencies ("CAAs")--Private Nonprofit Organizations and Public Organizations that carry out the Community Action Program, which was established by the 1964 Economic Opportunity Act to fight poverty by empowering the poor in the United States.
- (7) Community Services Block Grant ("CSBG")--An HHS-funded program which provides funding for CAAs and other Eligible Entities that seek to address poverty at the community level.
- (8) Comprehensive Energy Assistance Program ("CEAP")--A LIHEAP-funded program to assist low-income Households, in meeting their immediate home energy needs.
- (9) Concern--A policy, practice or procedure that has not yet resulted in a Finding or Deficiency but if not changed will or may result in Findings, Deficiencies and/or disallowed costs.
- (10) Contract--The executed written agreement between the Department and a Subrecipient performing an activity related to a program that describes performance requirements and responsibilities assigned by the document, for which the first day of the Contract term is the point at which program funds may be considered by a Subrecipient for Expenditure, unless otherwise directed in writing by the Department.
- (11) Contracted Funds--The gross amount of funds Obligated by the Department to a Subrecipient as reflected in a Contract.
- (12) Cost Reimbursement--A Contract sanction whereby reimbursement of costs incurred by the Subrecipient is made only after the Department has conducted such review as it deems appropriate, which may be complete or limited, such as on a sampling basis, and approved backup documentation provided by the Subrecipient to support such costs. Such a review and approval does not serve as a final approval and all uses of advanced funds remain subject to review in connection with future or pending reviews, monitoring, or audits.
- (13) Declaration of Income Statement ("DIS")--A Department-approved form used only when it is not possible for an applicant to obtain third party or firsthand verification of income.
- (14) Deficiency--Consistent with the CSBG Act, a Deficiency exists when an Eligible Entity has failed to comply with the terms of an agreement or a State plan, or to meet a State requirement. The Departments determination of a Deficiency may be based on the Eligible Entity's failure to provide CSBG services, or to meet appropriate standards, goals, and other requirements established by the State, including performance objectives. A Finding, Observation, or Concern that is not corrected, or is repeated, may become a Deficiency.
- (15) Deobligate/Deobligation--The partial or full removal of Contracted Funds from a Subrecipient. Partial Deobligation is the removal of some portion of the full Contracted Funds from a Subrecipient, leaving some remaining balance of Contracted Funds to be administered by the Subrecipient. Full Deobligation is the removal of the full amount of Contracted Funds from a Subrecipient. This definition does not apply to CSBG non-discretionary funds.
- (16) Department of Energy ("DOE")--Federal department that provides funding for a weatherization assistance program.
- (17) Department of Health and Human Services ("HHS")--Federal department that provides funding for CSBG and LIHEAP energy assistance and weatherization.
- (18) Dwelling Unit--A house, including a stationary mobile home, an apartment, a group of rooms, or a single room occupied as separate living quarters.
- (19) Elderly Person--
- (A) for CSBG, a person who is 55 years of age or older; and
- (B) for CEAP and WAP, a person who is 60 years of age or older.
- (20) Emergency--defined as:
- (A) a natural disaster;
- (B) a significant home energy supply shortage or disruption;
- (C) significant increase in the cost of home energy, as determined by the Secretary of HHS;
- (D) a significant increase in home energy disconnections reported by a utility, a state regulatory agency, or another agency with necessary data;

(E) a significant increase in participation in a public benefit program such as the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. §§2011, et seq.), the national program to provide supplemental security income carried out under Title XVI of the Social Security Act (42 U.S.C. §§1381, et seq.) or the state temporary assistance for needy families program carried out under Part A of Title IV of the Social Security Act (42 U.S.C. §§601, et seq.), as determined by the head of the appropriate federal agency;

(F) a significant increase in unemployment, layoffs, or the number of Households with an individual applying for unemployment benefits, as determined by the Secretary of Labor; or

(G) an event meeting such criteria as the Secretary of HHS, at the discretion of the Secretary of HHS, may determine to be appropriate.

(21) Expenditure--Funds that have been accrued or remitted for purposes of the award, or in the case of CEAP, funds that have been pledged.

(22) Families with Young Children--A Household that includes a Child age five or younger. For LIHEAP WAP only, a Family with Young Children also includes a Household that has a pregnant woman.

(23) 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 organizations 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.

(24) High Energy Burden--Households with energy burden which exceeds 11% of annual gross income (as defined by the applicable program), determined by dividing a Household's annual home energy costs by the Household's annual gross income.

(25) High Energy Consumption--A Household that is billed more than \$1000 annually for related fuel costs for heating and cooling their Dwelling Unit.

(26) Household--Any individual or group of individuals, excluding unborn children, who are living together as one economic unit. For DOE WAP this includes all persons living in the Dwelling Unit. For CSBG/LIHEAP these persons customarily purchase residential energy in common or make undesigned payments for energy. In CSBG/LIHEAP a live-in aide, or a Renter with a separate lease that includes a separate bill for utilities would not be considered a Household member.

(27) Inverse Ratio of Population Density Factor--The number of square miles of a county divided by the number of poverty Households of that county.

(28) Low Income Household--defined as:

(A) For DOE WAP, a Household whose total combined annual income is at or below 200% of the HHS Poverty Income guidelines, or a Household who is Categorically Eligible;

(B) For CEAP and LIHEAP WAP, a Household whose total combined annual income is at or below 150% of the HHS Poverty Income guidelines, or a Household who is Categorically Eligible; and

(C) For CSBG, a Household whose total combined annual income is at or below 125% of the HHS Poverty Income guidelines.

(29) Low Income Home Energy Assistance Program ("LIHEAP")--An HHS-funded program which serves low income Households who seek assistance for their home energy bills and/or weatherization services.

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

(31) Mixed Status Household--A Household that contains one or more members that are U.S. Citizens, U.S. Nationals, or Qualified Aliens, and one or more members that are Unqualified Aliens.

(32) Obligation--Funds become obligated upon approval of an award to Subrecipient by the Department's Governing Board, unless the Department does not receive sufficient funding from the cognizant federal entity.

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

(34) 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.

(35) 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.

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

(37) Performance Statement--A document which identifies the services to be provided by a Subrecipient.

(38) Persons with Disabilities--Any individual who is:

(A) an individual described 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.

(39) Population Density--The number of persons residing within a given geographic area of the state.

(40) Poverty Income Guidelines--The official poverty income guidelines as issued by HHS annually.

(41) Private Nonprofit Organization--An organization described in §501(c) of the Internal Revenue Code (the "Code") of 1986 and which is exempt from taxation under subtitle A of the Code and that is not a Public Organization.

(42) Production Schedule--The estimated monthly and quarterly performance targets and expenditures for a Contract period. The Production schedule must be signed by the applicable approved signatory and approved by the Department in writing.

(43) Program Year--January 1 through December 31 of each calendar year for CSBG and LIHEAP and July 1 through June 30 of each calendar year for DOE WAP.

(44) 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.

(45) Qualified Alien--A person that is not a U.S. Citizen or a U.S. National and is described at 8 U.S.C. §1641(b).

(46) Referral--The documented process of providing information to a customer Household about an agency, program, or professional person that can provide the service(s) needed by the customer.

(47) Reobligation--The reallocation of Deobligated funds to other Subrecipients.

