

The Texas Department of Housing and Community Affairs (the “Department”) proposes amendments to TAC Chapter 24 Texas Bootstrap Loan Program Rule, §§24.1 Purpose, 24.2 Definitions, 24.4 Participant Requirements, 24.5 Program Activities, 24.6 Prohibited Activities, 24.7 Distribution of Funds, 24.8 Criteria for Funding, 24.9 Program Administration, 24.10 Owner-Builder Qualifications, 24.11 Types of Funding Transactions, 24.12 Property Guidelines and Related Issues, and 24.13 Nonprofit Owner-Builder Housing Program Certification.

The purpose of amending the Texas Bootstrap Loan Program Rule is to further clarify construction requirements. The significant proposed changes to 10 TAC Chapter 24 are:

§24.1. Purpose. Additional chapters of the Texas Administrative Code were added as chapters that are relevant to the administration of the Program.

§24.2. Definitions. Additional chapters of the Texas Administrative Code were added as places to locate definitions used in this chapter. The definition for Capital Recovery Fee was added because loans that include waivers of these fees will be prioritized.

§24.6. Prohibited Activities. Clarifies that loan servicing fees are an ineligible expense.

§24.7. Distribution of Funds. Limitations on benchmark extensions were removed, but may be placed in Notices of Funding Availability and/or contracts.

§24.7(c). Loan Priority. This subsection was added to clarify how the Department will prioritize certain loans. The loans prioritized are: 1) those that serve households with income below \$17,500; and 2) situations in which local fees are waived to promote more efficient use of funds.

§24.8. Criteria for Funding. Provides clearer language on the reservation process and properly uses defined terms.

§24.9. Program Administration. Specifies the requalification process for Owner-Builder Applicants and properly uses defined terms.

§24.9(1)(1). Loan Program Requirements. This subsection was amended to better protect the Department’s investment by increasing the difference in the leveraged loan amount from \$1,000 to \$10,000 in the instances when the Department subordinates its lien.

§24.9(1)(9)(10)(11)(12). Credit Qualifications. These subsections were moved to §24.10(3) Owner-Builder Qualifications, regarding Owner-Builders’ demonstration of willingness and ability to repay loans because they are more appropriate under the Owner-Builder Qualifications section than under the Program Administration section.

§24.9(1)(13). Principal Residency. This subsection was moved to §24.10(9) Owner-Builder Qualifications, regarding Owner-Builders’ length of time they must occupy the property as their Principal Residence because it is better suited under this subsection than under the Program Administration section.

§24.9(n). Forgivable Loans. This subsection was added to include loan term limits for Forgivable Loans.

§24.10(2). Owner-Builder Qualifications. Subsections on Eligibility Income and Qualifying Income were added to clarify how the Department calculates household income and debt-to-income ratio, respectively.

§24.10(2). Owner-Builder Qualifications. Regarding unacceptable credit, the period of review for any account placed for collection, profit and loss or charge-off will be extended from 12 months prior to date of loan application to 24 months prior to date of loan application.

§24.12(a). Property Guidelines and Related Issues. This subsection regarding property inspection requirements was reorganized and clarified at the end of the section under new subsection §24.12 (g), Existing Property.

§24.13. Nonprofit Owner-Builder Housing Program Certification. Strengthens the certification language for the nonprofit builder to refer specifically to Generally Accepted Accounting Principles (“GAAP”) audited financial statements.

REQUEST FOR PUBLIC COMMENT. The public comment period for the proposed amendments will be from August 21, 2015, to September 21, 2015. Written comments may be mailed to the Texas Department of Housing and Community Affairs, Attention: Raul Gonzales, Bootstrap Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941; emailed to htf@tdhca.state.tx.us; or faxed to (512) 475-1162. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. SEPTEMBER 21, 2015.

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**§24.1. Purpose.**

(a) This chapter clarifies the Texas Bootstrap Loan Program, [administration]administered [of] by the Texas Department of Housing and Community Affairs[Affairs'] (the "Department") [Texas Bootstrap Loan Program], also known as the Owner-Builder Loan Program. The Texas Bootstrap Loan Program provides assistance to income-eligible individuals, families and households to purchase or refinance real property, on which to build new residential housing or improve existing residential housing. The Program is administered in accordance with Texas Government Code, Chapter 2306, Subchapter FF, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement),[and] Chapter 20 of this title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this title (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities), and Chapter 26 of this title (relating to Housing Trust Fund).

(b) The Texas Bootstrap Loan Program is a Self-Help[self-help] construction Program that is designed to provide very low-income families an opportunity to help themselves attain homeownership or repair their existing homes through sweat equity. All Owner-Builder Applicants[applicants] under this Program are required to provide through personal labor at least 65 percent of labor necessary to build or rehabilitate the home. All applicable building codes and housing standards are adhered to under this Program. In addition, Nonprofit Organizations[nonprofit organizations] can combine these funds with other sources of funds. The total amount of amortized[Amortized] repayable loans made by the Department and other entities to an Owner-Builder may not exceed \$90,000 per housing unit.

**§24.2. Definitions.**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Other definitions may be found in Texas Government Code, Chapter 2306, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), [or ]Chapter 20 of this title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this title (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities), and Chapter 26 of this title (relating to Housing Trust Fund).

(1) Capital Recovery Fee--Means a charge or assessment imposed by a political subdivision against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. The term includes amortized charges, lump-sum charges, contributions in aid of construction, and any other fee that functions as described by this definition.

