

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
**TDHCA Governing Board Approved Draft of
Amendments to the 2017 HOME Rules at 10 TAC Chapter 23**

Disclaimer

Attached is a draft of amendments to the 2017 HOME Single Family Rules at 10 TAC Chapter 23 that was approved by the TDHCA Governing Board on September 7, 2017. This document, including its preamble, is scheduled to be published in the September 22, 2017 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 September 22, 2017
Ends: 5:00 p.m. Austin local time on October 31, 2017**

Comments received after 5:00 p.m. Austin local time on October 31, 2017 will not be accepted.

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

Texas Department of Housing and Community Affairs
Attn: Abigail Versyp
P.O. Box 13941
Austin, Texas 78711-3941
Email: HOME@tdhca.state.tx.us

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

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

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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The Texas Department of Housing and Community Affairs (the “Department”) proposes amendments to 10 TAC Chapter 23, Subchapter B, §23.25 General Threshold and Selection Criteria and 10 TAC Chapter 23, Subchapter F, §23.61 Tenant-Based Rental Assistance (TBRA) General Requirements.

The purpose of amending the State HOME Investment Partnerships Program (“HOME”) Rule under Subchapter B is to require applicants for HOME Program funds to establish intent to apply for funding subject to the terms and conditions set forth at time of application receipt. Currently, the threshold requirements state that a resolution from the governing board of the applicant must be dated no later than 6 months from the date of application submission; proposed amendments to the rule would require the applicant to more specifically identify the fund source and, if applicable, Notice of Funding Availability under which funds are requested by the applicant.

The purpose of amending the HOME Rule under Subchapter F is to require that units selected by tenants for occupancy under the Tenant-Based Rental Assistance (“TBRA”) program are two-fold. First, an amendment is proposed to ensure that units selected for rental by an assisted household are not owned by members of the assisted household’s immediate family, with an exception for units that have unique accessibility features for persons with disabilities that are not readily available in the service area. This amendment will more closely align the HOME Rule with the requirements of the Section 8 Housing Choice Voucher Program, allowing tenants a more seamless transition between temporary HOME assistance and more permanent assistance offered under the Section 8 Housing Choice Voucher Program. Second, an additional amendment is proposed to ensure that administrators of the HOME Program comply with requirements to conduct a rent-reasonableness analysis for each unit to be occupied by a HOME assisted household.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the proposed new section will be in effect, enforcing or administering the proposed new section does not have any foreseeable additional costs or revenues for the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be improved regulatory guidance to enhance the efficiency and effectiveness of the HOME Program. There will not be any economic cost to any individuals required to comply with the amendments or there is an economic cost by the change required by federal HOME Program requirements.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 22, 2017, to October 31, 2017, to receive input on the proposed new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attention: Abigail Versyp, Homelessness Programs, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to the following address: HOME@tdhca.state.tx.us.

ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time on October 31, 2017. A copy of the proposed new chapter will be available on the Department’s website at <http://www.tdhca.state.tx.us/public-comment.htm> under Items Open for Public Comment during the public comment period.

STATUTORY AUTHORITY. The amendment is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendment affects no other code, article, or statute.

<rule>

SUBCHAPTER B. Availability of Funds, Application Requirements, Review and Award Procedures, General Administrative Requirements, and Resale And Recapture of Funds

§23.25. General Threshold and Selection Criteria.

(a) General Threshold. All Applicants and Applications to administer a HOME Program award from the Department must submit or comply with the following:

(1) an Applicant certification of compliance with state rules promulgated by the Department, and federal laws, rules and guidance governing the HOME Program as provided in the Application;

(2) a Resolution [signed and dated within the six (6) months preceding the Application submission date] from the Applicant's direct governing body which includes:

(A) authorization of the submission of the Application specifying the NOFA under which funds are requested for Contract award Applications;

(B) commitment and amount of cash reserves, if applicable, for use during the Contract or RSP Agreement term;

(C) source of funds for Match obligation and Match dollar amount, if applicable;

(D) name and title of the person authorized to represent the organization and who also has signature authority to execute a Contract and grant agreement or loan documents, as applicable, unless otherwise stated; ;

(E) date that the resolution was passed by the governing body, which must be within six (6) months preceding Application submission for Reservation System Participation Agreement Applications, and no earlier than the date of the Department's Governing Board approval of the NOFA for Contract award Applications.