(48) Single Audit--The audit required by Office of Management and Budget (OMB), 2 CFR Part 200, Subpart F, or Tex. Gov't Code, Chapter 738, Uniform Grant and Contract Management, as reflected in an audit report.

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

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

(51) 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.

- (52) Subgrantee--The legal entity to which a Subgrant is awarded and which is accountable to the Subrecipient for the use of the funds provided.
- (53) Subrecipient--An organization that receives federal funds passed through the Department to operate the CSBG, CEAP, DOE WAP and/or LIHEAP program(s).
- (54) Supplemental Security Income (SSI)--A means tested program run by the Social Security Administration.
- (55) System for Award Management ("SAM")--Combined federal database that includes the Excluded Parties List System ("EPLS").
- (56) Systematic Alien Verification for Entitlements ("SAVE")--Automated intergovernmental database that allows authorized users to verify the immigration status of applicants.
- (57) Texas Administrative Code ("TAC")--A compilation of all state agency rules in Texas.
- (58) 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. In addition, Tex. Gov't Code Chapter 2105, subjects Subrecipients of federal block grants (as defined therein) to the Uniform Grant and Contract Management Standards.
- (59) United States Code ("U.S.C.")--A consolidation and codification by subject matter of the general and permanent laws of the United States.
- (60) Unqualified Alien--A person that is not a U.S. Citizen, U.S. National, or a Qualified Alien.
- (61) Vendor Agreement--An agreement between the Subrecipient and energy vendors that contains assurances regarding fair billing practices, delivery procedures, and pricing for business transactions involving LIHEAP beneficiaries.
- (62) Vulnerable Populations--Elderly persons, Persons with a Disability, and Households with a Child at or below the age of five.
- (63) Weatherization Assistance Program ("WAP")--DOE and LIHEAP funded program designed to reduce the energy cost burden of Low Income Households through the installation of energy efficient weatherization materials and education in energy use.

§6.3. 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 calendar 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.
- (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.
- (e) Amendments and Extensions to Contracts.
- (1) Except for quarterly amendments to non-discretionary CSBG Contracts to add funds as they are received from HHS, and excluding amendments that move funds within budget categories but do

not extend time or add funds, amendments and extension requests must be submitted in writing by the Subrecipient and will not be granted if any of the following circumstances exist:

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

(B) if the Subrecipient is delinquent in the submission of their Single Audit or the Single Audit Certification form required by §1.403, relating to Single Audit Requirements, in Chapter 1 of this Title;

(C) if the Subrecipient owes the Department disallowed amounts in excess of \$1,000 and a Department-approved repayment plan is not in place or has been violated;

(D) for amendments adding funds (not applicable to amendments for extending time) if the Department has cited the Subrecipient for violations within §6.10 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; or

(E) 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 (e) or other applicable reason will be cited. The Subrecipient may appeal the decision to the Executive Director consistent with Chapter 1, §1.7, of this Title.

§6.7. Subrecipient Reporting Requirements.

(a) Subrecipient must submit a monthly performance and expenditure report through the Community Affairs Contract System not later than the fifteenth (15th) day of each month following the reported month of the contract period. Reports are required even if a fund reimbursement or advance is not being requested. It is the responsibility of the Subrecipient to upload information into the Department's designated database.

(b) Subrecipient shall reconcile their expenditures with their performance on at least a monthly basis 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.

(c) Subrecipient shall electronically submit to the Department no later than 45 days after the end of the Subrecipient Contract term a final expenditure or reimbursement and programmatic report utilizing the expenditure report and the performance report.

(d) If the Department has provided funds to a Subrecipient in excess of the amount of reported expenditures in the ensuing month's report, no additional funds will be released until those excess funds have been expended. For example, in January a Subrecipient requests and is advanced \$50,000. In February, if the Subrecipient reports \$10,000 in Expenditures and an anticipated need for \$30,000, no funds will be released.

(e) CSBG Annual Report and National Survey. Federal requirements mandate all states to participate in the preparation of an annual performance measurement report. To comply with the requirements of 42 U.S.C. §9917, all CSBG Eligible Entities and other organizations receiving CSBG funds are required to participate.

(f) The Subrecipient shall submit other reports, data, and information on the performance of the DOE and LIHEAP-WAP program activities as required by DOE pursuant to 10 CFR §440.25 or by the Department.

(g) Subrecipient shall submit other reports, data, and information on the performance of the federal program activities as required by the Department.

(h) A Subrecipient may refer a contractor to the Department for debarment consistent with §2.401, regarding Debarment from Participation in Programs Administered by the Department, of this Part.

§6.8. Potential Applicant/ Applicant/ Customer Denials and Appeal Rights.

(a) Subrecipient shall establish a written procedure for the handling of denials of service when the denial involves an individual inquiring or applying for services/assistance whom is communicating or behaving in a threatening or abusive manner.

(b) Subrecipient shall establish a denial of service complaint procedure to address written complaints from program applicants/customers. At a minimum, the procedures described in paragraphs (b)(1) - (8) of this subsection shall be included:

(1) Subrecipient shall provide a written denial of assistance notice to applicant within ten (10) calendar days of the determination. Such a determination is defined as a denial of assistance, but does not include a level of assistance lower than the possible program limits or a reduction in assistance, as long as such process is in accordance with the Subrecipient's written policy. This notification shall include written notice of the right of a hearing and specific reasons for the denial by program. The applicant wishing to appeal a decision must provide written notice to Subrecipient within twenty (20) calendar days of receipt of the denial notice.

(2) A Subrecipient must establish an appeals committee composed of at least three persons. Subrecipient shall maintain documentation of appeals in their customer files.

(3) Subrecipient shall hold a private appeal hearing (unless otherwise required by law) by phone or in person in an accessible location within ten (10) business days after the Subrecipient received the appeal request from the applicant and must provide the applicant notice in writing of the time/location of the hearing at least seven (7) calendar days before the appeal hearing.

(4) Subrecipient shall record the hearing.

(5) The hearing shall allow time for a statement by Subrecipient staff with knowledge of the case.

(6) The hearing shall allow the applicant at least equal time, if requested, to present relevant information contesting the decision.

(7) Subrecipient shall notify applicant of the decision in writing. The Subrecipient shall mail the notification by close of business on the third calendar day following the decision (three day turn-around).

(8) If the denial is solely based on income eligibility, the provisions described in paragraphs (2) - (7) of this subsection do not apply, and the applicant may request a recertification of income eligibility based on initial documentation provided at the time of the original application. The recertification will be an analysis of the initial calculation based on the documentation received with the initial application for services and will be performed by an individual other than the person who performed the initial determination. If the recertification upholds the denial based on income eligibility documents provided at the initial application, the applicant is notified in writing.

(c) If the applicant is not satisfied, the applicant may further appeal the decision in writing to the Department within ten (10) calendar days of notification of an adverse decision.

(d) Applicants/customers who allege that the Subrecipient has denied all or part of a service or benefit in a manner that is unjust, violates discrimination laws, or without reasonable basis in law or fact, may request a contested hearing under Tex. Gov't Code, Chapter 2001.

(e) The hearing under subsection (d) shall be conducted by the State Office of Administrative Hearings on behalf of the Department in the locality served by the Subrecipient, for which the procedures are further described in §1.13, relating to Contested Case Hearing Procedures, of this Part.

