

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
**TDHCA Governing Board Approved Draft of
10 TAC Chapter 23, Single Family HOME Program Rule**

Disclaimer

Attached is a draft of 10 TAC Chapter 23, Single Family HOME Program Rule, that was approved by the TDHCA Governing Board on September 3, 2020. This document, including its preamble, is scheduled to be published in the September 18, 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: 8:00 a.m. Austin local time on September 18, 2020

Ends: 5:00 p.m. Austin local time on October 19, 2020

Comments received after 5:00 p.m. Austin local time on October 19, 2020, will not be accepted.

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

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

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 §23, Single Family HOME Program

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC §23, Single Family HOME Program Rule. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.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.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, 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, administration of the HOME Program.

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; however, the proposed repeal does eliminate the application fee in §23.25(a)(4) that had been \$30, which will provide for a reduction in costs for those participants participating in the activity governed by this rule.

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 the HOME Program.

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 affect this state's economy; however, the repeal does eliminate application fees that may have been a barrier to participation, and which may 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 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 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 also 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 an updated and more germane rule that conforms with the State's 2020-2023 Consolidated Plan. 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 September 18, 2020, to October 19, 2020, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email HOME@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, OCTOBER 19, 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.

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Attachment B: Preamble for proposed new 10 TAC Chapter 23 General Guidance

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 23, Single Family HOME Rule. The purpose of the proposed new sections is to conform to the 2020-2024 State of Texas Consolidated Plan and to update the rule to update definitions to better align HOME Program administration to federal requirements.

Tex. Gov't Code §2001.0045(b) does not apply to the rule 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 rule does not create or eliminate a government program, but it does eliminate the Homebuyer Assistance program activity to align with the 2020-2024 State of Texas Consolidated Plan. This rule also relates to changes in the administration of other Single Family HOME Program activities, including Homeowner Reconstruction Assistance, Contract for Deed, Tenant-Based Rental Assistance, Single Family Development, and Homebuyer Assistance with New Construction.
2. The proposed new rule does 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 rule changes do not require additional future legislative appropriations.
4. The proposed rule changes will not result in an increase in fees paid to the Department, however, the rule change does reduce the Application Fee from \$30 to \$0, which will provide for a reduction in costs for those participants complying with this rule.
5. The proposed rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The proposed rule will not expand or repeal an existing regulation, but can be considered to "limit" the existing regulations on this activity because the proposed rule removes regulations related to the Homebuyer Assistance activity and rehabilitation of existing housing. However, this potentially limiting clarification to the rule is necessary to ensure compliance with the State of Texas 2020-2024 Consolidated Plan.
7. The proposed rule will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed rule will not negatively affect the state's economy, and may be considered to have a positive effect on the state's economy because changes at §23.25(a)(4) eliminate the requirement for an application fee, potentially increasing the number of applicants participating in the Single Family HOME Program.

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 rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.111.

1. The Department has evaluated this rule and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are approximately 60 rural communities currently participating in construction activities under the Single Family HOME Program that are subject to the proposed rule for which the economic impact of the rule is projected to be \$4,000,000 during the first year the rule is in effect.

3. The Department has determined that because the rule both eliminates an application fee and increases the funding limitation for construction activities, and because the applicants are primarily in rural parts of Texas, the proposed rule would assist in infusing funds into the local construction market, and may result in a possible positive economic effect on small or micro-businesses or rural communities, although the specific impact is not able to be quantified.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed rule does 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 rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed rule may provide a possible positive economic effect on local employment because increased funding limitations for construction activities may create employment opportunities in the construction sector and supportive businesses; however, because participation in the Single Family HOME Program is not compulsory for communities, there is no way to determine during rulemaking where the positive effects may occur. The impact is not able to be quantified for any given community.

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 participation in the Single Family HOME Program is at the discretion of the local government or other eligible subrecipients, 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). Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule which conforms to the State of Texas 2020-2024 Consolidated Plan and federal regulations. There will not be any economic cost to any individuals required to comply with the new section because the HOME Program provides reimbursement to those entities whom are subject to the rule for the cost of compliance with the rule.

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 section is in effect, enforcing or

administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because the Single Family HOME Program is a federally funded program, and no increase in the requirement to match federal funds is proposed in the rule.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 18, 2020, to October 19, 2020, to receive input on the new proposed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email abigail.versyp@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, October 19, 2020.

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

CHAPTER 23 SINGLE FAMILY HOME PROGRAM

SUBCHAPTER A GENERAL GUIDANCE

§23.1 Applicability and Purpose

(a) ~~Applicability.~~ This Chapter governs the use and administration of all HOME single family Activities funds provided to the Texas Department of Housing and Community Affairs (the "Department") by the U.S. Department of Housing and Urban Development (HUD) pursuant to Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 as amended (42 U.S.C. §§12701 - 12839) and HUD regulations at 24 CFR, Part 92, as amended. Chapter 20 of this ~~§~~Title relating to Single Family Programs Umbrella Rule and ~~other~~ Chapters 1 and 2 of this ~~§~~Title will apply to all single family activities, including Single Family Development. Unless otherwise noted herein or required by law, all provisions of this Chapter apply to any Application for a Contract award, or any Reservation submitted or received on or after the date of adoption of this Chapter. Existing Agreements executed within the preceding ~~twelve~~ ~~{12}~~ months from the date of adoption of this Chapter or current pending Applications may be amended in writing at the request of the Administrator or Applicant, and with Department approval, so that all provisions of this Chapter apply to the Agreement or Application. Amendments proposing only partial adoption of this Chapter are prohibited. No amendment adopting this Chapter shall be granted if, in the discretion of the Department, any of the provisions of this Chapter conflict with the Notice of Funding Availability (NOFA) under which the existing Agreement was awarded or Application was submitted. The Governing Board may waive rules subject to this Chapter for good cause to meet the purpose of the HOME Program as described further in subsection (b) of this section, provided the ~~action~~waiver does not conflict with the federal regulations governing the use of these funds, or impact federally imposed obligation or expenditure deadlines governing the HOME Program.

(b) Purpose. The State's HOME Program is designed to:

- (1) focus on the areas with the greatest housing need described in the State Consolidated Plan;
- (2) provide funds for home ownership and rental housing through acquisition, Reconstruction, New Construction, ~~Rehabilitation~~, and Tenant-Based Rental Assistance;
- (3) promote partnerships among all levels of government and the private sector, including nonprofit and for-profit organizations; and
- (4) provide low, very low, and extremely low-income families with affordable, decent, safe, and sanitary housing.

§23.2 Definitions

These words when used in this Chapter shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions may be found in Tex. Gov't Code Chapter 2306 or Chapter 20 of this Title relating to Single Family Programs Umbrella Rule.

- (1) Area Median Family Income--The income limits published annually by the U.S. Department of Housing and Urban Development (HUD) for the Housing Choice Voucher Program that is used by the Department to determine the eligibility of Applicants for the HOME Program, also referred to as AMFI.
- (2) CFR--Code of Federal Regulations.
- (3) Commitment of Funds--Occurs when the funds are awarded to an Administrator for a specific Activity approved by the Department and set up in the Integrated Disbursement and Information System (IDIS) established by HUD.
- (4) Construction Completion Date--The Construction Completion Date shall be the date of completion of all improvements as stated on the affidavit of completion, provided that the affidavit is filed within ~~ten (10)~~ days of the stated date of completion or the date of filing as outlined in Tex Prop. Code §53.106.
- ~~(5)~~ (5) Date of Assistance--The date that assistance is provided to the Household. For Tenant-Based Rental Assistance, this is the start date of the rental subsidy. For Homeowner Reconstruction Assistance and Contract for Deed, this is the date of the loan closing or date of execution of grant agreement. For Single Family Development and Homebuyer Assistance with New Construction, this is the date that the Household executes the purchase agreement.
- (6) Development Site--The area, or if scattered site, areas on which the development is proposed to be located.

- (~~67~~) Direct Activity Costs--The total costs of hard construction costs, demolition costs, aerobic septic systems, refinancing costs (as applicable), acquisition and closing costs, for acquisition of real property, and rental and utility subsidy and deposits, and Match Funds.
- (~~78~~) HOME Final Rule--The regulations with amendments promulgated at 24 CFR, Part 92 as published by HUD for the HOME Investment Partnerships Program at 42 U.S.C. §§12701 - 12839.
- (~~89~~) Homeownership--Ownership in fee simple title in a ~~1one~~ to 4four unit dwelling or in a condominium unit, or equivalent form of ownership approved by the Department. Homeownership is not right to possession under a contract for deed, installment contract, or land contract ~~(pursuant to which the deed is not given until the final payment is made).~~ that has not converted into a deed for title ownership.
- (~~910~~) Identity of Interest--An acquisition will be considered to be an Identity of Interest transaction when the purchaser has any financial interest whatsoever in the seller or lender or is subject to common control, or any family relationship by virtue of blood, marriage, or adoption exists between the purchaser and the seller or lender.
- (~~1011~~) Match--Funds contributed to an Activity that meet the requirements of 24 CFR §§92.218 - 92.220. Match contributed to an Activity does not include mortgage revenue bonds, non HOME-assisted projects, and cannot include any other sources of Department funding unless otherwise approved in writing by the Department.
- (~~1112~~) New Construction--Construction of a new Single Family Housing Unit which involves:
- (A) Construction on a lot that was not the site of a Single Family Housing Unit on the date HOME assistance was requested;
 - (B) Construction of a new Single Family Housing Unit following acquisition; or
 - (C) Construction of a site-built Single Family Housing Unit ~~which~~ that replaces a ~~unit of~~ manufactured housing unit.
- (~~1213~~) Person--Any individual, partnership, corporation, association, unit of government, community action agency, or public or private organization of any character.
- (~~134~~) Persons with Special Needs--Individuals or categories of individuals determined by the Department to have unmet housing needs as provided in the Consolidated Plan and the State's One Year Action Plan.

~~(1415)~~ Predevelopment Costs--Costs consistent with 24 CFR §92.212 related to a specific eligible Activity including:

- (A) Predevelopment housing project costs that the Department determines to be customary and reasonable, including but not limited to consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, and site control;
- (B) Pre-construction housing project costs that the Department determines to be customary and reasonable, including but not limited to, the costs of obtaining firm construction loan commitments, architectural plans and specifications, zoning approvals, engineering studies and legal fees; and
- (C) Predevelopment costs do not include general operational or administrative costs.

~~(1516)~~ Principal--A Person, or Persons, that will exercise Control over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

- (A) Partnerships: Principals include all General Partners, special limited partners, and Principals with ownership interest;
- (B) Corporations: Principals include any officer authorized by the board of directors to act on behalf of the corporation, including the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10ten percent or more interest in the corporation; and
- (C) Limited liability companies: Principals include all managing members, members having a 10ten percent or more interest in the limited liability company or any officer authorized to act on behalf of the limited liability company.

~~(1617)~~ Reconstruction--~~Defined~~ Has the same meaning as the defined term in 24 CFR Part §92.

~~(17)~~ ~~Rehabilitation~~ Improvements and repairs made to an existing Single Family Housing Unit which do not require demolition of the entire existing Single Family Housing Unit. Additionally, replacement of a unit of manufactured housing with a new unit of manufactured housing is Rehabilitation².

(18) Reservation System Participant (RSP)--Administrator who has executed a written Agreement with the Department that allows for participation in the Reservation System.

(19) Service Area--The city(ies), county(ies) and/or place(s) identified in the Application and/or Agreement that the Administrator will serve.

~~(20)~~ ~~Texas Minimum Construction Standard (TMCS)~~ ~~The program standard used to determine the minimum acceptable housing condition for the purposes of Rehabilitation.~~

~~(21)(20)~~ Third Party--A Person who is not:

- (A) An Applicant, Administrator, Borrower, General Partner, Developer, Development Owner, or General Contractor; or
- (B) An Affiliate, Affiliated Party to the Applicant, Administrator, Borrower, General Partner, Developer, Development Owner, or General Contractor; or
- (C) A Person receiving any portion of the administration, contractor fee, or developer fee.

SUBCHAPTER B AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, REVIEW AND AWARD PROCEDURES, GENERAL ADMINISTRATIVE REQUIREMENTS, AND RESALE AND RECAPTURE OF FUNDS

§23.20 Availability of Funds and Regional Allocation Formula

~~Funds subject to regional allocation formula shall be made available as described in paragraphs (1)–(3) of this section:~~

~~(1) — Applicants applying in response to a Competitive Application Cycle NOFA will be ranked highest to lowest by region and subregion. Funds remaining after awarding all eligible Applications in a subregion shall collapse and be directed to the next Application across all regions and subregion regardless of the type of assistance being proposed, based on descending scoring order;~~

~~(2) — Funds made available through an open Application cycle and subject to regional allocation formula shall be made available to each region and subregion for a time period to be specified in the applicable NOFA, after which the funds remaining shall collapse and be made available statewide; and~~

~~(3) — In the event of a tie between rankings of two or more Applicants, the Department reserves the right to determine which Application will receive a recommendation for funding, or as otherwise specified in the NOFA. Tied Applicants may be awarded through a random selection process.~~

§23.21 Application Forms and Materials and Deadlines

(a) The Department will produce an Application, ~~which if properly completed in accordance herein by an eligible Applicant and approved by the Department, can~~ satisfy the Department's requirements to be qualified to administer HOME activities. The Application will be available on the Department's website.