(3) any Applicant requesting \$25,000 or more must be registered in the System for Award Management (SAM) and have a current Data Universal Numbering System (DUNS) number;

(4) an Application fee of thirty dollars per Application;

(5) an Application must be substantially complete when received by the Department. An Application will be terminated if an entire tab of the Application is missing; has excessive omissions of documentation from the threshold or selection criteria or uniform Application documentation; or is so unclear, disjointed, or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department. Such Application will be terminated without being processed as an administrative deficiency. To the extent that a review was able to be performed, specific reasons for the Department's termination will be included in the notification sent to the Applicant but, because of the suspended review, may not include an all inclusive list of deficiencies in the Application.

(b) Selection Criteria. Applications for competitive awards consistent with a NOFA will be scored and ranked based on the following criteria. Selection criteria for which points are awarded will become a contractual requirement if the Applicant is awarded a Contract.

(1) Applicants will be required to submit a self-score within the Application. In no event will the points awarded to the Applicant exceed the point value of the self-score in any one selection criterion. Applicants must achieve a minimum staff determined score of fifteen (15) points to be awarded a Contract.

(2) Applicants may be awarded points under the following selection criteria:

(A) Homes Built to greater than or equal to IRC 2012 Standard. This selection criterion is applicable to Homeowner Rehabilitation Assistance ("HRA") Applications only. Applications may be awarded five (5) points if all

reconstructed or newly constructed homes under the Contract will be built to a code that meets or exceeds IRC 2012 standards.

(B) Purchased Home Will Meet TMCS. This selection criterion is applicable to Homebuyer Assistance ("HBA") Applications only. Applications may be awarded five (5) points if all homes for which HBA is provided under the Contract pass an inspection prior to purchase that meets or exceeds TMCS.

(C) Previous HOME Award. All Applications may receive a maximum of five (5) points for past experience in the HOME Program as follows:

(i) Applications may be awarded five (5) points if the Applicant administered a HOME Contract awarded within five (5) years of the date that Applications are first accepted under the NOFA. The previous HOME Contract for which points are requested must be of the same assistance type as that proposed in the Application and the Applicant must have met the 100 percent commitment benchmark of the Contract without requiring an amendment.

(ii) Applications may be awarded one (1) point for each reservation of the same assistance type which resulted in Commitment of Funds within twelve (12) months of the date that Applications are first accepted under the NOFA, but may not, in any event, receive more than four (4) points under this criterion.

(iii) Applications may be awarded two (2) points if the Applicant administered a HOME Contract awarded within five (5) years of the date that Applications are first accepted under the NOFA. The previous HOME Contract for which points are requested must be of the same assistance type as that proposed in the Application and all contractually required units must have been completed by the end of the Contract term in accordance with the original Contract, or as amended.

(D) Administrator Provides Expanded Services. This selection criterion is applicable to Tenant-Based Rental Assistance (TBRA) Applications only. Applicants may receive a maximum of five (5) points for the provision of services available to existing clients within twelve (12) months of the date that Applications are first accepted under the NOFA. Applicant must specify the types of services offered in the Application, and must provide documentation verifying the provision of each service within the specified timeframe. A maximum of one (1) point for each separate service may be awarded. Any service for which points are requested must be identified as provided under one of the following categories: Child Care, Nutrition, Job Training, Health, and Human Services. The services must be uniquely different as determined by the Department. The Department must be able to make a determination that the service stated in the Application was provided by the Applicant and qualifies for the corresponding point(s) when determining the points awarded under this criterion.

(E) Previous Monitoring History. All Applications may receive a maximum of five (5) points for the Applicant's previous monitoring history. The Department will consider the monitoring history for three (3) years preceding the date that Applications are first accepted under the NOFA when determining the points awarded under this criterion. Findings that were subsequently rescinded will not be considered findings for the purpose of this point criterion.

(i) Applications will be limited to a maximum of two (2) points if the Applicant has a monitoring close-out letter that included findings related to violations of procurement requirements.

(ii) Applications will be limited to a maximum of three (3) points if the Applicant has a monitoring close-out letter that included findings on miscalculation of Household income.

(iii) Applications may be awarded a maximum of four (4) points if the Applicant has a monitoring close-out letter that included findings but the findings were not related to miscalculation of Household income or violations of procurement requirements.