(f) If the applicant/customer appeals to the Department, the funds should remain encumbered until the Department completes its decision.

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STATUTORY AUTHORITY. The proposed rule is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which specifically authorizes the Department to administer community affairs programs. Except as described herein the proposed rule affects no other code, article, or statute.

§6.205. Limitations on Use of Funds.

(a) Construction of Facilities. CSBG funds may not be used for the purchase, construction or improvement of land, or facilities as described in (42 U.S.C. §9918(a)).

(b) The CSBG Act prohibits the use of funds for partisan or nonpartisan political activity; any political activity associated with a candidate, contending faction, or group in an election for public or party office; transportation to the polls or similar assistance with an election; or voter registration activity, (for example, contacting a congressional office to advocate for a change to any law is a prohibited activity).

(c) Utility and rent deposit refunds from vendors must be reimbursed to the Subrecipient and not the customer. Refunds must be treated as program income, and returned to the Department within ten calendar days of receipt.

§6.206. CSBG Community Assessment, Community Action Plan, and Strategic Plan

(a) In accordance with the CSBG Act each Eligible Entity must submit a Community Action Plan on an annual basis. The Community Action Plan is required to be submitted to the Department by a date directed by the Department, for approval prior to execution of a Contract.

(b) Consistent with organizational standards relating to Data Analysis and Performance, the Eligible Entity must present to its governing board for review or action, at least every twelve months, an analysis of the agency's outcomes and any operational or strategic program adjustments and improvements identified as necessary; and the organization must submit its annual CSBG Information Survey data report which reflects customer demographics and organization-wide outcomes.

(c) Every three (3) years each Eligible Entity shall complete a Community Assessment (may also be called "Community Needs Assessment" or "CNA"), upon which the annual Community Action Plan will be based. Guidance on the content and requirements of the Community Assessment will be released by the Department. Information related to the Community Assessment shall be submitted to the Department on or before a date specified by the Department in the previous year's Contract. The Community Assessment will require, among other things, that the top five needs of the service area are identified.

(d) Services to Poverty Population. Eligible Entities administering services to customers in one or more CSBG service area counties shall ensure that such services are rendered reasonably and in an equitable manner to ensure fairness among all potential applicants eligible for services. Services rendered must reflect the poverty population ratios in the service area and services should be distributed based on the proportionate representation of the poverty population within a county. A variance of greater than plus or minus 20% may constitute a Deficiency. Eligible Entities with a service area of a single county shall demonstrate marketing and outreach efforts to make available direct services to a reasonable percentage of the county's eligible population based on the most recent census or American Community Survey data, as directed by the Department. Services should also be distributed based on the proportionate representation of the poverty population within a county. Other CSBG-funded organizations shall ensure that services are rendered in accordance with requirements of the CSBG contract.

(e) The Community Action Plan shall be derived from the Community Assessment and at a minimum include a budget, a description of the delivery of case management services, in accordance

with the National Performance Indicators, and include a performance statement that describes the services, programs, activities, and planned outcomes to be delivered by the organization.

(f) The Community Action Plan must take into consideration the outcomes expected by previous Community Action Plan(s). If past outcomes were not achieved as reported in the CA contract system, or outcomes exceed the targeted goals, the Subrecipient must assess the reasons for the variance in outcomes, determine what will be done differently if continuing to include those outcome goals, and identify how any of issues or obstacles will be mitigated or addressed. An effective CAP should be constantly monitored and adjusted to optimize achievement of results consistent with CSBG Act goals.

(g) The Community Assessment and the CAP both require Department approval; those that do not meet the Department's requirements as articulated in these rules or in Department actions described and contemplated in these rules will be required to be revised until they meet the Department's satisfaction.

(h) If circumstances warrant amendments to the Community Assessment or the CAP, a Subrecipient must provide a written request to the Department identifying the specific requested change(s) to the document with a justification for each change. The Department will approve or deny amendment requests in writing.

(i) Hearing. In conjunction with the submission of the CAP, the Eligible Entity must submit to the Department a certification from its board that a public hearing was conducted on the proposed use of funds.

(j) Every five (5) years each Eligible Entity shall complete a strategic plan, with which the annual Community Action Plan should be consistent. Information related to the strategic plan shall be submitted to the Department on or before a date specified by the Department in the previous year's Contract.

(k) Each CSBG Subrecipient must develop a performance statement which identifies the services, programs, and activities to be administered by that organization.

§6.207. Subrecipient Requirements.

(a) Eligible Entities shall submit information regarding the planned use of funds as part of the CAP as described in §6.206 of this Subchapter.

(b) HHS issues terms and conditions for receipt of funds under the CSBG. Subrecipients will comply with the requirements of the terms and conditions of the CSBG award.

(c) CSBG Eligible Entities, and other CSBG organizations where applicable, are required to coordinate CSBG funds and form partnerships and other linkages with other public and private resources and coordinate and establish linkages between governmental and other social service programs to assure the effective delivery of services and avoid duplication of services.

(d) CSBG Eligible Entities will provide, on an emergency basis, the provision of supplies and services, nutritious foods, and related services as may be necessary to counteract the conditions of starvation and malnutrition among low-income individuals. The nutritional needs may be met through a referral source that has resources available to meet the immediate needs.

(e) CSBG Eligible Entities and other CSBG organizations are required to coordinate for the provision of employment and training activities through local workforce investment systems under the Workforce Innovation and Opportunity Act, as applicable.

(f) CSBG Eligible Entities are required to inform custodial parents in single-parent families that participate in programs, activities, or services about the resources available through the Texas Attorney General's Office with respect to the collection of child support payments and refer eligible parents to the Texas Attorney General's Office of Child Support Services Division.

(g) Documentation of Services. Subrecipient must maintain a record of referrals and services provided.

(h) Intake Form. To fulfill the requirements of 42 U.S.C. §9917, CSBG Subrecipients must complete and maintain an intake form that screens for income, assesses customer needs, and captures the demographic and household characteristic data required for the monthly performance and expenditure report, referenced in Subchapter A of this chapter (relating to General Provisions), for all Households receiving a community action service. CSBG Subrecipients must complete and maintain a manual or electronic intake form for all customers for each program year.

(i) Case Management.

(1) Subrecipients are required to provide integrated case management services. Subrecipients are required to identify and set goals for households they serve through the case management process. Subrecipients are required to evaluate and assess the effect their case management system has on the short-term (less than three months) and long-term (greater than three months) impact on customers, such as enabling the customer to move from poverty to self-sufficiency, to maintain stability. CSBG funds may be used for short term case management to meet immediate needs. In addition, CSBG funds may be used to provide long-term case management to persons working to transition out of poverty and achieve self-sufficiency.

(2) Subrecipients must have and maintain documentation of case management services provided.

