

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
**TDHCA Governing Board Approved Draft of  
10 TAC Chapter 7, Subchapter C, Emergency Solutions Grants Rule; and  
10 TAC Chapter 7, Subchapter D Ending Homelessness Fund Rule**

**Disclaimer**

Attached is a draft of 10 TAC Chapter 7, Subchapter C, Emergency Solutions Grants and 10 TAC Chapter 7, Subchapter D, Ending Homelessness Fund that was approved by the TDHCA Governing Board on March 10, 2022. This action includes repeal of the current rule, and adoption of a new rule in its place. However, the document attached reflects all changes proposed in tracked changes to facilitate review. This document, including its preamble, is scheduled to be published in the March 25, 2022 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 March 25, 2022  
Ends: 5:00 p.m. Austin local time on April 25, 2022

Comments received after 5:00 p.m. Austin local time on April 25, 2022 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: Rosy Falcon  
Homeless Programs Rule Comments  
P.O. Box 13941  
Austin, Texas 78711-3941  
Email: [rosy.falcon@tdhca.state.tx.us](mailto:rosy.falcon@tdhca.state.tx.us)

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

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

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

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**Attachment A: Preamble, including required analysis, for proposed repeal of 10 TAC §7.1, Purpose and Goals; 10 TAC §7.2, Definitions; 10 TAC §7.3, Construction Activities; 10 TAC §7.7, Subrecipient Contact Information; and 10 TAC §7.12, Waiver of Rule**

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC §7.1, Purpose and Goals; 10 TAC §7.2, Definitions; 10 TAC §7.3, Construction Activities; 10 TAC §7.7, Subrecipient Contact Information; and 10 TAC §7.12, Waiver of 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.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect:

1. The proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the overarching policies and procedures of the Emergency Solutions Grants, Emergency Solutions Grants CARES, Homeless Housing and Services, and Ending Homelessness Fund programs.
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 or in a decrease in fees paid to the Department.
5. The proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of homeless programs.
7. The proposed repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate 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 determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be more clarity on the administration of homeless programs. There will not be economic costs to individuals required to comply with the repealed section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held March 25, 2022, to April 25, 2022, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email [rosy.falcon@tdhca.state.tx.us](mailto:rosy.falcon@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, APRIL 25, 2022.

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

10 TAC Chapter 7, Subchapter A, General Policies and Procedures

10 TAC §7.1, Purpose and Goals

10 TAC §7.2, Definitions

10 TAC §7.3, Construction Activities

10 TAC §7.7, Subrecipient Contact Information

10 TAC §7.12, Waiver of Rule

**Attachment B: Preamble for proposed new 10 TAC §7.1, Purpose and Goals; 10 TAC §7.2, Definitions; 10 TAC §7.3, Construction Activities; 10 TAC §7.7, Subrecipient Contact Information; and 10 TAC §7.12, Waiver of Rule**

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC §7.1, Purpose and Goals; 10 TAC §7.2, Definitions; 10 TAC §7.3, Construction Activities; to TAC §7.7, Subrecipient Contact Information; and 10 TAC §7.12, Waiver of Rule. The purpose of the proposed new sections is to update the rules to clarify definitions and eligible activities, and to better align with the administrative rules for the Department at 10 TAC §1.5 related to rule waivers.

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

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

**a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.**

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed rules do not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, the overarching policies and procedures of the Emergency Solutions Grants, Emergency Solutions Grants CARES, Homeless Housing and Services, and Ending Homelessness Fund programs (homeless programs).
2. The proposed new rules do not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The proposed rules do not require additional future legislative appropriations.
4. The proposed rules will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The proposed rules are not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The proposed rules will not expand, limit, or repeal an existing regulation.
7. The proposed rules will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed rule will not negatively or positively affect the state's economy.

**b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.** The Department, in drafting these proposed rules, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, Ch. 2306.

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

2. There are approximately no small or micro-businesses subject to the proposed rules because these funds are limited to private nonprofit organizations and units of local governments per 24 CFR §576.202 for Emergency Solutions Grants funds; limited to counties and municipalities in Tex. Transportation Code §502.415 for the Ending Homeless Fund; and limited to municipalities or designated nonprofits per 10 TAC §7.22 for the Homeless Housing and Services Program.

3. The Department has determined that based on the considerations in item two above, there will be no economic effect on small or micro-businesses or rural communities.

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

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the rules as to their possible effects on local economies and has determined that for the first five years the rules will be in effect the new rules have no economic effect on local employment because these rules will channel funds, which may be limited, only to nonprofits, private nonprofits, local governments, and counties and municipalities; it is not anticipated that the amount of funds would be enough to support additional employment opportunities, but would add to the services provided. Alternatively, the rules would also not cause any negative impact on employment. Therefore no local employment impact statement is required to be prepared for the rules.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that no impact is expected, there are no "probable" effects of the new rules on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be a rule that has greater clarity into the processes and definitions of the administration of homeless programs. There will not be any economic cost to any individuals required to comply with the new sections because the processes described by the rule have already been in place through the rules found at these sections being repealed.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held March 25, 2022, to April 25, 2022, to receive input on the new proposed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email [rosy.falcon@tdhca.state.tx.us](mailto:rosy.falcon@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, APRIL 25, 2022.

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 7 HOMELESSNESS PROGRAMS

### SUBCHAPTER A GENERAL POLICIES AND PROCEDURES

#### §7.1 Purpose and Goals -

(a) The rules established ~~herein for Chapter 7, concerning~~ in this chapter relate to Homeless Programs, ~~Subchapter A, concerning for which the~~ General Provisions ~~applies~~ provided in this subchapter apply to all of the Homeless Programs, unless otherwise noted. Additional program specific requirements are contained within each program subchapter.

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

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

(d) Unless otherwise noted herein or required by federal law or regulation, or state statute, all provisions of this chapter apply to any Application received for federal funds and any Contract of state funds on or after September 1, 2018, the effective date of this rule.

#### §7.2 Definitions

~~(a) To ensure a clear understanding of the terminology used in the context of the Department's Homeless Programs, a list of terms and definitions has been compiled as a reference.~~

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

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

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

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

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

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

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

(7) Continuum of Care (CoC)--The group composed of representatives of relevant organizations, which generally includes nonprofit homeless providers; victim service providers; faith-based organizations; governments; businesses; advocates; public housing agencies; school districts; social service providers; mental health agencies; hospitals; universities; affordable housing developers; law enforcement; organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons that are organized to plan for and provide, as necessary, a system of outreach, engagement, and assessment; emergency shelter; rapid re-housing; transitional housing; permanent housing; and prevention strategies to address the various needs of homeless persons and persons at risk of homelessness for a specific geographic area. HUD funds a CoC Program designed to assist sheltered and unsheltered homeless people by providing the housing and/or services needed to help individuals move into transitional and permanent housing, with the goal of long-term stability.

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

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

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

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

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

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

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

(15) Elderly Person--

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

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

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

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

~~(18) ESG Coordinator—An organization procured by the Department that administers a competition for funds in its CoC region and recommends ESG awards to the Department based on its competition.~~

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

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

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

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

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

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

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

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



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

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

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

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

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

(31) Homeless Subpopulations--Persons experiencing Homelessness who are part of the [followingspecial](#) population categories, ~~or~~ as defined ~~in~~[by](#) the most recent Point In Time Data Collection guidance issued by HUD:

~~(A) Children of Parenting Youth;~~

~~(B) Parenting Youth;~~

~~(C) Persons Experiencing Chronic Homelessness;~~

~~(D) Persons Experiencing Severe Mental Illness;~~

~~(E) Persons with Chronic Substance Use Disorder;~~

~~(F) Persons with HIV/AIDS;~~

~~(G) Unaccompanied Youth;~~

~~(H) Veterans; and~~

~~(I) Victims of Domestic Violence.~~

(32) Household--A Household is a single individual or a group of persons who apply together for assistance and who live together in one ~~(1)~~ Dwelling Unit, or, for persons who are not housed or in a shelter, who would live together in one ~~(1)~~ Dwelling Unit if they were housed, or as defined in the most recent HMIS Data Dictionary issued by HUD.

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

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

~~(35) Local Competition--A competition for ESG funding administered by an ESG Coordinator on behalf of the Department for a CoC region.~~

~~(3635)~~ Match--A contribution to the ESG Program from a non-ESG source governed by 24 CFR §576.201.

~~(3736)~~ Monthly Expenditure Report--Information on Expenditures from ~~Subrecipients~~[Subrecipient](#) to the Department.

~~(3837)~~ Monthly Performance Report--Information on Program Participants and program activities from ~~Subrecipients~~[Subrecipient](#) to the Department.

~~(3938)~~ Notice of Funding Availability (NOFA)--Notice of Funding Availability or announcement of funding published by the Department notifying the public of available funds for a Program with certain requirements.

~~(4039)~~ Outcome--A benefit or change achieved by a Program Participant served by the Department's ~~homeless programs~~[Homeless Programs](#).

~~(4140)~~ Performance Target--Number of persons/Households [to be served](#), outcomes [to be reached](#), or construction/rehabilitation/conversion [to be performed](#) that the Subrecipient commits to accomplish during the Contract Term.

~~(4241)~~ Private Nonprofit Organization--An organization described in §501(c) of the Internal Revenue Code (the "Code") of 1986 and which is exempt from taxation under subtitle A of the Code, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance. This does not include a governmental organization such as a public housing authority or a housing finance agency.

~~(4342)~~ Project--A group of eligible activities identified in an Application or Contract to the Department, and designated in HMIS or HMIS-comparable database.

~~(4443)~~ Program Participant--An individual or Household that is assisted by a Homeless Program.

~~(4544)~~ Program Year--Contracts with funds from a specific federal allocation (ESG [and ESG CARES](#)) or year of a state biennium (HHSP).

~~(4645)~~ Recertification--Required review of a Program Participant's eligibility determination for continuation of assistance.

~~(4746)~~ Service Area--The city(ies), county(ies) and/or place(s) identified in the Application (as applicable), and Contract that the Subrecipient will serve.

~~(4847)~~ State--The State of Texas or the Department, as indicated by context.

~~(4948)~~ Subcontract--A contract made between the Subrecipient and a purveyor of goods or services through a procurement relationship.

~~(5049)~~ Subcontractor--A person or an organization with whom the Subrecipient contracts to provide services.

~~(5150)~~ Subgrant--An award of financial assistance in the form of money made under a grant by a Subrecipient to an eligible Subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases.

(5251) Subgrantee--The legal entity to which a Subgrant is awarded and which is accountable to the Subrecipient for the use of the funds provided.

(5352) Subrecipient--An organization that receives federal or states funds passed through the Department to operate ESG and/or state funded ~~homeless programs~~[Homeless Programs](#).

(5453) Texas Administrative Code (TAC)--A compilation of all state agency rules in Texas.

(5554) United States Department of Housing and Urban Development (HUD)--Federal department that provides funding for ESG.

(5655) Unit of General Purpose Local Government--A unit of government which has, among other responsibilities, the authority to assess and collect local taxes and to provide general governmental services.

(5756) United States Code (U.S.C.)--A consolidation and codification by subject matter of the general and permanent laws of the United States.