(b) The Department must receive all Applications by the deadline specified in the NOFA.

§23.22 Contract Award Application Review Process for Open and Competitive Application Cycles

(a) — An Application received by the Department in response to an open Application cycle NOFA will be assigned a "Received Date." An Application will be prioritized for review based on its "Received Date." Application acceptance dates may be staggered under an open Application cycle to prioritize Applications which propose to serve areas identified in Tex. Gov't Code §2306.127 as priority for certain communities. An Application with outstanding administrative deficiencies under Section 23.24 of this Chapter, may be suspended from further review until all administrative deficiencies have been cured or addressed to the Department's satisfaction. Applications that have completed the review process may be presented to the Board for approval with priority over Applications that continue to have administrative deficiencies at the time Board materials are prepared, regardless of "Received Date." If all funds available under a NOFA are awarded, all remaining Applicants will be notified and the remaining Applications will not be processed.

~~(b) — For Applications received by the Department in response to a Competitive Application Cycle NOFA, the Department will accept Applications on an ongoing basis during the Application acceptance period as specified in the NOFA. Applications will be reviewed and scored then ranked based on the score of the Application.~~

§23.23 Reservation System Participant Review Process

An Application for a Reservation System Participant (RSP) Agreement shall be reviewed and if approved under ~~§Chapter 1.303, Subchapter C~~ of this ~~§Title~~, as amended or superseded, concerning Previous Participation and the Executive Award and Review Advisory Committee, and not denied under ~~§Section~~ 23.24 of this Chapter, will be drafted and processed in the order in which it was accepted ~~by~~ to be executed and made effective.

§23.24 Administrative Deficiency Process

(a) The administrative deficiency process allows staff to 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 an email or if an email address is not provided in the Application, by facsimile to the Applicant. Responses ~~are required to~~ must be submitted electronically to the Department. A review of the Applicant's response may reveal 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 being resolved. Department staff may, in good faith, provide an Applicant confirmation that an administrative deficiency response has been received 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 having fulfilled any requirements. Final determination regarding the sufficiency of documentation submitted to cure an administrative deficiency as well as the distinction between material and non-material missing information are reserved for the ~~Director of the HOME Program, Executive Director~~ or authorized designee, and Board, as applicable.

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

~~(c) Administrative deficiencies for HOME Applications under an open application cycle NOFA, including an Application for an RSP Agreement. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m., Austin local central time, on the fifth business seventh day following the date of the deficiency notice, the application shall may be terminated. The Department may accept a corrected Board Resolution submitted after the deficiency deadline on the condition that the corrected Board Resolution resolves the deficiencies to the satisfaction of the Department, but the Board Resolution must be received and deemed satisfactory by the Department before the RSP Agreement or Contract start date. Applicants that have been terminated may reapply, and the application fee shall be waived for an Application submitted within 30 days of the termination of an Application.~~

~~(d) Administrative deficiencies for HOME Applications under a Competitive Application Cycle NOFA. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then one point shall be deducted from the selection criteria score for each additional business day the deficiency remains unresolved. If administrative deficiencies are not resolved by 5:00 p.m., Austin local time, on the seventh business day following the date of the deficiency notice, then the Application shall be terminated. The Department may accept a corrected Board Resolution submitted after the deficiency deadline on the condition that the corrected Board Resolution resolves the deficiencies to the satisfaction of the Department, but the Board Resolution must be received and deemed satisfactory by the Department before the Contract start date.~~

§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~~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~~A Resolution from the Applicant's direct governing body which includes:

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

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

(C) ~~s~~Source of funds for Match obligation and Match dollar amount, if applicable;

(D) ~~n~~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; and

(E) ~~d~~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~~An 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~~(4) 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.~~

§23.26 Contract Benchmarks and Limitations

(a) Contract Award Funding Limits. Limits on the total amount of a Contract award will be established in the NOFA.

- (b) Contract Award Terms. Homeowner ~~Rehabilitation Assistance~~ and ~~Homebuyer~~ Reconstruction Assistance awards will have a Contract term of not more than ~~twenty-one (21)~~ months, exclusive of any applicable affordability period or loan term. Single Family Development awards will have a Contract term of not more than 24 months, exclusive of any applicable affordability period or loan term. Tenant-Based Rental Assistance awards will have a Contract term of not more than ~~thirty-six (36)~~ months.
- (c) Contract Award Benchmarks. ~~Except for acquisition only Activities,~~ Administrators must have attained environmental clearance for the contractually required number of Households served within six ~~(6)~~ months of the effective date of the Contract. Contract Administrators must submit to the Department complete Activity setup information for the Commitment of Funds of all contractually required Households in accordance with the requirements herein within nine ~~(9)~~ months from the effective date of the Contract. All remaining funds will be deobligated and reallocated in accordance with Chapter 1 of this ~~€~~ Title relating to Reallocation of Financial Assistance.
- (d) Voluntary deobligation. The Administrator may fully deobligate funds in the form of a written request signed by the signatory, or successor thereto, of the Contract. The Administrator may partially deobligate funds under a Contract in the form of a written request from the signatory if the letter also deobligates the associated number of targeted Households, funds for administrative costs, and Match and the partial deobligation would not have impacted the award of the Contract. Voluntary deobligation of a Contract does not limit an Administrator's ability to participate in an open application cycle.
- (e) The Department may request information regarding the performance or status under a Contract prior to a Contract benchmark or at various times during the term of a Contract. Administrator must respond within the time limit stated in the request. Prolonged or repeated failure to respond may result in suspension of funds and ultimately in termination of the Contract by the Department.
- (f) Pre-Contract Costs.
- (1) The Administrator may be reimbursed for eligible administrative and Activity soft costs incurred before the effective date of the Contract in accordance with 24 CFR §92.212 and at the sole discretion of the Department.
 - (2) A Community Housing Development Organization may be reimbursed for Predevelopment Costs as defined in this Chapter for an Activity funded under Single Family Development.
 - (3) In no event will the Department reimburse expenses incurred more than six ~~(6)~~ months prior to Governing Board approval of the Administrator's award.

- (g) Amendments to Contract awards will be processed in accordance with Chapter 20 of this ~~€Title,~~ relating to Single Family Programs Umbrella Rule.

§23.27 Reservation System Participant (RSP) Agreement

- (a) Terms of Agreement. The term of an RSP Agreement will not exceed ~~thirty-six (36)~~ months. Execution of an RSP Agreement does not guarantee the availability of funds under a reservation system. Reservations submitted under an RSP agreement will be subject to the provisions of this Chapter in effect as of the date of submission by the Administrator.
- (b) Limits on Number of Reservations. Except for Activities submitted under the Disaster set-aside, RSP Administrators may have no more than five ~~(5)~~ Reservations per county within the RSP's Service Area submitted to the Department for approval at any given time, except that Tenant-Based Rental Assistance Reservations submitted for approval under an RSP Agreement is limited to ~~thirty (30) at any given time.~~ All required documentation for the Reservation must be submitted to the Department twenty (20) business days prior to the end of RSP Agreement term 30 at any given time.
- (c) Extremely Low-Income Households. Except for Households ~~served with disaster relief, Homebuyer Assistance or Single Family Development assistance~~ submitted under the Disaster set-aside, each RSP will be required to serve at least one extremely low-income Household out of every four Households submitted and approved for assistance. For purposes of this subsection, extremely low-income is defined as families that are either at or below 30 percent ~~area median family income~~ AMFI for the county in which they will reside ~~without the increase for poverty guidelines~~ or have an income that is lower than the statewide 30 percent income limit without adjustments to HUD limits.
- (d) Match. Administrators must meet the Match requirement per Activity approved for assistance.
- (e) Completion of Construction. For Activities involving construction, construction must be complete within ~~twelve (12)~~ months from the Commitment of Funds for the Activity.
- (f) Household commitment contract term. The term of a Household commitment contract may not exceed ~~twelve (12)~~ months, except that the term for Tenant-Based Rental Assistance may not exceed ~~twenty four (24)~~ months. Household commitment contracts may commence after the end date of an RSP Agreement only in cases when the Administrator has submitted a Reservation on or before the termination date of the RSP Agreement.
- (g) Amendments to Household ~~C~~commitment contracts may be considered by the Department provided the approval does not conflict with the federal regulations governing use of these funds, or impact federally imposed obligation or expenditure deadlines.
- (1) The ~~Division Director~~ Executive Director's authorized designee may approve ~~amendments~~ an amendment that extends the terms of a Household commitment

contracts by not more than three ~~(3)~~ months, except that the term of a Household ~~€~~commitment contract for Tenant-Based Rental Assistance may not be extended to exceed a total contract term of 24 months.

- (2) The ~~Division Director~~Executive Director's authorized designee may approve ~~amendments~~an amendment to a Household ~~€~~commitment contract to increase Activity funds within the limitations set forth in this Chapter.
 - (3) The Executive Director may approve amendments to a Household ~~Commitment contracts~~commitment contract, except amendments to extend the ~~terms~~contract term of a Household Commitment contracts by more than ~~twelve (12)~~ months.
- (h) Pre-agreement costs. The Administrator may be reimbursed for eligible administrative and Activity soft costs incurred before the effective date of the RSP Agreement in accordance with 24 CFR §92.212 and at the sole discretion of the Department. In no event will the Department reimburse expenses incurred more than six ~~(6)~~ months prior to the effective date of the RSP Agreement.
- (i) Administrators ~~must~~ remain in good standing with the Department, the state of Texas, and HUD. If an Administrator is not in good standing, participation in the Reservation System will be suspended and may result in termination of the RSP Agreement.

§23.28 General Administrative Requirements

Unless otherwise provided in this Chapter, the Administrator or Developer must comply with the requirements described in paragraphs (1) - (21) of this section, for the administration and use of HOME funds:

- (1) ~~€~~Complete training, as applicable;
- (2) ~~þ~~Provide all applicable Department Housing Contract System access request information and documentation requirements;
- (3) ~~€~~Establish and maintain sufficient records at its regular place of business and make available for examination by the Department, HUD, the U.S. General Accounting Office, the U.S. Comptroller, the State Auditor's Office of Texas, the Comptroller of Public Accounts, or any of their duly authorized representatives, throughout the applicable record retention period;
- (4) ~~£~~For non-developmentSingle Family Development Contracts, develop and establish written procurement procedures that comply with federal, state, and local procurement requirements including:
 - (A) ~~£~~Develop and comply with written procurement selection criteria and committees, including appointment of a procurement officer to manage any bid process;

- (B) ~~e~~Develop and comply with a written code of conduct governing employees, officers, or agents engaged in administering HOME funds;
 - (C) ~~e~~Ensure consultant or any procured service provider does not participate in or direct the process of procurement for services. A consultant cannot assist in their own procurement before or after an award is made;
 - (D) ~~e~~Ensure that procedures established for procurement of building construction contractors do not include requirements for the provision of general liability insurance coverage in an amount to exceed the value of the contract and do not give preference for contractors in specific geographic locations;
 - (E) ~~e~~Ensure that building construction contractors are procured in accordance with State and Federal regulations for single family HOME Activities;
 - (F) ~~e~~Ensure that professional service providers (consultants) are procured using an open competitive procedure and are not procured based solely on the lowest priced bid; and
 - (G) ~~e~~Ensure that any Request for Proposals or Invitation for Bid include:
 - (i) an equal opportunity disclosure and a notice that bidders are subject to search for listing on the Excluded Parties List;
 - (ii) bidders' protest rights and an outline of the procedures bidders must take to address procurement related disputes;
 - (iii) a conflict of interest disclosure;
 - (iv) a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description must include complete, adequate, and realistic specifications;
 - (v) for sealed bid procedures, disclose the date, time and location for public opening of bids and indicate a fixed-price contract;
 - (vi) must not have a term of services greater than five ~~(5)~~ years; and
 - (vii) for competitive proposals, disclose the specific election/evaluation criteria;
- (5) ~~in~~In instances where a potential conflict of interest exists, follow procedures to submit a ~~request~~request required documentation to the Department sufficient to ~~grant~~submit an exception request to HUD for any conflicts prohibited by 24 CFR §92.356. The request submitted to the Department must include a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict by

newspaper publication, a description of how the public disclosure was made, and an attorney's opinion that the conflict does not violate state or local law. No HOME funds will be committed to or reserved to assist a Household impacted by the conflict of interest regulations until HUD has granted an exception to the conflict of interest provisions;

(6) ~~p~~Perform environmental clearance procedures, as required, before acquiring any Property or before performing any construction activities, including demolition, or before the occurrence of the loan closing, if applicable;

(7) ~~d~~Develop and comply with written Applicant intake and selection criteria for program eligibility that promote and comply with Fair Housing requirements and the State's One Year Action Plan;

(8) ~~e~~Complete Applicant intake and Applicant selection. Notify each Applicant Household in writing of either acceptance or denial of HOME assistance within ~~sixty (60)~~ days following receipt of the intake application. ~~For Homeowner Rehabilitation Assistance and Contract for Deed Conversion the Administrator must:~~

~~(A) provide Rehabilitation as an available option to Households, provide Households with a general cost estimate, and to the extent that Rehabilitation would not meet the program requirements, explain these program requirements;~~

~~(B) unless not allowed by local code, provide replacement of an existing housing unit with a new MHU as an available option; and~~

~~(C) explain relocation as an available option under applicable Activities;~~

(9) ~~d~~Determine the income eligibility of a Household using the "Annual Income" as defined at 24 CFR §5.609, by using the list of income included in HUD Handbook 4350, and excluding from income those items listed in HUD's Updated List of Federally Mandated Exclusions from Income;

(10) ~~except for Single Family Development, complete~~Complete an updated income eligibility determination of a Household if ~~more than six (6) months has elapsed from the date of certification and is more than six months prior to the date the HOME assistance is provided to the Household. For Single Family Development, complete income eligibility determination~~Date of a Household if more than six (6) months has elapsed from the date of certification and the date the contract to purchase the housing unit is executed with the Household;Assistance.