(3) Eligible Entities are each assigned a minimum TOP goal by the Department. Eligible Entities must provide ongoing case management services for these transitioning out of poverty "TOP" households. The case management services must include the components described in subparagraphs (A) - (L) of this paragraph. Subrecipients must also provide case management clients with a Customer Satisfaction Survey, item (M), for the client to complete anonymously. And, at least annually, Subrecipients must evaluate the effectiveness of their case management services, item (N) of this paragraph. The forms or systems utilized for each component may be manual or electronic forms provided by the Department or manual or electronic forms created by the Eligible Entity that at minimum contain the same information as the Department-issued form, including but not limited to:

(A) Self-Sufficiency Customer Questionnaire to assess a customer's status in the areas of employment, job skills, education, income, housing, food, utilities, child care, child and family development, transportation, healthcare, and health insurance;

(B) Self-Sufficiency Outcomes Matrix to assess the customer's status in the self-sufficiency domains noted in subparagraph (A) of this paragraph;

(C) Case Management Screening Questions to assess the customer's willingness to participate in case management services on an ongoing basis;

(D) For customers who are willing to engage in long term case management services, a Case Management Agreement between Subrecipient and customer;

(E) Release of Information Form;

(F) Case Management Service Plan to document planned goals agreed upon by the case manager and customer along with steps and timeline to achieve goals;

(G) Case management follow-up - A system to document customer progress at completing steps and achieving goals. Case management follow-up should occur, at a minimum, every 30 days, either through a meeting, phone call or e-mail. In person meetings should occur, at a minimum, once a quarter;

(H) A record of referral resources and documentation of the results;

(I) A system to document services received and to collect and report NPI data;

(J) A system to document case closure for persons that have exited case management;

(K) A system to document income for persons that have maintained an income level above 125% of the Poverty Income Guidelines for 90 days;

(L) A system to document and notify customers of termination of case management services;

(M) Customer Satisfaction Survey; and

(N) Evaluation System. On an annual basis, Eligible Entities should determine the effectiveness of their case management services and identify strategies for improvement, including identification of reasons for customer terminations and strategies to limit their occurrence.

(j) Effective January 1, 2016, Eligible Entities shall meet the CSBG Organizational Standards as issued by HHS in Information Memorandum #138 (as revised), except that where the word bylaws is used the Department has modified the standards to read Certificate of Formation/Articles of Incorporation and bylaws; also, Eligible Entities must follow the requirements in UGMS including State of Texas Single Audit Circular. Failure to meet the CSBG Organizational Standards may result in HHS Information Memorandum #116 proceedings as described in Chapter 2 of this Title.

§6.213. Board Responsibility.

(a) Tripartite boards have a fiduciary responsibility for the overall operation of the Eligible Entity. Members are expected to carry out their duties as any reasonably prudent person would do.

(b) At a minimum, board members are expected to:

(1) Maintain regular attendance of board and committee meetings;

(2) Develop thorough familiarity with core agency information as appropriate, such as the agency's bylaws, Certificate of Formation/Articles of Incorporation, sources of funding, agency goals and programs, federal and state CSBG statutes;

(3) Exercise careful review of materials provided to the board;

(4) Make decisions based on sufficient information;

(5) Ensure that proper fiscal systems and controls, as well as a legal compliance system, are in place;

(6) Maintain knowledge of all major actions taken by the agency; and

(7) Receive regular reports that include:

(A) Review and approval of all funding requests (including budgets);

(B) Review of reports on the organization's financial situation;

(C) Regular reports on the progress of goals specified in the performance statement or program proposal;

(D) Regular reports addressing the rate of expenditures as compared to those projected in the budget;

(E) Updated modifications to policies and procedures concerning employee's and fiscal operations; and

(F) Updated information on community conditions that affect the programs and services of the organization.

(c) Individuals that agree to participate on a tripartite governing board, accept the responsibility to assure that the agency they represent continues to:

(1) assess and respond to the causes and conditions of poverty in their community;

(2) achieve anticipated family and community outcomes; and

(3) remains administratively and fiscally sound.

(4) Excessive absenteeism of board members compromises the mission and intent of the program.

(d) Residence Requirement. Board members must follow any residency requirements outlined in 42 USC §9910, or federal regulations made pursuant to this section.

(e) Improperly Constituted Board. If the Department determines that a board of an Eligible Entity is improperly constituted, the Department shall prescribe the necessary remedial action, a timeline for implementation and possible sanctions which may include:

(1) Cost Reimbursement;

(2) withholding of funds;

(3) Contract suspension; or

(4) termination of funding.

§6.214. Board Meeting Requirements.

- (a) A Board of an Eligible Entity must meet and have a quorum at least once per calendar quarter, and at a minimum five (5) times per year and, must give each Board member a notice of meeting five (5) calendar days in advance of the meeting.
- (b) Tex. Gov't Code, Chapter 551, Texas Open Meetings Act, addresses specific requirements regarding meetings and meeting notices. Tex. Gov't Code, §551.001(3)(J), includes in the definition of a governmental body and of a nonprofit corporation that is eligible to receive funds under the federal CSBG program and that is authorized by the state to serve a geographic area of the state. All Eligible Entities must follow the requirements of the Texas Open Meetings Act. As set forth in that law, there is the potential for individual criminal liability for violations.
- (c) Tex. Gov't Code, §551.005 requires elected or appointed officials to receive training in Texas Open Government laws. The Department requires that all board members receive training in Texas Open Government laws, according to the requirements of §551.005.
- (d) A copy of the attendance roster for all Board trainings shall be maintained at the Subrecipient level.
- (e) The minimum number of members required to meet quorum is three unless the Subrecipient's Certification of Formation/Articles of Incorporation, Bylaws, or the Texas Open Meetings Act requires a greater number.

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STATUTORY AUTHORITY. The proposed rule is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which specifically authorizes the Department to administer community affairs programs. Except as described herein the proposed rule affects no other code, article, or statute.

§6.301. Background and Definitions.

(a) The Comprehensive Energy Assistance Program ("CEAP") is funded through the Low Income Home Energy Assistance Act of 1981 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, as amended). LIHEAP has been in existence since 1982. LIHEAP is a federally funded block grant program that is implemented to serve low income Households who seek assistance for their home energy bills. LIHEAP is not an entitlement program, and there are not sufficient funds to serve all eligible customers or to provide the maximum benefit for which a customer may qualify.

(b) Definitions.

(1) Extreme Weather Conditions--For winter months (November, December, January, and February), extreme weather conditions will exist when the temperature has been at least 2 degrees below the lowest winter month's temperature or below 32 degrees, for at least three days during the client's billing cycle. For summer months (June, July, August, and September), when the temperature is at least 2 degrees above the highest summer month's temperature for at least three days during the client's billing cycle. Extreme weather conditions will be based on either data for "1981-2010 Normals" temperatures recorded by National Centers for Environmental Information of the National Oceanic and Atmospheric Administration ("NOAA") and available at <http://www.ncdc.noaa.gov/cdo-web/datatools/normals>, or on data determined by the Subrecipient, and approved by the Department in writing. Subrecipient must maintain documentation of local temperatures and reflect their standard for extreme weather conditions in its Service Delivery Plan.

(2) Household Crisis--A bona fide Household Crisis exists when extraordinary events or situations resulting from extreme weather conditions and/or fuel supply shortages have depleted or will deplete Household financial resources and/or have created problems in meeting basic Household expenses, particularly bills for energy so as to constitute a threat to the well-being of the Households, particularly Vulnerable Population Households.

