

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
TDHCA Governing Board Approved Draft of
10 TAC Chapter 7, Subchapter A, General Policies and Procedures;
10 TAC Chapter 7, Subchapter B, Homeless Housing Services Program; and
10 TAC Chapter 7, Subchapter C, Emergency Solutions Grants Rule

Disclaimer

Attached is a draft of 10 TAC Chapter 7, Subchapter A, General Policies and Procedures, 10 TAC Chapter 7, Subchapter B, Homeless Housing Services Program, and sections §7.34, Continuing Awards, §7.37, Application Review and Administrative Deficiency Process, and §7.41, Contract Term, Expenditure Benchmark, Return of Funds, and Performance Targets that was approved by the TDHCA Governing Board on October 26, 2023. This action includes repeal of the current sections of the rule, and adoption of new sections of the rule in its place. However, the document attached reflects all changes proposed in tracked changes to facilitate review. This document, including its preamble, is scheduled to be published in the November 10, 2023 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: 8:00 a.m. Austin local time on November 10, 2023
Ends: 5:00 p.m. Austin local time on December 11, 2023

Comments received after 5:00 p.m. Austin local time on December 11, 2023 will not be accepted.

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

Texas Department of Housing and Community Affairs
Attn: Rosy Falcon
Homeless Programs Manager
P.O. Box 13941
Austin, Texas 78711-3941
Email: rosy.falcon@tdhca.state.tx.us

Written comments may be submitted in hard copy 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
Mailing Address: PO Box 13941, Austin, TX 78711-3941
Main Number: 512-475-3800 Toll Free: 1-800-525-0657
Email: info@tdhca.state.tx.us Web: www.tdhca.state.tx.us

DEPARTAMENTO DE VIVIENDA Y ASUNTOS COMUNITARIOS DE TEXAS
Borrador aprobado por la Junta Directiva del TDHCA del
Subcapítulo A [“Políticas y procedimientos generales”] del capítulo 7 del título 10 del Código Administrativo de
Texas (TAC);
Subcapítulo B [“Programa de servicios de vivienda para personas sin hogar”] del capítulo 7 del título 10 del TAC;
Subcapítulo C [“Regla de subvenciones para soluciones de emergencia”] del capítulo 7 del título 10 del TAC

Descargo de responsabilidad

Se adjunta un borrador de la propuesta para el subcapítulo A [“Políticas y procedimientos generales”] del capítulo 7 del título 10 del Código Administrativo de Texas (TAC), subcapítulo B [“Programa de servicios de vivienda para personas sin hogar”] del capítulo 7 del título 10 del TAC, subcapítulo C [“Regla de subvenciones para soluciones de emergencia”] del capítulo 7 del título 10 del TAC, y del subcapítulo C [“Regla de subvenciones para soluciones de emergencia”] del capítulo 7 del título 10 del TAC que consta de la sección (§) §7.34 [“Concesión Continua”] y la sección §7.37 [“Proceso de revisión de solicitudes y deficiencias administrativas”] y la sección §7.41 [“Plazo del contrato, punto de referencia de gastos, devolución de fondos y objetivos de rendimiento”]. Se aprobó por parte de la Junta Directiva del TDHCA el 26 de Octubre de 2023. Esta acción incluye la derogación de las secciones actuales de la regla y la adopción de nuevas secciones de la regla en su lugar. Sin embargo, el documento adjunto refleja todos los cambios propuestos en los cambios rastreados para facilitar la revisión. Se espera que este documento, incluyendo su preámbulo, se publique en la edición del Texas Register del 10 de Noviembre de 2023. Esa versión publicada constituirá la versión oficial para fines de comentarios del público. La versión contenida en este documento es sólo informativa y no debe utilizarse como base para comentarios públicos.

Comentarios del público

Periodo de comentarios del público: **Inicio: 8:00 a.m. hora local de Austin, del 10 de Noviembre de 2023**
Finalización: 5:00 p.m. hora local de Austin, del 11 de Diciembre de 2023

No se aceptarán los comentarios que se reciban después de las 5:00 p. m., hora local de Austin, del 11 de Diciembre de 2023.