(2)[(1)] Loan Origination Agreement--A written agreement, including all amendments thereto between the Department and the Participant[Nonprofit Owner-Builder Housing Provider (NOHP)] that authorizes the Participant[NOHP] to originate certain loans under the Texas Bootstrap Loan Program.

(3)[(2)] NOHP--Nonprofit Owner-Builder Housing Provider.

(4)[(3)] Owner-Builder--A person, other than a person who owns or operates a construction business and who owns or purchases a piece of real property through a warranty deed and deed of trust; or is purchasing a piece of real property under a Contract for Deed[contract for deed] entered into before January 1, 1999; and who undertakes to make improvements to that property.

(5)[(4)] Participant--An organization which submits an application to the Department to be certified as an NOHP or a Colonia Self-Help Center.

(6)[(5)] Program--Texas Bootstrap Loan Program also known as the Owner-Builder Loan Program.

(7)[(6)] Self-Help Housing Construction—The Self-Help Housing[self-help housing] process enables Owner-Builders to Rehabilitate[rehabilitate], Reconstruct[reconstruct] or construct their own homes, usually working together in groups on other eligible Owner-Builder's houses at the same time. Owner-Builders use their own "sweat equity" to reduce the cost of their homes.

#### **§24.4. Participant Requirements.**

(a) Eligible Participants. The following organizations or entities are eligible to participate in the Texas Bootstrap Loan Program:

(1) Colonia Self Help Centers established under Texas Government Code, Chapter 2306, Subchapter Z; or

(2) NOHPs[Nonprofit Owner-Builder Housing Provider (NOHP)] certified by the Department pursuant to Texas Government Code, §2306.755.

(b) Eligibility requirements. The Participant must be certified as an NOHP or must be a Colonia Self-Help Center and must have entered into a Loan Origination Agreement with the Department in order to be eligible to participate in the Texas Bootstrap Loan Program. The Participant must have the capacity to administer and manage resources as evidenced by previous experience of managing state and/or federal programs.

#### **§24.5. Program Activities.**

Texas Bootstrap Loan Program funds may be used to finance affordable housing and promote homeownership through acquisition, new construction, Reconstruction[reconstruction], or Rehabilitation[rehabilitation] of residential housing. All eligible organizations[Participants] that satisfy the requirements of this chapter may reserve funds by submitting[and submit] a loan application on behalf of an Owner-Builder Applicant[applicant] for the Texas Bootstrap Loan Program.

#### **§24.6. Prohibited Activities.**

The use of funds[activities] described in paragraphs (1) - (8) of this section are prohibited in relation to the origination of a loan through the Texas Bootstrap Loan Program[ loan], but may be charged as an allowable cost by a third (3rd) party lender for the origination of all other loans originated in connection with a loan through the Texas Bootstrap Loan Program[ loan]:

(1) payment of delinquent property taxes or related fees or charges on properties to be assisted with Texas Bootstrap Loan Program funds;

(2) Loan Origination Fees;

(3) Application fee;

(4) discount fees;

(5) underwriter fee;

(6) loan processing fees; [and]

(7) loan servicing fees; and

(8)[(7)] other fees not approved by the Department in writing prior to expenditure.

#### **§24.7. Distribution of Funds.**

(a) Set-Asides. In accordance with Texas Government Code, §2306.753(d), at least two-thirds (2/3) of the dollar amount of loans made under this chapter in each fiscal year must be made to Owner-Builders whose property is located in a census tract that has a median household income that is not greater than 75 percent of the median state household income for the most recent year for which statistics are available.

(b) Balance of State. The remaining one-third (1/3) of the dollar amount of loans may be made to Owner-Builders statewide.

(c) Loan Priority. The Department may allow a Participant access to the Reservation System 24 hours prior to all other Participants if the Owner-Builder Applicant meets the following criteria:

(1) annual household income is less than \$17,500; or

(2) property is located in a county and/or municipality that agrees in writing to waive the Capital Recovery Fees, building permit fee or other fees related to the house(s) to be built with the loan proceeds. Owner-Builder Applicant will not receive priority if there are none of the above fees are imposed by the county and/or municipality or water supply company.

[(c) Once a Reservation has been awarded, the Department may grant one forty-five (45) day extension of required benchmarks due to extenuating circumstances that were beyond the Owner-Builder's and/or the NOHPs control. If the NOHP cannot meet the required benchmarks after the forty-five (45) day extension, the Reservation will be cancelled. If funds are available the NOHP may receive another Reservation on the same Owner-Builder applicant and the NOHP must submit an updated application to ensure the Owner-Builder applicant still meets all guidelines and requirements under Texas Bootstrap Loan Program Rule and Program Manual.]

#### **§24.8. Criteria for Funding.**

(a) The Department will distribute the funds in accordance with the Texas Housing Trust Fund (HTF) Plan in effect at the time. The Department will publish an announcement for a NOFA[Notice of Funding Availability (NOFA)] in the *Texas Register* and post the NOFA on the Department's website. The NOFA will establish and define the terms, [and]conditions, and maximum Reservation amounts allowed per Participant[for the submission of Reservations and/or applications]. The Department may also set a deadline for receiving Reservations and/or Applications[applications]. The NOFA will [also]indicate the approximate amount of available funds. The Department may increase funds in the NOFA from time to time without republishing the NOFA in the *Texas Register* and Department's website.