(5857) Youth Headed Household--Household that includes unaccompanied youth 24 years of age and younger, parenting youth 24 years of age and younger and children of parenting youth 24 years of age and younger.

### **§7.3 [HHSP and EH](#) Construction Activities**

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

~~(b) For construction under the ESG Program, the term of the LURA will be 10 years from the date of execution of the LURA when the cost of major rehabilitation or conversion exceeds seventy five percent of the value of the building prior to rehabilitation or conversion, regardless of the amount of the ESG investment. The value of the building prior to conversion or rehabilitation must be evidenced by the submission of the most recent tax records showing the value of the property, an appraisal reflecting the value of the property prior to improvements, or other valuation method approved by the Department.~~

~~(c) The term of the LURA in other circumstances where construction was funded under the ESG Program shall be three years from the date of execution of the LURA.~~

~~(d) For state funds only, Tex.~~

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

[\(ec\)](#) A Subrecipient that intends to expend funds for new construction, rehabilitation, or conversion must submit a copy of the activity budget inclusive of all sources and uses of funding, documents for a construction plan review, and identification of the entity and signature authorization of the individual (name and title) that will execute the LURA. These documents must be submitted no less than 90 calendar days prior to the end of the Contract Term under which funds for the activity are provided. The Department may elect to reconsider award

amounts if financial resources other than those presented in the Application are subsequently committed to an activity.

(~~f~~d) A Subrecipient must request a final construction inspection within 30 calendar days of construction completion. The inspection will cover the Shelter and Housing Standards, Uniform Physical Construction Standards, 2000 International Residential Code (or municipality adopted later version), Minimum Energy Efficiency Requirements for Single Family Construction Activities, and the Accessibility Standards in Chapter 1, Subchapter B, as applicable for the Homeless Program and activity.

### **§7.7 Subrecipient Contact Information**

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

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

(1) Board Member's name;

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

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

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

(5) Member's direct email address.

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

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

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

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

**§7.12 ~~Waiver of Rule~~Waivers**

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

(b) A provision of a closed NOFA ~~or a Local Competition~~ may not be waived except in the case of a ~~federal~~ disaster as described in §1.5 ~~(relating to Waiver Applicability in the Case of Federally Declared Disasters)~~ of this title or a change in federal law that makes adherence to the requirements of the NOFA ~~or Local Competition~~ impossible or impracticable as determined by the Board.

**Attachment C: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 7, Subchapter C, Emergency Solutions Grants (ESG)**

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 7, Homelessness Programs, Subchapter C, Emergency Solutions Grants (ESG). The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect:

1. The proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the administration of the Emergency Solutions Grants (ESG) 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 or in a decrease in fees paid to the Department.
5. The proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of homeless programs.
7. The proposed repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

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

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

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

individuals required to comply with the repealed section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held March 25, 2022, to April 25, 2022, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email [rosy.falcon@tdhca.state.tx.us](mailto:rosy.falcon@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, APRIL 25, 2022.

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

## 10 TAC Chapter 7, Subchapter C, Emergency Solutions Grants (ESG)

§7.31 Purpose

§7.32 Use of ESG Funds

§7.33 Apportionment of ESG Funds

§7.34 Local Competition for Funds

§7.35 Eligible Applicants

§7.36 General Threshold Criteria under a Department NOFA

§7.37 Application Review and Administrative Deficiency Process for Department NOFAs

§7.38 Competitive Award and Funding Process for Allocated Funds

§7.39 Uniform Selection Criteria

§7.40 Program Participant Services Selection Criteria

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

§7.42 General Administrative Requirements

§7.43 Program Income

§7.44 Program Participant Eligibility and Program Participant Files

**Attachment D: Preamble for proposed new 10 TAC Chapter 7, Subchapter C, Emergency Solutions Grants (ESG) Program and the Emergency Solutions Grant CARES (ESG CARES)**

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 7, Subchapter C, Emergency Solutions Grants (ESG) Program and the Emergency Solutions Grant CARES (ESG CARES). The purpose of the proposed new subchapter is to propose a new rule that updates requirements related to the requirements of and the award process for the ESG and ESG CARES Programs, including updating eligible program expenses, establishing a process for continuity of awards to some Subrecipients, and updating scoring processes and award procedures for competitive award cycles.

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 relates to the re-adoption of this rule which makes changes to an existing activity, administration of the Emergency Solutions Grants or Emergency Solutions Grants CARES programs.
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 does not require additional future legislative appropriations.
4. The proposed 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 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, limit, or repeal an existing regulation.
7. The proposed rule will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed rule will not negatively or positively affect the state's economy.

**b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.** The Department, in drafting this proposed 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, Ch. 2306.

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.
2. There are no small or micro-businesses subject to the proposed rule because these funds are



limited to units of local government or designated nonprofits per 10 TAC §7.35 for the programs.  
3. The Department has determined that based on the considerations in item two above, there will be no economic effect on small or micro-businesses or rural communities.

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

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the 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 new rule has no economic effect on local employment because this rule will channel funds, which may be limited, only to municipalities and nonprofits; it is not anticipated that the amount of funds would be enough to support additional employment opportunities, but would add to the services provided. Alternatively, the rule would also not cause any negative impact on employment. Therefore no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that no impact is expected, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new subchapter is in effect, the public benefit anticipated as a result of the new subchapter will be a rule that has greater clarity into the processes and definitions of the administration of homeless programs. There will not be any economic cost to any individuals required to comply with the new subchapter because the processes described by the rule have already been in place through the rule found at this subchapter being repealed.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held March 25, 2022, to April 25, 2022, to receive input on the new proposed subchapter. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email [rosy.falcon@tdhca.state.tx.us](mailto:rosy.falcon@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, APRIL 25, 2022.

STATUTORY AUTHORITY. The new subchapter is 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 7 HOMELESSNESS PROGRAMS

### SUBCHAPTER C EMERGENCY SOLUTIONS GRANTS (ESG) AND EMERGENCY SOLUTIONS GRANTS CARES (ESG CARES)

#### §7.31 Purpose

(a) The purpose of this rule is to provide guidance and procedures for the Emergency Solutions Grants (ESG) and the Emergency Solutions Grant CARES (ESG) Program CARES programs as

authorized by Tex. Gov't Code §2306.053. ESG ~~and ESG CARES~~ funds are federal funds awarded to the State of Texas by HUD and administered by the Department.

(b) The regulations in this subchapter, relating to ~~Emergency Solutions Grants~~ ~~ESG and ESG CARES~~, govern the administration of ~~ESG~~ funds and establish policies and procedures for use of ESG funds to meet the purposes contained in Title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. §§11371 - 11378) (the Act), as amended by the Homeless Emergency Assistance and Rapid Transition to Housing Act (HEARTH Act).

(c) In addition to this subchapter, ~~an ESGa~~ Subrecipient shall comply with the regulations applicable to the ESG ~~Program and ESG CARES programs~~ as set forth in Chapters 1 and 2 of this title (relating to Administration and Enforcement, respectively), Subchapter A of Chapter 7 of this title (relating to General Policies and Procedures) and as set forth in 24 CFR Parts 5, 91, and 576 (the Federal Regulations). ~~An ESGa~~ Subrecipient must also follow all other applicable federal and state statutes and the regulations established in this chapter, relating to Homelessness Programs, as amended or supplemented.

(d) In the event that Congress, the Texas Legislature, or HUD add or change any statutory or regulatory requirements, special conditions, or waivers, concerning the use or administration of these funds, ~~an ESGa~~ Subrecipient shall comply with such requirements at the time they become effective.

### **§7.32 Use of ESG Funds -**

~~(a) The purpose of ESG is to assist people in regaining stability in permanent housing quickly after experiencing a housing crisis and/or Homelessness.~~

~~(b)(a)~~ ESG Applications for provision of Program Participant services under emergency shelter, street outreach, homeless prevention and/or rapid re-housing may include a request for funds for Homeless Management Information Systems (HMIS) activities. Applications proposing to provide only HMIS activities are not eligible for an award of funds.

~~(c) Subrecipients~~ ~~(b) Subrecipient~~ may not Subgrant funds, but may Subcontract for the provision of services. Such Subcontracts are subject to applicable procurement requirements.

~~(d)~~ The Department's Governing Board of Directors, Executive Director, or his/her designee may limit activities in a ~~Notice of Funding Availability~~ ~~NOFA~~, or by Contract.

~~(e)~~ Program Participant services may be provided under street outreach, emergency shelter, homeless prevention or rapid re-housing, as described in this subsection or otherwise permitted in Federal Regulations.

~~(f)~~ The street outreach component may be provided to unsheltered Homeless persons as defined in 24 CFR §576.101(a). Eligible costs for Program Participants of street outreach include the following services:

(1) Engagement costs to locate, identify, and build relationships with unsheltered Homeless persons, including assessment of needs, crisis counseling, addressing urgent physical needs, provision of information and referrals;

(2) Case management costs to assess housing and service needs and coordinate delivery of services;

(3) Emergency health services to the extent that other health services are inaccessible or unavailable in the area;

(4) Emergency mental health services to the extent that other mental health services are inaccessible or unavailable in the area; and

(5) Transportation for outreach workers and Program Participants, [not including the purchase or lease of vehicles](#).

(g) The emergency shelter component may be provided to Homeless persons per 24 CFR §576.102. Eligible emergency shelter costs are for Program Participant services and costs related to the shelter building, relocation, and operation.

(1) Eligible costs for Program Participants of emergency shelter services include:

(A) Case management to coordinate individualized services;

(B) Child care for children under the age of 13, and for disabled children under the age of 18;

(C) Education services providing instruction or training to enhance their ability to obtain and maintain housing, including but not limited to literacy, English literacy, General Educational Requirement (GED) preparation, consumer education, health education, and substance abuse prevention;

(D) Employment assistance and job training services;

(E) Outpatient health services to the extent that other health services are inaccessible or unavailable in the area;

(F) Legal services, to the extent that legal services are unavailable or inaccessible within the community, to assist with housing needs, excluding immigration and citizenship matters, matters related to mortgages, legal retainers and contingency fees;

(G) Life skills training including budgeting resources, managing money, managing a household, resolving conflict, shopping for food and need items, improving nutrition, using public transportation, and parenting;

(H) Outpatient mental health services to the extent that other mental health services are inaccessible or unavailable in the area;

(I) Outpatient substance abuse treatment services up to 30 days, excluding inpatient treatment; and

(J) Transportation for staff and Program Participants related to the provision of essential services, [not including the purchase or lease of vehicles](#).

(2) Eligible emergency shelter costs related to the shelter building, relocation, and operation include:

~~(A) Renovation, rehabilitation or conversion of buildings for use as emergency shelter;~~

~~(B)~~(A) Certain costs for operation of emergency shelters, including provision of hotel or motel vouchers to Program Participants when no appropriate emergency shelter is available and minor or routine repairs to the shelter facility; and

(~~C~~B) Assistance required under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(~~H~~g) The homelessness prevention component may be provided to Homeless persons and persons At-risk of Homelessness per 24 CFR §576.103, and the rapid re-housing component may be provided to Homeless persons per 24 CFR §576.104. Homelessness prevention and rapid re-housing may be provided for up to 24 months of assistance in a 36-month period. Eligible costs for homelessness prevention and rapid re-housing include housing relocation and stabilization for financial assistance, housing relocation and stabilization services, and rental assistance.