~~(11) for disaster relief set aside Activities, provide evidence that the housing unit occupied by the eligible Household was damaged as a direct result of a federal, state, or locally declared disaster that occurred less than three (3) years prior to Administrator's Application for a RSP Agreement or Contract under which the Household applied for assistance;~~

- ~~(12)~~ ~~for~~ (11) For single family Activities involving construction, perform initial inspection in accordance with Chapter 20 of this ~~€~~ Title (relating to Single Family Programs Umbrella Rule). Property inspections must include photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms. The inspection must be signed and dated by the inspector and the Administrator;.
- ~~(13)~~ ~~submit~~ (12) Submit a substantially complete request for the Commitment or Reservation of Funds, loan closing preparation, and for disbursements. Administrators must upload all required information and verification documentation in the Housing Contract System. Requests determined to be substantially incomplete will not be reviewed and may be disapproved by the Department. Expenses for which reimbursement is requested must be documented as incurred. If the Department identifies administrative deficiencies during review, the Department will allow a cure period of ~~ten (10) business~~ 14 days beginning at the start of the first ~~business~~ day following the date the Administrator or Developer is notified of the deficiency. If any administrative deficiencies remain after the cure period, the Department, in its sole discretion, may disapprove the request. Disapproved requests will not be considered sufficient to meet the performance benchmark and shall not constitute a Reservation of Funds;.
- ~~(14)~~ ~~submit~~ (13) Submit signed program documents timely as may be required for the completion of a Commitment or Reservation of Funds, and for closing preparation of the loan or grant documents. Department reserves the right to cancel or terminate Activities when program documents are not executed timely, in the Department's sole and reasonable discretion;.
- ~~(15)~~ ~~not~~ (14) Not proceed or allow a contractor to proceed with construction, including demolition, on any Activity or development without first completing the required environmental clearance procedures, preconstruction conference and receiving notice to proceed, if applicable, and execution of grant agreement or loan closing with the Department, whichever is applicable;.
- ~~(16)~~ ~~submit~~ (15) Submit any Program Income received by the Administrator or Developer to the Department within ~~ten (10) business~~ 14 days of receipt; any fund remittance to the Department, including refunds, must include a written explanation of the return of funds, the Contract number, name of Administrator or Developer, Activity address and Activity number, and must be sent to the Department's accounting division;.
- ~~(17)~~ ~~submit~~ (16) Submit required documentation for project completion reports no later than ~~sixty (60)~~ days after the completion of the Activity;.

~~(18) For~~ (17) For Contract awards, submit certificate of Contract Completion within ~~ten~~ business ~~10~~ 14 days of the Department's request;

~~(19) Submit~~ (18) Submit to the Department reports or information regarding the operations related to HOME funds provided by the Department;

~~(20) Submit~~ (19) Submit evidence with the final draw for construction related activities that the builder has provided a one-year warranty specifying at a minimum that materials and equipment used by the contractor will be new and of good quality unless otherwise required, the work will be free from defects other than those inherent in the work as specified, and the work will conform to the requirements of the contract documents;

~~(21) Provide~~ (20) Provide the Household all warranty information for work performed by the builder and any materials purchased for which a manufacturer or installer's warranty is included in the price; ~~and~~.

~~(22) If~~ (21) If required by state or federal law, place the appropriate bonding requirement in any contract or subcontract entered into by the Administrator or Developer in connection with a HOME award may result in termination of the RSP Agreement.

§23.29 Resale and Recapture Provisions

(a) Recapture is the primary method the Department will use to recoup HOME funds under 24 CFR §92.254(a)(5)(ii).

~~(b) The~~ (b) To ensure continued affordability, the Department has established the recapture provisions described in paragraphs (1) - (4) of this subsection to ensure affordability as and further defined in 24 CFR §92.254(a)(5)(ii).

(1) In the event that a federal affordability period is required and the assisted property is rented ~~or~~ leased, or no member of the Household has it as the Principal Residence, the entire HOME investment is subject to recapture. The Department will include any loan payments previously made when calculating the amount subject to recapture. Loan forgiveness is not the same thing as loan payments for purposes of this subsection.

(2) In the event that a federal affordability period is required and the ~~unit~~ assisted property is sold, including through a short sale, deed in lieu of foreclosure, or foreclosure, prior to the end of the affordability period, the Department will recapture the available amount of net proceeds based on the requirements of 24 CFR §92.254, and as outlined in the State's One Year Action Plan.

(3) The Household can sell the unit to any willing buyer at any price. In the event of sale to a qualified low-income purchaser of a HOME-assisted unit, the qualified low-income

purchaser may assume the existing HOME loan and assume the recapture obligation entered into by the original buyer if no additional HOME assistance is provided to the ~~subsequent homebuyer~~ low-income purchaser. In cases in which the subsequent homebuyer needs HOME assistance in excess of the balance of the original HOME loan, the HOME subsidy (the direct subsidy as described in 24 CFR §92.254) to the original homebuyer must be recaptured. A separate HOME subsidy must be provided to the new homebuyer, and a new affordability period must be established based on that assistance to the buyer.

- (4) If there are no net proceeds from the sale, no repayment will be required of the Household and the balance of the loan shall be forgiven as outlined in the State's applicable One Year Action Plan.
- (c) The Department has established the resale provisions described in paragraphs (1) - (7) of this subsection, only in the event that the Department must impose the resale provisions of 24 CFR §92.254(a)(i).
- (1) Resale is defined as the continuation of the affordability period upon the sale or transfer, rental or lease, refinancing, and no member of the Household is occupying the property as their Principal Residence.
 - (2) In the event that a federal affordability period is required and the assisted property is rented or leased, or no member of the Household has it as the Principal Residence, the HOME investment must be repaid.
 - (3) In the event that a federal affordability period is required and the assisted property is sold or transferred in lieu of foreclosure to a qualified ~~low-~~income buyer at an affordable price, the HOME loan balance shall be transferred to the subsequent qualified buyer and the affordability period shall remain in force to the extent allowed by law.
 - (4) The resale provisions shall remain in force from the date of loan closing until the expiration of the required affordability period.
 - (5) The Household is required to sell the home at an affordable price to a reasonable range of ~~low-~~income homebuyers that will occupy the home as their Principal Residence. Affordable to a reasonable range of low-income buyers is defined as targeting Households that have income between 70 and 80 percent ~~of the area median family income~~ AMFI and meet all program requirements.
 - (A) The seller will be afforded a fair return on investment defined as the sum of down payment and closing costs paid from the initial seller's cash at purchase, closing costs paid by the seller at sale, the principal payments only made by the initial

homebuyer in excess of the amount required by the loan, and any documented capital improvements in excess of \$500.

(B) Fair return on investment is paid to the seller at sale once first mortgage debt is paid and all other conditions of the initial written agreement are met. In the event there are no funds for fair return, then fair return does not exist. In the event there are partial funds for fair return, then the appropriate partial fair return shall remain in force.

(6) The appreciated value is the affordable sales price less first mortgage debt less fair return.

(A) If appreciated value is zero, or less than zero, then no appreciated value exists.

(B) The initial homebuyer's investment of down payment and closing costs divided by the Department's HOME investment equals the percentage of appreciated value that shall be paid to the initial homebuyer or persons as otherwise directed by law. The balance of appreciated value shall be paid to the Department.

(7) The property qualified by the initial Household will be encumbered with a lien for the full affordability period.

(d) In the event ~~that a federal affordability period is not required and~~ the housing unit transfers by devise, descent, or operation of law upon the death of the assisted homeowner, forgiveness of installment payments under the loan may continue until maturity or the ~~grant~~penalty amount for noncompliance under the conditional grant agreement may be ~~forgiven~~waived, if the new Household qualifies for assistance in accordance with this subchapter. If the new Household does not qualify for assistance in accordance with this Chapter, forgiveness of installment payments will cease and repayment of scheduled payments under the loan will commence and continue until maturity or payment of a penalty amount under the conditional grant agreement may be required in accordance with the terms of the conditional grant agreement.

(e) Forgiveness of installment payments under the loan may continue until maturity or the ~~grant~~penalty amount under conditional grant agreement may be ~~forgiven~~waived by the Department if the housing unit is sold by the decedent's estate to a purchasing Household that qualifies for assistance in accordance with this Chapter.

(f) Grants subject to conditional grant agreements ~~may be forgiven annually during the Department's affordability period and~~ are not subject to ~~recapture~~ of the entire ~~grant~~penalty amount in the event the property is no longer the Principal Residence of any Household member. ~~The outstanding amount owed will be based on the remaining affordability term.~~

**SUBCHAPTER C HOMEOWNER ~~REHABILITATION~~RECONSTRUCTION ASSISTANCE
PROGRAM**

§23.30 Homeowner ~~Rehabilitation~~Reconstruction Assistance (HRA) Threshold and Selection Criteria

(a) Match requirement. Excluding Applications under the disaster relief and persons with disabilities set asides, Match shall be required based on the tiers described in paragraphs (1) and (2) of this subsection:

(1) Zero percent of Direct Activity Costs, exclusive of Match, is required as Match:

(A) when the Service Area includes the entire unincorporated area of a county and where the population of Administrator's Service Area is less than or equal to 20,000 persons; or

(B) when the Service Area does not include the entire unincorporated area of a county and the population of the Administrator's Service Area is less than or equal to 3,000 persons.

(2) One percent of Direct Activity Costs, exclusive of Match, is required as Match for every 1,000 in population to a maximum of 15 percent.

(b) The Department shall use population figures from the most recently available U.S. census bureau's American Community Survey (ACS) as of the date that Applications are first accepted under of submission of the NOFA Application to determine the applicable Match. The Department may incentivize or provide preference to Applicants committing to provide additional Match above the requirement of this subsection. Such incentives may be established as selection criteria in the NOFA.

(c) Documentation is required of a commitment of at least \$40,000 in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(1) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(2) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in this subsection.

(d) Selection criteria for this activity will be outlined in the NOFA.

§23.31 Homeowner ~~Rehabilitation~~Reconstruction Assistance (HRA) General Requirements

(a) Program funds may be used for the following under this subchapter:

(1) ~~the Rehabilitation or Reconstruction of existing owner-occupied housing on the same site. The Rehabilitation of a~~ meeting the following conditions:

(A) Replacement of an owner-occupied site-built house with either a new site-built house or a new Manufactured Housing Unit (MHU) on the same site;

(B) Replacement of an owner-occupied MHU with a new MHU on the same site;

(C) A unit that is not an owner-occupied has been destroyed may be eligible use of for Reconstruction under (A) or (B) of this subsection if:

(i) the unit was the Principal Residence of the Household as of the date of destruction where evidence of the Household's Principal Residence is established by a homestead exemption from the local taxing jurisdiction and Household certification in effect at the date of destruction. ; and

(ii) HOME funds; are committed within 12 months of the date of destruction.