Los comentarios por escrito pueden presentarse en formatos impreso o electrónico a la siguiente dirección:

Texas Department of Housing and Community Affairs
Attn: Rosy Falcon
Gerente de Programas para Personas sin Hogar
P.O. Box 13941
Austin, Texas 78711-3941
Email: rosy.falcon@tdhca.state.tx.us

Los comentarios por escrito pueden presentarse en formato impreso o por correo electrónico dentro del período designado de comentarios del público. Se anima a quienes formulen comentarios públicos a que hagan referencia al borrador de la norma, política o plan específico relacionado con su comentario, así como una referencia o cita específica asociada a cada comentario.

Tenga en cuenta que todos los comentarios enviados al TDHCA se considerarán información pública.

DEPARTAMENTO DE VIVIENDA Y ASUNTOS COMUNITARIOS DE TEXAS
Dirección: 221 East 11th Street, Austin, TX 78701
Dirección de correspondencia: PO Box 13941, Austin, TX 78711-3941
Número principal: 512-475-3800 Número gratuito: 1-800-525-0657
Correo electrónico: info@tdhca.state.tx.us Web: www.tdhca.state.tx.us

Attachment A: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 7, Subchapter A, General Policies and Procedures.

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

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

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

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

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

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

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

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

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

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

- §7.1 Purpose and Goals
- §7.2 Definitions
- §7.3 HHSP and EH Construction Activities
- §7.4 Subrecipient Contract
- §7.5 Subrecipient Reporting
- §7.6 Subrecipient Data Collection
- §7.7 Subrecipient Contact Information
- §7.8 Records Retention
- §7.9 Contract Termination and Deobligation
- §7.10 Inclusive Marketing
- §7.11 Compliance Monitoring
- §7.12 Waivers

Attachment B: Preamble, including required analysis, proposing new 10 TAC Chapter 7, Subchapter A, General Policies and Procedures.

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

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

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

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

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

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

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

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

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

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

- §7.1 Purpose and Goals
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§7.1 Purpose and Goals

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

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

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

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

§7.2 Definitions

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

(1) Affiliate--An entity related to an Applicant that controls by contract or by operation of law the Applicant or has the power to control the Applicant or a third entity that controls, or has the power to control both the Applicant and the entity. Examples include but are not limited to entities submitting under a common application, or instrumentalities of a unit of government. This term also includes any entity that is required to be reported as a component entity under Generally Accepted Accounting Standards, is required to be part of the same Single Audit as the Applicant, is reported on the same IRS Form 990, or is using the same federally approved indirect cost rate.

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

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

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

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

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

(7) Continuum of Care (CoC)--The group composed of representatives of relevant organizations, which generally includes nonprofit homeless providers; victim service providers; faith-based organizations; governments; businesses; advocates; public housing agencies; school districts; social service providers;

mental health agencies; hospitals; universities; affordable housing developers; law enforcement; organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons that are organized to plan for and provide, as necessary, a system of outreach, engagement, and assessment; emergency shelter; rapid re-housing; transitional housing; permanent housing; and prevention strategies to address the various needs of homeless persons and persons at risk of homelessness for a specific geographic area. HUD funds a CoC Program designed to assist sheltered and unsheltered homeless people by providing the housing and/or services needed to help individuals move into transitional and permanent housing, with the goal of long-term stability.

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

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

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

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

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

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

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

(15) Elderly Person--

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

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

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

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

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

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

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

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

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

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

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

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

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

(27) Homeless or Homeless Individual--An individual as defined by 42 U.S.C. §§11371 - 11378 and 24 CFR §576.2. For state-funded programs, a homeless individual may have right of occupancy because of a signed lease, but still qualify as homeless if his or her primary nighttime residence is an emergency shelter or place not meant for human habitation.