(1) Housing relocation and stabilization for financial assistance include:

(A) Rental application fees;

(B) Security deposits (equal to not more than two month's rent) and last month's rent;

(C) Utility deposits and/or utility payments;

(D) Moving costs, such as truck rental or hiring a moving company. Payment of arrearages for temporary storage is not an eligible cost; and

(E) Costs to break a lease to effect an emergency transfer per 24 CFR §5.2005(e), if Program Participant is receiving rental assistance under ESG.

(2) Housing relocation and stabilization services include:

(A) Housing search and placement costs to assist in locating, obtaining, and retaining suitable permanent housing;

(B) Housing stability case management for assessing, arranging, coordinating and monitoring the delivery of individual services to facilitate housing stability;

(C) Mediation between the Program Participant and the landlord/owner to prevent loss of current housing;

(D) Legal services for housing needs excluding immigration and citizenship matters, matters related to mortgages, legal retainers and contingency fees; and

(E) Credit repair and resolution, excluding payment or modification of debts.

(3) Non-duplicative rental assistance may be provided for up to 24 months within any 36-month period. Late payment penalties during the term of assistance are not eligible ESG expenses. Rental assistance includes:

(A) Short-term rental assistance which is up to three months of rent, inclusive of arrearages, late fees, accrued prior to the term of assistance, and last month's rent; and

(B) Medium-term rental assistance which is more than three months of rent but not more than 24 months of rent, inclusive of up to six months of arrearages, late fees, [accrued prior to the term of assistance, and](#) last month's rent.

(ih) Costs to participate in HMIS are eligible ESG costs. Eligible costs related to HMIS include:

- (1) Hardware, software, equipment, office space, utility costs;
- (2) Salary and staff costs for operation of HMIS, including technical support;
- (3) HMIS training and overhead costs, including travel to HUD sponsored and approved HMIS training programs and travel costs for staff to conduct intake;
- (4) HMIS participation fees charged by the HMIS lead agency; and
- (5) HMIS-comparable databases for victim services providers or legal services providers.

(ji) Eligible administrative costs for ESG are:

- (1) General management and oversight of the ESG award, excluding cost to purchase office space;
- (2) Provision of ESG training and costs to attend HUD-sponsored ESG training; and
- (3) Costs to carry out required environmental reviews.

### **§7.33 Apportionment of ESG Funds**

(a) The Department will retain funds for Administrative activities. ~~A portion of these Administrative funds in an amount not to exceed .25% of the Department's total allocation of ESG funds may be retained by TDHCA to procure entities to administer a Local Competition for funding within a CoC region.~~ Funds for Administrative or Program Participant services may be retained by TDHCA to subgrant specific ESG activities, such as legal services [or operating costs for non-congregate emergency shelters funded by the Department's allocation of funds from the HOME American Rescue Plan Act.](#)

(b) If the Department receives ESG funding from HUD that has additional activity or geographic restrictions, the Department may elect not to use the Allocation Formula. [Retained funds](#) ~~Funds retained under subsection (a) of this section~~ are not subject to the Allocation Formula.

(c) ESG funds not retained for the purposes outlined ~~above~~ [in subsections \(a\) and \(b\) of this section](#) will be made available by CoC region based on an Allocation Formula. Allocation Formula factors noted in paragraphs (1) - (4) of this subsection will be used to calculate distribution percentages for each CoC region as follows:

- (1) Fifty percent weight will be apportioned to renter cost burden for Households with incomes less than 30% Area Median Family Income (AMFI), as calculated in the U.S. Department of Housing and Urban Development's (HUD) Comprehensive Housing Affordability Strategy;
- (2) Fifty percent weight will be apportioned for the number of persons in poverty from the most recent five-year estimate of the American Community Survey released by the U.S. Census Bureau;
- (3) Fifty percent weight will be apportioned to point-in-time counts, which are annual counts of sheltered and unsheltered persons experiencing homelessness on one day during the last two

weeks of January as required by HUD for CoCs. If a CoC did not conduct a point-in-time count or only completed a partial point-in-time count, the results of the most recent point-in-time count conducted that covered both the sheltered and unsheltered persons experiencing homelessness will be utilized for the purposes of the Allocation Formula; and

(4) Negative 50% weight will be apportioned based on a total of all ESG funding allocated by HUD to local jurisdictions within the CoC region, and ESG funding awarded by the Department within the region from the previous fiscal year.

(d) Each CoC region is allocated a minimum amount of \$100,000. This is accomplished by taking the amounts of all regions with over \$100,000 during the initial allocation and redistributing a proportional share to the regions with less than \$100,000. If the Department distributes by Allocation Formula less than the amount required to provide all regions with \$100,000, then the funds will be split evenly among the CoC regions.

~~(e)~~ Not less than 70% of ESG funding allocated to the CoC regions shall be initially withheld from competition for use by Subrecipients eligible for continuing awards as described under §7.34 of this subchapter.

(f) Those ESG funds allocated based on the formula in subsection (~~b~~c) of this section will be made available for the provision of Program Participant services; they will be made available through a NOFA for both continuing awards described in subsection (e) of this section and for competitive Applications which may be released on an annual or biennial/multiyear basis.

(1) Not more than 60% of allocated fundstotal ESG funds under direct subgrants, continuing, and competitive awards may be awarded for the provision of street outreach and emergency shelter activities. Funds will first be made available to direct subgrants, then continuing awards. Remaining funds made available for competitive awards.

(2) Contract funding limits include the funding request for all Program Participant services proposed in the Application, HMIS, and Administrative funds.

~~(A) Applicant must apply for an award amount of at least \$50,000 and not more than \$300,000 for all Program Participant services proposed in the Application.~~

(A) Funding request minimums and maximums will be noted in the NOFA.

(B) Funds awarded for HMIS are limited to 12% of the amount of funds awarded for Program Participant services.

(C) Administrative activities are limited to three percent of the amount of funds awarded for Program Participant services.

(~~f~~g) ESG funds that have been deobligated by the Department or that have been voluntarily returned from an ESG Contract may be reprogrammed at the discretion of the Department, and are not included in the Allocation Formula or award process detailed in subsections (c)-(~~e~~f) or (~~g~~-~~h~~)-(j) of this section.

(~~g~~)h An ESG Applicant may have the right to appeal funding decisions per 10 TAC §1.7 of this chapter (relating to Appeals Process).

(i) The Department reserves the right to negotiate the final Contract amount and local Match requirement with an Applicant.

(j) Percentages described in this subchapter will not be rounded up to the nearest whole number.

### §7.34 Continuing Awards

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

(b) ESG funds withheld for continuing awards by the Department from HUD for its 2021 annual allocation of funds will be allocated in accordance with the Allocation Formula (less the amount retained for the Department's Administrative activities), but, and are not subject to the award process and requirements outlined in §7.38 of this subchapter (relating to Award and Funding Process for Allocated Funds) This was correct.

(c) The 2021 subsequent years of allocation of ESG funds received by the Department will be offered to eligible Subrecipients of ESG funds (not including ESG CARES) that were awarded funds under from at least three of the 2020 ESG NOFA. A 2021 prior four allocations of ESG Applicant. An ESG Subrecipient is ineligible eligible for funding an offer of a continuing award of funds if the Subrecipient meets the following requirements:

(1) does not submit Submits an abbreviated Application for funding within 21 days of the request from TDHCA the Department as promulgated by the Department;

(2) does not resolve Resolves administrative deficiencies within the timeframe and in the manner outlined in §7.37 of this subchapter (relating to Application Review and Administrative Deficiency Process for Department NOFAs);

(3) has Submitted four or more months of fewer delinquent monthly reports for the Contract under the 2020 each of their active ESG NOFA; or, if the Applicant has no contract issued under that NOFA, four or more months of delinquent monthly reports for the existing Contract(s) for Contracts (not including ESG Coronavirus Aid Relief and Economic Security (CARES) funds per §7.5(b) of this Chapter (relating to Subrecipient Reporting); for reports due in the six month period preceding the application submission deadline;

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

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

(6) is not Does not apply for funds within the same COC Region under the competitive application process;

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

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

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

~~(d)~~ Any offer of ~~2021~~ ESG funds made under this section is contingent on retaining similar terms and conditions or agreeing to adjustments reflective of funding amount, including but not limited to performance and match requirements, in the active ESG annual Contract issued under ~~the 2020 ESG~~<sub>a</sub> NOFA.

~~(j) If the total amount of the 2021 ESG funding allocated to TDHCA (less the amount available for TDHCA's Administrative activities) is less than 100% of the award amounts of the Contracts issued under the 2020 ESG NOFA, offers~~

(e) Offers of funding will be proportionally reduced based on the total reduction in the amount of the 2021 allocation.

~~(k) If the total amount of the 2021 ESG funding allocated to TDHCA is equal to or greater than the 2020 ESG allocation, or if there are funds available from reduced awards (e.g. an Applicant is ineligible or accepts less than the full offer of 2021 ESG funding), this subparagraph will apply. If the federal cap of no more than 60% of funds being used for emergency shelter/street outreach (or other federal limitation) for the 2021 ESG funds would be exceeded based on all awardees from the 2020 ESG NOFA accepting a potential offer of 2021 funds, a reduced award may be offered to ensure the cap is not exceeded. All other offers of funds would then be limited to ESG Applicants providing rapid re-housing and homelessness prevention program components, or other activities which are not subject to a federal cap.~~

~~(1) ESG Subrecipients that received an award under the 2020 ESG NOFA will be offered an award amount up to 100% of their 2020 ESG Contract award amount, prior to year's award, excluding Contracts comprised exclusively of reallocated funds, before amendments, and will be proportionally increased or decreased in proportion to the total amount of ESG funds available subject to the allocation formula.~~

~~(2) Excess amounts will be offered to ESG Subrecipients awarded under the 2020 ESG NOFA that received a partial award of funds, up to their original request. The funds will be divided among all ESG Subrecipients with partial awards under the 2020 ESG NOFA. This proportional share, or the amount needed to increase the partial awards up to the original Application request, whichever is less, will be offered to these Subrecipients. If this process results in one or more Subrecipients receiving funds adequate to fulfill the original Application request, the funds in excess of the full award amount will be offered again to the remaining Subrecipients with a partial award. This process will continue until all partial awards of these Subrecipients are funded up to the original Application request, or until excess amounts are exhausted.~~

~~(3) Any remaining 2021 ESG funds may be offered to ESG CARES Subrecipients in regions where the full allocation of 2021 ESG funds were not fully utilized, or may be retained by TDHCA to subgrant to specific ESG activities, such as legal services. All Applicants must be able to satisfy the eligibility requirements of subsection (h) of this section (except that instead of late reports of ESG funding late reports of ESG CV will be used), and must agree to provide Match in the amount of 100% of the award of 2021 ESG funds.~~

~~(4) An ESG Applicant may have the right to appeal funding decisions per 10 TAC §1.7 of this chapter (relating to Appeals Process).~~



~~(m) The Department reserves the right to negotiate the final Contract amount and local Match requirement with an Applicant.~~