(2) ~~the~~ New Construction of housing meeting the following conditions:

(A) Construction of site-built housing on the same site to replace an existing owner-occupied MHU;

~~the replacement~~ (B) Replacement of existing owner-occupied housing with an MHU or New Construction construction of site-built housing on another site contingent upon written approval of the Department;

~~(3) if~~ (C) Replacement of a housing unit is determined to be uninhabitable, within the previous five (5) four years from requested assistance, of submission of a Reservation for funds on the same site or another site when:

(i) the unit has been rendered uninhabitable as a direct result of a natural or man-made disaster or, a condemnation order from the unit of local government, or a determination from the unit of local government that the unit presents an imminent threat to the life, health, or and safety of occupants as determined by the local government with jurisdiction over the property, ; and

(ii) the Household may be eligible for the New Construction of site-built housing or an MHU under this section provided the assisted Household documents that the housing unit was previously their Household's Principal Residence through evidence of is established by a homestead exemption from the local taxing jurisdiction and Household certification. If a housing unit is destroyed due to a disaster (housing unit may no longer be standing on the site), that unit is eligible for Reconstruction provided that the HOME funds are committed within twelve

~~(12) months as of the date of destruction; or the disaster, condemnation order, or determination of uninhabitability through a Certification.~~

~~(4) — if allowable under the NOFA, the refinance of an existing mortgage meeting the federal requirements at 24 CFR §92.206(b) and any additional requirements in the NOFA.~~

(b) If a housing unit has an existing mortgage loan and Department funds are provided in the form of a loan, the Department will require a first lien position if the existing mortgage loan has an outstanding balance that is less than the investment of HOME funds and any of the statements described in paragraphs (1) - (3) of this subsection are true:

(1) ~~a~~ A federal affordability period is required; ~~or~~

(2) ~~a~~ Any existing mortgage has been in place for less than three ~~(3)~~ years from the date the Household applies for assistance; or

(3) ~~€~~ The HOME loan is structured as a repayable loan.

(c) The Household must be current on any existing mortgage loans or home equity loans. If the Department's assistance is provided in the form of a loan, the property cannot have any existing home equity loan liens.

~~(d) — Direct Activity Costs, exclusive of Match funds, and are limited to:~~

(d) Direct Activity Costs, exclusive of Match funds, are limited to the amounts described in this subsection; however, not more than once per year, the Board in its sole discretion, may increase or decrease by up to five percent of the limitation for Direct Activity Costs. Total Activity costs may not exceed HUD Subsidy Limits. Dollar amounts in a Household commitment contract are set at the time of contract execution and may not be adjusted through this process. Current dollar amounts under this subsection will be reflected on the Department's website.

(1) Reconstruction and New Construction of site-built housing: the lesser of ~~\$90~~120 per square foot of conditioned space or ~~\$100~~135,000 or for Households of five or more Persons the lesser of ~~\$90~~120 per square foot of conditioned space or ~~\$14~~50,000 for a four-bedroom unit;

(2) ~~r~~ Replacement with energy efficient MHU: \$75~~90~~0,000; and

(3) ~~Rehabilitation that is not Reconstruction: \$60,000, or up to \$100,000 for properties listed~~ Limits established in or identified as eligible for listing in the National Register of Historic Places; and

~~(4) refinancing of existing mortgages: in addition to the costs limited under paragraphs (1)–(3) of this subsection, the cost to refinance an existing mortgage is limited to \$35,000. To qualify, a Household's current total housing payment must be greater~~ may be

~~updated not more than 30 percent of their monthly gross income or their total monthly recurring debt payments must be greater than 45 percent of their gross monthly income. HOME funds may not be utilized to refinance loans made or insured by any federal program annually at the discretion of the Board.~~

(e) In addition to the Direct Activity Costs allowable under subsection (d) of this section, a sum not to exceed \$~~10~~15,000 maybe requested and if approved, used to pay for any or all of the following, as applicable:

(1) ~~N~~Necessary environmental mitigation as identified during the Environmental review process;

(2) ~~I~~Installation of an aerobic septic system; ~~or~~and

(3) ~~H~~Homeowner requests for accessibility features.

(f) Activity soft costs eligible for reimbursement for Activities of the following types are limited to:

(1) Reconstruction or New Construction of site-built housing: no more than \$~~10~~12,000 per housing unit;

(2) ~~R~~Replacement with an MHU: no more than \$3,500 per housing unit; and

~~(3) — Rehabilitation that is not Reconstruction: \$7,000 per housing unit. This limit may be exceeded for lead based paint remediation and only upon prior approval of the Division Director. The costs of testing and assessments for lead based paint are not eligible Activity soft costs for housing units that are Reconstructed or if the existing housing unit was built after December 31, 1977; and~~

~~(4) third(3) —~~ Third-party Activity soft costs related to costs incurred in connection with an Activity under this section, such as required housing counseling, appraisals, title reports or insurance, tax certificates, recording fees, surveys, and first year hazard and flood insurance are not subject to a maximum per Activity.

(g) Funds for administrative costs are limited to no more than 4four percent of the Direct Activity Costs, exclusive of Match funds.

~~(h) In the instances described in paragraphs (1) — (4) of this subsection~~ (h) For New Construction Activities, the assistance to an eligible Household shall be in the form of a loan in the amount of the Direct Activity Costs excluding Match funds. The loan will be at zero percent interest and include deferral of payment and annual pro rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

~~(1) — An MHU being replaced with newly constructed housing (site built) on the same site;~~

~~(2) Any housing unit being replaced on another site;~~

~~(3) Any housing unit that is being relocated out of the floodplain or replaced due to uninhabitability as allowed under subsection (a)(4) of this section; and~~

~~(4) Any Activity that requires a federal affordability period.~~

~~(i) For any Activity involving refinancing described in subsection (d)(4) of this section, the HOME funds used for refinancing shall be structured as a fully amortizing, repayable loan at zero percent interest. The loan term shall be calculated by setting the total estimated housing payment (including principal, interest, property taxes, insurance, and any other homebuyer assistance), equal to 20 percent of the Household's gross monthly income. The term shall not exceed thirty (30) years. Total debt service (back-end ratio) may not exceed 45 percent. Any Direct Activity Costs, exclusive of refinancing costs and Match funds, shall be structured as a deferred, forgivable loan with a 15-year term.~~

~~(j) In all other instances not described in subsections (h) and (i) of this section, the assistance to an eligible Household will be in the form of a grant agreement with a 5-year affordability period.~~

~~(k)(i) For Reconstruction Activities, the assistance to an eligible Household will be in the form of a grant agreement with a five year affordability period.~~

(j) To ensure affordability, the Department will impose resale and recapture provisions established in this Chapter.

~~(l) For Reconstruction and New Construction, site(k) Site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes, standards, ordinances, and zoning requirements. In addition, Reconstruction and New Construction housing is required to meet 24 CFR §92.251(a)(2) as applicable. Housing that is Rehabilitated under this Chapter must meet the Texas Minimum Construction Standards (TMCS) and all other applicable local codes, Rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule. MHUs must be installed according to the manufacturer's instructions and in accordance with Federal and State laws and regulations.~~

~~(m) Each(l) Unless an exception is requested by the Household and approved by the Division Director prior to submission of the Activity, each unit must meet the design and quality requirements described in paragraphs (1) - (4) of this subsection:~~

(1) ~~Include the following amenities: Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room; Blinds or window coverings for all windows; Oven/Range; Exhaust/vent fans (vented to the outside) in bathrooms; Energy-Star or equivalently rated lighting in all rooms, which may include compact fluorescentLED~~

bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans;

(2) ~~e~~Contain no less than two bedrooms. Each unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;

(3) ~~e~~Each bedroom must be no less than 100 square feet; have a length or width no less than 8 feet; be self contained with a door; have at least one window that provides exterior access; and have at least one closet that is not less than ~~2two~~ feet deep and ~~3three~~ feet wide and high enough to contain at least ~~5five~~ feet of hanging space; and

(4) ~~be~~Be no less than 800 total net square feet for a two bedroom home; no less than 1,000 total net square feet for a three bedroom and two bathroom home; and no less than 1,200 total net square feet for a four bedroom and two bathroom home

~~(n)~~(m) Housing proposed to be constructed under this subchapter must meet the requirements of Chapters 20 and 21 of this ~~title~~ and must be certified by a licensed architect or engineer.

(1) The Department will reimburse only for the first time a set of architectural plans are used, unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer; ~~and~~.

(2) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

§23.32 Homeowner ~~Rehabilitation~~ Reconstruction Assistance (HRA) Administrative Requirements

(a) Commitment or Reservation of Funds. The Administrator must submit the true and complete information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (20) of this subsection:

(1) ~~H~~Head of Household name and address of housing unit for which assistance is being requested;

(2) ~~a~~A budget that includes the amount of Activity funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested, a maximum of ~~5~~five percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Direct Activity Cost and Soft Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) ~~v~~Verification of environmental clearance;

(4) ~~a~~A copy of the Household's intake application on a form prescribed by the Department;

- (5) ~~e~~ Certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. In instances where the total Household income is within \$3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;
- (6) ~~p~~ Project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;
- (7) ~~w~~ When assistance is provided in the form of a loan, provide written consent from all Persons who have a valid lien or ownership interest in the Property ~~for the Rehabilitation or Reconstruction Activities;~~
- (8) ~~in~~ In the instance of relocation ~~and in accordance with §23.31(a)(3) of this Chapter (relating from one site to HRA General Requirements), another site,~~ the Household must document Homeownership of the existing unit to be replaced and must establish Homeownership of the lot on which the replacement housing unit will be constructed. The Household must agree to the demolition of the existing housing unit. HOME Activity funds cannot be used for the demolition of the existing unit and any funding used for the demolition is not eligible Match; however, solely for a Activity under this paragraph, the Administrator Match obligation may be reduced by the cost of such demolition without any Contract amendment;
- (9) ~~i~~ Identification of any Lead-Based Paint (LBP);
- (10) ~~f~~ For housing units located within the 100-year floodplain or otherwise required to carry flood insurance by federal or local regulation, certification from the Household that they understand the flood insurance requirements;
- (11) ~~e~~ Consent to demolish from any existing mortgage lien holders and consent to subordinate to the Department's loan, if applicable;
- (12) ~~i~~ If applicable, documentation to address or resolve any potential conflict of interest, Identity of Interest, duplication of benefit, or floodplain mitigation;
- (13) ~~a~~ A title commitment or policy or a down date endorsement to an existing title policy, ~~and evidencing the actual documents, or legible copies thereof, establishing the Household's Household's ownership, such as a warranty deed or ninety nine (99) year leasehold.~~ of the property:
 - (A) ~~For loan projects,~~ New Construction Activities, a title commitment or down-date endorsement to an existing title policy the effective date title commitment must be no more than ~~thirty (30)~~ 60 days prior to of the date of ~~project~~ Activity submission. Title commitments for loan projects that expire prior to the loan closing date must be updated and must not have any adverse changes. ~~For assistance provided in the~~

~~form of a grant agreement, a title report may be submitted in lieu of a title commitment or policy. In instances of an MHU, a Statement of Ownership and Location (SOL) must be submitted. Together, these documents must evidence the definition of Homeownership is met;~~

~~(14) tax~~(B) For Reconstruction Activities, a title report or a title commitment dated not more than six months prior to the date of Activity submission;

(14) Documents evidencing ownership, such as a warranty deed, life estate, or 99-year leasehold;

(15) If the housing to be replaced is an MHU, a Statement of Ownership and Location (SOL) for the MHU;

(16) Tax certificate that evidences a current paid status, and in the case of delinquency, evidence of an approved payment plan with the taxing authority and evidence that the payment plan is current;

~~(15) in~~(17) In the instances of replacement with an MHU, information necessary to draft loan documents or grant agreements to issue SOL;

~~(16) life~~(18) Life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship; ~~and~~

~~(17) any~~(19) For disaster relief set-aside Activities, evidence that the housing unit occupied by the eligible Household was damaged as a direct result of a federal, state, or locally declared disaster that occurred less than four years prior to the submission of the Activity; and

(20) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Loan closing or grant agreement. In addition to the documents required under subsection (a) of this section, the Administrator must submit the appraisal or other valuation method approved by the Department which establishes the post ~~Rehabilitation or Reconstruction~~construction value of improvements for Activities involving construction prior to the issuance of grant or loan documents by the Department.

(c) Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) - (12) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (12) of this subsection, may be required with a request for disbursement:

- (1) ~~F~~or construction costs associated with a loan, a down date endorsement to the title policy not older than the date of the last disbursement of funds or ~~forty five (45)~~ days, whichever is later. For release of retainage the down date endorsement must be dated at least ~~forty (40)~~ days after the Construction Completion Date;
- (2) ~~F~~or construction costs associated with a grant agreement, an interim lien waiver or final lien waiver. For release of retainage the release on final payment must be dated at least ~~forty (40)~~ days after the Construction Completion Date;
- (3) ~~I~~f applicable, a maximum of 50 percent of Activity funds for ~~an~~ Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed;
- (4) ~~P~~roperty inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator;
- (5) ~~C~~ertification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided; ~~that~~ no Person that would benefit from the award of HOME funds; ~~that it~~ has satisfied ~~the Applicant's~~ any applicable cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service; and that the service does not violate any conflict of interest provisions;
- (6) ~~T~~he executed grant agreement or original, executed, legally enforceable loan documents and statement of location, if applicable, for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official;
- (7) ~~E~~xpenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures submitted for reimbursement. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all ~~Program Rules~~ program requirements;
- (8) ~~T~~he request for funds for administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed;

- (9) ~~Include the withholding of 10~~ten percent of hard construction costs for retainage. Retainage will be held until at least ~~forty (40)~~ days after the Construction Completion Date;
- (10) ~~For~~ final disbursement requests, submission of documentation required for Activity completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot ~~occurred for Newly Constructed or Rehabilitated housing unit~~, certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot for which ownership was established and on and within the same lot secured by the loan or grant agreement, if applicable, and evidence of floodplain mitigation;
- (11) ~~The~~ final request for disbursement must be submitted to the Department with support documentation no later than ~~sixty (60)~~ days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract; and
- (12) ~~For~~ costs associated with insurance policies, including title policies and homeowner insurance policies, charged as Activity costs, evidence of payment of the title policy cost must be submitted with the retainage request.