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

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

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

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

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

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

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

- (35) Match--A contribution to the ESG Program from a non-ESG source governed by 24 CFR §576.201.
- (36) Monthly Expenditure Report--Information on Expenditures from Subrecipient to the Department.
- (37) Monthly Performance Report--Information on Program Participants and program activities from Subrecipient to the Department.
- (38) Notice of Funding Availability (NOFA)--Notice of Funding Availability or announcement of funding published by the Department notifying the public of available funds for a Program with certain requirements.
- (39) Outcome--A benefit or change achieved by a Program Participant served by the Department's Homeless Programs.
- (40) Performance Target--Number of persons/Households to be served, outcomes to be reached, or construction/rehabilitation/conversion to be performed that the Subrecipient commits to accomplish during the Contract Term.
- (41) Private Nonprofit Organization--An organization described in §501(c) of the Internal Revenue Code (the "Code") of 1986 and which is exempt from taxation under subtitle A of the Code, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance. This does not include a governmental organization such as a public housing authority or a housing finance agency.
- (42) Project--A group of eligible activities identified in an Application or Contract to the Department, and designated in HMIS or HMIS-comparable database.
- (43) Program Participant--An individual or Household that is assisted by a Homeless Program.
- (44) Program Year--Contracts with funds from a specific federal allocation (ESG and ESG CARES) or year of a state biennium (HHSP).
- (45) Recertification--Required review of a Program Participant's eligibility determination for continuation of assistance.
- (46) Service Area--The city(ies), county(ies) and/or place(s) identified in the Application (as applicable), and Contract that the Subrecipient will serve.
- (47) State--The State of Texas or the Department, as indicated by context.
- (48) Subcontract--A contract made between the Subrecipient and a purveyor of goods or services through a procurement relationship.
- (49) Subcontractor--A person or an organization with whom the Subrecipient contracts to provide services.
- (50) Subgrant--An award of financial assistance in the form of money made under a grant by a Subrecipient to an eligible Subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases.
- (51) Subgrantee--The legal entity to which a Subgrant is awarded and which is accountable to the Subrecipient for the use of the funds provided.
- (52) Subrecipient--An organization that receives federal or states funds passed through the Department to operate ESG and/or state funded Homeless Programs.
- (53) Texas Administrative Code (TAC)--A compilation of all state agency rules in Texas.

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

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

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

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

§7.3 HHSP and EH Construction Activities

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

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

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

(d) A Subrecipient must request a final construction inspection within 30 calendar days of construction completion. The inspection will cover the Shelter and Housing Standards, [Uniform Physical Construction Standards](#)~~National Standards for the Physical Inspection of Real Estate, 2012~~~~200~~ International Residential Code (or municipality adopted later version), Minimum Energy Efficiency Requirements for Single Family Construction Activities, and the Accessibility Standards in Chapter 1, Subchapter B, as applicable for the Homeless Program and activity.

§7.4 Subrecipient Contract

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

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

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

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

(e) Amendments and Extensions to Contracts.

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

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

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

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

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

(E) the Contract has expired; or

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

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

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

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

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

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

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

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

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

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

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

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

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

§7.5 Subrecipient Reporting

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

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

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

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

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

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

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

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

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

(A) HMIS exports as required per HUD; and

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

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

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

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

§7.6 Subrecipient Data Collection

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

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

§7.7 Subrecipient Contact Information

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

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

(1) Board Member's name;

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

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

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

(5) Member's direct email address.

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

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

(e) The Department will rely solely on the contact information supplied by the Subrecipient as indicated in the Department's web-based Contract System. It is the Subrecipient's sole responsibility to ensure such

information is current, accurate, and complete. Correspondence sent to the email or physical address shown in the Contract System will be deemed delivered to the Subrecipient. The Department is not required to send a paper copy and if it does so it does as a voluntary and non-precedential courtesy only.

§7.8 Records Retention

- (a) Records must be kept in accordance with §1.409 of this Title (relating to Records Retention).
- (b) Record retention for construction/rehabilitation/conversion of emergency shelters or Dwelling Units must be retained until the expiration of the LURA.
- (c) For ESG, retention for records relevant to the ESG Contract (including but not limited to shelter and habitability inspections) shall be kept in accordance with 24 CFR §576.500 and TXGMS, as defined at §1.401 of this title (relating to Definitions), as applicable except if any litigation, claim, negotiation, audit, monitoring, inspection or other action has started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later. The record retention period does not begin until one year after the expiration of the Contract.
- (d) For state funds, retention for records relevant to the Contract (including but not limited to shelter and habitability inspections) shall be kept in accordance with UGMS or TXGMS, as applicable, and retained by the Subrecipient for a period of three years from the expiration of the Contract except if any litigation, claim, negotiation, audit, monitoring, inspection or other action has started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