(3) Life Threatening Crisis--A life threatening crisis exists when at least one person in the applicant Household would be adversely affected without the Subrecipient's utility assistance, because there is a shut-off notice or a delivered fuel source is below a ten (10) day supply (by customer report) to the degree that, in the opinion of a reasonable person, the effect could cause loss of life. Examples of life-sustaining equipment include, but are not limited to, kidney dialysis machines, oxygen concentrators, cardiac monitors, and in some cases heating and air conditioning when ambient temperature control is prescribed by a medical professional. Documentation must not be requested about the medical condition of the applicant/customer but must state that such a device is required in the Dwelling Unit to sustain life.

(4) Low on Fuel--A reference to propane tanks which are below 20% supply (according to customer).

(5) Vendor Refund--A sum of money refunded by a utility company or supplier due to a credit on the account or due to a deposit. See §6.312 of this Subchapter for more information.

§6.304. Deobligation and Reobligation of CEAP Funds.

(a) The Department may determine to Deobligate funds from all budget categories from Subrecipients whose combined Expenditures and customer Obligations are less than 45% as of the May 15 report, unless an exception is approved by the Department in writing for extenuating circumstances. Subrecipients that request training and/or technical assistance may avoid deobligation at this phase if they request such assistance on or before the filing of the May 15 report. Once such assistance has been delivered, as determined by the Department, the Subrecipient must submit a clear specific plan for improving utility obligations and that plan must be approved by the Department in writing.

(b) The Department may deobligate funds from all budget categories from a Subrecipient whose combined Expenditures and customer Obligations are less than 70% as of the July 15 report, unless an exception is approved by the Department in writing for extenuating circumstances.

(c) The cumulative amount of Deobligated funds will be allocated proportionally by formula amongst all Subrecipients that did not have any funds Deobligated.

(d) A Subrecipient which has had funds Deobligated under option (a) or (b) above that fully expends the reduced amount of its Contract, will have access to the full amount of the following Program Year CEAP allocation. A Subrecipient which has had funds deobligated under option (a) or (b) of this section that fail to fully expend the reduced amount of its Contract will automatically have the following Program Year CEAP allocation Deobligated by the lesser of 24.99%, or the proportional amount that had been Deobligated in the prior year.

(e) The cumulative balance of the funds made available through subsection (d) of this section will be allocated proportionally by formula to the Subrecipients not having funds reduced under that subsection.

(f) In no event will involuntary Deobligations that occur through any of the clauses of this section exceed 24.99% of the Subrecipient's Program Year CEAP Contracted Funds, without a hearing as required by Tex. Gov't Code, Chapter 2105.

§6.307. Subrecipient Requirements for Customer Eligibility Criteria and Establishing Priority for Eligible Households.

(a) The customer income eligibility level is at or below 150% of the federal poverty level in effect at the time the customer makes an application for services.

(b) A complete application is required for all Households. Subrecipient shall determine customer income using the definition of income and process described in §6.4 (relating to income). Household income documentation must be collected by the Subrecipient for the purposes of determining the Household's benefit level.

- (c) Social security numbers are not required for applicants for CEAP.
- (d) Subrecipient must establish a written procedure to serve Households that have a Vulnerable Population Household member, Households with High Energy Burden, and Households with High Energy Consumption. High Energy Burden shall be the highest rated item in sliding scale priority determinations. The Subrecipient must maintain documentation of the use of the criteria.
- (e) A Dwelling Unit cannot be served if the meter is utilized by another Household that is not a part of the application for assistance. In instances where separate structures share a meter and the applicant is otherwise eligible for assistance, Subrecipient must provide services if:
- (1) the members of the separate structures that share a meter meet the definition of a Household per §6.2 of this Chapter;
 - (2) the members of the separate structures that share a meter submit one application as one Household; and
 - (3) all persons and applicable income from each structure are counted when determining eligibility.
- (f) United States Citizen, United States National, or Qualified Alien. Except for items described in 10 TAC §6.310(e)(4) and (6), Unqualified Aliens are not eligible to receive CEAP benefits. Mixed Status Households shall not be denied CEAP assistance based solely on the presence of a non-qualified member, except if the member is the sole member of the Household. A Subrecipient other than a Public Organization may utilize a method of its choosing, and may opt to use the Systematic Alien Verification for Entitlements (“SAVE”) program, but is not required to do so. A Public Organization must verify U.S. Citizen, U.S. National, or Qualified Alien status using SAVE.

§6.309. Types of Assistance and Benefit Levels.

- (a) Allowable CEAP expenditures include customer education, utility payment assistance; repair of existing heating and cooling units, and crisis-related purchase of portable heating and cooling units.
- (b) Total maximum possible annual Household benefit (all allowable benefits combined) shall not exceed \$5,400 during a Program Year.
- (c) Benefit determinations are based on the Household's income (even if the Household is Categorically Eligible), the Household size, Vulnerable Populations in the Household, plus other priority status, whether a Household has one or more Unqualified Aliens for which calculation adjustments must be made as described in paragraphs (1) – (2) of this clause, and the availability of funds.
- (1) Count income for all Household members eighteen years of age and older, including Unqualified Aliens; and
 - (2) Adjust the Household size for determining eligibility and benefit assistance level to exclude all Unqualified Aliens.
- (d) For purposes of determining Categorical Eligibility or Vulnerable Populations (i.e. priority status), the Household is not considered to satisfy the definition of having Categorical Eligibility or Vulnerable Population if the only individual(s) in the Household with that Categorical Eligibility or Vulnerable Population status are Unqualified Aliens. For purposes of reporting, all individuals in the Households should be reported.
- (e) Benefit determinations for the Utility Payment Assistance Component and the Household Crisis Component cannot exceed the sliding scale described in paragraphs (1) - (3) of this paragraph:
- (1) Households with Incomes of 0 to 50% of Federal Poverty Guidelines may receive an amount not to exceed \$1,200 per Component;
 - (2) Households with Incomes of 51% to 75% of Federal Poverty Guidelines may receive an amount not to exceed \$1,100 per Component; and
 - (3) Households with Incomes of 76% to at or below 150% of Federal Poverty Guidelines may receive an amount not to exceed \$1,000 per Component; and
- (f) Service and Repair of existing heating and cooling units: Households may receive up to \$3,000 for service and repair of existing heating and cooling units when the Household has an inoperable

heating or cooling system based on requirements in §6.310, Relating to Household Crisis Component.

(g) Assistance with service and repair or purchase of portable air conditioning/evaporative coolers and heating units not to exceed \$3,000 for Households that include a Vulnerable Population member, when the Household does not have an operable or non-existing heating or cooling system, regardless of weather conditions.

(h) Subrecipients shall provide only the types of assistance described in paragraphs (1) - (11) of this subsection with funds from CEAP:

(1) Payment to vendors and suppliers of fuel/utilities, goods, and other services, such as past due or current bills related to the procurement of energy for heating and cooling needs of the residence, not to include security lights and other items unrelated to energy assistance as follows:

(A) Subrecipient may make utility payments on behalf of Households based on the previous twelve (12) month's home energy consumption history, including allowances for cost inflation. If a twelve (12) month's home energy consumption history is unavailable, Subrecipient may base payments on current Program Year's bill or utilize a Department-approved alternative method. Subrecipient will note such exceptions in customer files. Benefit amounts exceeding the actual bill shall be treated as a credit for the customer with the utility company.

(B) Vulnerable Households can receive benefits to cover up to the eight highest remaining bills within the Program Year, as long as the cost does not exceed the maximum annual benefit.