#### ~~§7.34 Local Competition for Funds~~

~~(a) TDHCA may procure contractors-~~

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

~~(g) Funds that remain available after all eligible continuing awards have been accepted will be transferred to the competition for funds for the purpose of administering a local competition within a CoC. The contractor selected will be the designated ESG Coordinator for the CoC region or CoC regions in which a contract is awarded.~~

~~(b) Application materials, other than those created by the Department that will be utilized by an ESG Coordinator during a CoC Local Competition are subject to Department review prior to the Application acceptance period, and must not conflict with §7.33(d) of this subchapter, relating to Apportionment of ESG Funds. Applicants recommended to the Department by the ESG Coordinator after a CoC Local Competition must satisfy the general threshold criteria established in §7.36 of this subchapter, relating to General Threshold Criteria under a Department NOFA, and establish performance targets as required by §7.40 of this subchapter, relating to Program Participant Services Selection Criteria.~~

~~(c) The ESG Coordinator must submit Applications recommended for funding under the CoC Local Competition to the Department prior to award recommendations being made by the Department to its Board. The recommendations must utilize all funding available in the region, unless all eligible Applications received are funded, and there is a remaining balance in the region. An Applicant that applies in a Local Competition for funding is not eligible to be awarded funding in the TDHCA funding regional competition.~~

~~(d) Applications not recommended by the ESG Coordinator for funding must be retained by the ESG Coordinator for a minimum of five years in accordance with 24 CFR §576.500 and must be made available to the Department upon request.~~

~~(e) The ESG Coordinator must establish an appeals process wherein Applicants may appeal scoring procedures, and such appeals must be reviewed by the governing body of the ESG Coordinator. Results of the Local Competition submitted to the Department are final, and Applicants in a Local Competition may not appeal the final determination of the ESG Coordinator to the Executive Director or to the Board §7.38 of this subchapter.~~

#### **§7.35 Eligible Applicants**

(a) An eligible Subrecipient is a Unit of Local Government as defined by HUD in CPD Notice 17-10, or a Private Nonprofit Organization.

(b) The Department reserves the option to limit eligible Subrecipient entities in a given NOFA.

#### **§7.36 General Threshold Criteria under a Department NOFA**

(a) Applications submitted to the Department ~~in response to a NOFA~~ are subject to general threshold criteria. Applications which do not meet the general threshold criteria or which cannot resolve an administrative deficiency related to general threshold criteria are subject to

termination. Applicants applying directly to the Department to administer the ESG Program must submit an Application on or before the deadlines specified in the NOFA, [notification of a direct subgrant, or notification of availability of a continuing award](#), and must include items in paragraphs (1) - (13) of this subsection:

(1) Application materials as published by the Department including, but not limited to, program description, budget, and performance statement.

(2) An ESG budget that does not exceed the total amount available within the CoC region ~~or~~, other geographic limitation, [subgrant, or offer of continuing award](#), as applicable.

(3) A copy of the Applicant's written standards that comply with the requirements of 24 CFR §576.400 and certification of compliance with these standards. Any occupancy standard set by the Subrecipient must not conflict with local regulations or Texas Property Code §92.010.

(4) A copy of the Applicant's policy for termination of assistance that complies with the requirements of 24 CFR §576.402 and certification of compliance with these standards.

~~(5) For a NOFA under the Allocation Formula, a~~ (5) A Service Area which consists of at least the entirety of one county or multiple counties within the CoC region under which Application is made, unless a CoC region does not include an entire county. When the CoC region does not encompass at least the entirety of one county, the Service Area must encompass the entire CoC region. The Service Area selected within an Application must be fully contained within one CoC region.

(6) Commitment in the budget to the provision of 100% Match, or request for a Match waiver, as applicable. Match waivers will be considered by the Department based on the rank of the Application. Applicants requesting an award of funds in excess of ~~\$57,500~~ [the minimum award amount as described in the NOFA for Program Participant services](#) are not eligible to request or receive a Match waiver. In the event that the Match waivers requested exceed \$100,000, the waivers will be considered only for the highest scoring eligible Applications, subject to availability of excess Match provided by ESG Applicants. Applicants that do not receive the waiver and are unable to provide a source of Match will be ineligible for an ESG award.

~~(7) For a NOFA under the Allocation Formula, evidence~~ (7) Evidence from the CoC Lead Agency in the region that the Applicant consulted with the CoC in the preparation of their ESG application and that the CoC Lead Agency agrees that the Application meets CoC priorities for serving persons experiencing homelessness and/or persons At-risk of Homelessness.

(8) Applicant certification of compliance with State and federal laws, rules and guidance governing the ESG Program as provided in the Application.

(9) Evidence of Data Universal Numbering System (DUNS) number for Applicant.

(10) Documentation of existing Section 501(c) tax-exempt status, as applicable.

(11) Completed previous participation review materials, as outlined in 10 TAC Chapter 1, Subchapter C of this title (relating to Previous Participation) for Applicant.

(12) Local government approval per 24 CFR §576.202(a)(2) for an Applicant that will be providing shelter activities with ESG or as ESG Match, as applicable. This documentation must be submitted not later than 30 calendar days after the Application submission deadline as specified in the NOFA, or prior to execution of a Contract for Subrecipients subject to a direct subgrant, or continuing award. Receipt of the local government approval is a condition prior to the Department obligating ESG funding.

(13) A resolution or other governing body action from the Applicant's direct governing body which includes:

(A) Authorization of the submission of the Application;

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

(C) Date that the resolution was passed by the governing body, which must be not older than 12 months preceding the date the Application is submitted.

(b) An Application must be substantially complete when received by the Department. An Application may be terminated if the Application is so unclear or incomplete that a thorough review cannot reasonably be performed, as determined by the Department. Such Application will be terminated without being processed as an administrative deficiency. Specific reasons for a Department termination will be included in the notification sent to the Applicant but, because the termination may occur prior to completion of the full review, will not necessarily include a comprehensive list of all deficiencies in the Application. Termination of an Application may be subject to §1.7 of this title, relating to the Appeals Process.

### **§7.37 Application Review and Administrative Deficiency Process** ~~for Department NOFAs~~

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

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

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

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

(d) The time period for responding to a deficiency notice commences on the first day following the deficiency notice date. If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m. on the seventh calendar day following the date of the deficiency notice, then one point shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. If administrative deficiencies are not resolved by 5:00 p.m., Austin local time on the fourteenth calendar day following the date of the deficiency notice, then the Application shall be terminated.

### **§7.38 Competitive Award and Funding Process ~~for Allocated Funds~~**

~~(a) An Applicant recommended to the Department by the ESG Coordinator after a Local Competition may be awarded funding, pending Previous Participation Review and Board approval. If the Applicant does not meet the requirements of the Previous Participation Review or the Board does not approve the recommendations of the ESG Coordinator, if there is another scheduled Board meeting before the Department must commit funding in accordance with 24 CFR §576.203(a)(1)(i), the Department will provide the ESG Coordinator the option to revise the list of recommended Applicants and recommended award amounts in order to still recommend awards for the full amount of funding in the region. If there are any funds in a CoC region for which an ESG Coordinator administered the CoC Local Competition process that are not recommended for an award by the ESG Coordinator or not approved by the Board, and there are no other Applicants in the CoC region or the Department must commit funding in accordance with 24 CFR §576.203(a)(1)(i), these funds will be added into other resources as described in subsection (j) of this section.~~

~~(b)(a)~~ An Application may be submitted requesting funds for Program Participant services under street outreach, emergency shelter, homeless prevention, and/or rapid re-housing, ~~per §7.33(d) of this subchapter (relating to Apportionment of ESG Funds).~~ Each Application submission will include one uniform Application with information applicable across all Program Participant service types, and then information on each Program Participant service requested. Each Program Participant service reflected in an Application will be treated as a separate Application, assigned a separate Application number per service type, and will be scored and ranked separately for each service type selected. Applicants may be awarded funds for one or more Program Participant services in accordance with this section. Because each Program Participant service is reviewed separately and competes separately, an award of funds for provision of one

Program Participant service does not affect an award of funds in any other Program Participant service reflected in that same Application submission.

(~~eb~~) Applications submitted directly to the Department for ~~consideration in CoC areas in which there is not an ESG Coordinator under this section~~ will receive points based on experience, program design, budget, previous performance, ~~collaboration~~, and performance measures. Applications will be scored and ranked based on selection criteria described in this subchapter.

(~~ec~~) Applicants for a competitive award 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 selection criterion.

(~~ed~~) Tie breakers. Each Application submitted to the Department for a competitive award shall be assigned a number between one and the total number of applications. The number assignment will be determined in a random selection process to occur immediately following the close of the application acceptance period, and Applicants will be notified of said number assignment as soon as possible thereafter. The randomly assigned numbers will be used to resolve ties, with the highest assigned number having the highest priority.

(~~ee~~) Partial awards. In order to maintain funding within the Allocation Formula amounts designated for each CoC region as determined in this subchapter, an Applicant for a competitive award may be offered a partial award of their requested funds. An Applicant offered a partial award of funds must confirm their acceptance of a partial award, and submit updated information related to the reduction within seven calendar days following the date of notification. Scoring criteria may be updated based on the reduced funding request, but any changes to the scoring criteria must allow the Application to maintain its rank.

(~~ef~~)(f) Regional Funding Competition. Funding will be recommended first for Applicants within the CoC region up to the Allocation Formula amount designated for the CoC region as determined in this subchapter.

(1) Eligible Applications will be ranked in descending order by score within the CoC region which the Application proposes to serve. Paragraph (e) of this section will be used to determine the priority of tied scores.

(2) ESG funds allocated to each CoC region will be awarded starting with the highest ranking Application and continue until the funds allocated for that CoC region are fully utilized, but not exceeded, or until the Applicant for the last application to be recommended in the region declines an offer of a partial award.

(3) Applications proposing street outreach or emergency shelter will be ranked alongside all Applications in the region, however, a recommendation for a full award of an Application for street outreach or emergency shelter will not be made through the first level of funding if funding recommendations in the CoC region for street outreach and emergency shelter will exceed 60% of the funding available remaining in the CoC region after direct subgrants and acceptance of continuing awards. Applications proposing street outreach and emergency shelter services but causing awards for such services in the region to exceed 60% of the available funding in the region, will be offered a partial award of up to the amount remaining to reach 60% for the region.

If no funds remain available that would not exceed 60% at the regional level for a partial award, or if they decline such partial award, the Application will be passed over and recommendation of funding would proceed to the next highest scoring application(s) in the region in order to fully fund the Formula Allocation amount for the region. Applications that were passed over for funding may be eligible to compete in the second level of the award process described in subsection (h) of this section statewide funding competition, if no more than 60% of funds have been awarded for street outreach and emergency shelter in the total allocated funds.

(4) A partial award may be offered to the last highest ranking Application which is otherwise eligible for funding within the CoC region regional competition to ensure that the amount of funds recommended for a region does not initially exceed the amount identified in the Formula Allocation. Partial awards will be offered under the regional competition only if the funding remaining in the CoC region is more than \$30,000.

(A) The Applicant or Applicants that accept an offer of a partial award may be required to amend the Application if the reduction in funds is expected to impact scored items and to adjust performance deliverables based on the reduced amount of funding. The revised score based on the partial award must still ensure the Application ranking would not be affected. If a partial award or the Applicant's subsequent adjustments results in a reduced score that alters their scoring rank within the CoC region regional competition, the opportunity to be funded from the first level of funding recommendations will not be offered to the Application.