(b) A Nonprofit Organization[nonprofit organization] must have been certified by the Department as an NOHP[Nonprofit Owner-Builder Housing Provider (NOHP)] and must have executed a Loan Origination Agreement to be eligible to submit [a ]Reservations[ on behalf of an Owner-Builder applicant]. Any[A] Reservation containing false information will be disqualified. The Department will review and process all Reservations[Owner-Builder applications] in the order received. The NOHP will be notified in writing of the Department's determination.

(c) Reservations received by the Department in response to a NOFA will be handled as described in paragraphs (1) - (5) of this subsection.

(1) The Department will accept Reservations until all funds under the NOFA have been committed. The Department may limit the eligibility of Reservations in the NOFA.

(2) Each Reservation will be assigned a "received date" based on the date and time the Reservation was entered into the Texas Bootstrap Loan Program Reservation system. Each Reservation will be reviewed in accordance with the Program rules.

(3) Reservations [and/or applications submitted on behalf of an Owner-Builder applicant]must comply with all applicable Texas Bootstrap Loan Program requirements or regulations established in this chapter. Reservations [and/or applications submitted on behalf of an Owner-Builder applicant]that do not comply with such requirements may be disqualified. The Participant[NOHP] will be notified in writing of any cancelled and/or disqualified Reservations[and/or applications submitted on behalf of an Owner-Builder applicant].

(4) If a Reservation contains [administrative ]deficiencies which, in the determination of the Department, require clarification or correction of information submitted at the time of the Reservation, the Department may request clarification or correction[ of such Administrative Deficiencies. The Department may request clarification or correction in a deficiency notice] in the form of an email or letter[, facsimile or a telephone call] to the Participant[NOHP advising that such a request has been transmitted].

(5) Prior to issuing an Applicant[applicant] eligibility letter the Department may decline to fund any Reservation entered into the Reservation system if the proposed housing Activities[activities] do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Reservation which are entered, and may decide it is in the Department's best interest to refrain from committing the funds. If the Department has issued an Applicant[applicant] eligibility letter to the Owner-Builder Applicant[applicant], but the Participant[NOHP] and/or Owner-Builder Applicant[applicant] has not complied with all the Program rules and guidelines, the Department may suspend funding until the Participant[NOHP] and/or Owner-Builder Applicant[applicant] has satisfied all requirements of the Program. If the Participant[NOHP] is unable to cure any deficiencies within fifteen (15) calendar days, the Department may provide a one-time fifteen (15) calendar day extension or decline to fund the Reservation.

[ (6) The Department will give priority to Reservations to Owner-Builders with an annual income of less than \$17,500 and Reservations to Owner-Builders who will reside in counties and municipalities that agree in writing to waive the capital recovery fees, building permit fee or other fees related to the building of the houses to be built with the loan proceeds.]

#### **§24.9. Program Administration.**

(a) Household[Per household] assistance from the Department for any Texas Bootstrap Loan Program loans may not exceed \$45,000 per household[per-household] pursuant to Texas Government Code, §2306.754(b). The Owner-Builder must obtain the amount necessary that exceeds \$45,000 from other sources of funds including other Department funds with the exception of funds being utilized to implement the Texas Bootstrap Loan Program. The total amount of amortized[Amortized] repayable loans made by the Department and other entities to an Owner-Builder under the Program may not exceed \$90,000 pursuant to Texas Government Code, §2306.754(b).

(b) The Department[, through a Nonprofit Owner-Builder Housing Provider (NOHP),] shall make loans for Owner-Builder applicants to enable them to:

- (1) purchase or refinance real property on which to build new residential housing;
- (2) build new residential housing; or
- (3) improve existing residential housing.

[(c) The NOHP will be granted a 6 percent administration fee upon completion of the house and closing of each mortgage loan.]

(c)[(d)] Upon approval by the Department, the Participant[nonprofit organization certified as an NOHP or Colonia Self-Help Centers] shall enter into, execute, and deliver to the Department the Loan Origination Agreement. The Department may terminate the Loan Origination Agreement in whole or in part if the Participant has not performed as outlined in the NOFA, Loan Origination Agreement, and/or Program Manual.

(d)[(e)] In the event the Department has additional funds in the same funding cycle, the Department, with Board approval, will distribute funds in accordance with this chapter.

(e)[(f)] The Department may terminate the Loan Origination Agreement in whole or in part. If the NOHP has not achieved performance benchmarks as outlined in the NOFA, Loan Origination Agreement, and/or Program Manual.] If the Owner-Builder Applicant[applicant] qualifies for the Program, the Department will issue an Applicant[applicant] eligibility letter (approval letter) which reserves the funds (up to \$45,000 per Reservation) for twelve (12) months from the date of the Applicant[applicant] eligibility letter. Owner-Builder Applicant[applicant] will not be required to re-qualify for the Program if the Owner-Builder Applicant[applicant] closes on the loan on or before the expiration date stated on the Applicant[applicant] eligibility letter issued by the Department. If the Owner-Builder fails to close on the

loan on or before the expiration date stated on the Applicant[applicant] eligibility letter, the Owner-Builder Applicant[applicant] will be required to re-qualify for the Program. The Owner-Builder Applicant must be requalified by the Department. If the Owner-Builder Applicant is requalified the Department may grant an extension of up to 90 days from the expiration date on the original Applicant eligibility letter. If the Owner-Builder Applicants fails to close on the loan after the extension is granted the Reservation and/or loan will be cancelled.