(iv) Applications may be awarded a maximum of five (5) points if the Applicant has not received any monitoring findings, including Applicants with no previous monitoring history.

(F) Applicant Staff with Income Eligibility Training or Financial Management Training. All Applications may receive a maximum of five (5) points if a member of the Applicant's staff that will be involved in administration of the program if awarded, has attended TDHCA's 1st Thursday Income Eligibility training or has completed Financial Management 101: Introduction or Financial Management 201: A Closer Look, available through the HUD Exchange website, no earlier than one (1) year from the date that Applications are first accepted under the NOFA, or certifies that the staff member will attend TDHCA's 1st Thursday Income Eligibility training or HUD's on-line Financial Management 101 or 102 training prior to submission of a Activity for TDHCA approval. Activities may not be

approved under a Contract until the staff member has attended 1st Thursday Income Eligibility training or HUD's on-line Financial Management trainings if points are awarded under this criterion.

(G) Section 8 Housing Choice Voucher Availability. This selection criterion is applicable to TBRA Applications only. Applications may be awarded a maximum of five (5) points if the waiting list(s) for the Section 8 Housing Choice Voucher ("HCV") program maintained by the Public Housing Authority ("PHA") with jurisdiction over the Service Area outlined in the Application exceeds a twelve (12) month wait time as of the date that Applications are first accepted under the NOFA, or if the PHA does not offer rental assistance under the HCV program. The Department must be able to make a determination that PHA's wait time exceeds twelve (12) months through documentation provided in the Application by the Applicant for requested points when determining the points awarded under this criterion.

(H) Lack of Single Family Activities within the Service Area within the Previous Two (2) Years. This selection criterion is applicable to HRA and HBA Applications only.

(i) Applications may be awarded a maximum of five (5) points if TDHCA HOME funds have not been awarded thorough a competitive award or been provided to an Activity of the same type as the assistance proposed in the Application, and within the Service Area designated in the Application within two (2) years of the date that Applications are first accepted under the NOFA.

(ii) Applications may be awarded a maximum of four (4) points if TDHCA HOME funds have been committed to Activities of the same type of assistance as that proposed in the Application, and within the Service Area designated in the Application, if the Applicant was not awarded funds to administer a Contract of the same type of assistance and was not the service provider for Activities submitted under an RSP agreement, within two (2) years of the date that Applications are first accepted under the NOFA.

(I) Program Restricted to First-Time Homebuyers. This selection criterion is applicable to HBA Applications only. Applications may be awarded a maximum of five (5) points if 100 percent of Households served are first-time homebuyers defined on the Department's Certification of First-Time Homebuyer Status Form.

(J) Program Restricted to Households at or below 60 percent AMFI. This selection criterion is applicable to HRA and TBRA Applications only. Applications may be awarded a maximum of five (5) points if 100 percent of Households served will have incomes at or below 60 percent AMFI for the county in which the Activity will be located.

(K) Priority for Certain Communities. All Applications may receive a maximum of two (2) points if at least one Colonia is included in the Service Area identified in the Application. Applicants awarded points under this criterion will be contractually required to maintain a Service Area that includes at least one Colonia as identified on the Office of the Secretary of State's website.

STATUTORY AUTHORITY. The amendment is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendment affects no other code, article, or statute.

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§23.61. Tenant-Based Rental Assistance (TBRA) General Requirements.

- (a) The Household must participate in a self-sufficiency program.
- (b) The amount of assistance will be determined using the Housing Choice Voucher method.
- (c) Households certifying to zero income must also complete a questionnaire which includes a series of questions regarding how basic hygiene, dietary, transportation, and other living needs are met.
- (d) The minimum Household contribution toward gross monthly rent must be ten percent of the Household's gross monthly income.
- (e) Activity funds are limited to:
 - (1) rental subsidy: Each rental subsidy term is limited to no more than twenty-four (24) months. Total lifetime assistance to a Household may not exceed thirty-six (36) months cumulatively, except that a maximum of twenty-four (24) additional months of assistance, for a total of sixty (60) months cumulatively may be approved if:
 - (A) the Household has applied for a Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program, and is placed on a waiting list during their TBRA participation tenure; and
 - (B) the Household has not been removed from the waiting list for the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program due to failure to respond to required notices or other ineligibility factors; and
 - (C) the Household has not been denied participation in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program while they were being assisted with HOME TBRA; and
 - (D) the Household did not refuse to participate in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program when a voucher was made available.
 - (2) security deposit: no more than the amount equal to two (2) month's rent for the unit.
 - (3) utility deposit in conjunction with a TBRA rental subsidy.
- (f) The payment standard is determined at the date of assistance. The payment standard utilized by the Administrator must be:
 - (1) for metropolitan counties and towns, the current U.S. Department of Housing and Urban Development (HUD) Small Area Fair Market Rent for the Housing Choice Voucher Program;
 - (2) for nonmetropolitan counties and towns, the current HUD Fair Market Rent for the Housing Choice Voucher Program;