(B) The Applicant may decline the partial award of funds and instead request to be included for consideration in the second level of funding recommendations statewide competition.

~~(h) The second level of recommendations is available only to Applications in CoC regions where the initially allocated funds were not fully awarded under the first level of recommendations. Remaining funds after the completion of the first level of funding will be collapsed from CoC regions which had insufficient eligible Applications to utilize the entire Allocation Formula amount. This collapse of funds will be made available to Applicants within each of the CoC regions that are determined to be underfunded based on total award recommendations within the CoC, and their respective Allocation Formula amount. Applications eligible for an award will be ranked first by the degree to which their CoC region was underfunded, and then by Application score.~~

~~(1) The Department will determine the degree to which a CoC region is underfunded by dividing the total funds recommended through the first level of funding recommendation by the amount of funds that were initially allocated to the CoC region according to the Allocation Formula. Regions where this percentage is greater than zero and less than 100 will be ranked in order, such that the lowest percentage funded is~~ (g) Statewide Funding Competition. If any funds remain after recommendations for all eligible Applications in the regional funding competition, such funds shall collapse and be made available in the statewide competition.

~~(1) All eligible Applications not recommended to be awarded under the regional funding competition will be ranked in descending order of score with the highest degree underfunded and therefore has~~ scoring unfunded Application, regardless of region, having the highest priority rank. Subsection (e) of this section will be used to determine the outcome of tied scores. ~~The highest ranking unfunded Applicant in the most underfunded region will be~~

~~(2) Funds will be awarded in the statewide funding competition starting with the highest ranked Application and continuing until no funds remain available to award or until there are no eligible Applications left to be recommended for an award of full funding if sufficient funds remain available for funding or a partial award of funds if an insufficient statewide balance remains.~~

~~(23) Applications proposing street outreach or emergency shelter will be ranked alongside all Applications. If the 60% of the total allocated funding available funds has been awarded to Applications proposing street outreach and emergency shelter, Applications proposing these activities will not be recommended, and will be passed over to fund Applications proposing homeless prevention or rapid re-housing.~~

~~(A) An Application which is otherwise eligible for (4) The final award in the statewide funding within the second level, except that requested funds exceed the amount available for street outreach competition and emergency shelter, may be offered a partial award of funds. In no event shall the partial award cause the Department to award funds in excess of the 60% of allocated funds for capped street outreach and emergency shelter funding may be a partial award if an Application cannot be fully funded.~~

~~(BA) An Applicant that accepts an offer of a partial award may be required to amend the Application if the reduction in funds is expected to impact scored items and to adjust performance deliverables based on the reduced amount of funding. The revised score based on the partial award must still ensure the Applications ranking would not be affected. If a partial award or the Applicant's subsequent adjustments result in a reduced score that alters their scoring rank within this second level of funding recommendations, the opportunity to be funded from this second level of recommendations will not be offered to this Applicant.~~

~~(3) As long as collapsed funds remain available, the process continues with the next highest-ranked unfunded Application within the highest underfunded region receiving a recommendation for an award. When more than one CoC region is equally underfunded, the CoC region with the highest ranked unfunded Application will first be offered the funding. It is anticipated that only one Application will be funded per underserved CoC region during the second level of recommendations, but the process will continue until the earlier of all CoC regions with sufficient eligible Applicants are recommended for funding up to their Allocation Formula amount, or no collapsed funds remain. If an Applicant declines the final offer of a partial award, or is unable to maintain their rank within their region, then the next highest-ranked unfunded Application in the region will have an option to receive the remaining funds. This offer will be made only one time per region in the second level of recommendations. If no other eligible Application exist, the next most underfunded regions highest application will be offered the funds. Any funds remaining after all underfunded regions have had the opportunity to be fully funded will be utilized in the third level of funding recommendations.~~

~~(i) If any funds remain after recommendations for all eligible Applications in the second level of recommendations is completed, such funds shall collapse and be made available statewide.~~

~~(1) All eligible Applications not recommended to be awarded under the first two levels of funding recommendations will be ranked in descending order of score with the highest scoring unfunded Application, regardless of region, having the highest priority rank. Subsection (e) of this section will be used to determine the outcome of tied scores.~~

~~(2) Funds will be awarded in this level of funding starting with the highest ranked Application and continuing until no funds remain available to award or until there are no eligible Applications left to be recommended for funding.~~

~~(3) Applications proposing street outreach or emergency shelter will be ranked alongside all Applications. If the 60% of the allocated funds has been awarded to Applications proposing street outreach and emergency shelter, Applications proposing these activities will not be recommended and will be passed over to fund Applications proposing homeless prevention or rapid re-housing.~~

~~(4) The final award in the third level of recommendations and the 60% capped street outreach and emergency shelter funding may be a partial award if an Application cannot be fully funded.~~

~~(A) An Applicant that accepts an offer of a partial award may be required to amend the Application if the reduction in funds is expected to impact scored items and to adjust performance deliverables based on the reduced amount of funding. The revised score based on the partial award must still ensure the Application's ranking would not be affected. Partial awards may only be offered if the remaining funding exceeds the minimum award amount as stated in the NOFA.~~

(B) The Applicant may decline a partial award of funds. Applicants that decline a partial award of funding within the statewide competition will be withdrawn from competition, as there are not sufficient remaining funds to award the Application.

(C) If a partial award or the Applicant's subsequent adjustments result in a reduced score that alters the scoring rank or an Applicant declines a partial award, the next highest ranked Application will be presented with the opportunity to be funded. ~~This offer will be made only one time per region in the third level of recommendations.~~

~~(j)~~ If there are still funds available after the ~~third level of recommendations~~ statewide funding competition, the Department may offer and recommend award amounts in excess of the funds requested and in excess of the award amount limits identified in §7.33(c) of this subchapter (relating to Apportionment of ESG Funds), starting with the highest scoring Applications already identified to be recommended for an award, not to exceed an award more than 50% greater than their original request. The Department will provide notice of the proposed increase to the impacted Applicants. The budget and ~~Performance targets~~ Performance targets would increase proportionally to the additional funding received. An Applicant will have the opportunity to accept or reject the recommendation for increased funding prior to final award by the Department.

~~(k) In the event that the Department elects to include a provision to award funds biennially, the distribution of funding for the second funding cycle is contingent upon the amount of the ESG allocation granted to the Department in the subsequent federal fiscal year. An ESG Subrecipient that does not satisfy the requirements of the Previous Participation Review or is not approved by the Department's Governing Board is ineligible for funding. An ESG Subrecipient may have the right to appeal funding decisions per 10 TAC §1.7 of this chapter (relating to the Appeals Process). When the total amount of ESG funding in the subsequent year is less than 100% of the first year's funding, awards will be reduced proportionally.~~

~~(1) When the total amount of ESG funding in the subsequent year's Allocation Formula is greater than 100% of the first year funding or if there are funds available from reduced awards, the additional funding will be used first to increase any partial awards to ESG Subrecipients that have met their first Expenditure benchmark. The funds will be divided by the number of ESG Subrecipients with partial awards who met the first Expenditure benchmark in year one. This amount or the amount needed to increase the partial awards up to the original~~



~~Application request, whichever is less, will be offered to these Subrecipients. If this process results in one or more Subrecipients receiving funds adequate to fulfill the original Application request, the funds in excess of the full award amount will be offered again to the remaining Subrecipients with a partial award. This process will continue until all partial awards of these Subrecipients are funded up to the original Application request, or until funds are exhausted.~~

~~(2) Funds remaining after the partial award increase under paragraph (1) of this subsection will be awarded to ESG Subrecipients in proportion to the ESG allocation. The budget and Performance targets would be adjusted proportionally to the funding. If the subsequent year allocation (after subtracting the amounts allocated under paragraph (1) of this subsection) is equal to or less than 150% of the first year of allocation, ESG Subrecipients may be offered an award of funds not to exceed 150% of their first award of funding under the NOFA.~~

~~(3) Funds remaining after increasing ESG Subrecipients to 150% of their original award will be offered to fully or partially fund the next highest ranking Applications from the ESG competition for a 12-month period.~~

~~(4)(i) The Department reserves the right to negotiate the final Contract amount and local Match with a Subrecipient.~~

### **§7.39 Uniform Selection Criteria**

An Application for funding allocated in accordance with §7.33(b) of this section (relating to Apportionment of ESG Funds) and made to the Department may be awarded points under the following uniform selection criteria. The total of the score under this part will be the uniform Application score. The uniform Application score will be comprised of points awarded under each of the following criteria:

(1) Homeless participation. An Application may receive a maximum of three points for the participation of persons who are Homeless in the Applicant's program design. Points may be earned under subparagraphs (A) and (B) of this paragraph for a total of up to three points.

(A) An Application may receive a maximum of two points when at least one person who is Homeless or formerly Homeless is a member of or consults with the Applicant's policy-making entity for facilities, services, or assistance under ESG; and

(B) An Application may receive a maximum of one point when at least one person who is Homeless or formerly Homeless ~~assists~~ is employed in a paid position with duties that include constructing, renovating, or maintaining, or operating the Applicant's ESG facilities, or providing services for occupants of its ESG facilities.

(2) Organizational or management experience. An Application may receive a maximum of eight points for ~~the Applicant's an Applicant~~ or its ~~management's~~ management staff's experience administering federal or State homeless programs.

(A) An Application may receive a maximum of ~~six~~ three points for ~~Applicant's an Applicant~~ or its management staff with ~~one to five~~ at least two but less than four years of experience;

(B) An Application may receive a maximum of five points for an Applicant or its management staff with at least four but less than six years of experience; or

(B) An Application may receive a maximum of eight points for an Applicant or its management staff with six or more years of experience.

(3) Percentage of prior ESG awarded funds expended. An Application may receive a maximum of ~~five~~six points for the Applicant's past expenditure performance of ESG funds proportionate to the award of funds from TDHCA to the Applicant. This will apply to any and all ESG Contract(s), exclusive of ESG CARES Contracts, administered by the Applicant that were ~~subject to the second Expenditure benchmark or~~ closed within 12 months prior to the date of the Application deadline established in the by the Department. Contract Expenditures will be averaged among all ESG Contracts that were closed within 12 months of the Application deadline, ~~or met the second Expenditure benchmark~~ without requiring an amendment if the Applicant was awarded multiple Contracts. The percentage of ESG funds expended will be calculated utilizing the amount of the Contract as of its closing ~~or the second Expenditure benchmark~~ as stated in the Contract prior to amendments, except where the Applicant voluntarily return funds in accordance with this subchapter. Expenditure will be defined as the Applicant having reported the funds as expended. Applications may receive:

(A) ~~Three~~Two points if the Applicant expended 91-94% of its prior ESG Contract funds as of its closing ~~or the second Expenditure benchmark~~ as stated in the Contract prior to amendments;

(B) ~~Four~~Three points if the Applicant expended 95% to less than 100% of its prior ESG Contract funds as of its closing ~~or the second Expenditure benchmark~~ as stated in the Contract prior to amendments; or

(C) ~~Five~~Six points if the Applicant expended 100% of its prior ESG Contract funds as of its closing ~~or the second Expenditure benchmark~~ as stated in the Contract prior to amendments.