(f)[(g)] Roles and responsibilities for administering the Program Contract[contract]. Participants[NOHPs] are required to:

- (1) qualify potential Owner-Builders for loans;
- (2) provide Owner-Builder homeownership education classes;
- (3) supervise and assist Owner-Builders to build[in building] and/or Rehabilitate[rehabilitate] housing;
- (4) facilitate loans made or purchased by the Department under the Program; and
- (5) implement and administer the Program on behalf of the Department.

(g)[(h)] Loan Servicing Agreement. If the Participant[NOHP] wishes to service the loans originated on behalf of the Department it must enter into a Loan Servicing Agreement with the Department. The Department may grant the request upon reviewing the Participant[NOHP] capacity to implement those specific functions.

(h)[(i)] First Year Consultation Agreement. The Participant[NOHP] agrees that if notified by the Department that Owner-Builder has failed to make a scheduled payment due under the Program loan, or other payments due under the Program loan documents issued under the Program, within the first twelve (12) months of funding, the Participant[NOHP] will be required to meet with the Owner-Builder and provide counseling and assistance until the payments are made current. After consultation and in the event that the Department and Participant[NOHP] are not able to reach a consensus about Participant's[NOHPs] effort to bring the Program loan current as required under this chapter, the Department in accordance with its administrative rules may apply appropriate graduated sanctions leading up to, but not limited to deobligation of funds and future debarment from participation in the Program.

(i)[(j)] Administrative Fee. [The NOHP may request their administrative fee upon completion of the house and closing of each mortgage loan.] The Participant will be granted a 6 percent administration fee upon completion of the house and funding of each Mortgage loan.

(j)[(k)] Blueprints. If Participant's[NOHP's] activity is interim or residential construction, Participant[NOHP] must provide an original copy of the proposed blueprints to be approved by the Department prior to accepting applications. Blueprints must include the required construction requirements pursuant to Texas Government Code, §2306.514. All blueprints submitted for approval must be prepared and executed by an architect or engineer licensed by the state of Texas.

(k)[(l)] Work Write-up. The Participant[NOHP] must submit a work write-up for all rehabilitation projects. Work write-ups must be reviewed and approved by the Department, before rehabilitation is started.

(l)[(m)] Loan Program requirements. The Department may purchase or originate loans that conform to the lending parameters and the specific loan Program requirements as described in paragraphs (1) – (8)[(1) - (13)] of this subsection:

(1) maximum Loan amount not to exceed \$45,000. If it is not possible for the Owner-Builder to purchase necessary real property and build adequate housing for \$45,000, the Participant[NOHP] must obtain additional funding from other sources of funds. The Department may accept a subordinate lien position if the original principal amount of the leveraged mortgage loan is at least \$10,000 or greater than the Department's Loan. However, liens related to other subsidized funds provided in the form of grants and non-amortizing loans, such as deferred payment of Forgivable Loans, must be subordinate to the Department's Loan;

- (2) minimum Loan amount is \$1,000;
- (3) the total amount of all Amortized repayable loans under the Program may not exceed \$90,000. Deferred Forgivable[forgivable] Loans[loans] are not included in these total loan calculations;
- (4) may not exceed a term of thirty (30) years;

- (5) minimum loan term of five (5) years;
- (6) zero percent (0 percent) non-interest loans;
- (7) when refinancing a Contract[contract] for Deed[deed], the Department will not disburse any portion of the Department's loan until the Owner-Builder receives a deed to the property;
- (8) Owner-Builder(s) must have resided in this state for the preceding six (6) months prior to the date of loan application.

[(9) Credit Qualifications. Owner-Builder applicants must have a credit history that indicates reasonable ability and willingness to meet debt obligations. In order for the Department to make a reasonable determination, the Department will obtain a tri-merge credit report on all Owner-Builder applicants submitted to the Department for approval;]

[(10) unacceptable credit includes, but is not limited to:]

[(A) payments on any open consumer, retail and/or installment account (i.e. auto loans, signature loans, payday loans, credit cards or any other type of retail and/or installment loan) which has been delinquent for more than thirty (30) days on three (3) or more occasions within the last twelve (12) months, unless the Owner-Builder applicant has been current for the four (4) months immediately preceding the application date. For purposes of this subparagraph, the credit history of an Owner-Builder who is a Domestic Farm Laborer and receives a substantial portion of his/her income from the production or handling of agriculture or aquacultural products will not apply. However, Owner-Builder must still demonstrate the ability and willingness to meet debt obligations;]

[(B) a foreclosure which has been completed within the last twelve (12) months prior to the date of loan application;]

[(C) an outstanding Internal Revenue Service tax lien or any other outstanding tax liens where Owner-Builder applicant has made formal and satisfactory payment arrangements for at least six (6) months prior to the date of loan application;]

[(D) a court-created or court-affirmed obligation or judgment caused by nonpayment that is currently outstanding must be paid off. The Department may consider this account in good standing if the Owner-Builder applicant has made formal and satisfactory payment arrangements for at least six (6) months prior to the date of loan application;]

[(E) any account (with the exception of a medical account) that has been placed for "collection," "profit and loss" or "charged off" within the last twelve (12) months prior to the date of loan application, unless the account has been or will be paid in full after receiving notice from the Department. If there are other, unpaid or unresolved accounts that were placed for "collection," "profit and loss," or "charged off" prior to the last twelve (12) months prior to the date of loan application then. Owner-Builder applicant must also have re-established at least one line of credit that must be in good standing with no delinquencies for at least six (6) months prior to the date of loan application. Type of debts that will be taken into consideration may include, but are not limited to the following: rental history, cell phone, utility, child care, auto insurance, etc.];]