§7.9 Contract Termination and Deobligation

- (a) When a Contract is terminated or voluntarily relinquished, the procedures described in this subsection will be implemented.
- (b) The terminology of a "terminated" Subrecipient is intended to include the Subrecipient that is voluntarily or involuntarily terminating their Contract, but does not include Contracts that expire without being sent a termination letter.
 - (1) The Department will issue a termination letter to the Subrecipient no less than 30 calendar days prior to terminating the Contract. The Department may determine to take any of the following actions: suspend funds immediately or allow a temporary transfer to another Subrecipient; or provide instructions to the Subrecipient to prepare a proposed budget and written plan of action that supports the closeout of the Contract. The plan must identify the name and current titles of staff that will perform the closeout and an estimated dollar amount to be incurred. The plan must identify the CPA or firm which will perform the Single Audit. The Department will issue an official termination date to allow all parties to calculate deadlines which are based on such date.
 - (2) No later than 30 calendar days after the Contract is terminated, the Subrecipient will take a physical inventory of Program Participant files, including case management files.
 - (3) The terminated Subrecipient will have 30 calendar days from the date of the physical inventory to make available to the Department all Program Participant files. Current and active case management files also must be inventoried.
 - (4) The terminated Subrecipient will prepare and submit no later than 30 calendar days from the date the Department retrieves the files, a final report containing a full accounting of all funds expended under the Contract.

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

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

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

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

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

§7.10 Inclusive Marketing

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

(b) Participant selection criteria:

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

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

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

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

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

(C) Inform Program Participants in any denial, non-renewal or termination notice, information on rights they may have under VAWA (for ESG only, in accordance with the Violence Against Women

Reauthorization Act of 20~~22~~²¹ (VAWA) protections). Subrecipient may not deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking.

(c) Other policies and procedures:

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

(2) Language Access Plan. A Subrecipient that interacts with Program Participants must create a Language Access Plan for Limited English Proficiency (LEP) Requirements. Consistent with Title VI and Executive Order 13166, Subrecipient is also required to take reasonable steps to ensure meaningful access to programs and activities for LEP persons.

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

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

§7.11 Compliance Monitoring

(a) Purpose and Overview

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

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

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

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

(1) In general, the Subrecipient or Subgrantee will be scheduled for monitoring based on state or federal monitoring requirements and/or a risk assessment. Factors to be included in the risk assessment include

but are not limited to: the number of Contracts administered by the Subrecipient or Subgrantee, the amount of funds awarded and expended, the length of time since the last monitoring, findings identified during previous monitoring, issues identified through the submission or lack of submission of a Single Audit, complaints received by the Department, and reports of fraud, waste and/or abuse. The risk assessment will also be used to determine which Subrecipients or Subgrantees will have an onsite review and which may have a desk review.

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

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

- (A) Minutes of the governing board and any committees thereof, together with all supporting materials;
- (B) Copies of all internal operating procedures or other documents governing the Subrecipient's operations;
- (C) The Subrecipient's Board approved operating budget and reports on execution of that budget;
- (D) The Subrecipient's strategic plan or comparable document if applicable and any reports on the achievement of that plan;
- (E) Correspondence to or from any independent auditor;
- (F) Contracts with any third parties for goods or services and files documenting compliance with any applicable procurement and property disposition requirements;
- (G) All general ledgers and other records of financial operations (including copies of checks and other supporting documents);
- (H) Applicable Program Participant files with all required documentation;
- (I) Applicable human resources records;
- (J) Monitoring reports from other funding entities;
- (K) Program Participant files regarding complaints, appeals and termination of services; and
- (L) Documentation to substantiate compliance with any other applicable state or federal requirements including, but not limited to, the Davis-Bacon Act, HUD requirements for environmental clearance, Lead Based Paint, the Personal Responsibility and Work Opportunity Act, HUD LEP requirements, and requirements imposed by Section 3 of the Housing and Urban Development Act of 1968.

(c) Post Monitoring Procedures.

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

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

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

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

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

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

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

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

§7.12 Waivers

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

(b) A provision of a closed NOFA may not be waived except in the case of a disaster as described in §1.5 of this title (related to Waiver Applicability in the Case of Federally Declared Disasters) or a change in

federal law that makes adherence to the requirements of the NOFA impossible or impracticable as determined by the Board.

