Attached is a draft of the Community Affairs Proposed Rule Changes to 10 TAC §2.203 Termination and Reduction of Funding for CSBG Eligible Entities and §2.204 Contents of a Quality Improvement Plan Notice for Public Comment that was approved by the TDHCA Governing Board on July 25, 2019. This document, including its preambles, is scheduled to be published in the August 9, 2019, 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 August 9, 2019 Ends: 5 PM Austin local time on September 9, 2019

Comments received after 5 PM Austin local time on September 9, 2019 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.
Attachment 1: Preamble, including required analysis, for proposed repeal of 10 TAC §2.203, Termination and Reduction of Funding for CSBG Eligible Entities and 10 TAC §2.204, Contents of a Quality Improvement Plan

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of §2.203, Termination and Reduction of Funding for CSBG Eligible Entities and §2.204, Contents of a Quality Improvement Plan. The purpose of the proposed repeal is to eliminate outdated rules that warrant revision while adopting new updated rules under separate action.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV’T CODE §2001.0221.

Mr. Cervantes has determined that, for the first five years the proposed repeals would be in effect:
1. The proposed repeals do not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making a change to an existing activity, the administration of the Community Services Block Grant (CSBG).

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

3. The proposed repeals do not require additional future legislative appropriations.

4. The proposed repeals do not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The proposed repeals are not creating a new regulation, except that they are being replaced by new rules simultaneously to provide for revisions.

6. The proposed action will repeal existing regulations, but is associated with a simultaneous readoption making changes to an existing activity, of the rules governing the administration of the CSBG.

7. The proposed repeals will not increase nor decrease the number of individuals subject to the rule’s applicability.

8. The proposed repeals will not negatively nor positively affect this state’s economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV’T CODE §2006.002. The Department has evaluated the proposed repeals and determined that the proposed repeals will not create an economic effect on small or micro-businesses or rural communities.
1. The Department has evaluated the rules and determined that none of the adverse affect strategies outlined in Tex. Gov’t Code §2006.002(b) are applicable.

2. The rules relate to the Department’s implementation of the U.S. Department of Health and Human Services’ (HHS) Information Memorandum (IM) 116. Other than a CSBG Eligible Entity who may consider itself a small or micro-business, which would not generally be the case, no small or micro-businesses are subject to the rules. However, if a CSBG Eligible Entity considers itself a small or micro-business, the rule changes provide greater clarity.

3. The Department has determined that because the rules apply only to existing CSBG Eligible Entities, there will be no economic effect on small or micro-businesses or rural communities.

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

   d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV’T CODE §2001.024(a)(6).

      The Department has evaluated the rules as to their possible effects on local economies and has determined that for the first five years the proposed repeals will be in effect there would be no economic effect on local employment because the rules relate only to a process which has already been in effect for existing CSBG Eligible Entities; therefore, no local employment impact statement is required to be prepared for the rules.

      Tex. Gov’t Code §2001.022(a) states that this “impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule...” Considering that the rules pertain to all CSBG Eligible Entities throughout the state, regardless of location, there are no “probable” effects of the new rules on particular geographic regions.

   e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV’T CODE §2001.024(a)(5). David Cervantes, Acting Director, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of the repealed sections would be a more streamlined version of the HHS IM 116 implementation process. There will not be economic costs to individuals required to comply with the repealed sections.

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

   g. REQUEST FOR PUBLIC COMMENT. The public comment period will be held August 9, 2019, to September 9, 2019, to receive input on the proposed repealed sections. 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
STATUTORY AUTHORITY. The repeals are adopted pursuant to TEX. GOV'T CODE, §2306.053, which authorizes the Department to adopt rules. Except as described herein the repeals affect no other code, article, or statute.