[(F) any delinquency on any government debt unless the Owner-Builder applicant has made formal and satisfactory payment arrangements for at least six (6) months prior to the date of loan application;]

[(G) a bankruptcy that has been filed within the past twelve (12) months prior to the date of loan application;]

[(H) any delinquency on child support unless the Owner-Builder applicant has made formal and satisfactory payment arrangements for at least six (6) months prior to the date of loan application;]

[(11) subparagraphs (A) - (C) of this paragraph will not be considered indicators of unacceptable credit:]

[(A) a bankruptcy in which debts were discharged more than twelve (12) months prior to the date of loan application. Owner-Builder applicant must also have re-established at least one line of credit that must be in good standing with no delinquencies for at least six (6) months prior to the date of loan application. In addition the Owner-Builder applicant must submit to the Department a letter of explanation regarding the circumstances that led to the bankruptcy which is acceptable to the Department;]

[(B) where an Owner-Builder applicant has successfully completed a debt restructuring plan and has demonstrated a willingness to meet obligations when due for the six (6) months prior to the date of loan

application. If an Owner-Builder applicant is currently participating in a debt management plan, the trustee or assignee must provide a letter to the Department stating that they are aware and agree with the Owner-Builder applicant applying for a mortgage loan. In addition Owner-Builder applicant must have successfully completed at least six (6) months of the debt management plan with no delinquent payments;]

[(C) medical accounts that are delinquent or that have been placed for collection;]

[(12) the Owner-Builder applicant's liabilities include all revolving charge accounts, real estate loans, alimony, child support, installment loans, and all other debts of a continuing nature with more than ten (10) monthly payments remaining. Debts for which the Owner-Builder applicant is a co-signer will be included in the total monthly obligations unless the other party to the debt provides evidence showing that the Owner-Builder applicant has not been making payments on the co-signed loans for the previous twelve (12) months. There may be no late payments within the past twelve (12) months or the debt will be included. Payments on installment debts which are paid off prior to funding are not included for qualification purposes. Payments on all revolving debts (e.g. credit cards, payday loans, lines of credit, unsecured loans) and certain types of installment loans that appear to be recurring in nature will be included in debt ratio calculation, even if the Owner-Builder applicant intends to pay off the accounts, since the Owner-Builder applicant can reuse those credit sources, unless the account is paid off and closed. Payments on any type of loan that have been deferred must be deferred for at least eighteen (18) months from the date of loan application in order for the debt not to be included in the debt ratio calculation; and]

[(13) the residence must be occupied as the Principal Residence of the Owner-Builder within thirty (30) days of the later of the end of the construction period or the closing of the loan. Any additional habitable structures must be removed from the property prior to closing. Portion of the former structure may be utilized as storage upon the Department's written approval prior to closing.]

(m)(n) Loan Assumption. A Program loan is assumable if the Department determines that the Owner-Builder Applicant[applicant] complies with all Program requirements in effect at the time of the assumption.

(n) Forgivable Loan. The term for a Forgivable Loan may not exceed 15 years from the date of closing.

#### **§24.10. Owner-Builder Qualifications.**

The Owner-Builder must:

- (1) own or be purchasing a piece of real property through a warranty deed or Contract for Deed;
- (2) not have an annual household income that exceeds 60 percent of the greater of the state or local area median family income as determined by HUD's income table;

(A) Eligibility Income is the total Household income including all income (salary, tips, bonus, overtime, alimony, child support, benefits, etc.) received by the Owner-Builder Applicant, co-Applicant and/or any other persons living in the home. This income is used to determine whether the household income exceeds 60% of the Area Median Family Income or 60% of the State Median Family Income, adjusted for Household size, whichever is greater. No income is excluded in this calculation.

(B) Qualifying Income is the income used to calculate the Owner-Builder Applicant's debt to income ratio. It is the income of the Owner-Builder Applicant and co-Applicant excluding the total of any income not received consistently for the past 12 months from the date of application. Examples of excluded income includes, but is not limited to, income from a full or part time job that lacks a stable job history, potential bonuses, commissions, and child support.

(3) demonstrate the willingness and ability to repay the loan; Owner-Builder Applicants must have a credit history that indicates reasonable ability and willingness to meet debt obligations. In order for the Department to make a reasonable determination, the Department will obtain a tri-merge credit report on all Owner-Builder Applicants submitted to the Department for approval. Unacceptable credit includes, but is not limited to:

(A) payments on any open consumer, retail and/or installment account (i.e. auto loans, signature loans, payday loans, credit cards or any other type of retail and/or installment loan) which has been delinquent

for more than thirty (30) days on three (3) or more occasions within the last twelve (12) months. For purposes of this subparagraph, the credit history of an Owner-Builder who is a Domestic Farm Laborer and receives a substantial portion of his/her income from the production or handling of agriculture or aquacultural products will not apply. However, Owner-Builder must still demonstrate the ability and willingness to meet debt obligations;

(B) a foreclosure which has been completed within the last twelve (12) months prior to the date of loan application;

(C) an outstanding Internal Revenue Service tax lien or any other outstanding tax liens unless the Owner-Builder Applicant has made formal and satisfactory payment arrangements for at least six (6) months prior to the date of loan application;