(3) for a HOME assisted unit, the current applicable HOME rent; or

(4) The Administrator may submit a written request to the Department for approval of a different payment standard. The request must be evidenced by a market study or documentation that the PHA serving the market area has adopted a different payment standard. An Administrator may request a Reasonable Accommodation as defined in §1.204 of this title for a specific household if the household, because of a disability, requires the features of a specific unit, and units with such features are not available in the Service Area at the payment standard.

(g) The lease agreement start date must correspond to the date of the TBRA rental coupon contract, and the rent reasonable analysis must be conducted prior to the date of the TBRA rental coupon contract.

(h) Activity soft costs are limited to \$1,200 per Household assisted for determining Household income eligibility, including recertification, and conducting Housing Quality Standards (HQS) inspections. All costs must be reasonable and customary for the Administrator's Service Area.

(i) Funds for administrative costs are limited to 4 percent of Direct Activity Costs, excluding Match funds. Funds for administrative costs may be increased an additional 1 percent of Direct Activity Costs if Match is provided in an amount equal to 5 percent or more of Direct Activity Costs.

(j) Rental units must be inspected prior to occupancy, annually upon Household recertification, and must comply with HQS established by HUD.

(k) Administrators must have a written agreement with Owner that the Owner will notify the Administrator within one (1) month if a tenant moves out of an assisted unit prior to the lease end date.

(l) Administrator must not approve a unit if the owner is by consanguinity, affinity, or adoption the parent, child, grandparent, grandchild, sister, or brother of any member of the assisted Household, unless the Administrator determines that approving the unit would provide Reasonable Accommodation for a Household member who is a Person with Disabilities. This restriction against Administrator approval of a unit only applies at the time the Household initially receives assistance under a Contract or Agreement, but does not apply to Administrator approval of a recertification with continued tenant-based assistance in the same unit.

~~(m)~~ Administrators must maintain Written Policies and Procedures established for the HOME Program in accordance with §10.610 of this title, except that where the terms Owner, Property, or Development are used Administrator or Program will be substituted, as applicable. Additionally, the procedures in subsection (n) of this section (relating to the Violence Against Women Act (if in conflict with the provisions in §10.610 of this title)) will govern.

~~(nn)~~ Administrators serving a Household under a Reservation Agreement may not issue a Certificate of Eligibility to the Household prior to reserving funds for the project.

~~(oo)~~ Administrators are required to comply with regulations and procedures outlined in the Violence Against Women Act (VAWA), and provide tenant protections as established in the Act.

(1) An Administrator of Tenant-Based Rental Assistance must provide all Applicants (at the time of admittance or denial) and Households (before termination from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance Coupon Contract) the Department's "Notice of Occupancy Rights under the Violence Against Women Act", (based on HUD form 5380) and also provide to Households "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking" (HUD form 5382) prior to execution of a Rental Coupon Contract and before termination of assistance from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance coupon contract.

(2) Administrator must notify the Department within three (3) calendar days when tenant submits a Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and/or alternate documentation to Administrator and must submit a plan to Department for continuation or termination of assistance to affected Household members.

(3) Notwithstanding any restrictions on admission, occupancy, or terminations of occupancy or assistance, or any Federal, State or local law to the contrary, Administrator may "bifurcate" a rental coupon contract, or otherwise remove a Household member from a rental coupon contract, without regard to whether a Household member is a signatory, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a recipient of TBRA and who engages in criminal acts of physical violence against family members or others. This action may be taken without terminating assistance to, or otherwise penalizing the person subject to the violence.

