TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

TDHCA Governing Board Approved Draft of 10 Texas Administrative Code (TAC) Chapter 7 Homelessness Programs, Subchapter D, Ending Homelessness Fund, 10 TAC §7.62, EH Fund Subrecipient Application and Selection, and 10 TAC §7.65, Contract Term and Limitations

Disclaimer

Attached is a draft of 10 TAC Chapter 7 Homelessness Programs, Subchapter D, Ending Homelessness Fund, 10 TAC §7.62, EH Fund Subrecipient Application and Selection, and 10 TAC §7.65, Contract Term and Limitations, that was approved by the TDHCA Governing Board on February 27, 2020. This draft incorporates changes made by the Board as a result of public comment at the meeting. This document, including its preamble, is scheduled to be published in the March 13, 2020 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: Friday, March 13, 2020

Comments received after 5:00pm, Austin local time on Monday, April 13, 2020, 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: Naomi Cantu
P.O. Box 13941
Austin, Texas 78711-3941
Fax: 512-475-0220
Email: naomi.cantu@tdhca.state.tx.us

On March 13, 2020, TDHCA had announced a public hearing to receive comment on the proposed rule changes. Due to the novel coronavirus, the public hearing has been canceled.

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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Attachment A: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 7 Homelessness Programs, Subchapter D, Ending Homelessness Fund, 10 TAC §7.62, EH Fund Subrecipient Application and Selection, and §7.65, Contract Term and Limitations

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of two sections in 10 TAC Chapter 7, Homelessness Programs, Subchapter D, Ending Homelessness Fund: 10 TAC §7.62, EH Fund Subrecipient Application and Selection, and §7.65, Contract Term of Limitations. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.
Mr. 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 repeal, and simultaneous readoption making changes to an existing activity: the administration of the Ending Homelessness Fund.
2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.
3. The proposed repeal does not require additional future legislative appropriations.
4. The proposed repeal does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of homeless programs.
7. The proposed repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed repeal will not negatively or positively affect this state's economy.

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

c. 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.

d. 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.

e. 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 repealed section would be more clarity on the administration of the Ending Homelessness Fund. There will not be economic costs to individuals required to comply with the repealed section.

f. 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 March 13, 2020, to April 13, 2020, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Naomi Cantu, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email naomi.cantu@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, APRIL 13, 2020.

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 repealed sections affect no other code, article, or statute.

10 TAC §7.62, EH Fund Subrecipient Application and Selection

10 TAC §7.65, Contract Term and Limitations

Attachment B: Preamble for proposed new 10 TAC Chapter 7 Homelessness Programs, Subchapter D, Ending Homelessness Fund, 10 TAC §7.62, EH Fund Subrecipient Application and Selection, and §7.65, Contract Term and Limitations

The Texas Department of Housing and Community Affairs (the Department) proposes two new sections in 10 TAC Chapter 7 Homelessness Programs, Subchapter D, Ending Homelessness Fund: 10 TAC §7.62, EH Fund Subrecipient Application and Selection; and §7.65, Contract Term and Limitations. The purpose of the proposed new sections is to update the rule to reflect new definitions, and to clarify the Contract term and limitations.

Tex. Gov't Code §2001.0045(b) does not apply to the rules proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

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

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:
1. The proposed rules do not create or eliminate a government program, but relates to the readoption of these rules which makes changes to an existing activity, administration of the Ending Homelessness Fund.
2. The proposed new rules do not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The proposed rules do not require additional future legislative appropriations.
4. The proposed rules will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The proposed rules are not creating a new regulation, except that they are replacing a rule being repealed simultaneously to provide for revisions.
6. The proposed rules will not expand, limit, or repeal an existing regulation.
7. The proposed rules will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed rules will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this proposed rules, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, Ch. 2306.
1. The Department has evaluated these rules and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.
2. There are unlikely to be any small or micro-businesses subject to the proposed rule because these funds are limited to counties and municipalities in Tex. Transportation Code §502.415 for the Ending Homeless Fund.
3. The Department has determined that based on the considerations in item two above, there will be no economic effect on small or micro-businesses or rural communities.