SUBCHAPTER D — HOMEBUYER ASSISTANCE PROGRAM

~~§23.40 Homebuyer Assistance (HBA) Threshold and Selection Criteria~~

- (a) ~~Except for Applications under the disaster relief and Persons with Disabilities set asides, the amount of Match required must be at least 5 percent of Direct Activity Costs, exclusive of Match, requested.~~
- (b) ~~Documentation of a commitment of at least \$20,000 in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:~~
- (1) ~~financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or~~
- (2) ~~evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in this subsection.~~

~~§23.41 Homebuyer Assistance (HBA) General Requirements~~

~~(a) — Program funds under this subchapter are limited to the acquisition or acquisition and Rehabilitation for accessibility modifications of single family housing units.~~

~~(b) — The Household must complete a homebuyer counseling program/class.~~

~~(c) — Direct Activity Costs, exclusive of Match funds, are limited to:~~

~~(1) — acquisition and closing costs: the lesser of \$20,000 or the amount necessary as determined by an affordability analysis that evidences the total estimated housing payment (including principal, interest, property taxes, insurance, and any other homebuyer assistance) is no less than 20 percent of the Household's gross monthly income based on a thirty (30) year amortization schedule. If the estimated housing payment will be less than 20 percent, the Department shall reduce the amount of downpayment assistance to the homebuyer such that the total estimated housing payment is no less than 20 percent of the homebuyer's gross income; or~~

~~(2) — closing costs and downpayment: the lesser of \$6,000 or the total estimated settlement charges shown on the closing disclosure that are paid by the buyer at closing which are not paid by the buyer's contribution. Households assisted under this paragraph who, at the time of application, have assets which may be liquidated without a federal income tax penalty and which exceed three (3) months of estimated principal, interest, property tax, and property insurance payments for the unit to be purchased as shown in the truth in lending statement must contribute the excess funds to the total estimated settlement charges as shown on the good faith estimate; and~~

~~(3) — Rehabilitation for accessibility modifications: \$20,000.~~

~~(4) — No funds shall be disbursed to the assisted Household at closing. The HOME assistance shall be reduced in the amount necessary to prevent the Household's direct receipt of funds if the closing disclosure shows funds to be provided to the buyer at closing.~~

~~(5) — Total assistance to the Household must be in an amount of no less than \$1,000. Households who are not eligible for at least \$1,000 in total homebuyer assistance are ineligible for assistance under this subchapter.~~

~~(d) — Activity soft costs eligible for reimbursement for Activities of the following types are limited to:~~

~~(1) — acquisition and closing costs: no more than \$1,500 per housing unit; and~~

~~(2) — Rehabilitation for accessibility modifications: \$5,000 per housing unit.~~

~~(e) — Funds for Administrative costs are limited to no more than 4 percent of the Direct Activity Costs, exclusive of Match funds.~~

~~(f) — The assistance to an eligible Household shall be in the form of a loan in the amount of the Direct Activity Costs, excluding Match funds. The loan will be at zero percent interest and include deferral of payment and annual pro-rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254.~~

~~(g) — Any forgiveness of the loan must follow §23.30 of this Chapter.~~

~~(h) — To ensure affordability, the Department will impose the recapture provisions established in this Chapter.~~

~~(i) — Housing that is Rehabilitated under this Chapter must meet the Texas Minimum Construction Standards (TMCS) and all other applicable local codes, Rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule, and Chapter 21 of this title. Housing units that are provided assistance for acquisition only must meet all applicable state and local housing quality standards and code requirements. In the absence of such standards and requirements, the housing units must meet the Housing Quality Standards (HQS) in 24 CFR §982.401.~~

§23.42 Homebuyer Assistance (HBA) Administrative Requirements

~~(a) — Reservation of Funds. The Administrator must submit true and complete information, certified as such, with a request for the Reservation of Funds, as described in paragraphs (1)–(7) of this subsection:~~

~~(1) — head of Household name;~~

~~(2) — a budget that includes the amount of Activity funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested. A maximum of 5 percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Activity and soft cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;~~

~~(3) — a copy of the Household's intake application on a form prescribed by the Department;~~

~~(4) — certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. In instances where the total Household income is within \$3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;~~

~~(5) — if applicable, documentation to address or resolve any potential Conflict of Interest, Identity of Interest, or duplication of benefit;~~

~~(6) — if applicable, construction cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion; and~~

~~(7) — any other documentation necessary to evidence that the Activity meets the program requirements.~~

~~(b) — Commitment of Funds. In addition to the documents required under subsection (a) of this section, the Administrator must submit the documents described in paragraphs (1) — (8) of this subsection, with a request for the Commitment of Funds within ninety (90) days of approval of the Reservation:~~

~~(1) — address of housing unit for which assistance is being requested;~~

~~(2) — verification of environmental clearance;~~

~~(3) — identification of Lead Based Paint (LBP);~~

~~(4) — for housing units located within the 100-year floodplain or otherwise required to carry flood insurance by federal or local regulation, certification from the Household that they understand the flood insurance requirements;~~

~~(5) — a title commitment to issue a title policy that evidences the property will transfer with no tax lien, child support lien, mechanics or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. The effective date of the title commitment must be no more than thirty (30) days prior to the date of project submission. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;~~

~~(6) — executed sales contract and documentation that the first lien mortgage meets the eligibility requirements;~~

~~(7) — appraisal which includes post Rehabilitation or Reconstruction improvements for Activities involving construction; and~~

~~(8) — a loan estimate or letter from the lender confirming that the loan terms and closing costs will be consistent with the executed sales contract, the first lien mortgage loan requirements, and the requirements of this Chapter.~~

~~(c) — Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) — (10) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator's compliance with requirements described in paragraphs (1) — (10) of this subsection, may be required with a request for disbursement:~~

~~(1) — For construction costs that are a part of a loan subject to the requirements of this subsection, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty five (45) days, whichever is later. For release of retainage the~~

~~down date endorsement must be dated at least forty (40) days after the date Construction Completion Date;~~

~~(2) — If applicable, a maximum of 50 percent of Activity funds for a Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed;~~

~~(3) — The property inspection must be signed and dated by the inspector and the Administrator or Developer;~~

~~(4) — Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;~~

~~(5) — Original, executed, legally enforceable loan documents for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official. This provision is not applicable for funds made available at the loan closing;~~

~~(6) — Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures submitted for reimbursement. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all program requirements;~~

~~(7) — The request for funds for Administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed;~~

~~(8) — Table funding requests must be submitted to the Department with complete documentation no later than ten (10) business days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company payee identification information, the Administrator or Developer's authorization for disbursement of funds to the title company, request letter from title company to the Comptroller of Public Accounts with bank account wiring instructions, and invoices for soft costs being paid at closing;~~

~~(9) For Activities involving Rehabilitation, include the withholding of 10 percent of hard construction costs for retainage. Retainage will be held until at least forty (40) days after the Construction Completion Date and until submission of documentation required for Activity completion reports; and~~

~~(10) The final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.~~

SUBCHAPTER ~~ED~~ CONTRACT FOR DEED PROGRAM

~~§23.5040~~ Contract for Deed (CFD) Threshold and Selection Criteria

~~Documentation of a commitment of that the Applicant can commit~~ at least \$40,000 in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

- ~~(1) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or~~
- ~~(2) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in this subsection.~~

~~§23.5141~~ Contract for Deed (CFD) General Requirements

~~(a) Program funds may be used for the following under this subchapter:~~

~~(1) utilized for Acquisition or acquisition and Rehabilitation, Reconstruction, or refinance, and New Construction of single family housing units occupied by the purchaser as shown on an executory contract for conveyance; or~~

~~(2) Refinance with Rehabilitation, Reconstruction, or New Construction, of single family housing units occupied by the purchaser as shown on an executory contract for conveyance provided construction costs exceed the amount of debt that is to be refinanced;~~

~~(b) An MHU is not an eligible property type for Rehabilitation. MHUs must be installed according to the manufacturer's installation instructions and in accordance with Federal and State laws and regulations.~~

~~(c) The Household's income must not exceed 80% (percent AMFI) and the Household must complete a homebuyer counseling program/class.~~

~~(d)~~ (c) The Department shall limit the availability of funds for CFD for a minimum of 60 ~~calendar~~ days for Activities proposing to serve Households whose income does not exceed 60% percent AMFI, and for properties located in a Colonia as defined in Tex. Gov't Code §2306.083.

~~(e)~~ (d) The Department will require a first lien position.

~~(f)~~ — Direct Activity Costs, exclusive of Match funds, are limited to:

(e) Direct Activity Costs, exclusive of Match funds, are limited to the amounts described in this subsection; however, not more than once per year, the Board in its sole discretion, may increase or decrease by up to five percent of the limitation for Direct Activity Costs. Total Activity costs may not exceed HUD Subsidy Limits. Dollar amounts in a Household commitment contract are set at the time of contract execution and may not be adjusted through this process. Current dollar amounts under this subsection will be reflected on the Department's website.

(1) Refinance, acquisition, and closing costs: \$35,000. In the case of a contract for deed housing unit that involves the refinance or acquisition of a loan on an existing MHU and/or the loan for the associated land, the Executive Director may grant an exception to exceed this amount, however, the Executive Director will not grant an exception to exceed \$40,000 of assistance;

(2) Reconstruction and New Construction of site-built housing: the lesser of ~~\$90~~120 per square foot of conditioned space or ~~\$100~~135,000, or for Households of five or more Persons the lesser of ~~\$90~~120 per square foot of conditioned space or ~~\$11~~50,000 for a four-bedroom unit; and

(3) Replacement with an energy efficient MHU: ~~\$75~~90,000; and

~~(4)~~ — Rehabilitation that is not Reconstruction: \$60,000, or up to \$100,000 for properties listed in or identified as eligible for listing in the National Register of Historic Places.

~~(e)~~ (f) In addition to the Direct Activity Costs allowable under subsection ~~(d)~~(e) of this section, a sum not to exceed ~~\$10~~15,000 may be used to pay for any or all of the following, as applicable:

(1) Necessary environmental mitigation as identified during the Environmental review process;

(2) Installation of an aerobic septic system; ~~or~~ and

(3) Homeowner requests for accessibility features.

~~(h)~~ (g) Activity soft costs eligible for reimbursement for Activities of the following types are limited to:

- (1) ~~Acquisition or refinance, and closing costs~~ New Construction of site-built housing: no more than ~~\$113,500~~ \$13,500 per housing unit; and
- (2) ~~Reconstruction or New Construction~~: no more than \$10,000 per housing unit;
- ~~(3) Replacement~~ Acquisition or refinance, and replacement with an MHU: no more than ~~\$3,500~~ \$5,000 per housing unit;
- ~~(4) Rehabilitation that is not Reconstruction~~: \$7,000 per housing unit. This limit may be exceeded for lead-based remediation and only upon prior approval of the Division Director. The costs of testing and assessments for lead-based paint are not eligible Activity soft costs for housing units that are reconstructed or if the existing housing unit was built after December 31, 1977.
- ~~(h)~~ Funds for administrative costs are limited to no more than ~~4%~~ four percent of the Direct Activity Costs, exclusive of Match funds.
- ~~(i)~~ The assistance to an eligible Household shall be in the form of a loan in the amount of the Direct Activity Costs excluding Match funds. The loan will be at zero percent interest and include deferral of payment and annual pro rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254. For refinancing activities, the minimum loan term and affordability period is 15 years, regardless of the amount of HOME assistance.
- ~~(k)~~ To ensure affordability, the Department will impose resale ~~and~~ or recapture provisions established in this Chapter.
- ~~(l) For Reconstruction and New Construction, site~~ (k) Site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes, standards, ordinances, and zoning requirements. In addition, Reconstruction and New Construction housing is required to meet, and the standards outlined in 24 CFR §92.251(a)(2) as applicable. Housing that is Rehabilitated under this chapter must meet the Texas Minimum Construction Standards (TMCS) and all other applicable local codes, Rehabilitation standards, ordinances, and zoning ordinances in MHUs must be installed according to the manufacturer's instructions and in accordance with the HOME Final Rule. Housing units that are provided assistance for acquisition only must meet all applicable state and local housing quality standards and code requirements. In Federal and State laws and regulations.
- ~~(l)~~ Unless an exception is requested by the absence Household and approved by the Division Director prior to submission of such standards and requirements, the housing units must meet the Housing Quality Standards (HQS) in 24 CFR §982.401.
- ~~(m) Each~~ Activity, each unit must meet the design and quality requirements described in paragraphs (1) - (4) of this subsection:

- (1) Include the following amenities: Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room; Blinds or window coverings for all windows; Oven/Range; Exhaust/vent fans (vented to the outside) in bathrooms; Energy-Star or equivalently rated lighting in all rooms, which may include ~~compact fluorescent~~LED bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans;
- (2) Contain no less than two bedrooms. Each unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;
- (3) Each bedroom must be no less than 100 square feet; have a length or width no less than eight feet; be self-contained with a door; have at least one window that provides exterior access; and have at least one closet that is not less than two feet deep and three feet wide and high enough to contain at least five feet of hanging space; and
- (4) Be no less than 800 total net square feet for a two bedroom home; no less than 1,000 total net square feet for a three bedroom and two bathroom home; and no less than 1,200 total net square feet for a four bedroom and two bathroom home.