10 TAC §2.203. Termination and Reduction of Funding for CSBG Eligible Entities.
10 TAC §2.204. Contents of a Quality Improvement Plan.
Attachment 2: Preamble for proposed new 10 TAC §2.203, Termination and Reduction of Funding for CSBG Eligible Entities and 10 TAC §2.204, Contents of a Quality Improvement Plan

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC §2.203, Termination and Reduction of Funding for CSBG Eligible Entities and new 10 TAC §2.204, Contents of a Quality Improvement Plan. The purpose of the proposed new sections are to update the rules to provide greater clarity to Community Services Block Grant (CSBG) Eligible Entities on how the Department will implement the U.S. Department of Health and Human Services’ (HHS) Information Memorandum (IM) 116 process.

Tex. Gov’t Code §2001.0045(b) does not apply to the rules proposed for action because it is exempt under §2001.0045(c)(4), which exempts rule changes necessary to receive a source of federal funds or to comply with federal law. This revision is being proposed to provide more clarity to the process that will be used to either terminate the status of a CSBG Eligible Entity or reduce a CSBG Eligible Entity’s funding. The Department does not anticipate any costs associated with this proposed rule action. Compliance with the proposed rules are intended to ensure adherence to federal statute while operating federal grants.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.


Mr. David Cervantes, Acting Director, has determined that, for the first five years the proposed new rules would be in effect:

1. The proposed rules do not create or eliminate a government program, but relate to the repeal, and simultaneous readoption making changes to an existing activity, the administration of the Community Services Block Grant (CSBG).

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

3. The proposed rule changes do not require additional future legislative appropriations.

4. The proposed rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The proposed rules are not creating new regulations, except that they are replacing rules being repealed simultaneously to provide for revisions.

6. The proposed rules will not expand, limit, or repeal existing regulations.
7. The proposed rules will not increase nor decrease the number of individuals subject to the rule’s applicability.

8. The proposed rules will not negatively nor positively affect the state’s economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV’T CODE §2006.002. The Department, in drafting the proposed rules, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov’t Code, §2306, Subchapter E.

1. The Department has evaluated the proposed rules and determined that none of the adverse effect strategies outlined in Tex. Gov’t Code §2006.002(b) are applicable.

2. The rules relate to the Department’s implementation of the U.S. Department of Health and Human Services’ (HHS) Information Memorandum (IM) 116. Other than a CSBG Eligible Entity who may consider itself a small or micro-business, which would not generally be the case, no small or micro-businesses are subject to the rules. However, if a CSBG Eligible Entity considers itself a small or micro-business, the rule changes provide greater clarity.

3. The Department has determined that because the rules apply only to existing CSBG Eligible Entities, there will be no economic effect on small or micro-businesses or rural communities.

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

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV’T CODE §2001.024(a)(6).

The Department has evaluated the rules as to their possible effect on local economies and has determined that for the first five years the proposed rules will be in effect there would be no economic effect on local employment because the rules relate only to a process which has already been in effect for existing CSBG Eligible Entities; therefore, no local employment impact statement are required to be prepared for the rules.

Tex. Gov’t Code §2001.022(a) states that this “impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…” Considering that the rules pertain to all CSBG Eligible Entities throughout the state, regardless of location, there are no “probable” effects of the new rules on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV’T CODE §2001.024(a)(5). Mr. Cervantes has also 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 would be a more streamlined version of the HHS IM 116 implementation process. There will not be economic costs to individuals required to comply with the new sections because the processes described by the rules have already been in place through the rules found at the sections being repealed.
f. FISCAL NOTE REQUIRED BY TEX. GOV’T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections do not have any foreseeable implications related to costs or revenues of the state or local governments.

g. REQUEST FOR PUBLIC COMMENT. The public comment period will be held August 9, 2019, to September 9, 2019, to receive input on the proposed new sections. 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 p.m., Austin local time, September 9, 2019.

STATUTORY AUTHORITY. The new sections are proposed pursuant to TEX. GOV’T CODE, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

[Note that these rules are shown in blackline form below for the purpose of the posting of Board materials but will be shown as clean proposed new language when submitted to the Texas Register.]

10 TAC §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) Capitalized words used herein have the meaning assigned in, Chapter 1 of this Title (relating to Administration), Chapter 2 of this Title (relating to Enforcement), Chapter 6 of this Title (relating to Community Affairs Programs), or assigned by federal or state law.