(4) Contract History on Reporting and percentage of Outcomes. An Applicant may receive a maximum of ~~five~~twelve points for its prior timeliness of reports and performance achieved for previously awarded ESG Contract(s) ~~that met the second Expenditure benchmark or~~, exclusive of ESG CARES Contracts, that closed within 12 months prior to the date of the Application deadline established by the Department. Points may be requested under all of the subparagraphs (A) to (E) of this paragraph not to exceed a total of ~~five~~ten points. The Outcome percentages will be averaged among all prior ESG Contracts, exclusive of ESG CARES Contracts, that ~~met the second Expenditure benchmark or~~ closed within 12 months prior to the date of the Application deadline to determine the final percentage amount for this scoring criterion. Applications may receive points as follows:

(A) ~~One point~~Two points if the Applicant submitted the last three reports on or before the Contract end date within the reports' respective reporting deadlines;

(B) ~~One point~~Two points if the Applicant met 100% or more of their street outreach target of persons exiting to temporary or transitional or permanent housing destination;

(C) ~~One point~~Two points if the Applicant met 100% or more of their emergency shelter exits to permanent housing;

(D) ~~One point~~Two points if the Applicant met 100% or more of their Homeless prevention target for maintaining housing for three months or more; ~~and~~

(E) ~~One point~~Two points if the Applicant met 100% or more of their rapid re-housing target for maintaining housing for three months or more; ~~and~~

(F) Two points if the Applicant met 100% or more of their Match obligation.

(G) Twelve points if the Applicant has not previously been awarded an ESG Contract closed within 12 months prior to the date of the Application deadline.

(5) Monitoring history. Applications may receive a maximum of five points for the Applicant's previous ESG and ESG CARES monitoring history. The Department will consider the monitoring history for three years before 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 purposes of this scoring criterion. Applications may be limited to a maximum of:

(A) Five points if the Applicant has not received any monitoring Findings, including Applicants with no previous monitoring history;

(B) Not more than three points if the monitoring history has a close-out letter that included Findings, but the Findings were not related to Household eligibility or violations of procurement requirements;

(C) Not more than two points if the monitoring history has a close-out letter that included Findings related to Household eligibility;

(D) Not more than one point if the monitoring history has a monitoring close-out letter that included Findings related to violations of procurement requirements; or

(E) Zero points may be requested under this criterion if the Applicant received a Finding resulting in disallowed costs in excess of \$5,000 which required repayment to the Department.

(6) Priority for certain communities. Applications may receive two points if at least one Colonia, as defined in Tex. Gov't Code §2306.083, 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 Attorney General's website.

(7) Previously unserved areas. Applications may receive a maximum of 10 points for provision of ESG services if at least one county in the Service Area included in the Application has not received ESG funds from the Department or directly from HUD within the previous federal funding year for services. Applications may receive a maximum (of:

(A) Five ten points if at least one county within the Service Area as stated in the Application did not receive an award of ESG annual funds from the Department within the previous federal funding year;or.

(B) Ten points if no portion of the Service Area has received ESG funds within the previous federal funding year.

#### **§7.40 Competitive Program Participant Services Selection Criteria**

(a) An Application for competitive funding allocated under §7.33(b) of this subchapter (relating to Apportionment of ESG Funds), and made to the Department, may be awarded points for Program Participant services under each category. Points awarded for Program Participant services will be separately tabulated and added to the uniform Application score to determine a

score for each of the Program Participant services Applications submitted. All scoring criteria that are based upon measurable future performance expectations will be measured and expected to be fulfilled by being included as a performance requirement in the Contract should the Application be awarded funds.

(b) Street outreach. An Application proposing street outreach may receive points under the following criteria:

~~(1) Street outreach CoC collaboration. Applications may receive up to 10 points for support from the CoC under which the Application is submitted. Applications may receive a maximum of:~~

~~(A) Three points based on an "approved" rating from the CoC;~~

~~(B) Seven points based on "recommended" rating from the CoC; and~~

~~(C) Ten points based on a "strongly recommended" rating from the CoC.~~

~~(2)~~ (1) Matching funds for street outreach. An Application may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for street outreach.

~~(3)~~ (2) Street outreach serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(b)(34) of this chapter (relating to Definitions). An Applicant providing street outreach may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who are in one or more Homeless Subpopulation;

(B) Two points based on a minimum target of 80% of persons served who are in one or more Homeless Subpopulation;

(C) Three points based on a minimum target of 90% of persons served who are in one or more Homeless Subpopulation;

(D) Four points based on a minimum target of 95% of persons served who are in one or more Homeless Subpopulation; or

(E) Five points based on a minimum target of 100% of persons served who are in one or more Homeless Subpopulation.

(3) Street outreach exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the application due date who exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with street outreach who exited to positive housing destinations;

(B) Three points based on 35% of persons served with street outreach who exited to positive housing destinations;

(C) Four points based on 45% of persons served with street outreach who exited to positive housing destinations; or

(D) Five points based on 55% of persons served with street outreach who exited to positive housing destinations.

(4) Street outreach staff qualifications. An Applicant may receive a maximum of six points if a member of the staff interacting with Program Participants in the street outreach component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;

(B) Two points if a member of staff is fluent in more than one language identified in the Language Access Plan; and

(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Street outreach temporary/transitional/permanent housing target. An Application may receive a maximum of ~~five~~three points based on the percentage of persons targeted to be served with street outreach who will be placed in temporary, transitional or permanent housing. An Application may receive a maximum of:

~~(A) Two points based on a minimum target of 25% of persons served with street outreach who will be placed in temporary housing;~~

~~(B) Three points~~(A) One point based on a minimum target of 35% of persons served with street outreach who will be placed in temporary housing;

~~(C) Four~~(B) Two points based on a minimum target of 45% of persons served with street outreach who will be placed in temporary housing; or

~~(D) Five~~(C) Three points based on a minimum target of 55% of persons served with street outreach who will be placed in temporary housing.

~~(56)~~ Street outreach services. An Application may receive a maximum of five points based on the number of street outreach services provided through ESG or other funds including engagement, case management, emergency health services, emergency mental health services, and transportation services. Emergency health services and emergency mental services may only be provided by ESG funds if these services are inaccessible or unavailable within the area. An Application may receive a maximum of:

(A) Two points if the Applicant provides street outreach engagement and case management;

(B) Three points if the Applicant provides street outreach engagement and case management, and one other service;

(C) Four points if the Applicant provides street outreach engagement and case management, and two other services; or

(D) Five points if the Applicant provides street outreach engagement and case management, and three other services.

(68) Experience providing street outreach. An Application may receive a maximum of 10 points based on the Applicant's experience providing street outreach services.

(A) Two points if the Applicant has provided street outreach for up to two years;

(B) Four points if the Applicant has provided street outreach for up to four years;

(C) Six points if the Applicant has provided street outreach for up to six years;

(D) Eight points if the Applicant has provided street outreach for up to eight years; or

(E) Ten points if the Applicant has provided street outreach for 10 or more years.

(c) Emergency shelter. An Application proposing emergency shelter may receive points under the following criteria:

~~(1) Emergency shelter CoC collaboration. Applications may receive up to 10 points for support from the CoC under which the Application is submitted. Applications may receive a maximum of:~~

~~(A) Three points based on an "approved" rating from the CoC;~~

~~(B) Seven points based on "recommended" rating from the CoC; and~~

~~(C) Ten points based on a "strongly recommended" rating from the CoC.~~

~~(2)~~(1) Matching funds for emergency shelter. An Application may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for emergency shelter.

(32) Emergency ~~Shelters~~shelter serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(b)(34) of this chapter (relating to Definitions). An Applicant providing emergency shelter may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who are in one or more Homeless Subpopulation;

(B) Two points based on a minimum target of 80% of persons served who are in one or more Homeless Subpopulation;

(C) Three points based on a minimum target of 90% of persons served who are in one or more Homeless Subpopulation;

(D) Four points based on a minimum target of 95% of persons served who are in one or more Homeless Subpopulation; or

(E) Five points based on a minimum target of 100% of persons served who are in one or more Homeless Subpopulation.

(3) Emergency shelter exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the application due date exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with emergency shelter who exited to positive housing destinations;

(B) Three points based on 35% of persons served with emergency shelter who exited to positive housing destinations;

(C) Four points based on 45% of persons served with emergency shelter who exited to positive housing destinations; or

(D) Five points based on 55% of persons served with emergency shelter who exited to positive housing destinations.

(4) Emergency shelter ~~permanent housing~~ staff qualifications. An Applicant may receive a maximum of ~~five~~six points if a member of the staff interacting with Program Participants in the street outreach component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;

(B) Two points if a member of staff is fluent in more than one language identified in the Language Access Plan; and

(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Emergency shelter permanent housing. An Applicant may receive a maximum of three points based on the percentage of persons served with emergency shelter targeted to be placed in permanent housing. An Application may receive a maximum of:

~~(A) Two points based on a minimum target of 25% of persons served with emergency shelter who will be placed in permanent housing;~~

~~(B) Three points~~(A) One point based on a minimum target of 35% of persons served with emergency shelter who will be placed in permanent housing;

~~(C) Four~~B) Two points based on a minimum target of 45% of persons served with emergency shelter who will be placed in permanent housing; or

~~(D) Five~~C) Three points based on a minimum target of 55% of persons served with emergency shelter who will be placed in permanent housing.

~~(56)~~ Emergency shelter services. An Applicant may receive a maximum of five points based on the number of emergency shelter services provided through ESG or other funds, as listed in 24 CFR §576.102. Emergency shelter services include case management, child care, education services, employment assistance and job training, outpatient health services, legal services, life skills training, outpatient mental health services, outpatient substance abuse treatment services, and transportation. Outpatient health services, mental services, and substance abuse treatment services should only be provided by ESG funds if these services are otherwise inaccessible or unavailable within the Service Area. This selection criterion will become a contractual requirement if the Applicant is awarded a Contract. An Application may receive a maximum of:

(A) Two points if the Applicant provides case management and two of the other services;

- (B) Three points if the Applicant provides case management and three of the other services;
- (C) Four points if the Applicant provides case management and four of the other services; or
- (D) Five points if the Applicant provides case management and five of the other services.

~~(67)~~ Experience providing emergency shelter. An Application may receive a maximum of 10 points based on the Applicant's experience providing emergency shelter services.

- (A) Two points if the Applicant has provided emergency shelter for up to two years;
- (B) Four points if the Applicant has provided emergency shelter for up to four years;
- (C) Six points if the Applicant has provided emergency shelter for up to six years;
- (D) Eight points if the Applicant has provided emergency shelter for up to eight years; or
- (E) Ten points if the Applicant has provided emergency shelter for 10 or more years.

(d) Homeless prevention. An Application proposing homeless prevention may receive points under the following criteria:

~~(1) Homeless prevention CoC collaboration. An Application may receive a maximum of 10 points for support from the CoC under which the Application is submitted. An Application may receive a maximum of:~~

- ~~(A) Three points based on an "approved" rating from the CoC;~~
- ~~(B) Seven points based on "recommended" rating from the CoC; and~~
- ~~(C) Ten points based on a "strongly recommended" rating from the CoC.~~

~~(2)~~(1) Matching funds for homeless prevention. An Application may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for homelessness prevention.