(C) Households that do not contain a Vulnerable Population member can receive benefits to cover up to the six highest remaining bills within the Program Year as long as the cost does not exceed the maximum annual benefit.

(2) Payment to vendors--only one energy bill payment per month;

(3) Needs assessment and energy conservation tips, coordination of resources, and referrals to other programs;

(4) Payment of water, waste water and solid waste charges are not an allowable LIHEAP expense even in cases where those charges are an inseparable part of a utility bill. Whenever possible, Subrecipient shall negotiate with the utility providers to pay only the "home energy" (heating and cooling) portion of the bill or utilize other funds to pay for the water related charges;

(5) Energy bills already paid may not be reimbursed by the program;

(6) Payment of reconnection fees in line with the registered tariff filed with the Public Utility Commission and/or Texas Railroad Commission. Payment cannot exceed that stated tariff cost. Subrecipient shall negotiate to reduce the costs to cover the actual labor and material and to ensure that the utility does not assess a penalty for delinquency in payments;

(7) Payment of security deposits only when state law requires such a payment, or if the Public Utility Commission or Texas Railroad Commission has listed such a payment as an approved cost, and where required by law, tariff, regulation, or a deferred payment agreement includes such a payment. Subrecipient shall not pay such security deposits that the energy provider will eventually return to the customer;

(8) While rates and repair charges may vary from vendor to vendor, Subrecipient shall negotiate for the lowest possible payment. Prior to making any payments to an energy vendor a Subrecipient shall have a signed vendor agreement on file from the energy vendor receiving direct CEAP payments from the Subrecipient;

(9) Subrecipient may make payments to landlords on behalf of eligible renters who pay their utility and/or fuel bills indirectly. Subrecipient shall notify each participating Household of the amount of assistance paid on its behalf. Subrecipient shall document this notification. Subrecipient shall maintain proof of utility or fuel bill payment. Subrecipient shall ensure that amount of assistance paid on behalf of customer is deducted from customer's rent;

(10) In lieu of deposit required by an energy vendor, Subrecipient may make advance payments. The Department does not allow CEAP expenditures to pay deposits, except as noted in paragraph (7) of this subsection. Advance payments may not exceed an estimated two months' billings; and
(11) Funds for the CEAP shall not be used to weatherize dwelling units, for medicine, food, transportation assistance (e.g., vehicle fuel), income assistance, or to pay for penalties or fines assessed to customers.

§6.312. Payments to Subcontractors and Vendors.

(a) A bi-annual Vendor Agreement is required to be implemented by the Subrecipient and shall contain assurances as to fair billing practices, delivery procedures, and pricing procedures for business transactions involving CEAP beneficiaries. The Subrecipient must use the Department's current Vendor Agreement template, found on the CEAP Program Guidance page of the Department's website. These agreements are subject to monitoring procedures performed by the Department staff.

(b) Subrecipient shall maintain proof of payment to Subcontractors and vendors as required by Chapter 1, Subchapter D, of this Title.

(c) Subrecipient shall notify each participating Household of the amount of assistance paid on its behalf. Subrecipient shall document this notification.

(d) Subrecipients shall use the Vendor Payment method for CEAP components. Subrecipient shall not make cash payments directly to eligible Household for any of the CEAP components.

(e) Payments to Vendors for which a valid Vendor Agreement is not in place may be subject to disallowed costs unless prior written approval is obtained from the Department.

(f) A Vendor Refund is program income and must be reimbursed to the Subrecipient, and not the customer.

(g) When a Vendor Refund is issued, Subrecipient shall determine which TDHCA Contract the payment(s) was charged to, the Household associated to the payment and if the Contract remains open.

(1) If the Contract remains open, Subrecipient must enter the amount into the Contract System in the appropriate budget line item into the adjustment column in the next monthly report, and make the appropriate note in the system. This will credit back the Vendor Refund for the Subrecipient to expend on eligible expenses.

(2) If the Contract is closed, Subrecipient must return the Vendor Refund(s) to the Department within ten calendar days of receipt. The payment must contain the Contract number and appropriate budget line item associated with the refund.

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STATUTORY AUTHORITY. The proposed rule is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which specifically authorizes the Department to administer community affairs programs. Except as described herein the proposed rule affects no other code, article, or statute.

§6.403. Definitions.

(a) Department of Housing and Urban Development ("HUD")--Federal department that provides funding for certain housing and community development activities.

(b) Electric Base-Load Measure--Weatherization measures which address the energy efficiency and energy usage of lighting and appliances.

(c) Energy Audit--The energy audit software and procedures used to determine the cost effectiveness of Weatherization measures to be installed in a Dwelling Unit. The Energy Audit shall be used for any Dwelling Unit weatherized utilizing DOE funds.

- (d) Energy Repairs--Weatherization-related repairs necessary to protect or complete regular Weatherization energy efficiency measures.
- (e) Multifamily Dwelling Unit--A structure containing more than one Dwelling Unit.
- (f) Rental Unit--A Dwelling Unit occupied by a person who pays rent for the use of the Dwelling Unit.
- (g) Renter--A person who pays rent for the use of the Dwelling Unit.
- (h) Reweathering--Consistent with 10 CFR §440.18(e)(2), if a Dwelling Unit has been damaged by fire, flood, or act of God and repair of the damage to Weatherization materials is not paid for by insurance; or if a Dwelling Unit was partially weatherized under a federal program during the period September 30, 1975, through September 30, 1994, the Dwelling Unit may receive further financial assistance for Reweathering.
- (i) Shelter-- a Dwelling Unit or Units whose principal purpose is to house on a temporary basis individuals who may or may not be related to one another and who are not living in nursing homes, prisons, or similar institutional care facilities.
- (j) Significant Energy Savings--A Savings to Investment Ratio (SIR) of 1.0 or greater.
- (k) Single Family Dwelling Unit--A structure containing no more than one Dwelling Unit.
- (l) Weatherization Assistance Program Policy Advisory Council ("WAP PAC")--The WAP PAC was established by the Department in accordance with 10 CFR §440.17 to provide advisory services in regards to the DOE WAP program.
- (m) Weatherization Material--The material listed in Appendix A of 10 CFR Part 440.
- (n) Weatherization --A program conducted to reduce heating and cooling demand of Dwelling Units that are energy inefficient.

§6.405. Deobligation and Reobligation of Awarded Funds.

- (a) At any time that a Subrecipient believes they may be at risk of meeting one of the criteria noted in subsection (l) of this section relating to criteria for Seobligation of funds, notification must be provided to the Department unless excepted under subsection (m) of this section.
- (b) A written Notification of Possible Deobligation' will be sent to the Executive Director of the Subrecipient by the Department as soon as a criterion listed in subsection (l) of this section is at risk of being met. Written notice will be sent electronically and/or by mail. The notice will include an explanation of the criteria met. A copy of the written notice will be sent to the Board of Directors of the Subrecipient by the Department within seven (7) business days after the notice to the Executive Director has been released. A Notification will not be sent, and the steps in this section not triggered, if an Amendment increasing funds by at least 20% has been provided to the Subrecipient in the prior 90 calendar days.
- (c) Within fifteen (15) days of the date of the 'Notification of Possible Deobligation' referenced in subsection (b) of this section, a Mitigation Action Plan must be submitted to the Department by the Subrecipient in the format prescribed by the Department unless excepted under subsection (m) of this section.
- (d) A Mitigation Action Plan is not limited to but must include:
- (1) Explanation of why the identified criteria under this section occurred setting out all fully relevant facts.
 - (2) Explanation of how the criteria will be immediately, permanently, and adequately mitigated such that funds are expended during the Contract Period. For example, if production or expenditures appear insufficient to complete the Contract timely, the explanation would need to address how production or expenditures will be increased in the short- and long-term to restore projected full and timely execution of the contract.
 - (3) If applicable because of failure to produce Unit Production or Expenditure targets under the existing Production Schedule, a detailed narrative of how the Production Schedule will be adjusted,

going forward, to assure achievement of sufficient, achievable Unit Production and Expenditures to ensure timely and compliant full utilization of all funds.

