Disclaimer

Attached is a draft of 10 TAC Chapter 23, Subchapter H, Homebuyer Assistance with New Construction or Rehabilitation (HANC) that was approved by the TDHCA Governing Board on May 23, 2019. This draft incorporates changes made by the Board as a result of public comment at the meeting. This document, including its preamble, is scheduled to be published in the June 7, 2019 edition of the Texas Register and that published version will constitute the official version for purposes of public comment. The version herein is informational only and should not be relied upon as the basis for public comment.

Public Comment

Public Comment Period: Starts: 8:00 a.m. Austin local time on June 7, 2019 Ends: 5:00 p.m. Austin local time on July 12, 2019.

Comments received after 5:00 p.m. Austin local time on July 12, 2019 will not be accepted.

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

Texas Department of Housing and Community Affairs
Attn: Abigail Versyp
P.O. Box 13941
Austin, Texas 78711-3941
Fax: 512-475-1671
Email: HOME@tdhca.state.tx.us

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

Please be aware that all comments submitted to the TDHCA will be considered public information.
The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 23, Subchapter H, Homebuyer Assistance with New Construction (HANC) or Rehabilitation, §§23.80 – 23.82. The purpose of the proposed new sections are to provide a new program activity to address the shortage of quality affordable housing available in rural communities by allowing homeownership through new construction or rehabilitation of single family housing on acquired or owned real property.

Tex. Gov’t Code §2001.0045(b) does apply to the rule being adopted, however, the costs associated with the new activity created by this rule are only those typical and customary costs associated with an administrator voluntarily electing to participate in a single family activity similar to those in other sections of this chapter related to homebuyer and reconstruction/rehabilitation activities.

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

1. The proposed rule does not create a new government program but does establish another eligible activity type within the existing HOME Program. This new activity type provides for increased opportunities for rural Texans to access quality affordable housing opportunities.

2. The proposed new rule does not require a change in work that would require the creation of new employee positions. While some additional work by the Department will be required associated with underwriting and loan processing applications under the new activity, the Department anticipates handling this additional work with existing staff resources; the new rule does not reduce work load such that any existing employee positions could be eliminated.

3. The proposed new rule does not require additional future legislative appropriations.

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

5. The proposed rule is creating a new regulation to address an identified need for a household driven option for prospective low income homeowners in rural communities.

6. The proposed rule will not limit or repeal an existing regulation, but can be considered to “expand” the existing regulations because the proposed rule adds a new category of homebuyer assistance under the HOME Program. However, this new rule is necessary to establish regulations for access to and implementation of the new activity which will serve to increase the opportunity for eligible low income rural families to access affordable homes for purchase.

7. The proposed rule will increase the number of individuals subject to the rule’s applicability but only so far as administrators voluntarily elect to participate in this new Department activity.
8. The proposed rule will not negatively effect the state’s economy, and may be considered to have a positive effect on the state’s economy because the proposed rule enables homebuyers to access new or rehabilitated homes at a lower cost and provides communities with a tool to increase and update their housing stock.

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, §2306.002.

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

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 proposed 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 in association with this rule because the construction activities associated with the program will allow local contractors to bid on jobs in their area; however, because the work would be bid on a project-by-project basis, and because it is unknown what communities will end up pursuing this activity, a local impact is not able to be quantified for any given community.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV’T CODE §2001.024(a)(5). Mr. Cervantes has also determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be increased opportunity to access affordable housing for homeownership. There will not be any economic cost to any individuals required to comply with the new sections because the costs associated with this activity and that are incurred to administer the activity are allowable and payable under the grant though which the activity is offered.

f. FISCAL NOTE REQUIRED BY TEX. GOV’T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections do not have any foreseeable implications related to costs or revenues of the state or local governments. The costs incurred to comply with the rule are reimbursable by the federal funding source under which the activity is offered.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held June 7, 2019, to July 12, 2019, to receive input on the new proposed sections. 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, July 12, 2019.
STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

§23.80. 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) 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) 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%.

(b) Cash Reserve Threshold Requirement. When HOME funds will be utilized for construction activities, documentation, as described below, 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) 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.

§23.81. Homebuyer with New Construction or Rehabilitation (HANC) General Requirements.

(a) Eligible Activities must meet the ownership requirement in subparagraph (A) of this subsection and an Activity described in subparagraph (B) 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 paragraph 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 subsection (e) of this section;

(2) Placement of an energy efficient MHU: $75,000; 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 $10,000 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 of the following as applicable:

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

(2) Installation of an aerobic septic system; or

(3) Homebuyer requests for accessibility features.
(g) Activity soft costs eligible for reimbursement are limited to:

(1) New Construction: no more than $11,500 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% 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 Chapter 20 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% 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.

(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.

§23.82. 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% 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 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 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 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% 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 disbursal 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.

(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% 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.