~~(n)~~(m) Housing proposed to be constructed under this subchapter must meet the requirements of Chapters 20 and 21 of this ~~title~~title (relating to Single Family Programs Umbrella Rule and Minimum Energy Efficiency Requirements for Single Family Construction Activities, respectively) and must be certified by a licensed architect or engineer.

- (1) The Department will reimburse only for the first time a set of architectural plans are used, unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer;~~and.~~
- (2) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

~~§23.5242~~ §23.5242 Contract for Deed (CFD) Administrative Requirements

- (a) Commitment or Reservation of Funds. The Administrator must submit true and correct information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (15) of this subsection:
 - (1) ~~H~~Head of Household name and address of housing unit for which assistance is being requested;
 - (2) ~~a~~a budget that includes the amount of Activity funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested, a maximum of ~~5~~five percent of hard construction costs for contingency items, proposed Match to be

provided, evidence that Activity and soft costs limitations are not exceeded, and evidence that any duplication of benefit is addressed;

- (3) ~~v~~Verification of environmental clearance;
- (4) ~~a~~A copy of the Household's intake application on a form prescribed by the Department;
- (5) ~~e~~Certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. In instances the total Household income is within \$3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;
- (6) ~~p~~Project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;
- (7) ~~i~~Identification of Lead-Based Paint (LBP);
- (8) ~~f~~For housing units located within the 100-year floodplain or otherwise required to carry flood insurance by federal or local regulation, certification from the Household that they understand the flood insurance requirements;
- (9) ~~i~~If applicable, documentation to address or resolve any potential Conflict of Interest, Identity of Interest, duplication of benefit, or floodplain mitigation;
- (10) ~~a~~Appraisal which includes post ~~Rehabilitation or Reconstruction~~construction improvements for Activities involving construction;
- (11) ~~a~~A title commitment to issue a title policy that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. The effective date of the title commitment must be no more than ~~thirty (30)~~60 days prior to the date of Activity submission. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;
- (12) ~~i~~In the instances of replacement with an MHU, information necessary to draft loan documents and issue Statement of Ownership and Location (SOL);
- (13) ~~l~~Life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship;
- (14) ~~a~~A copy of the recorded ~~contract for deed~~executory contract and a current payoff statement; and

(15) ~~a~~Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Disbursement of funds. The Administrator must comply all of the requirements described in paragraphs (1) - (12) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (12) of this subsection may be required with a request for disbursement:

(1) ~~F~~or construction costs, a down date endorsement to the title policy not older than the date of the last disbursement of funds or ~~forty five (45)~~ days, whichever is later. For release of retainage the down date endorsement must be dated at least ~~forty (40)~~ days after the Construction Completion Date;

(2) ~~i~~f applicable, a maximum of 50 percent of Activity funds for ~~an~~ Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed;

(3) ~~p~~roperty inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator;

(4) ~~c~~ertification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) ~~o~~Original, executed, legally enforceable loan documents, and statement of location, as applicable, for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official. This provision is not applicable for funds made available at the loan closing;

(6) ~~e~~xpenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request Administrator or Developer to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional

requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all program requirements;

- (7) ~~¶~~The request for funds for administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed;
- (8) ~~¶~~Table funding requests must be submitted to the Department with complete documentation no later than ~~ten (10) business~~14 days prior to the anticipated loan closing date. Such a request must include a draft ~~settlement statement~~closing disclosure, title company payee identification information, the Administrator or Developer's authorization for disbursement of funds to the title company, request letter from title company to the Comptroller of Public Accounts with bank account wiring instructions, and invoices for costs being paid at closing;
- (9) include the withholding of ~~10ten~~ percent of hard construction costs for retainage. Retainage will be held until at least ~~forty (40) days~~40days after the Construction Completion Date;
- (10) ~~¶~~For final disbursement requests, submission of documentation required for Activity completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot, certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot secured by the loan, and evidence of floodplain mitigation; ~~and~~
- (11) ~~¶~~The final request for disbursement must be submitted to the Department with support documentation no later than ~~sixty (60)~~ days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.—; and
- (12) For costs associated with insurance policies, including title policies and homeowner's insurance policies, charged as Activity costs, evidence of payment of the cost must be submitted with the retainage request.

SUBCHAPTER ~~¶~~ TENANT-BASED RENTAL ASSISTANCE PROGRAM

§23.6050 Tenant-Based Rental Assistance (TBRA) Threshold and Selection Criteria

All Applicants and Applications must submit Documentation of a commitment of at least \$15,000 for cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

- (1) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or
- (2) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in this subsection; and
- (3) evidence that the Service Area for a Contract or RSP Agreement includes the entire rural or urban area of a county as identified in the Application, excluding Participating Jurisdictions. However, Service Areas must include Participating Jurisdictions as applicable if the Agreement includes access to the Persons with Disabilities set-aside.

§23.6151 Tenant-Based Rental Assistance (TBRA) General Requirements

- (a) ~~The Household~~ Households assisted under the general set-aside must participate in a self-sufficiency program, as described in the Administrator's policies and procedures.
- (b) The amount of assistance will be determined using the HUD Housing Choice Voucher method.
- (c) ~~Households~~ A Household certifying to zero income must also complete a questionnaire ~~which that~~ 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~~ adjusted monthly income. The maximum Household contribution toward gross monthly rent at initial occupancy is limited to 40 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) ~~u~~Utility deposit in conjunction with a TBRA rental subsidy.

(f) The payment standard is determined at the ~~d~~Date of ~~a~~Assistance. The payment standard utilized by the Administrator must be:

(1) ~~f~~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) ~~f~~For nonmetropolitan counties and towns, the current HUD Fair Market Rent for the Housing Choice Voucher Program;

(3) ~~f~~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 ~~§~~Section 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) Administrators must select the method under which funds for administrative costs and Activity soft costs may be reimbursed prior to execution of an RSP agreement or at Application for an award of funds. Administrators of an existing RSP Agreement may request an amendment to an existing Agreement in accordance with Section 23.1 of this Chapter. Applicants and Administrators may choose from one of the following options, and in any case funds for Administrative costs may be increased by an additional ~~4~~one percent

of Direct Activity Costs if Match is provided in an amount equal to 5five percent or more of Direct Activity Costs:

- (1) Funds for Administrative costs are limited to 4four percent of Direct Activity Costs, excluding Match funds, and Activity soft costs are limited to \$1,200 per Household assisted. Activity soft costs may reimburse expenses for costs related to 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; or
 - (2) Funds for Administrative costs are limited to 8eight percent of Direct Activity Costs, excluding Match funds, and Administrator may not be reimbursed for Activity soft costs.
- (h) 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.
- (i) 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.
- (j) Administrators must maintain Written Policies and Procedures established for the HOME Program in accordance with §Section 10.802 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 (l) of this section (relating to the Violence Against Women Act (if in conflict with the provisions in §Section 10.802 of this Title)) will govern.
- (k) Administrators serving a Household under a Reservation Agreement may not issue a Certificate of Eligibility to the Household prior to reserving funds for the Activity.
- (l) 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.

§23.6252 Tenant-Based Rental Assistance (TBRA) Administrative Requirements

- (a) Commitment or Reservation of Funds. The Administrator must submit the documents described in paragraphs (1) - (9) of this subsection, with a request for the Commitment or Reservation of Funds:
 - (1) ~~H~~Head of Household name and address of housing unit for which assistance is being requested;
 - (2) ~~a~~A budget that includes the amount of Direct Activity Costs, Activity soft costs, administrative costs requested, Match to be provided, evidence that Direct Activity Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;
 - (3) ~~v~~Verification of environmental clearance;
 - (4) ~~a~~A copy of the Household's intake application on a form prescribed by the Department;
 - (5) ~~c~~Certification of the income eligibility of the Household signed by the Administrator, and all Household members age 18 or over, and including the date of the income eligibility determination. Administrator must submit documentation used to determine the income and rental subsidy of the Household;
 - (6) ~~i~~Identification of Lead-Based Paint (LBP);

(7) ~~If~~ applicable, documentation to address or resolve any potential conflict of interest or duplication of benefit;

(8) ~~Project~~ address within ~~ninety (90)~~ days of preliminary set up approval, if applicable;

(9) For Households assisted under the Disaster set-aside, verification that the household was displaced or is at-risk of displacement as a direct result of a Federal, State, or Locally declared disaster approved by the Department within four years of the date of Activity submission; and

~~(9) any~~ (10) Any other documentation necessary to evidence that the Activity meets the Program Rules program requirements.

(b) Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) - (~~87~~) of this subsection for a request for disbursement of funds. Submission of documentation related to the Administrator compliance with requirements described in paragraphs (1) - (~~87~~) of this subsection may be required with a request for disbursement:

(1) If required or applicable, a maximum of 50 percent of Direct Activity Costs for ~~an~~ Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Direct Activity Costs disbursed;

(2) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(3) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to the Administrator or Developer as may be necessary or advisable for compliance with all Program Requirements;

(4) With the exception of a maximum of 25 percent of the total funds available for administrative costs, the request for funds for administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed;

(5) Requests may come in not more than ~~ten (10)~~ 15 days in advance of the first day of the following month;

(6) For final disbursement requests, submission of documentation required for Activity completion reports; and

~~(7) Household commitment contracts may be signed after the end date of an RSP only in cases where the Department has approved a project set up with a project address to be determined at a later time; and~~

~~(8)~~(7) The final request for disbursement must be submitted to the Department with support documentation no later than ~~sixty (60)~~ days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

SUBCHAPTER ~~GF~~ SINGLE FAMILY DEVELOPMENT PROGRAM

§23.7060 Single Family Development (SFD) Threshold and Selection Criteria

All Applicants and Applications must submit or comply with this section.

(1) An Application for Community Housing Development Organization (CHDO) certification. Applicants must meet the requirement for CHDO certification as defined in ~~10 TAC~~ §Section 13.2 of this ~~€~~Title (relating to the Multifamily Direct Loan Rule).

~~(2) If the total of the Department's loan equals more than 50 percent of the total development cost, except for developments also financed with U.S. Department of Agriculture (USDA) funds, the Applicant must provide:~~

(2) The Applicant must provide:

(A) evidence of a line of credit or equivalent tool of at least \$80,000 from a financial institution that will be available for use during the proposed development activities; or

(B) a letter from a third party Certified Public Accountant (CPA) verifying the capacity of the owner or developer to provide at least \$80,000 as a short term loan for development; and

(C) a letter from the developer's or owner's bank(s) confirming funds amounting to at least \$80,000 is available.

(3) A proposed development plan that is consistent with the requirements of this Chapter, all other federal and state rules, and includes:

(A) a floor plan and front exterior elevation for each proposed unit which reflects the exterior building composition;

- (B) a FEMA Issued Flood Map that identifies the location of the proposed site(s);
- (C) letters from local utility providers, on company letterhead, confirming each site has access to the following services: water and wastewater, sewer, electricity, garbage disposal and natural gas, if applicable
- (D) documentation of site control of each proposed lot: A recorded warranty deed with corresponding executed settlement statement; or a contract or option for the purchase of the proposed lots that is valid for at least ~~one hundred twenty (120) days~~120days from the date of application submission; and
- (E) an "as vacant" appraisal of at least one of the proposed lots if: The Applicant has an Identity of Interest with the seller or current owner of the property; or any of the proposed property is part of a newly developed or under-development subdivision in which at least three other third-party sales cannot be evidenced. The purchase price of any lot in which the current owner has an Identity of Interest must not exceed the appraised value of the vacant lot at the time of Activity submission. The appraised value of the lot may be included in the sales price for the homebuyer transaction;

(4) The Department may prioritize Applications or otherwise incentivize Applications that partner with other lenders to provide permanent purchase money financing for the purchase of units developed with funds provided under this subchapter.