(D) a court-created or court-affirmed obligation or judgment caused by nonpayment that is currently outstanding must be paid off. The Department may consider this account in good standing if the Owner-Builder Applicant has made formal and satisfactory payment arrangements for at least six (6) months prior to the date of loan application;

(E) any account (with the exception of a medical account) that has been placed for "collection," "profit and loss" or "charged off" within the last twenty-four (24) months prior to the date of loan application, unless the account has been or will be paid in full after receiving notice from the Department. If there are other, unpaid or unresolved accounts that were placed for "collection," "profit and loss," or "charged off" prior to the last twenty-four (24) months prior to the date of loan application then Owner-Builder Applicant must also have re-established at least one line of credit that must be in good standing with no delinquencies for at least six (6) months prior to the date of loan application. Type of debts that will be taken into consideration may include, but are not limited to the following: rental history, cell phone, utility, child care, auto insurance, etc.;

(F) any delinquency on any government debt unless the Owner-Builder Applicant has made formal and satisfactory payment arrangements for at least six (6) months prior to the date of loan application;

(G) a bankruptcy that has been filed within the past twelve (12) months prior to the date of loan application;

(H) any delinquency on child support unless the Owner-Builder Applicant has made formal and satisfactory payment arrangements for at least six (6) months prior to the date of loan application;

The following will not be considered indicators of unacceptable credit:

(i) a bankruptcy in which debts were discharged more than twelve (12) months prior to the date of loan application. Owner-Builder Applicant must also have re-established at least one line of credit that must be in good standing with no delinquencies for at least six (6) months prior to the date of loan application. In addition the Owner-Builder Applicant must submit to the Department a letter of explanation regarding the circumstances that led to the bankruptcy which is acceptable to the Department;

(ii) where an Owner-Builder Applicant has successfully completed a debt restructuring plan and has demonstrated a willingness to meet obligations when due for the six (6) months prior to the date of loan application. If an Owner-Builder Applicant is currently participating in a debt management plan, the trustee or assignee must provide a letter to the Department stating that they are aware and agree with the Owner-Builder Applicant applying for a mortgage loan. In addition Owner-Builder Applicant must have successfully completed at least six (6) months of the debt management plan with no delinquent payments;

(iii) medical accounts that are delinquent or that have been placed for collection;

The Owner-Builder Applicant's liabilities include all revolving charge accounts, real estate loans, alimony, child support, installment loans, and all other debts of a continuing nature with more than ten (10) monthly payments remaining. Debts for which the Owner-Builder Applicant is a co-signer will be included in the total monthly obligations. Payments on installment debts which are paid off prior to funding are not included for qualification purposes. Payments on all revolving debts (e.g. credit cards, payday loans, lines of credit, unsecured loans) and certain types of installment loans that appear to be recurring in nature will be included in debt ratio calculation, even if the Owner-Builder Applicant intends to pay off the accounts, since the Owner-Builder Applicant can reuse those credit sources, unless the account is paid off and closed. Payments on any type of loan that have been deferred must be deferred for

at least eighteen (18) months from the date of loan application in order for the debt not to be included in the debt ratio calculation:

(4) execute a Self-Help Agreement committing to provide through personal labor at least 65 percent of the labor necessary to build or Rehabilitate[rehabilitate] the proposed housing working through a state-certified Participant[NOHP]; or provide an amount of labor equivalent to 65 percent in connection with building or Rehabilitating[rehabilitating] housing for others through a state certified Participant[NOHP]; provide through the noncontract labor of friends, family, or volunteers and through personal labor at least 65 percent of the labor necessary to build or Rehabilitate[rehabilitate] the proposed housing by working through a state certified Participant[NOHP] or if due to a documented disability or other limiting circumstances the Owner-Builder cannot provide the amount of personal labor otherwise required, provide through the noncontract labor of friends, family or volunteers at least 65 percent of the labor necessary to build or Rehabilitate[rehabilitate] the proposed housing by working through a state certified Participant[NOHP];

(5) not have cash assets in excess of \$25,000 (excluding retirement and/or 401K accounts);

(6) successfully complete an Owner-Builder homeownership education class prior to loan funding;

(7) be given priority for loans if the Owner-Builder has an income of less than \$17,500 annually; and

(8) not have any outstanding judgments and/or liens on the property.

(9) the residence must be occupied as the Principal Residence of the Owner-Builder within thirty (30) days of the later of the end of the construction period or the closing of the loan. Any additional habitable structures must be removed from the property prior to closing. Portion of the former structure may be utilized as storage upon the Department's written approval prior to closing.

#### **§24.11. Types of Funding Transactions.**

All Mortgage Loans[mortgage loans] will be evidenced by a promissory note and will be secured by a lien on the subject property. The following transaction types are permitted by the Department under the Program.

(1) Purchase Money. In a purchase money transaction, all proceeds are used to finance the purchase of a single-family dwelling unit and/or a piece of real property which will be the Owner-Builders primary residence within thirty (30) days of closing the loan. In this instance, a permanent loan is made and the Owner-Builder's repayment obligation begins immediately. In certain situations, eligible closing costs may be financed by the loan proceeds.

(2) Residential Construction (One Time Closing with Owner-Builder). An interim construction loan, also known as a residential construction loan, this transaction is treated as a purchase, because it is a one-time closing with the Owner-Builder. Construction period may be up to twelve (12) months.

(3) Interim Construction (Closing with Participant[NOHP]). Interim construction is a commercial transaction between the Participant[NOHP] and the Department. The construction period may be up to twelve (12) months; once the construction of the home is completed the closing with the Owner-Builder will take place as a purchase money transaction.