(4) An explanation of how the other criteria under this section will be mitigated. For example, if Unit Production criteria for a time period were not met, then the explanation will need to include how the other criteria will not be triggered.

(5) If relating to a Unit Production or Expenditure criteria, a description of activities currently being undertaken including an accurate description of the number of units in progress, broken down by number of units in each of these categories: units that have been qualified, audited, assessed, contracted, inspected, and invoiced and as reflected in an updated Production Schedule.

(6) Provide any request for a reduction in Contracted Funds, reasons for the request, desired Contracted Funds and revised Production Schedule reflecting the reduced Contracted Funds.

(e) At any time after sending a Notification of Deobligation, the Department or a third-party assigned by the Department may monitor, conduct onsite visits or other assessments or engage in any other oversight of the Subrecipient that is determined appropriate by the Department under the facts and circumstances.

(f) The Department or a third-party assigned by the Department will review the Mitigation Action Plan, and where applicable, assess the Subrecipient's ability to meet the revised Production Schedule or remedy other Concern.

(g) After the Department's receipt of the Mitigation Action Plan, the Department will provide the Subrecipient a written Corrective Action Notice which may include one or more of the criteria identified in this section (relating to deobligation and other mitigating actions) or other acceptable solutions or remedies.

(h) The Subrecipient has seven (7) calendar days from the date of the Corrective Action Notice to appeal the Corrective Action Notice to the Executive Director. Appeals may include:

(1) Request to retain for the full Fund Award if Partial Deobligation was indicated;

(2) Request for only partial Deobligation of the full Contracted Fund if full Deobligation was indicated in the Corrective Action Notice;

(3) Request for other lawful action consistent with the timely and full completion of the contract and Production Schedule for all Contracted Funds.

(i) In the event that an appeal is submitted to the Executive Director, the Executive Director may grant extensions or forbearance of targets included in the Production Schedule, continued operation of a Contract, authorize Deobligation, or take other lawful action that is designed to ensure the timely and full completion of the Contract for all Contracted Funds.

(j) In the event the Executive Director denies an appeal, the Subrecipient will have the opportunity to have their appeal presented at the next meeting of the Department's governing board for which the matter may be posted in accordance with law and submitted for final determination by the Board.

(k) In the event an appeal is not submitted within seven (7) calendar days from the date of the Corrective Action Notice, the Corrective Action Notice will automatically become final without need of any further action or notice by the Department, and the Department will amend/terminate the contract with the Subrecipient to effectuate the Corrective Action Notice.

(l) The criteria noted in this subsection will prompt the Deobligation process under this rule. If the criteria are met, then notification and ensuing processes discussed elsewhere in this subchapter will apply.

(1) Subrecipient fails to provide the Department with a Production Schedule for their current Contract within 30 calendar days of receipt of the draft Contract. The Production Schedule must be signed by the Subrecipient Executive Director/Chief Executive Officer and approved by the Department in writing;

(2) By the third program reporting deadline, Subrecipient must report at least one unit weatherized for each Weatherization contract;

(3) By the fifth program reporting deadline, less than 25% of total expected unit production has occurred based on the Production Schedule, or less than 20% of total Awarded Funds have been expended;

(4) By the seventh program reporting deadline, less than 50% of total expected unit production has occurred based on the Production Schedule, or less than 50% of total Awarded Funds have been expended;

(5) The Subrecipient fails to submit a required monthly report explaining any variances between the Production Schedule and actual results on Production Schedule criteria;

(m) Notification of deobligation will not be required to be sent to a Subrecipient, and a Mitigation Action Plan will not be required to be provided to the Department, if any one or more of the following are satisfied:

(1) The total cumulative unit production for the Subrecipient, based on the monthly report as reported in the Community Affairs contract system, is at least 75% of the total cumulative number of units to be completed as of the end of the month according to the Subrecipient's forecast unit production within the Production Schedule for the time period applicable (i.e. cumulative through the month for which reporting has been made).

(2) The total cumulative expenditures for the Subrecipient, based on the monthly report as reported in the Community Affairs contract system, is at least 75% of the total cumulative estimated expenditures to be expended as of the end of the month according to the Subrecipient's forecast expenditures within the Production Schedule for the time period applicable (i.e., cumulative through the month for which reporting has been made).

(3) The Subrecipient's monthly reports as reported in the Community Affairs contract system, for the prior two months, as required under the Contract, reflects unit production that is 80% or more of the expected unit production amount to be completed as of the end of the month according to the Subrecipient's forecast unit production within the Production Schedule.

(n) A Subrecipient that has funds deobligated under this section but that fully expends the reduced amount of its Contract, will have access to the full amount of the following Program Year WAP allocation. A Subrecipient which has had funds Deobligated under this section that fails to fully expend the reduced amount of its Contract will automatically have its following Program Year WAP allocation Deobligated by the lesser of 24.99% or the proportional amount that had been Deobligated in the prior year.

§6.406. Subrecipient Requirements for Establishing Priority for Eligible Households and Customer Eligibility Criteria.

(a) Subrecipient shall establish eligibility and priority criteria to increase the energy efficiency of dwellings owned or occupied by Low Income persons who are particularly vulnerable such as the Elderly, Persons with Disabilities, Families with Young Children, Households with High Energy Burden, and Households with High Energy Consumption.

(b) Subrecipient shall follow the Department rules and established state and federal guidelines for determining eligibility for Multifamily Dwelling Units as referenced in §6.414 of this Chapter (relating to Eligibility for Multifamily Dwelling Units).

(c) Subrecipient shall determine applicant income eligibility in compliance with §6.4 of this Chapter (relating to Income Determination).

(d) Social Security numbers are not required for applicants.

(e) U.S. Citizen, U.S. National or Qualified Alien. Unqualified Aliens are not eligible to receive WAP benefits. Mixed Status Households shall not be denied WAP assistance based solely on the presence of a non-qualified member, except if the member is the sole member of the Household. A Subrecipient other than a Public Organization may utilize an application method of its choosing, and may opt to use the Systematic Alien Verification for Entitlements ("SAVE") program, but is not

required to do so. A Public Organization must verify U.S. Citizen, U.S. National, or Qualified Alien status using SAVE. Assistance shall be determined as follows:

(1) Count income for all Household members eighteen years of age and older, including Unqualified Aliens; and

(2) Adjust the Household size for determining eligibility and benefit assistance level to exclude all Unqualified Aliens.