§23.7161 Single Family Development (SFD) General Requirements

- (a) Program funds under this subchapter may be used for the ~~acquisition and New Construction or acquisition and Rehabilitation~~Development of new single family housing for homeownership that complies with affordability requirements as defined at 24 CFR §92.254.
- (b) Program funds under this subchapter are only eligible to be administered by a CHDO certified as such by the Department. A separate grant for CHDO operating expenses may be awarded to CHDOs that receive a Contract award if funds are provided for this purpose in the NOFA. A CHDO may not receive more than one grant of CHDO operating funds in an amount not to exceed \$50,000 within any one year period, and may not draw more than \$25,000 in CHDO operating funds in any ~~12~~twelve month period from any source, including CHDO operating funds from other HOME Participating Jurisdictions.
- (c) The Household's income must not exceed 80 percent ~~area median family income (AMFI) and the Household must complete a homebuyer counseling program/class. The Household must be income qualified as of the date of signature of the homebuyer's purchase contract.~~
- (d) Each unit must meet the design and quality requirements described in paragraphs (1) - (5) of this subsection:

- (1) ~~for New Construction and Reconstruction, current~~Current applicable International Residential Code, local codes, ~~Rehabilitation standards,~~ ordinances, and zoning ordinances in accordance with ~~the~~ 24 CFR§92.251(a);
- (2) ~~Include~~ the following amenities: Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room; Blinds or window coverings for all windows; Disposal and Energy-Star or equivalently rated dishwasher (must only be provided as an option to each Household); Oven/Range; Exhaust/vent fans (vented to the outside) in bathrooms; Energy-Star or equivalently rated lighting in all rooms, which may include ~~compact florescent~~LED bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans; and Paved off-street parking for each unit to accommodate at least one mid-sized car and access to on-street parking for a second car;
- (3) ~~e~~Contain no less than two bedrooms. Each unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;
- (4) ~~e~~Each bedroom must be no less than 100 square feet; have a length or width no less than 8 feet; be self contained with a door; have at least one window that provides exterior access; and have at least one closet that is not less than ~~2~~two feet deep and ~~3~~three feet wide and high enough to contain at least ~~5~~five feet of hanging space; and
- (5) ~~be~~Be no less than 800 total net square feet for a two bedroom home; no less than 1,000 total net square feet for a three bedroom and two bathroom home; and no less than 1,200 total net square feet for a four bedroom and two bathroom home.

(e) Housing proposed to be constructed under this subchapter must meet the requirements in Chapters 20 and 21 of this ~~€~~Title and plans submitted with the Application must be certified by a licensed architect or engineer.

(f) The total hard construction costs are limited ~~as described in paragraphs (1) and (2) of this subsection:~~

~~(1) — Reconstruction and New Construction of site-built housing: The hard construction costs are limited to \$90,120 per square foot of conditioned space and \$100,135,000 or for Households of five units with three or more Persons fewer bedrooms and the lesser of \$90,120 per square foot of conditioned space or \$14,50,000 for a units with four-bedroom unit; and~~

~~(2) Rehabilitation that is not Reconstruction: \$60,000, or or more bedrooms. Not more than once per year, the Board in its sole discretion, may increase or decrease by up to \$100,000 for properties listed in or identified as eligible for listing in the National Register of Historic Places 5 percent of the limitation for hard construction costs. Total Activity costs may not exceed HUD Subsidy Limits. Current dollar amounts under this subsection will be reflected on the Department's website.~~

- (g) In addition to the Direct Activity Costs allowable under subsection (d) of this section, a sum not to exceed \$~~10~~15,000 may be used to pay for any or all of the following, as applicable:
- (1) ~~N~~Necessary environmental mitigation as identified during the Environmental review process;
 - (2) ~~i~~installation of an aerobic septic system; ~~or and~~
 - (3) ~~homeowner~~Homebuyer requests for accessibility features.
- (h) Developer fees (including consulting fees) are limited to 15 percent of the total hard construction costs. The developer fee will be reduced by 1~~one~~ percent per month or partial month that the construction period exceeds the original term of the construction period financing.
- (i) General Contractor Fees are limited to 15 percent of the total hard construction costs. The General Contractor is defined as one who contracts for the construction ~~or Rehabilitation~~ of an entire development Activity, rather than a portion of the work. The General contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. A prime subcontractor will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, in the scenarios described in paragraphs (1) and (2) of this subsection:
- (1) ~~a~~Any subcontractor, material supplier, or equipment lessor receiving more than 50 percent of the contract sum in the construction contract will be deemed a prime subcontractor; or
 - (2) ~~i~~if more than 75 percent of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed prime subcontractors.
- (j) Construction period financing for each unit shall be structured as a zero percent interest loan with a ~~twelve (12)~~ month term, ~~or with a term that coincides with the end date of the Household commitment contract under a Reservation System Participation Agreement.~~ The maximum construction loan amount may not exceed the total development cost less developer fees/profit, ~~homebuyer~~ closing costs associated with the permanent mortgage financing, and ineligible Activity costs. Prior to construction loan closing, a sales contract must be executed with a qualified homebuyer.
- (k) In the instance that the ~~Combined Loan to Value~~ total development cost equals more than 100 percent of the appraised value, the portion of the ~~sales price~~ development cost that exceeds 100 percent of the appraised value will be granted to the developer to buy down the purchase price ~~if the homebuyer is receiving downpayment assistance or a first lien mortgage from the Department. The cost to the Developer to close the homebuyer loan.~~

Reasonable and customary seller closing costs may be provided with HOME funds as a grant to the Developer.

- (l) ~~The HOME Direct~~ assistance to the ~~homebuyer shall~~buyer will be structured as a first and/or second lien loan(s):

~~(1) the downpayment~~(1) A first-lien, fully amortizing, repayable loan with a 30-year term may be provided by the Department and will initially be evaluated at zero percent interest. The loan amount will not exceed the total development cost combined with reasonable and customary buyer's closing costs. Should the estimated housing payment, including all funding sources, be less than the minimum required housing payment for the minimum term, the Department may charge an interest rate to the homebuyer such that the total estimated housing payment is no less than the required minimum housing payment. In no instance shall the interest rate charged to the homebuyer exceed five percent, and such result may deem the applicant as overqualified for assistance.

(A) The total Mortgage Loan may include costs incurred for the total development cost and Mortgage Loan Closing Costs, exclusive of Match funds.

(B) The total Debt-to-Income Ratio shall not exceed the limitations set forth in Chapter 20 of this Title.

(C) For buyers whose income is equal to or less than 50 percent AMFI, the minimum required housing payment shall be no less than 15 percent of the household's gross income. For homebuyers whose income exceeds 50 percent AMFI, the minimum required housing payment shall be no less than 20 percent of the household's gross income.

(2) Downpayment and closing costs assistance is limited to the lesser of downpayment required by a third-party lender and reasonable and customary buyer's closing costs, or the amount required to ensure affordability of the HOME financing. Downpayment and closing cost assistance may not exceed ten percent of the total development costs and shall be structured as a five or ten—(10)—year deferred, forgivable loan with a subordinate lien; and, in accordance with the required federal affordability period.

~~(2) — a first lien conventional mortgage not provided by the Department must meet the mortgage financing requirements outlined in Chapter 20 of this title. If the Department is providing the first lien mortgage with HOME financing, the loan will be fully amortizing with a thirty (30) year term. The Department will require a debt to income ratio (back end ratio) not to exceed 45 percent. The total estimated housing payment (including principal, interest, property taxes, and insurance) shall be no less than 20 percent and no greater than 30 percent of the Household's gross monthly income. Should the estimated housing payment be less than 20 percent of the Household's gross income, the Department shall reduce the amount of~~

~~downpayment assistance and/or charge an interest rate to the homebuyer such that the total estimated housing payment is no less than 20 percent of the homebuyer's gross income. In no instance shall the interest rate charged to the homebuyer exceed 5 percent.~~

(3) A first lien conventional mortgage not provided by the Department must meet the mortgage financing requirements outlined in Chapter 20 of this Title.

(m) Earnest money is limited to no more than \$1,000, which may be credited to the homebuyer at closing, but may not be reimbursed as cash. ~~HOME funds may be used to pay other reasonable and customary closing costs that are HOME eligible costs.~~

(n) If a Household should become ineligible or otherwise cease participation and a replacement Household is not located within ~~ninety (90)~~ days of the end of the construction period, all additional funding, closings, and draws on the award will cease and the Department will require the Applicant to repay any outstanding construction debt in full.

(o) The Division Director may approve the use of alternative floor plans or lots from those included in the approved Application, provided the requirements of this section can still be met and such changes do not materially affect the total budget.

(p) To ensure affordability, the Department will impose resale or recapture provisions established in this Chapter.

§23.7262 Single Family Development (SFD) Administrative Requirements

(a) Commitment or Reservation of Funds. The Administrator must submit true and correct information, certified as such, with a request for the Commitment ~~or Reservation~~ of Funds as described in paragraphs (1) - (11) of this subsection:

(1) ~~H~~Head of Household name and address of housing unit for which assistance is being requested;

(2) ~~a~~A budget that includes the amount of Activity funds specifying the acquisition cost, construction costs, contractor fees, and developer fees, as applicable. A maximum of ~~5~~five percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Activity Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) ~~v~~Verification of environmental clearance;

(4) ~~a~~A copy of the Household's intake application on a form prescribed by the Department;

(5) ~~e~~Certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. ~~In instances where the total Household income is within \$3,000 of the~~

~~80 percent AMFI, all~~ All documentation used to determine the income of the Household must be provided;

(6) ~~p~~Project cost estimates, construction contracts, and other construction documents necessary, in the Department's sole determination, to ensure applicable property standard requirements will be met at completion;

(7) identification of Lead-Based Paint (LBP); if site remediation is needed;

(8) ~~e~~Executed sales contract and documentation that the first lien mortgage meets the eligibility requirements;

(9) ~~#~~Evidence that the housing unit will be located outside the 100-year floodplain;

(10) _____ If applicable, documentation to address or resolve any potential conflict of interest, Identity of Interest, duplication of benefit, or floodplain mitigation;

~~(10) _____ appraisal~~ (11) Appraisal, which includes post ~~Rehabilitation or Reconstruction~~ construction improvements for ~~Activities involving construction~~; and

~~(11) _____ any~~ (12) Any other documentation necessary to evidence that the Activity meets the ~~Program Rules~~ program requirements.

(b) Construction Loan closing. The Administrator ~~or Developer~~ must submit the documents described in paragraphs (1) - (2) of this subsection, with a request for the preparation of loan closing with the request for the Commitment ~~or Reservation~~ of Funds:

(1) ~~a~~ A title commitment to issue a title policy that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. The effective date of the title commitment must be no more than ~~thirty (30)~~ 60 days prior to the date of project submission. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close; and

(2) ~~within ninety (90)~~ (Within 90) days after the loan closing date, the Administrator ~~or Developer~~ must submit to the Department the original recorded deed of trust and transfer of lien, if applicable. Failure to submit these documents within ~~ninety (90)~~ days after the loan closing date will result in the Department withholding payment for disbursement requests.

(c) Disbursement of funds. The Administrator must comply with the requirements described in paragraphs (1) - (10) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the

Administrator compliance with requirements described in paragraphs (1) - (10) of this subsection may be required with a request for disbursement:

- (1) ~~F~~or construction costs, an interim construction binder advance endorsement not older than the date of the last disbursement of funds or ~~forty five (45)~~ days, whichever is later. For release of retainage a down date endorsement to the mortgagee policy issued to the homebuyer dated at least ~~forty (40)~~ days after the Construction Completion Date;
- (2) ~~i~~f required or applicable, a maximum of 50 percent of Direct Activity Costs for ~~an~~ Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed;
- (3) ~~p~~roperty inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator or Developer;
- (4) ~~c~~ertification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;
- (5) ~~o~~riginal, executed, legally enforceable loan documents containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official;
- (6) ~~e~~xpenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures submitted for reimbursement. The Department may request Administrator or Developer to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator or Developer as may be necessary or advisable for compliance with all Program Requirements;
- (7) ~~t~~able funding requests must be submitted to the Department with complete documentation no later than ~~ten (10) business~~14 days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company

payee identification information, the Administrator or Developer's authorization for disbursement of funds to the title company, request letter from title company to the Comptroller of Public Accounts with bank account wiring instructions, and invoices for costs being paid at closing;

- (8) ~~I~~Include the withholding of ~~ten~~ 10 percent of hard construction costs for retainage. Retainage will be held until at least ~~forty (40)~~ days after the Construction Completion Date;
- (9) ~~F~~or final disbursement requests, submission of documentation required for Activity completion reports; ~~and~~
- (10) ~~T~~he final request for disbursement must be submitted to the Department with support documentation no later than ~~sixty (60)~~ days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract. ~~—; and~~ and
- (11) For costs associated with insurance policies, including title policies and homeowner's insurance policies, charged as Activity costs, evidence of payment of the cost must be submitted with the retainage request.