(4) Purchase of Mortgage loans[Loans]. The Department may purchase and take assignments from Mortgage[mortgage] lenders of notes and other obligations evidencing loans or interest in loans for purchase money transactions as described in paragraph (1) of this section or for residential construction transactions as described in paragraph (2) of this section.

#### **§24.12. Property Guidelines and Related Issues.**

[(a) If the Nonprofit Owner-Builder Housing Provider (NOHP) is utilizing Program funds to construct the home they must conform to Texas Government Code, §2306.514 and execute a Construction Loan Agreement.]

[(1) If the property is located outside an incorporated area inspections will be required to be completed by a professional inspector licensed by the Texas Real Estate Commission for all new construction and reconstruction projects. For all housing rehabilitation projects an initial and final inspection will be required and completed by a licensed inspector.]

[(2) The NOHP and/or the Owner-Builder Applicant will be responsible for the selection and/or the fee of a licensed inspector.]

(a)[(b)] Appraisals are required by the Department on each property prior to closing[funding].

(b)[(c)] Loan to value ratio may not exceed 95 percent of the appraised value. The[, the] lien amounts of forgivable loans and/or Grants[grants] will not be included in the loan-to-value calculation.

(c)[(d)] Combined loan-to-value[loan to value] ratio may not exceed 100 percent of the appraised value. The[, the] lien amounts of Forgivable Loans[forgivable loans] will also be included in the combined loan to value ratio.

(d)[(e)] Improvement Surveys are required on each property.

(e)[(f)] Category 1A (Texas Society of Professional Surveyors) ("lot survey") are required for all interim and residential construction loans. Upon Department approval a recorded subdivision plat may be used in lieu of lot surveys for interim construction loans only. Upon completion of construction an improvement survey must also be provided.

(f)[(g)] Title Commitment. A copy of the preliminary title report including complete legal description, and copies of covenants, conditions and restrictions, easements, and any supplements thereto is required. The preliminary title report should not be more than thirty (30) days old at the time the submission package (Submission or Funding Package) is sent to the Department and must list the Department's Loan.

(g) Existing Property. A property inspection will be required to be completed by a professional inspector licensed by the Texas Real Estate Commission for all existing properties. A copy of the inspection report must be submitted prior to closing. Any deficiencies listed on the report must be corrected prior to closing. Cosmetic issues such as paint, wall texture, etc. may not be required to be corrected if utilizing a Self-Help construction Program. A copy of the reports must be provided to the Owner-Builder Applicant and the Department. The Participant and/or the Owner-Builder Applicant will be responsible for the selection and/or the fee of a licensed inspector.

#### **§24.13. Nonprofit Owner-Builder Housing Program [(NOHP)] Certification.**

(a) Definitions and Terms. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Applicant--A Nonprofit[nonprofit] Organization[organization] that has submitted a request for certification as a NOHP to the Department. An Applicant for the Texas Bootstrap Loan Program must be a NOHP certified by the Department.

(2) Bylaws--A rule or administrative provision adopted by a corporation for its internal governance. Bylaws are enacted apart from the Certificate of Formation. Bylaws and amendments to bylaws must be formally adopted in the manner prescribed by the organization's certificate of formation or current bylaws by either the organization's board of directors or the organization's members, whoever has the authority to adopt and amend bylaws.

(3) Certificate of Formation--A document that sets forth the basic terms of a corporation's existence and is the official recognition of the corporation's existence. The documents must evidence that they have been filed with the Office of the Secretary of State.

(4) Resolutions--Formal action by a corporate board of directors or other corporate body authorizing a particular act, transaction, or appointment. Resolutions must be in writing and state the specific action that was approved and adopted, the date the action was approved and adopted, and the signature of person or persons authorized to sign resolutions. Resolutions must be approved and adopted in accordance with the corporate bylaws.

(b) Application Procedures for Certification or Re-Certification of NOHP. An Applicant requesting certification or re-certification as an[a] NOHP must submit an Application[application] for NOHP certification in a form prescribed by the Department. The NOHP Application[application] must be submitted prior to submitting an Application[application] for Texas Bootstrap Loan Program Reservation system, and must be recertified every three (3) years. An NOHP applying for recertification will only be required to submit the following if any changes have occurred. An organization applying for certification

[The application] must include documentation pertaining to[evidencing] the requirements of this subsection.

(1) Applicant must have the following legal status at the time of Application[application] to apply for certification as an[a] NOHP:

(A) The Applicant must be organized as a nonprofit organization under the Texas Business Code or other state not-for-profit/nonprofit statute as evidenced by charter[Charter] or Certificate of Formation.

(B) The Applicant must be registered and in good standing with the Office of the Secretary of State and the State Comptroller's Office to do business in the state of Texas.

(C) No part of the Nonprofit[nonprofit] Organization's[organization's] net earnings may inure to the benefit of any member, founder, contributor, or individual, as evidenced by charter or Certificate of Formation.

(D) The Applicant must have the following tax status:

(i) A current letter of determination from the Internal Revenue Service (IRS) under §501(c)(3), a charitable, nonprofit corporation, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective on the date of the Application[application] and must continue to be effective while certified as an[a] NOHP; or

(ii) Classification as a subordinate of a central Nonprofit[non-profit] Organization[organization] under the Internal Revenue Code §501(c)(3), as evidenced by a current group exemption letter, that is dated 1986 or later[, from the IRS that includes the Applicant]. The group exemption letter must specifically list the Applicant.