~~(32)~~ Homelessness prevention serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(b)(34) of this chapter (relating to Definitions). An Applicant providing homelessness prevention may receive a maximum of:

- (A) One point based on a minimum target of 70% of persons served who have one or more special needs;
- (B) Two points based on a minimum target of 80% of persons served who have one or more special needs;
- (C) Three points based on a minimum target of 90% of persons served who have one or more special needs;
- (D) Four points based on a minimum target of 95% of persons served who have one or more special needs; or
- (E) Five points based on a minimum target of 100% of persons served who have one or more special needs.



(3) Homelessness prevention exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the application due date exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with homelessness prevention who exited to positive housing destinations;

(B) Three points based on 35% of persons served with homelessness prevention who exited to positive housing destinations;

(C) Four points based on 45% of persons served with homelessness prevention who exited to positive housing destinations; or

(D) Five points based on 55% of persons served with homelessness prevention who exited to positive housing destinations.

(4) Homeless prevention staff qualifications. An Applicant may receive a maximum of six points if a member of the staff interacting with Program Participants in the homeless prevention component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;

(B) Two points if a member of staff is fluent in more than one language identified in the Language Access Plan; and

(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Homeless prevention maintaining housing. An Application may receive a maximum of ~~five~~three points based on the percentage of persons served with Homelessness prevention who are targeted to maintain their housing for three months or more after program exit. Applications may receive a maximum of:

(A) ~~Two points based on a minimum target of 40% of persons served with homelessness prevention maintaining housing for three months;~~

~~(B) Three points~~One point based on a minimum target of 50% of persons served with homelessness prevention maintaining housing for three months;

~~(C) Four~~B) Two points based on a minimum target of 60% of persons served with homelessness prevention maintaining housing for three months; or

~~(D) Five~~C) Three points based on a minimum target of 70% of persons served with homelessness prevention maintaining housing for three months.

(56) Homeless prevention services and rental assistance. An Application may receive a maximum of five points based on the number of homeless prevention services and type of rental assistance provided through ESG or other funds. Homeless prevention services and rental assistance include rental application fees, security deposits and last month's rent, utility payments/deposits, moving costs, housing search and placement, housing stability case management, mediation,

legal services, credit repair, short-term rental assistance, and medium-term rental assistance. An Application may receive a maximum of:

(A) Two points if the Applicant provides housing stability case management and three of the other services or rental assistance;

(B) Three points if the Applicant provides housing stability case management and four of the other services or rental assistance;

(C) Four points if the Applicant provides housing stability case management and five of the other services or rental assistance; or

(D) Five points if the Applicant provides housing stability case management and six of the other services or rental assistance.

(67) Experience providing homeless prevention or rental assistance services. An Application may receive a maximum of 10 points based on the Applicant's experience providing homeless prevention or tenant-based rental assistance services.

(A) Two points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to two years;

(B) Four points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to four years;

(C) Six points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to six years;

(D) Eight points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to eight years; or

(E) Ten points if the Applicant has provided homeless prevention or tenant-based rental assistance services for 10 or more years.

(e) Rapid re-housing. An Application proposing rapid re-housing may receive points under the following criteria:

~~(1) Rapid re-housing CoC collaboration. An Application may receive up to 10 points for support from the CoC under which the Application is submitted. Applications may receive a maximum of:~~

~~(A) Three points based on an "approved" rating from the CoC;~~

~~(B) Seven points based on "recommended" rating from the CoC; and~~

~~(C) Ten points based on a "strongly recommended" rating from the CoC.~~

~~(2)~~ (1) Matching funds for rapid re-housing. Applications may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for rapid re-housing.

(32) Rapid re-housing serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in 10 TAC §7.2(b)(34) (relating to Definitions). Applicants providing rapid re-housing may receive a maximum of:

- (A) One point based on a minimum target of 70% of persons served who are in one or more Homeless Subpopulation;
- (B) Two points based on a minimum target of 80% of persons served who are in one or more Homeless Subpopulation;
- (C) Three points based on a minimum target of 90% of persons served who are in one or more Homeless Subpopulation;
- (D) Four points based on a minimum target of 95% of persons served who are in one or more Homeless Subpopulation; or
- (E) Five points based on a minimum target of 100% of persons served who are in one or more Homeless Subpopulation.

(3) Rapid re-housing exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the application due date exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with rapid re-housing exited to positive housing destinations;

(B) Three points based on 35% of persons served with rapid re-housing who exited to positive housing destinations;

(C) Four points based on 45% of persons served with rapid re-housing who exited to positive housing destinations; or

(D) Five points based on 55% of persons served with rapid re-housing who exited to positive housing destinations.

(4) Rapid re-housing staff qualifications. An Applicant may receive a maximum of six points if a member of the staff interacting with Program Participants in the rapid re-housing component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;

(B) Two points if a member of staff is fluent in more than one language identified in the Language Access Plan; and

(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Rapid re-housing maintaining housing. Applicants may receive a maximum of ~~five~~three points based on the percentage of persons served with rapid re-housing targeted to maintain their housing for three months or more after program exit. Applications may receive a maximum of:

(A) ~~Two points based on a minimum target of 40% of persons served with rapid re-housing maintaining housing for three months;~~

~~(B) Three points~~One point based on a minimum target of 50% of persons served with rapid re-housing maintaining housing for three months;

~~(C) Four~~Two points based on a minimum target of 60% of persons served with rapid re-housing maintaining housing for three months; or

~~(D) Five~~Three points based on a minimum target of 70% of persons served with rapid re-housing maintaining housing for three months.

~~(56)~~ Rapid re-housing services and rental assistance. Applicants may receive a maximum of five points based on the number of rapid re-housing services and type of rental assistance provided through ESG or other funds. Rapid re-housing services and rental assistance include rental application fees, security deposits/last month's rent, utility payments/deposits, moving costs, housing search and placement, housing stability case management, mediation, legal services, credit repair, short-term rental assistance, medium-term rental assistance. Applications may receive a maximum of:

(A) Two points if the Applicant provides housing stability case management and three of the other services or rental assistance;

(B) Three points if the Applicant provides housing stability case management and four of the other components;

(C) Four points if the Applicant provides housing stability case management and five of the other components; or

(D) Five points if the Applicant provides housing stability case management and six of the other components.

~~(67)~~ Experience providing rapid re-housing or tenant-based rental assistance services. Applications may receive a maximum of 10 points based on the Applicant's experience providing homeless prevention or tenant-based rental assistance services.

(A) Two points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to two years;

(B) Four points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to four years;

(C) Six points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to six years;

(D) Eight points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to eight years; or

(E) Ten points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for 10 or more years.

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

(a) The Contract Term for ~~allocated~~ESG funds may not exceed 12 months ~~under a one-year funding cycle~~. All funds awarded under the Contract must be expended by the Subrecipient on

or before the expiration of the Contract, unless an extension has been granted in accordance with this section. A request to extend the Contract Term must show evidence that the extension is necessary to provide services required under the Contract, and provide good cause for failure to timely expend the funds. Extensions of Contract Terms are considered on a case-by-case basis, but are subject to Section 7.4(e) of this Title, concerning Amendments and Extensions of Contracts.

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

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

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

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

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

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

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

(f) If additional funds become available through returned or deobligated amounts from an award made under the allocation formula or program income generated from an award made under the allocation formula, the funds may be offered to ESG Subrecipients with active Contracts that have not been amended to extend the Contract Term. ~~Funds that become available subsequent to an allocation under a NOFA~~ [Returned or deobligated funds](#) will be offered with priority given

to ESG Subrecipients with the highest Expenditure rate as of the most recent Monthly Expenditure Report. ~~Funds will be offered first to eligible ESG Subrecipients within the CoC region from which the additional funds became available, and then available statewide; however~~ However, funds may not be offered to any Subrecipient that returned funds, or from whom funds were deobligated. The Executive Director or designee may increase the Contract of an ESG Subrecipient or authorize a new Contract with a Subrecipient by up to 25% of the original Contract amount ~~from funds that become available after the initial allocation under a NOFA.~~

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

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

#### **§7.42 General Administrative Requirements**

(a) Subrecipient must have written policies and procedures to ensure that sufficient records are established and maintained to enable a determination that ~~ESG~~applicable federal and state requirements are met. The written standards must be applied consistently for all Program Participants. Written policies must include, but not be limited to Inclusive Marketing outlined in §7.10 of this chapter.

(b) Subrecipient must obtain the correct level of environmental clearance prior to expenditure of ~~ESG~~ funds. Activities for which the Subrecipient does not properly complete the Department's environmental review process are ineligible, and funds will not be reimbursed or will be required to be repaid.

(c) Subrecipient is prohibited from charging occupancy fees for emergency shelter activities supported by funds covered by this subchapter.

(d) If a Private Nonprofit Organization ~~ESG~~ Subrecipient wishes to expand the geographic scope of its emergency shelter activities after Contract execution, an updated certification of approval from the Unit of General Purpose Local Government with jurisdiction over the updated Service Area must be submitted to the Department before funds are spent on emergency shelter in those areas.

(e) Subrecipient must document compliance with the shelter and housing standards per 24 CFR §576.500(j) and (k), including but not limited to, maintaining sufficient construction and shelter inspection reports.

(f) Rental developments must comply with all construction or operational requirements governing the development or program to which ~~ESG~~ funds are comingled, and must comply with local health and safety codes.

(g) Subrecipient may be required to complete Contract orientation training prior to submission of the first Monthly Expenditure Report. Subrecipient must also complete training as requested

by the Department in response to Findings or other issues identified while managing the Contract.

(h) Subrecipient must develop and establish written procurement procedures that comply with federal, State, and local procurement requirements. A conflict of interest related to procurement is prohibited by 2 CFR §200.317-318 or Chapter 171 of the Local Government Code, as applicable.

(i) In instances where a potential conflict of interest exists related to a ~~beneficiary of ESG~~ assistance to a Program Participant, Subrecipient must submit a request to the Department to grant an exception to any conflicts prohibited using the procedures at 24 CFR §576.404. 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, 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 ~~ESG~~ funds will be committed to assist a Household until HUD has granted an exception.

(j) Subrecipient will comply with the requirements under 24 CFR §576.409, "Protection for victims of domestic violence, dating violence, sexual assault, or stalking."

(1) Compliance with 24 CFR §576.409 includes, but is not limited to, providing two Departmental forms called "Notice of Occupancy Rights under the Violence Against Women Act" based on HUD form 5380 and "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking," HUD form 5382, to each of the following:

(A) All applicants for short- and medium-term rental assistance at the time of admittance or denial;

(B) Program Participants of short- and medium-term rental assistance prior to execution of a Rental Assistance Agreement;

(C) Program Participants of short- and medium-term rental assistance with any notification of eviction or notification of termination of assistance; and

(D) Program Participants of short- and medium-term rental assistance either during an annual Recertification or lease renewal process, whichever is applicable.

(2) Subrecipient will adopt and follow an Emergency Transfer Plan based on HUD's model Emergency Transfer Plan ~~by no later than June 14, 2017~~, pursuant to 24 CFR §5.2005(e). Within three calendar days after Program Participants request transfers, Subrecipient will inform Program Participants of their eligibility under their Emergency Transfer Plan and keep records of all outcomes.