SUBCHAPTER ~~HG~~ HOMEBUYER ASSISTANCE WITH NEW CONSTRUCTION (HANC) ~~OR~~ REHABILITATION

~~§23.8070~~ Homebuyer Assistance with New Construction (HANC) ~~or~~ Rehabilitation Threshold and Selection Criteria

- (a) Threshold Match requirement. The Department shall use population figures from the most recently available U.S. Census Bureau's American Community Survey (ACS) as of the date that an Application is first submitted under the NOFA to determine the applicable Threshold Match requirement. The Department may incentivize or provide preference to Applicants committing to provide additional Threshold Match above the requirement of this subsection. Such incentives may be established as selection criteria in the NOFA. Excluding Applications under the disaster relief and persons with disabilities set asides, Threshold Match shall be required based on the tiers described in paragraphs (1) and (2) of this subsection:
 - (1) No Threshold Match is required when:
 - (A) ~~T~~he Service Area includes the entire unincorporated area of a county and where the population of Administrator's Service Area is less than or equal to 20,000 persons; or

(B) ~~¶~~the Service Area does not include the entire unincorporated area of a county, and the population of the Administrator's Service Area is less than or equal to 3,000 persons.

(2) One percent of Direct Activity Costs, exclusive of Match, is required as Match for every 1,000 in population up to a maximum of ~~15%.~~ percent.

(b) Cash Reserve Threshold Requirement. When HOME funds will be utilized for construction activities, documentation, as described in paragraph (1) - (2) of this subsection, must be submitted at the time of Application that demonstrates that the Applicant has at least \$40,000 in cash reserves. The cash reserves may be utilized to facilitate administration of the program, and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(1) ~~¶~~financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(2) ~~E~~evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in this subsection.

(c) Other Threshold and/or Selection criteria for this Activity may be outlined in the NOFA.

~~§23.8471~~ Homebuyer with New Construction—~~or Rehabilitation~~ (HANC) General Requirements

(a) Eligible Activities must meet the ownership requirement in paragraph (1) of this subsection and an Activity described in paragraph (2) of this subsection:

(1) Ownership requirement. A site must be owned by the beneficiary or the HOME Activity must include one of the two following Activities:

(A) Acquisition of existing single family housing or a parcel; or

(B) Refinance of non-owner occupied real property parcel not prohibited for single family housing by zoning or restrictive covenants.

(2) All Activities must include ~~New Construction—~~or Rehabilitation~~~~ of a unit of single family housing not occupied by the Household prior to assistance; ~~New Construction~~ described in this subsection includes the purchase and installation of a new unit of Manufactured Housing (MHU). ~~Rehabilitation of an MHU is not an eligible Activity.~~

- (b) The unit of housing in any of the Activities described in subsection (a) of this section must be occupied by the assisted Household as their principal residence for a minimum of 15 years from the Construction Completion Date.
- (c) If the assisted property is owned by the Household prior to participation, the Household must be current on any existing Mortgage Loans and taxes, and the property cannot have any existing home equity loan liens. HOME funds may not be utilized to refinance loans made or insured by any federal program.
- (d) The purchase price of acquired property and the post-improvement value of the unit may not exceed the limitations set forth in 24 CFR §92.254. Compliance with the purchase price limitation must be evidenced prior to loan closing. Compliance with the post-improvement value limitation must be evidenced with a final appraisal of the completed project prior to release of retainage.
- (e) Activity Costs. Total Activity Costs, exclusive of Match funds, are limited to an amount not to exceed the federal subsidy limitations defined in 24 CFR §92.250. Direct Activity Costs, exclusive of Match and leverage, for construction are limited to:
 - (1) Construction of new site-built housing: The Direct Activity Costs are not restricted beyond the Total Activity Costs as identified in this subsection;
 - (2) Placement of an energy efficient MHU: ~~\$7590,000; and~~
 - ~~(3) Rehabilitation that is not Reconstruction: \$60,000, or up to \$100,000 for properties listed in or identified as eligible for listing in the National Register of Historic Places.~~
- (f) In addition to the Direct Activity Costs allowable under subsection (e) of this section, a sum not to exceed ~~\$1015,000~~ and not causing the total subsidy to exceed the limitations set forth by 24 CFR §92.250 may be requested and, if approved, used to pay for any or all of the following, as applicable:
 - (1) Necessary environmental mitigation as identified during the Environmental review process;
 - (2) Installation of an aerobic septic system; ~~or~~ and
 - (3) Homebuyer requests for accessibility features.
- (g) Activity soft costs eligible for reimbursement are limited to:
 - (1) New Construction of site-built housing: no more than ~~\$113,500~~ per housing unit; or
 - (2) Replacement with an MHU: no more than \$5,000 per housing unit;
 - ~~(3) Rehabilitation: \$8,500 per housing unit. This limit may be exceeded for lead-based remediation and only upon prior approval of the Division Director. The costs of testing~~

~~and assessments for lead-based paint are not eligible Activity soft costs for housing units that are reconstructed or if the existing housing unit was built after December 31, 1977.~~

- (h) Funds for administrative costs are limited to no more than ~~4%~~four percent of the Direct Activity Costs, exclusive of Match funds.
- (i) Homebuyers may choose to obtain financing for the acquisition or construction, or any combination thereof, from a third-party lender so long as the loan meets the requirements of ~~§~~Section 20.13 of this ~~¶~~Title (relating to Loan, Lien and Mortgage Requirements for Activities).
- (j) Direct assistance will be structured as a fully amortizing, repayable loan and will initially be evaluated at zero percent interest. The minimum loan term shall be equal to the required federal affordability period based on the HOME investment, and shall be calculated by setting the total estimated housing payment (including principal, interest, property taxes, insurance, and any other homebuyer assistance), equal to at least the minimum required housing payment. Should the estimated housing payment, including all funding sources, be less than the minimum required housing payment for the minimum term, the Department may charge an interest rate to the homebuyer such that the total estimated housing payment is no less than the required minimum housing payment. In no instance shall the interest rate charged to the homebuyer exceed ~~5%~~five percent and such result may deem the applicant as overqualified for assistance. The term shall not exceed 30 years and not be less than 15 years.
 - (1) The total Mortgage Loan may include costs incurred for Acquisition or Refinance, Mortgage Loan closing costs, and Direct Activity Costs, exclusive of Match funds.
 - (2) The total Debt-to-Income Ratio shall not exceed the limitations set forth in Chapter 20 of this ~~¶~~Title.
 - (3) For buyers whose income is equal to or less than ~~50%~~percent AMFI, the minimum required housing payment shall be no less than ~~15%~~percent of the household's gross income. For homebuyers whose income exceeds ~~50%~~percent AMFI, the minimum required housing payment shall be no less than ~~20%~~percent of the household's gross income.
- (k) Earnest money may be credited to the homebuyer at closing, but may not be reimbursed as cash. HOME funds may be used to pay other reasonable and customary closing costs that are HOME eligible costs.
- (l) To ensure affordability, the Department will impose recapture provisions established in this Chapter.
- (m) For New Construction, site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes, standards, ordinances, and zoning

requirements. In addition, New Construction housing is required to meet 24 CFR §92.251(a)(2) as applicable. ~~Housing that is Rehabilitated under this Chapter must meet the Texas Minimum Construction Standards (TMCS) and all other applicable local codes, Rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule.~~ MHUs must be installed according to the manufacturer's instructions and in accordance with Federal and State laws and regulations.

(n) Housing proposed to be constructed under this subchapter must meet the requirements of Chapters 20 and 21 of this ~~†~~Title (relating to Single Family Programs Umbrella Rule and Minimum Energy Efficiency Requirements for Single Family Construction Activities, respectively) and must be certified by a licensed architect or engineer.

(1) To the extent that a set of architectural plans are generated and used by an Applicant for more than one home site, the Department will reimburse only for the first time a set of architectural plans is used, unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer for the reuse of the plans on that subsequent specific site.

(2) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

§23.8272 Homebuyer with New Construction (HANC) Administrative Requirements

(a) Commitment or Reservation of Funds. The Administrator must submit the true and complete information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (14) of this subsection:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Activity funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested, a maximum of ~~5%~~five percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Direct Activity Cost and Soft Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance from the Department;

(4) A copy of the Household's intake application on a form prescribed by the Department;

(5) Certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. All documentation used to determine the income of the Household must be provided;

- (6) Project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;
- (7) Identification of any Lead-Based Paint (LBP) if activity involves an existing unit and certification that LBP will be mitigated as required by 24 CFR §92.355;
- (8) Evidence that the housing unit will be located outside of the 100-year floodplain;
- (9) If applicable, documentation to address or resolve any potential conflict of interest, Identity of Interest, or duplication of benefit;
- (10) Information necessary to draft Mortgage Loan documents, including issuance of an SOL;
- (11) Life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship;
- (12) Documentation of homebuyer completion of a homebuyer counseling program/class provided by a HUD certified housing counselor;
- (13) For Activities involving acquisition of real property:
 - (A) A title commitment to issue a title policy that evidences that the property will transfer with no tax lien, child support lien, mechanics or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. The effective date of the title commitment must be no more than ~~30~~60 days prior to the date of project submission. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;
 - (B) Executed sales contract; and
 - (C) A loan estimate or letter from any other lender confirming that the loan terms and closing costs will be consistent with the executed sales contract, the first lien Mortgage Loan requirements, and the requirements of this Chapter.
- (14) For Activities that do not involve acquisition of real property:
 - (A) A title commitment or policy, or a down date endorsement to an existing title policy, and the actual documents, or legible copies thereof, establishing the Household's ownership, such as a warranty deed or ground lease for a 99-year leasehold. The effective date of the title commitment must be no more than ~~30~~60 days prior to the date of project submission. Title commitments for loan projects that expire prior

to the loan closing date must be updated and must not have any adverse changes. These documents must evidence the definition of Homeownership is met;

(B) A tax certificate that evidences a current paid status;

(C) Written consent from all Persons who have a valid lien or ownership interest in the Property ~~for the Rehabilitation or New Construction Activities;~~

(D) Consent to demolish from any existing Mortgage Loan lien holders and consent to subordinate to the Department's loan, if applicable; and

(15) Any other documentation necessary to evidence that the Activity meets the Program requirements.

(b) Loan closing. In addition to the documents required under subsection (a) of this section, the Administrator must submit the appraisal or other valuation method approved by the Department which establishes the post ~~Rehabilitation or New Construction~~ construction value of improvements prior to the issuance of loan documents by the Department.

(c) Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) - (10) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of additional documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (10) of this subsection, may be required with a request for disbursement:

(1) For construction costs that are part of a loan subject to the requirements of this subsection, a down date endorsement to the title policy not older than the date of the last disbursement of funds or 45 ~~calendar~~ days, whichever is later, is required. For release of retainage, the down date endorsement must be dated at least 40 ~~calendar~~ days after the Construction Completion Date;

(2) If applicable, a maximum of 50% percent of Activity funds for an Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed;

(3) Property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo, are required to be submitted. The inspection must be signed and dated by the inspector and Administrator;

(4) Certification of the following is required:

- (A) That its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided;
 - (B) That no Person that would benefit from the award of HOME funds has satisfied the Applicant's cash reserve obligation or made promises in connection therewith;
 - (C) That each request for disbursement of HOME funds is for the actual cost of providing a service; and
 - (D) That the service does not violate any conflict of interest provisions;
- (5) Original, fully executed, legally enforceable loan documents for each assisted Household containing remedies adequate to enforce any applicable affordability requirements are required. Certified copies of fully executed, recorded loan documents that are required to be recorded in the real property records of the county in which the housing unit is located must be returned to the Department, duly certified as to recordation by the appropriate county official. This documentation prior to disbursement is not applicable for funds made available at the loan closing;
- (6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures submitted for reimbursement. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all ~~Program Rules~~ program requirements;
- (7) The request for funds for administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed;
- (8) Disbursement requests must include the withholding of ~~10%~~ ten percent of hard construction costs for retainage. Retainage will be held until at least 40 ~~calendar~~ days after the Construction Completion Date;
- (9) For final disbursement requests, the following is required:
- (A) Submission of documentation required for Activity completion reports and evidence that the demolition or, if an MHU, salvage and disposal of all dilapidated housing units on the lot ~~occurred for Newly Constructed or Rehabilitated housing unit~~;
 - (B) Certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot for which ownership was established and on and within the same lot secured by the loan; and

(C) A final appraisal of the property after completion of improvements.

(10) The final request for disbursement must be submitted to the Department with support documentation no later than 60 ~~calendar~~ days after the termination date of the Contract in order to remain in compliance with the Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract; and

(11) For costs associated with insurance policies, including title policies and homeowner insurance policies, charged as Activity costs, evidence of payment of the cost must be submitted with the retainage request.