(iii) A Nonprofit[nonprofit] Organization's[organization's] pending application for §501(c)(3) status cannot be used to comply with the tax status requirement under this subparagraph.

(E) The Applicant must have among its purposes the provision of decent housing that is affordable to low and moderate income people as evidenced by a statement in the organization's charter, Certificate of Formation, Resolutions, or Bylaws.

(2) An Applicant must have the capacity and experience listed in subparagraphs (A) and (B) of this paragraph.

(A) Conforms to the United States Generally Accepted Accounting Principles ("GAAP")[financial accountability standards of "Standards of Financial Management Systems"] as evidenced by a:

(i) notarized statement by the Executive Director or chief financial officer of the organization in a form prescribed by the Department; or

(ii) certification from a Certified Public Accountant.

(B) If the Applicant will be utilizing interim or residential construction funds it must provide an audited financial statement for the most recent fiscal year or a signed and dated financial statement for the period since last published audit. Applicants that do not have audited financial statements or a signed and dated financial statement for the period since last published audit must provide a resolution from the Board of Directors that is signed and dated within 6 months from the date of application and certifies that the accounting procedures used by the organization conform to the GAAP. Applicants that do not have audited financial statements or a signed and dated financial statement for the period since last published audit and are certified as NOHPs are restricted to only originating permanent loans and will be ineligible for any interim or residential construction loans until the Department has reviewed the most current audited financial statements.

(C)[(B)] Has a demonstrated capacity of at least one (1) year for carrying out Mortgage[mortgage] loan origination and Self-Help[self-] housing construction Activities[activities], as evidenced by resumes and/or statements that describe the experience of key staff members who have successfully completed projects similar to those to be assisted with Texas Bootstrap Loan Program funds; or contract(s) with consultant firms or individuals who have housing experience similar to projects to be assisted with Texas Bootstrap Loan Program funds, to train appropriate key staff of the organization. If applying for re-certification to participate in the Texas Bootstrap Loan Program and the organization is in good standing, the organization will not be required to submit any additional information regarding experience.

(3) An Applicant must submit a current roster of all Board of Directors, including names and mailing addresses.

(4) A local or state government and/or public agency cannot qualify as a NOHP, but may sponsor the creation of a NOHP.

(5) Religious or Faith-based Organizations may sponsor a NOHP if the NOHP meets all the requirements of this section. While the governing board of a NOHP sponsored by a religious or a faith-based organization remains subject to all other requirements in this section, the faith-based organization may retain control over appointments to the board. If a NOHP is sponsored by a religious organization, the restrictions described in subparagraphs (A) - (C) of this paragraph also apply:

(A) Housing developed must be made available exclusively for the residential use of Program beneficiaries and must be made available to all persons regardless of religious affiliations or beliefs;

(B) A religious organization that participates in the Texas Bootstrap Loan Program may not use Texas Bootstrap Loan Program funds to support any inherently religious activities such as worship, religious instruction, or proselytizing; and

(C) Compliance with subparagraphs (A) and (B) of this paragraph may be evidenced by the [Organizations] Bylaws, charter[Charter] or Certificate of Formation. If an organization is applying for re-certification and no updates have been made to its[their] Bylaws and/or Certificate of Formation, the organization will not be required to submit any additional information regarding its[their] Bylaws and/or [their] Certificate of Formation, but must submit a sworn statement attesting to the fact that no changes have been made to either the[their] Bylaws and/or Certificate of Formation.

(6) A Colonia Self-Help Center as defined under Texas Government Code, Chapter 2306, Subchapter Z is not required to complete the NOHP Certification process as long as it provides a letter from the unit of local government[appropriate funding entity] demonstrating a good standing performance[ and/or certification standing].

(c) Program Design. Organizations must provide written evidence on how the Owner-Builder will meet the 65 percent sweat equity requirement. If applying for re-certification to participate in the Texas Bootstrap Loan Program and the organization is in good standing and certifies that no changes have been made to the Program design, the organization will not be required to submit any additional information regarding the Program design.

(d) Applicant must provide details, such as number of houses they are proposing to build, type of proposed financing structure and construction timelines[timeliness] in order to show evidence of its ability to carry out the Texas Bootstrap Loan Program. If applying for re-certification to participate in the Texas Bootstrap Loan Program and the organization is in good standing and certifies that no changes have been made that impact the proposed financing structure or construction timelines, the organization will not be required to submit any additional information.

(e) Applicant must provide copies of Program guidelines used to qualify Owner-Builders and homebuyer course curriculum in order to show evidence of its experience in qualifying potential Owner-Builders and in[;] providing education classes, counseling and training. If applying for re-certification to participate in the Texas Bootstrap Loan Program and the organization is in good standing, the organization will not be required to submit any additional information.

(f) Applicant must submit any past due Single Audit[audit] to the Department in a satisfactory format on or before the Application deadline.

(g) Applicants must be in compliance in any existing or prior Contracts[contracts] awarded by the Department.

(h) The Department may certify NOHPs meeting all of the criteria in subsection (b) of this section operated by a tax-exempt organization listed under §501(c)(3), Internal Revenue Code of 1986 to:

(1) qualify potential Owner-Builders for loans under this chapter;

(2) provide Owner-Builder education classes;

(3) assist Owner-Builders in building or Rehabilitating[rehabilitating] housing; and

(4) originate and/or service loans.