#### **§7.43 Program Income**

(a) Program income is gross income received by the Subrecipient or its Affiliates directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period.

(b) Program income received and expended during the Contract Term will count toward meeting the Subrecipient's Matching requirements, per 24 CFR §576.201(f), provided the costs are eligible ~~ESG~~ costs that supplement the ~~ESG~~ program.

(c) Security and utility deposits paid on behalf of a Program Participant should be treated as a grant to the Program Participant. The deposit must remain with the Program Participant, and if returned, is to be returned only to the Program Participant. If the landlord or the utility service provider requires that the deposit be returned to the Subrecipient, Affiliate, Subcontractor, or Subgrantee, the deposit is program income, and must be treated as described in this subsection.

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

(e) Program income that is received after the end of the Contract Term, or not expended within the Contract Term, along with program income received two years following the end of the Contract Term must be returned to the Department within 10 calendar days of receipt. Income directly generated by a grant-supported activity after the two year period is no longer program income and may be retained by the Subrecipient.

#### **§7.44 Program Participant Eligibility and Program Participant Files**

(a) Program participants must meet the applicable definitions of Homeless or At-risk of Homelessness. Proof of the eligibility or ineligibility for Program Participants must be maintained in accordance with 24 CFR §576.500, Recordkeeping and reporting requirements. The Applicant must retain income documentation for Program Participants receiving homelessness prevention and Program Participants receiving rapid re-housing that require annual Recertification. Program Participant income eligibility must be calculated and documented in accordance with the Requirements of HUD Handbook 4350, except that the Department's DIS form may be utilized if income cannot be documented in accordance with 24 CFR §576.500(e)(4). A DIS must be completed and signed by Program Participants whom are subject to income eligibility determination.

(b) The Subrecipient must document eligibility before providing services after a break-in-service. A break-in-service occurs when a previously assisted Household has exited the program and is no longer receiving services through Homeless Programs. Upon reentry ~~into ESG~~, the Household is required to complete a new intake application and provide updated source documentation, if applicable.

(c) The ~~ESG~~ Subrecipient must utilize the rental assistance agreement promulgated by the Department if providing rental assistance. The rental assistance agreement does not take the place of the lease agreement between the landlord/property manager and the tenant.

(d) The Subrecipient must retain a copy of the signed Disclosure Information on Lead Based Paint and/or Lead-Based Hazards for housing built before 1978 in the Program Participant's file in accordance with 24 CFR §576.403(a).



## **Attachment E: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 7 Homelessness Programs, Subchapter D, Ending Homelessness Fund**

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 7 Homelessness Programs, Subchapter D, Ending Homelessness Fund. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

### **a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.**

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect:

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

### **b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.**

The Department has evaluated this proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

**c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.** The proposed repeal does not contemplate 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 determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be more clarity on the administration of the Ending Homelessness Fund. There will not be economic costs to individuals

required to comply with the repealed section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held March 25, 2022, to April 25, 2022, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email [rosy.falcon@tdhca.state.tx.us](mailto:rosy.falcon@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, APRIL 25, 2022.

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.

## CHAPTER 7 HOMELESSNESS PROGRAMS

### SUBCHAPTER D ENDING HOMELESSNESS FUND

§7.61 Purpose and Use of Funds

§7.62 EH Fund Subrecipient Application and Selection

§7.63 Availability of Funds

§7.64 Application Review Process

§7.65 Contract Term and Limitations

## **Attachment H: Preamble for proposed new 10 TAC Chapter 7 Homelessness Programs, Subchapter D, Ending Homelessness Fund**

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 7 Homelessness Programs, Subchapter D, Ending Homelessness Fund. The purpose of the proposed new subchapter is to update the rule to reflect new definitions, provide greater flexibility for Subrecipients, and to update the minimum amount of unobligated funds that require a competitive process.

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

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

### **a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.**

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new subchapter would be in effect:

1. The proposed rules do not create or eliminate a government program, but relates to the readoption of these rules which makes changes to an existing activity, administration of the Ending Homelessness Fund.
2. The proposed new rules do not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The proposed rules do not require additional future legislative appropriations.
4. The proposed rules will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The proposed rules are not creating a new regulation, except that they are replacing a rule being repealed simultaneously to provide for revisions.
6. The proposed rules will not expand, limit, or repeal an existing regulation.
7. The proposed rules will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed rules will not negatively or positively affect the state's economy.

**b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.** The Department, in drafting this proposed rules, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, Ch. 2306.

1. The Department has evaluated these rules and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.
2. There are approximately no small or micro-businesses subject to the proposed rule because these funds are limited to counties and municipalities in Tex. Transportation Code §502.415 for the Ending Homeless Fund.

3. The Department has determined that based on the considerations in item two above, there will be no economic effect on small or micro-businesses or rural communities.

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

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the rules as to their possible effects on local economies and has determined that for the first five years the rules will be in effect the new rules have no economic effect on local employment because these rules will channel funds, which may be limited, only to municipalities and nonprofits; it is not anticipated that the amount of funds would be enough to support additional employment opportunities, but would add to the services provided. Alternatively, the rules would also not cause any negative impact on employment. Therefore no local employment impact statement is required to be prepared for the rules.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that no impact is expected, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new subchapter will be a rule that has greater clarity into the processes and definitions of the administration of homeless programs. There will not be any economic cost to any individuals required to comply with the new sections because the processes described by the rule have already been in place through the rule found at this section being repealed.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held March 25, 2022, to April 25, 2022, to receive input on the new proposed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email [rosy.falcon@tdhca.state.tx.us](mailto:rosy.falcon@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, APRIL 25, 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 7 HOMELESSNESS PROGRAMS**  
**SUBCHAPTER D ENDING HOMELESSNESS FUND**

**§7.61 Purpose and Use of Funds**

(a) As authorized by Tex. Transp. Code §502.415, the Ending Homelessness Fund (EH Fund) provides grant funding only to counties and municipalities for the purpose of combating homelessness.

(b) Permitted EH Fund eligible activities include any activity determined to be eligible under Subchapter B of this Chapter, Homeless Housing and Services Program (HHSP), ~~or under Subchapter C of this Chapter, Emergency Solutions Grants (ESG), as applicable,~~ and as otherwise described in this subchapter and Subchapter A of this chapter.

(c) Capitalized terms used in this subchapter shall follow the meanings defined in Subchapter A of this chapter unless the context clearly indicates otherwise. Additionally, any words and terms not defined in this section but defined or given specific meaning in 24 CFR Part 576, or used in that Part and defined elsewhere in state or federal law or regulation, when used in this chapter, shall have the meanings defined therein, unless the context herein clearly indicates otherwise.

(d) Funds awarded under the EH Fund are not subject to any Match requirements, but may be used as Match for other programs that do require Match.

### **§7.62 EH Fund Subrecipient Application and Selection**

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

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

(c) Application for funds. Applicants for an award from the EH Fund must submit the following items:

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

(2) All information required under Subchapter ~~CB~~ of this chapter (related to ~~Emergency Solutions Grants (ESG))~~Homeless Housing and Services Program) to conduct a Previous Participation and Executive Award Review and Advisory Committee review;

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

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

(5) Activity descriptions, including selection of administration under Subchapter B of this chapter (related to Homeless Housing and Services Program (HHSP)) ~~or Subchapter C of this chapter.~~

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

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

### **§7.63 Availability of Funds**

(a) Funds available under the EH Fund will be made available at least once per state fiscal year to eligible Applicants dependent on the amount of funding made available.

(b) The balance of the EH Fund will determine the distribution method.

(1) For an annual, uncommitted balance that does not exceed \$~~500~~1,000,000 as of the end of the state fiscal year, the total of available EH funds will be distributed equally, up to the amount requested, among the total number of entities satisfying all of the following requirements:

(A) Are Subrecipients or awarded Applicants of ESG or HHSP;

(B) Are counties or municipalities;

(C) Have indicated that they wish to participate in the EH Fund; and

(D) Have identified the minimum amount of funds they would accept and the maximum amount of funds they would be able to expend during the Contract Term.

(2) For an annual, uncommitted fund balance that exceeds \$~~500~~1,000,000 as of the end of the state fiscal year, the total of available EH Funds may be made available through a NOFA, which may include being made available to counties and municipalities that are not existing ESG or HHSP Subrecipients or awarded Applicants. If the amount of uncommitted funds in the EH Fund is greater than \$~~500~~1,000,000, an award made available through a NOFA shall not exceed \$250,000 per Applicant per state fiscal year, unless there are no other eligible Applicants.

### **§7.64 Application Review Process**

(a) Review of Applications. When not using a NOFA, an Application received in response to solicitation by the Department will be assigned a "Received Date" and processed as noted below. An Application will be prioritized for review based on its "Received Date." All Applications received by the deadline described in §7.62(e) of this subchapter will be reviewed by the Department for completeness and administrative deficiencies to prepare for Board action and potential funding.

(b) 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 email. Responses to the Department's deficiency notice must be submitted electronically to the Department. A review of the Applicant's response may reveal that additional administrative deficiencies are exposed or that issues initially identified as an administrative deficiency are actually determined to be beyond the scope of an administrative deficiency process, meaning that they are in fact matters of a material nature not susceptible to be resolved. For example, a response to an administrative deficiency that causes a new inconsistency which cannot be resolved without reversing the first deficiency response would be an example of an issue that is beyond the scope of an administrative deficiency. Department staff will make a good faith effort to provide an Applicant confirmation that an administrative deficiency response has been received and/or that such response is satisfactory. Communication from staff that the response was satisfactory does

not establish any entitlement to points, eligibility status, or to any presumption of a final determination that the Applicant has fulfilled any other requirements.

(1) An Application with outstanding administrative deficiencies may be suspended from further review until all administrative deficiencies have been cured or addressed to the Department's satisfaction. The administrative deficiency process allows staff to request that an Applicant provide clarification, correction, or missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application.

(2) 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."

(3) If all funds available under a solicitation from the Department are awarded, all remaining Applicants will be notified and the remaining Applications will not be processed.

(c) Responses to administrative deficiencies. The time period for responding to a deficiency notice commences on the first calendar 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 time, on the seventh calendar day following the date of the deficiency notice, the Application shall be terminated. Applicants that have been terminated may reapply unless the Application period has closed.

(d) An Application must be substantially complete when received by the Department. An Application may be terminated if the Application is so unclear or incomplete that a thorough review cannot reasonably be performed, as determined by the Department. Such Application will be terminated without being processed as an administrative deficiency. Specific reasons for a Department termination will be included in the notification sent to the Applicant but, because the termination may occur prior to completion of the full review, will not necessarily include a comprehensive list of all deficiencies in the Application. Termination of an Application may be subject to §1.7 of this part, (relating to Appeals Process).

#### **§7.65 Contract Term and Limitations**

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

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

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

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

(b) EH Fund Contracts will generally have an initial period of 12 months for fund Expenditure. A request to extend the Contract Term must evidence that the extension is necessary to provide activities required under the Contract, and provide good cause for failure to timely expend the funds. Extensions of a Contract Term are considered on a case-by-case basis and are subject to §7.4(e) of this title (relating to Amendments and Extensions of Contracts).

(1) The Executive Director or his or her designee may approve an extension to the Contract Term that for up to six months from the original Contract Term.

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