Attachment C: Preamble, including required analysis, and proposed repeal of 10 TAC Chapter 7, Subchapter B, Homeless Housing and Services Program.

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

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

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

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

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

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

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

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

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

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

- §7.21 Purpose and Use of Funds
- §7.22 HHSP Subrecipient Application and Selection
- §7.23 Allocation of Funds and Formula
- §7.24 General HHSP Requirements
- §7.25 Program Income
- §7.26 Conflict of Interest
- §7.27 Eligible Costs
- §7.28 Program Participant Eligibility and Program Participant Files
- §7.29 Shelter and Housing Standards

Attachment D: Preamble, including required analysis, and proposed new 10 TAC Chapter 7, Subchapter B, Homeless Housing and Services Program.

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 7, Subchapter A, Homeless Housing and Services Program. The purpose of the proposed action is to repeal the existing rule and simultaneously propose a new rule to conform to State and Federal regulatory updates.

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

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

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

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

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

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

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

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

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

- §7.21 Purpose and Use of Funds
- §7.22 HHSP Subrecipient Application and Selection
- §7.23 Allocation of Funds and Formula
- §7.24 General HHSP Requirements
- §7.25 Program Income
- §7.26 Conflict of Interest
- §7.27 Eligible Costs
- §7.28 Program Participant Eligibility and Program Participant Files
- §7.29 Shelter and Housing Standards

§7.21 Purpose and Use of Funds

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

(b) HHSP eligible activities are:

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

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

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

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

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

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

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

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

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

§7.22 HHSP Subrecipient Application and Selection

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

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

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

(2) The municipality may designate the other entity for one or two years, as desired by the municipality. If designated for two years, the requirement that the resolution or council action be submitted within 60

calendar days of notification of allocated amount will be considered met for the second year since the council action was approved.

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

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

(2) proposed budget;

(3) proposed performance targets; and

(4) activity descriptions.

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

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

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

§7.23 Allocation of Funds and Formula

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

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

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

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

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

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

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

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

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

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

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

(1) thirty percent weight for population;

(2) thirty percent weight for poverty populations;

(3) twenty percent weight for the Homeless population;

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

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

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

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

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

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

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

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

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

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

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

(1) thirty percent weight for population;

(2) thirty percent weight for poverty populations;

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

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

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

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

§7.24 General HHSP Requirements

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

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

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

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

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

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

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

§7.25 Program Income

(a) Program income includes but is not limited to: income from fees for services performed, the use or rental of real or personal property acquired under this award, the sale of commodities or items fabricated under this award, and from payments of principal and interest on loans made with this award, where authorized. Program income does not include interest on federal grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them. Interest earned in excess of \$250 on grants or loans from purely state sources is considered program income.

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

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

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

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

§7.26 Conflict of Interest

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

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

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

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

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

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

§7.27 Eligible Costs

- (a) Administrative costs include employee compensation and related costs for staff performance of management, reporting, and accounting of HHSP activities, including office space. Costs associated with the purchase or licensing of HMIS or an HMIS-comparable databases are eligible administrative costs.
- (b) Case management costs include staff salaries related to assessing, arranging, coordinating and monitoring the delivery of services related to finding or maintaining housing. Costs include, but are not limited to, Household eligibility determination, counseling, coordinating services and obtaining mainstream benefits for Program Participants, monitoring Program Participant progress, providing safety planning for persons under VAWA, developing a housing and service plan, and entry into HMIS or an HMIS-comparable database.
- (c) Construction rehabilitation, and conversion costs include, but are not limited to, costs for:
- (1) Pre-Development, such as environmental review, site-control, survey, appraisal, architectural fees, and legal fees.
 - (2) Development, such as:
 - (A) land acquisition;
 - (B) site work (including infrastructure for service utilities, walkways, curbs, gutters);
 - (C) lot clearance and site preparation;
 - (D) construction to meet uniform building codes, international energy conservation code, or local rehabilitation standards;
 - (E) accessibility features to site and building;
 - (F) essential improvements and energy-related improvements;
 - (G) abatement of lead-based paint hazards;
 - (H) barrier removal/construction for accessibility features for persons with disabilities; and
 - (I) non-luxury general property improvements.
 - (d) Essential services costs are associated with finding and maintaining stable housing, and include, but are not limited to, costs for:
 - (1) out-patient medical services;
 - (2) child care;
 - (3) education services;
 - (4) legal services;
 - (5) mental health services;
 - (6) local transportation assistance;
 - (7) drug and alcohol rehabilitation; and
 - (8) job training.
 - (e) Homelessness prevention and homelessness assistance costs are associated with housing relocation, stabilization and assistance costs. Staff time entering information into HMIS or HMIS-comparable database related to homelessness prevention and homeless assistance is also an eligible cost. Homeless