(c) A Deficiency Deficiencies may be identified through failure to resolve issues identified in an onsite monitoring review, a review of the Subrecipient Eligible Entity'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).

(d) If a Deficiency is identified, the Eligible Entity will be notified in writing. The Department will also review the training and technical assistance that has been provided to the Eligible Entity and determine if further training and technical assistance germane to the Deficiency 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 Deficiency 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.

(e) If an Eligible Entity does not respond to the written notification, does not resolve the Deficiency, or does not propose a reasonable corrective action plan, the uncorrected Deficiency or Deficiencies identified by the Department will be considered a final decision that the Eligible Entity has failed to comply with requirements in a review pursuant to the CSBG Act, and can be considered 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 to the Eligible Entity.
(fe) If the Department determines that the development and implementation of a Quality Improvement Plan (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 25 calendar days from the date of the final determination letter to submit a proposed QIP compliant with §2.204 of this Subchapter, indicating that steps are under way and identifying dates for correction. In general, the Deficiency should be cured within 60 calendar days from the date of the final determination letter. If a Deficiency will require more than 60 calendar days, the Eligible Entity must explain why and propose a later date for correction, which the Department may elect to accept or deny. In the event a Deficiency cannot be corrected due to it being a singular past occurrence, the Eligible Entity must demonstrate to the Department that the Deficiency’s cause has been identified and properly addressed, so that the Deficiency will not reoccur. Within 25 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.

(gf) Within 25 calendar days from the date the proposed QIP is received, the Department will either approve it or specify the reasons it cannot be approved. The CSBG Act requires that a QIP be implemented not later than 60 calendar days following the notification in the final determination letter. While the Department is reviewing the submitted QIP, the Department will consider the corrective action timeline proposed by the Eligible Entity and may accept that timeline, or recommend an alternate deadline, based on the nature of the Deficiency, and the nature of the correction. The Eligible Entity’s inability to resolve the Deficiency within a reasonable timeframe may preclude 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.

(hg) The Department-approved QIP must be implemented as soon as possible and resolution of the Deficiency must be fully met within the specified and approved timelines agreed to by the Department.

(ii) 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, the QIP has not been met within the specified and approved timeline agreed to within the QIP, or the processes described in subsection (df) of this section have failed to resolve the Deficiency, the Department will contact the Executive Director of the Eligible Entity and all known members of the Subrecipient’s Eligible Entity’s Board, to notify them that staff will be and requesting 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”). Such notification will be made at least 30 days prior to the date of the meeting of the Department’s Governing Board. 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 or reduction of funding will be heard appear at the next on the agenda at a subsequent regularly scheduled meeting of the Department’s Governing Board. An entity Eligible 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.
(jh) 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 Eligible Entity. 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.

(ki) 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 Eligible Entity 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 Eligible Entity 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.

(jj) 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.

10 TAC §2.204. Contents of a Quality Improvement Plan.

(a) Capitalized words used herein have the meaning assigned in, Chapter 1 of this Title (relating to Administration), Chapter 2 of this Title (relating to Enforcement), Chapter 6 of this Title (relating to Community Affairs Programs), or assigned by federal or state law.

(b) If a QIP is required of a Subrecipient Eligible Entity under §2.203(fe) of this title, it must comply with the guidance in this section. While each QIP developed by a Subrecipient Eligible Entity is unique and must be responsive to the specific Deficiency identified, all of the items below in 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.

(c) The QIP must set forth an aggressive but achievable timeline for resolution of each Deficiency. In general, issues should be fully resolved within 60 calendar days from the final determination letter issued to the Eligible Entity as referenced in that plans for implementation of the planned remedies to be actively underway not later than the sixty-first day after the day on which the Department notified the Subrecipient of a final determination consistent with §2.203(ec) of this title. 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.

(d) At minimum, the QIP must identify 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 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:
(A1) Specific actions that will be taken to address each Deficiency; Who within the Subrecipient's staff will do what specific steps/tasks, when will they do it, and what resources will they need?

(B2) The date by when each Deficiency will be corrected; and

(C) If applicable, an explanation for any Deficiency that cannot be corrected within 60 calendar days. 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?