(f) For purposes of determining Categorical Eligibility or Vulnerable Populations (e.g. priority status) the Household is not considered to satisfy the definition of having Categorical Eligibility or Vulnerable Population if the only individual(s) in the Household with Categorical Eligibility or Vulnerable Population status is an Unqualified Alien. For purposes of reporting, all individuals in the Household should be reported.

§6.407. Program Requirements.

(a) Each Dwelling Unit weatherized requires completion of a written whole house assessment. Subrecipient must perform the whole house assessment then let that assessment guide whether the Dwelling Unit is best served through DOE funds using the audit, through LIHEAP WAP funds using the priority list, or a combination of DOE and LIHEAP funds.

(b) Any Dwelling Unit that is weatherized using DOE funds must use the audit as a guide for installed measures. A Subrecipient combining DOE funds with LIHEAP WAP funds may not mix the use of the audit and the priority list.

(c) Any Dwelling Unit that is weatherized using LIHEAP only must be completed using the priority list as a guide for installed measures. Failure to complete a written whole house assessment as indicated in §6.416 of this Subchapter prior to Weatherization may lead to unit failure during quality control inspection.

(d) If a Subrecipient's Weatherization work does not consistently meet DOE Standard Work Specifications Weatherization standards, the Department may proceed with the removal of the programs from the Subrecipient.

§6.412. Mold-like Substances.

(a) If the Subrecipient's energy auditor discovers the presence of mold-like substances that the Weatherization Subcontractor cannot adequately address, then the Dwelling Unit shall be referred to the Texas Department of State Health Services or its successor agency.

(b) The Subrecipient shall provide the applicant written notification that their home cannot, at this time, be weatherized and why. Subrecipient shall also inform the applicant in writing that they should contact the Texas Department of Licensing and Regulation, or successor agency, to report the presence of mold-like substances. The applicant should be advised that when the issue is resolved they may reapply for Weatherization. Should the applicant reapply for Weatherization, the Subrecipient must obtain written documentation of resolution of the issue from the applicant prior to proceeding with any Weatherization work.

(c) If the energy auditor determines that the mold-like substance is treatable and covers less than the 25 contiguous square feet limit allowed to be addressed by the Texas Department of State Health Services' guidelines, the Subrecipient shall notify the applicant of the existence of the mold-like substance and potential health hazards, the proposed action to eliminate the mold-like substance, and that no guarantee is offered that the mold-like substance will be eliminated and that the mold-like substance may return. The auditor must obtain written approval from the applicant to proceed with the Weatherization work and maintain the documentation in the customer file.

(d) Subrecipient shall be responsible for providing mold training to their employees and Weatherization Subcontractors.

§6.414. Eligibility for Multifamily Dwelling Units.

(a) A Subrecipient may weatherize a building containing Rental Units if not less than 66% (50% for duplexes and four-unit buildings) of the Dwelling Units in the building are occupied by Low Income Households, or will become occupied by Low-income Households within 180 days under a Federal, State, or local government program for rehabilitating the building or making similar improvements to the building.

(b) In order to weatherize large multifamily buildings containing twenty-five or more Dwelling Units or those with shared central heating (e.g., boilers) and/or shared cooling plants (e.g., cooling towers that use water as the coolant) regardless of the number of Dwelling Units, Subrecipient shall submit in writing to the Department a request for approval along with evidence which clearly shows that an investment of funds would result in Significant Energy Savings because of upgrades to equipment, energy systems, common space, or the building shell. When necessary, the Department will seek approval from DOE. Approvals from the Department in writing must be received prior to the installation of any Weatherization measures in this type of structure.

(c) In order to weatherize Shelters, Subrecipient shall submit a written request for approval from the Department. Written approval from the Department must be received prior to the installation of any Weatherization measures.

(d) If roof repair is to be considered as part of repair cost under the Weatherization process, the expenses must be shared equally by all eligible Dwelling Units weatherized under the same roof. If multiple storied buildings are weatherized, eligible ground floor units must be allocated a portion of the roof cost as well as the eligible top floor units. All Weatherization measures installed in multifamily units must meet the standards set in 10 CFR §440.18(d)(9) and (15) and Appendix A- Standards for Weatherization Materials.

(e) WAP Subrecipients shall establish a multifamily master file for each multifamily project in addition to the individual unit requirements found in the record keeping requirement section of the contract. The multifamily master file must include, at a minimum, the forms listed in paragraphs (1) - (6) of this subsection: (Forms available on the Departments website.)

(1) Multifamily Pre-Project Checklist Form;

(2) Multifamily Post-Project Checklist Form;

(3) Permission to Perform an Assessment for Multifamily Project Form;

(4) Landlord Agreement Form;

(5) Landlord Financial Participation Form; and

(6) Significant Data Required in all Multifamily Projects.

(f) For DOE WAP, if a public housing, assisted multi-family or Low Income Housing Tax Credit (LIHTC) building is identified by the HUD and included on a list published by DOE, that building meets certain income eligibility and may meet other WAP requirements without the need for further evaluation or verification. A public housing, assisted housing, and LIHTC building that does not appear on the list using HUD records may still qualify for the WAP. Income eligibility can be made on an individual basis by the Subrecipient based on information supplied by property owners and the Households in accordance with subsection (a) of this section.

(g) For any Dwelling Unit that is weatherized using funding provided under DOE WAP, all Weatherization measures installed must be entered into an approved Energy Audit. Weatherization measures installed shall begin with repair items, then continue with those measures having the greatest SIR and proceed in descending order to the measures with the smallest SIR or until the maximum allowable per unit expenditures are achieved, and finishing with Health and Safety measures.

§6.415. Health and Safety and Unit Deferral.

(a) Health and Safety expenditures with DOE WAP may not exceed 15% of total expenditures for Materials, Labor, Program Support, and Health and Safety at the end of the Contract term. Health

and Safety expenditures with LIHEAP WAP may not exceed 20% of total expenditures for Materials, Labor, Program Support, and Health and Safety at the end of the Contract term.

(b) Subrecipient shall provide Weatherization services with the primary goal of energy efficiency. The Department considers establishing a healthy and safe home environment to be important to ensuring that energy savings result from Weatherization work.

(c) Subrecipient must test for high carbon monoxide ("CO") levels and bring CO levels to acceptable levels before Weatherization work can start. The Department has defined maximum acceptable CO readings in its Standard Work Specifications.

(d) A Dwelling Unit shall not be weatherized when there is a potentially harmful situation that may adversely affect the occupants or the Subrecipient's Weatherization crew and staff, or when a Dwelling Unit is found to have structural concerns that render the Dwelling Unit unable to benefit from Weatherization. The Subrecipient must declare their intent to defer Weatherization on an eligible unit on the assessment form. The assessment form should include the customer's name and address, dates of the assessment, and the date on which the customer was informed of the issue in writing. The written notice to the customer must include a clear description of the problem, conditions under which Weatherization could continue, the responsibility of all parties involved, and any rights or options the customer has. A copy of the notice must be given to the customer, and a signed copy placed in the customer application file. Only after the issue has been corrected to the satisfaction of the Subrecipient shall Weatherization work begin.

(e) If structural concerns or health and safety issues identified (which would be exacerbated by any Weatherization work performed) on an individual unit cannot be abated within program rules or within the allowable WAP limits, the Dwelling Unit exceeds the scope of this program.