prevention and homelessness assistance costs include, but are not limited to, hotel or motel costs; transitional housing; rental and utility assistance; rental arrears; utility reconnection fees; reasonable and customary security and utility deposits; and moving costs.

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

§7.28 Program Participant Eligibility and Program Participant Files

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

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

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

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

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

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

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

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

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

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

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

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

- (4) documentation of annual recertification, as applicable, including income eligibility determination and verification that the Program Participant lacks sufficient resources and supports networks necessary to retain housing without assistance;
- (5) documentation of determination of ineligibility for assistance when assistance is denied. Documentation must include the reason for the determination of ineligibility;
- (6) copies of all leases and rental assistance agreements for the provision of rental assistance, documentation of payments made to owners for the provision of rental assistance, and supporting documentation for these payments, including dates of occupancy by Program Participants;
- (7) documentation of the monthly allowance for utilities used to determine compliance with the rent restriction; and
- (8) documentation that the Dwelling Unit for Program Participants receiving rental assistance complies with the Housing Standards in this Chapter, relating to Homelessness Programs.

§7.29 Shelter and Housing Standards

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

- (1) Structure and materials. The shelter building must be structurally sound to protect residents from the elements and not pose any threat to health and safety of the residents. Any renovation (including major rehabilitation and conversion) carried out with HHSP assistance must use Energy Star and WaterSense or equivalent products and appliances.
- (2) Access. The shelter must be accessible in accordance with Section 504 of the Rehabilitation Act (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8; the Fair Housing Act (42 U.S.C. 3601 et seq.) as outlined in 10 TAC Chapter 1, Subchapter B, and implementing regulations at 24 CFR Part 100; and Title II of the Americans with Disabilities Act (42 U.S.C. 12131 et seq.) and 28 CFR Part 35; where applicable.
- (3) Space and security. Except where the shelter is intended for day use only, the shelter must provide each program participant in the shelter with an acceptable place to sleep and adequate space and security for themselves and their belongings.
- (4) Interior air quality. Each room or space within the shelter must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of residents.
- (5) Water supply. The shelter's water supply must be free of contamination.
- (6) Sanitary facilities. Each program participant in the shelter must have access to sanitary facilities that are in proper operating condition and are adequate for personal cleanliness and the disposal of human waste.
- (7) Thermal environment. The shelter must have any necessary heating/cooling facilities in proper operating condition.
- (8) Illumination and electricity. The shelter must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the shelter.

- (9) Food preparation. Food preparation areas, if any, must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.
- (10) Sanitary conditions. The shelter must be maintained in a sanitary condition.
- (11) Fire safety. There must be at least one working smoke detector in each occupied unit of the shelter. Where possible, smoke detectors must be located near sleeping areas. The fire alarm system must be designed for hearing-impaired residents. All public areas of the shelter must have at least one working smoke detector. There must also be a second means of exiting the building in the event of fire or other emergency.
- (b) Minimum standards for housing for occupancy. Housing assisted under HHSP must meet the minimum habitability standards within 30 calendar days after the term of assistance begins. HHSP funds may assist a Program Participant in returning the Dwelling Unit to the minimum habitability standard in cases where the Program Participant is the responsible party for ensuring such conditions.
- (1) Structure and materials. The structures must be structurally sound to protect residents from the elements and not pose any threat to the health and safety of the residents.
- (2) Space and security. Each resident must be provided adequate space and security for themselves and their belongings. Each resident must be provided an acceptable place to sleep.
- (3) Interior air quality. Each room or space must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of residents.
- (4) Water supply. The water supply must be free from contamination.
- (5) Sanitary facilities. Residents must have access to sufficient sanitary facilities that are in proper operating condition, are private, and are adequate for personal cleanliness and the disposal of human waste.
- (6) Thermal environment. The Dwelling Unit must have any necessary heating/cooling facilities in proper operating condition.
- (7) Illumination and electricity. The structure must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the structure.
- (8) Food preparation. All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.
- (9) Sanitary conditions. The housing must be maintained in a sanitary condition.
- (10) Fire safety.
- (A) There must be a second means of exiting the building in the event of fire or other emergency.
- (B) Each Dwelling Unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each occupied level of the unit. Smoke detectors must be located, to the extent practicable, in a hallway adjacent to a bedroom. If the unit is occupied by hearing impaired persons, smoke detectors must have an alarm system designed for hearing-impaired persons in each bedroom occupied by a hearing-impaired person.