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

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).
The Department has evaluated the rules as to their possible effects on local economies and has determined that for the first five years the rules will be in effect the new rules have no economic effect on local employment because these rules will channel funds, which may be limited, only to counties and municipalities; it is not anticipated that the amount of funds would be enough to support additional employment opportunities, but would add to the services provided. Alternatively, the rules would also not cause any negative impact on employment. Therefore no local employment impact statement is required to be prepared for the rules.
Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that no impact is expected, there are no "probable" effects of the new rule on particular geographic regions.

e. 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 new sections are in effect, the public benefit anticipated as a result of the new sections will be a rule that has greater clarity into the processes and definitions of the administration of homeless programs. There will not be any economic cost to any individuals required to comply with the new sections because the processes described by the rule have already been in place through the rule found at this section being repealed.

f. 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 new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments because the costs for administering the program in included in eligible activities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held March 13, 2020, to April 13, 2020, to receive input on the new proposed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Naomi Cantu, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email naomi.cantu@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, APRIL 13, 2020.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules, and Tex. Transp. Code §502.415(g), which authorized the Department to adopt rules regarding the Ending Homelessness Fund. Except as described herein the proposed new sections affect no other code, article, or statute.

10 TAC §7.62 EH Fund Subrecipient Application and Selection

(a) The Department will produce an Application which, if properly completed by an eligible Applicant and approved by the Department, may satisfy the Department's requirements to receive an award of funds under the EH Fund. Applicants that have an existing ESG or HHSP Contract or ~~are applying for ESG~~who have been awarded ESG or HHSP funds may be eligible to submit an abbreviated EH Fund Application if such Application is made available by the Department.

(b) Funds will be available to Applicants determined to be eligible for the EH Fund under §7.63(b)(1) of this subchapter, or as specified in a NOFA as defined in and under §7.63(b)(2) of this subchapter, as applicable.

(c) Application for funds. ~~All~~ Applicants for an award from the EH Fund must submit the following items ~~(1) - (5) of this subsection~~:

(1) A complete Application including an Applicant certification of compliance with state rules, federal laws, rules and guidance governing the EH Fund as provided in the Application;

(2) All information required under 10 TAC Subchapter C to conduct a Previous Participation and Executive Award Review and Advisory Committee review;

(3) A proposed budget in the format required by the Department;

(4) Proposed performance targets in the format required by the Department; and

(5) Activity descriptions, including selection of administration under Subchapter B of this chapter related to HHSP or Subchapter C of this chapter related to ESG.

(d) ~~For~~ Applications submitted by existing ESG or HHSP Subrecipients or awarded Applicants for ESG or HHSP, eligible activities are limited to those activities in ESG or HHSP, except that the EH Fund is not subject to limitations on the amount of funds that may be spent for any given activity type.

(e) The Department must receive all Applications within 30 calendar days of notification of eligibility to Applicants per §7.63(b)(1) of this subchapter, or as specified in the NOFA, as applicable.

10 TAC §7.65 Contract Term and Limitations

(a) For EH Fund Applicants that do not have a current ESG or HHSP Contract, and have not been awarded ESG or HHSP funds, the Department requires evidence in the form of a certification or resolution adopted by the governing body of the Applicant specifying who is authorized to enter into a Contract on behalf of the Applicant. This certification or resolution is due to the Department no later than 90 calendar days after the award has been approved by the Board, must be received prior to execution of any Contract for EH funds, and must include:

(1) Authorization to enter into a Contract for EH Fund;

(2) Title of the person authorized to represent the organization and who also has signature authority to execute a Contract; and

(3) Date that the certification or resolution was adopted by the governing body, which must be within 12 months of Application submission.

(b) ~~For the~~ EH Fund~~, Applicants that~~ Contracts will generally have ~~a current Contract or have been awarded ESG or HHSP funds for a subsequent~~an initial period~~,~~ of 12 months for fund Expenditure. A request to extend the Contract Term must evidence that the extension is necessary to provide activities required under the Contract ~~Term of the EH funds may not extend past~~, and provide good cause for failure to timely expend the funds. Extensions of a Contract Term ~~of~~ are considered on a case-by-case basis and are subject to Section 7.4(e) of this Title,

concerning Amendments and Extensions of Contracts.

(1) The Executive Director or his or her designee may approve an extension to the ~~existing ESG or HHSP~~ Contract ~~or~~Term that for up to six months from the ~~subsequent ESG or HHSP~~original Contract Term. ~~For EH Fund Applicants that do not have current or awarded ESG or HHSP funds,~~

(2) Board approval is required if the Subrecipient requests to extend the Contract Term ~~may not exceed 24 months.~~for more than six months from the original Contract Term. Extensions for greater than 12 months may not be granted.