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

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

Attachment E: Preamble, including required analysis, and proposed repeal of 10 TAC Chapter §7.34, Continuing Awards; §7.37, Application Review and Administrative Deficiency Process; and §7.41, Contract Term, Expenditure Benchmark, Return of Funds, and Performance Targets.

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

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

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

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

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

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

PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repeal or proposed new sections would be more clarity on

the administration of homeless programs. There will not be economic costs to individuals required to comply with the amended section.

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

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

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

§7.34 Continuing Awards

§7.37 Application Review and Administrative Deficiency Process

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

Attachment F: Preamble, including required analysis, and proposed new 10 TAC Chapter §7.34, Continuing Awards; §7.37, Application Review and Administrative Deficiency Process; and §7.41, Contract Term, Expenditure Benchmark, Return of Funds, and Performance Targets.

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

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

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

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

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

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

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

of homeless programs. There will not be economic costs to individuals required to comply with the amended section.

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

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

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

§7.34 Continuing Awards

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

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

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

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

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

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

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

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

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

~~(67)~~ Does not apply for funds within the same COC Region under the competitive Application process for Program Participant service(s) in which they are already funded for a Continuing Award;

~~(87)~~ Expended a minimum of 95% of their contracted award amount, as amended in their most recently closed ESG Contract (not including ESG CARES);

~~(98)~~ Did not voluntarily deobligate an amount that exceeds 5% of their contracted award amount, as amended for increases due to reallocated funds, on their most recently closed ESG Contract (not including ESG CARES); and

~~(109)~~ Is approved by the Department's Governing Board.

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

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

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

(g) Funds that remain available after all eligible continuing awards have been accepted will be transferred to the competition for funds for the regional competition in accordance with §7.38 of this subchapter.

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

§7.37 Application Review and Administrative Deficiency Process

(a) The Department will accept Applications on an ongoing basis during the Application acceptance period as specified in the NOFA or notification of an offer of a continuing award, as applicable. Applications will be reviewed for threshold criteria and selection criteria, if applicable, administrative deficiencies, and competitive Applications will be ranked based upon the score of the Application as determined by the Department upon completion of the review.

(b) The administrative deficiency process allows the Applicant to provide additional information with regard to an Application after the Application acceptance period has ended, but only if it is requested in writing by Department staff. Staff may request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. Staff will send the deficiency notice via email and responses must be in kind unless otherwise defined in the notice. A review of the Applicant's response may reveal that additional administrative deficiencies are exposed or that issues initially identified as an administrative deficiency are actually determined to be beyond the scope of an administrative deficiency process, meaning that they are in fact matters of a material nature not susceptible to be resolved. For example, a response to an administrative deficiency that causes a new inconsistency which cannot be resolved without reversing or eliminating the need for the first deficiency response would be an example of an issue that is beyond the scope of an administrative deficiency. Department staff will make a good faith effort to provide an Applicant confirmation that an administrative

deficiency response has been received and/or that such response is satisfactory. Communication from staff that the response was satisfactory does not establish any entitlement to points, eligibility status, or to any presumption of a final determination that the Applicant has fulfilled any other requirements as such is the sole determination of the Department's Board.

(c) An Applicant may not change or supplement any part of an Application in any manner after submission to the Department, except in response to a direct written request from the Department to remedy an administrative deficiency or by amendment of an Application after the Board approval of an ESG award. An administrative deficiency may not be cured if it would, in the Department's determination, substantially change an Application including score, or if the Applicant provides any new unrequested information to cure the deficiency.

(d) The time period for responding to a deficiency notice commences on the first day following the deficiency notice date.

(1) If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m. on the seventh calendar day following the date of the deficiency notice, then one point shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. If administrative deficiencies are not resolved by 5:00 p.m. on the fourteenth calendar day following the date of the deficiency notice for an Application in response to a NOFA, then the Application shall be terminated.

(2) If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m. on the seventh calendar day following the date of the deficiency notice for an Application ~~if administrative deficiencies are not resolved by 5:00 p.m., Austin local time on the~~ in response to a continuing award offer ~~fourteenth calendar day following the date of the deficiency notice~~, then the Application shall be terminated.

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

(a) The Contract Term for ESG funds may not exceed 12 months. All funds awarded under the Contract must be expended by the Subrecipient on or before the expiration of the Contract, unless an extension has been granted in accordance with this section. A request to extend the Contract Term must show evidence that the extension is necessary to provide services required under the Contract, and provide good cause for failure to timely expend the funds. Extensions of Contract Terms are considered on a case-by-case basis, but are subject to §7.4(e) of this title (relating to Amendments and Extensions of Contracts).

(1) The Executive Director or his or her designee may approve an extension to the ESG Contract Term of up to six months from the original Contract Term; and may approve an extension to the Expenditure deadline for ESG CARES.

(2) Board approval is required if the Subrecipient requests to extend an ESG Contract Term for more than six months from the original Contract Term.

(3) Amendments of Expenditure requirements will not be granted by the Executive Director or the Board when such action would cause the Department to miss a federal Expenditure deadline.

(b) Subrecipient is required to have reported Expenditures in its Monthly Expenditure Reports reflecting at least 50% of the Contracted funds by month nine of the original Contract Term. A Subrecipient that has not met this Expenditure benchmark must submit a plan to the Department evidencing the ability of the Subrecipient to expend the remaining funds by month 12 of the original Contract Term. This Expenditure benchmark may not be extended through amendment.

(c) Not later than 60 days prior to the end of the Contract Term, a Subrecipient may submit a written request to voluntarily return some or all of its funds to the Department. Voluntary return of funds prior to the Expenditure benchmark constitutes a reduction in the awarded amount, and returned funds at or prior to the Expenditure benchmark will not be considered deobligated funds for the purpose of future funding recommendations. Subrecipient must return any funds that would result in a violation of the administrative and HMIS expenditure limits of the Contract, as outlined in §7.33(f) of this subchapter prior to approval of a request to voluntarily deobligate funds for any Program Participant services.

(d) Funds remaining at the end of Contract which are not reflected in the last Monthly Expenditure Report will be automatically deobligated. Deobligation of funds may affect future funding recommendations.

(e) The Department may request information regarding the performance or status of a Contract prior to the Expenditure benchmark, at various times during the Contract, or during the record retention period. Subrecipient must respond within the time limit stated in the request. Prolonged or repeated failure to respond may result in suspension of funds, termination of the Contract by the Department, and could impact future funding recommendations.

(f) If additional funds become available through returned or deobligated amounts from an award made under the allocation formula or program income generated from an award made under the allocation formula, the funds may be offered to ESG Subrecipients with active Contracts that have not been amended to extend the Contract Term. Returned or deobligated funds will be offered with priority given to ESG Subrecipients with the highest Expenditure rate as of the most recent Monthly Expenditure Report. However, funds may not be offered to any Subrecipient that returned funds, or from whom funds were deobligated. The Executive Director or designee may increase the Contract of an ESG Subrecipient or authorize a new Contract with a Subrecipient by up to 25% of the original Contract amount. The increase of reallocated funds may not exceed 25% of the initial Contract award, unless approved by the Board.

(g) Funds that have been returned more than once or returned less than three months before the federal Expenditure deadline may be retained by the Department.

(h) The Contract will reflect the Performance Targets that were utilized as selection criteria for the award of funds. Requests to amend Performance Targets may not be submitted less than 60 days prior to the end of the Contract Term. Requests to amend Performance Targets will not be granted if such an amendment would have precluded the award to the Subrecipient.