TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

TDHCA Governing Board Approved Draft of:
10 Texas Administrative Code ("TAC") Chapter 29
Texas Single Family Neighborhood Stabilization Program Rule

Disclaimer

Attached is a draft of proposed new 10 TAC Chapter 29, Texas Single Family Neighborhood Stabilization Program Rule, that was approved by the TDHCA Governing Board on September 6, 2018. This action will entail the repeal of the current rule and a contemporaneous new rule being proposed to replace it. This document, including its preamble, is scheduled to be published in the September 28, 2018, edition of the *Texas Register* and that published version will constitute the official version for purposes of public comment and can be found here: https://www.sos.state.tx.us/texreg/index.shtml. The version herein is informational only and should not be relied upon as the basis for public comment.

Public Comment

Public Comment Period:
Starts: 8:00 a.m. Austin local time on September 21, 2018.
Ends: 5:00 p.m. Austin local time on October 22, 2018.

Comments received after 5:00 p.m. Austin local time on October 22, 2018, will not be accepted. Written comments may be submitted in hard copy, fax or electronic formats within the designated public comment period to:

Texas Department of Housing and Community Affairs
Attn: Brooke Boston, Rule Comments
P.O. Box 13941
Austin, Texas 78711-3941
Fax: (512) 475-0220
Email: brooke.boston@tdhca.state.tx.us

Those making public comment are encouraged to reference the specific draft rule, policy, or plan related to their comment as well as a specific reference or cite associated with each comment.

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

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Preamble and proposed new 10 TAC Chapter 29, Texas Single Family Neighborhood Stabilization Program Rule

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 29, Texas Single Family Neighborhood Stabilization Program ("NSP"). The purpose of the proposed new section is to make changes that involve minor edits throughout, as well as the removal of several sections including §29.3(c)(4) and §29.3(c)(5), relating to thresholds for Administrative draw requests, because these sections are no longer applicable to remaining open Contracts, the deletion of §29.4(b) as it is no longer applicable, and the deletion of §29.5, relating to Compliance and Monitoring, because that section which is applicable to multifamily activities is no longer needed as the multifamily NSP requirements are now addressed in 10 TAC Chapter 13, the Multifamily Direct Loan Rule.

Tex. Gov't Code §2001.0045(b) does apply to the rule being adopted and no exceptions are applicable. However, the rule changes only involve the removal of several obsolete sections which are no longer applicable, and minor edits. The rule provides for how a federal program, the Neighborhood Stabilization Program, is administered. There are no costs associated with this proposed rule, therefore no costs or impacts warrant a need to be offset.

The Department has analyzed this 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.

Timothy K. Irvine, Executive Director, has determined that, for the first five years the proposed new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the rules that govern the Neighborhood Stabilization Program.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor will it reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

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

5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The rule will not limit, expand or repeal an existing regulation but merely revises a rule.

7. The new rule does not increase nor decrease the number of individuals to whom this rule applies; and

8. The new rule will not negatively nor 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.

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

2. This rule relates to the procedures in place for administrators of the Neighborhood Stabilization Program. Other than in the case of a small or micro-business that participates in this program, no small or micro-businesses are subject to the rule. If a small or micro-business does participate in the program, the rule provides a clear set of regulations for doing so.

3. The Department has determined that because this rule relates only to a process for applicants of an existing program, and the rule changes primarily remove outdated sections and make minor edits, 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 new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).
The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates only to the existing processes used in administering the Neighborhood Stabilization Program; therefore no local employment impact statement is required to be prepared for the rule.

Texas 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 the rule relates only to the continuation of the program regulations for the Neighborhood Stabilization Program 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. Irvine has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the proposed new rule will be an updated clear rule and assurance of the program having transparent compliant regulations. There will be no economic cost to any individuals required to comply with the proposed new rule because the activity described by the rule has already been in existence.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Irvine also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to a process that already exists and is not recommended for change.

REQUEST FOR PUBLIC COMMENT. The Department will accept public comment from September 21, 2018, through October 22, 2018. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 pm Austin local time, October 22, 2018.

STATUTORY AUTHORITY. The rule review is adopted 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 29, Texas Single Family Neighborhood Stabilization Program Rule

§29. 1. Purpose

This chapter clarifies the administration of the Texas Single Family Neighborhood Stabilization Program (Texas SFNSP). Texas SFNSP funds are administered by the Department. The Texas SFNSP awards funding to Subgrantees to acquire foreclosed, abandoned, or vacant property in order to redevelop it and prevent it from becoming a source of blight which could contribute to declining property values.

§29.2. Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context or the Notice of Funding Availability (NOFA) indicates otherwise. Lack of capitalization of a term or word in this chapter does not indicate that the term is undefined. Other definitions may be found in Texas Government Code, Chapter 2306; Chapter 1 of this title (relating to Administration); and Chapter 20 of this title (relating to Single Family Programs Umbrella Rule).

(1) Developer--A nonprofit entity that receives Texas SFNSP assistance for the purpose of:

(A) acquiring homes and residential properties to rehabilitate for residential purposes; and

(B) constructing new housing in connection with the redevelopment of demolished or vacant properties.

(2) Expended--For the purposes of contract milestones and thresholds, "Expended" means that a complete draw request is submitted with adequate back-up documentation; it is not necessary for staff to have processed a draw to meet a benchmark. For all other purposes, "Expended" means that an eligible cost was incurred and staff has processed a draw to reimburse the expense with Texas SFNSP funds.

(3) Land Bank--A governmental or nongovernmental nonprofit organization established, at least in part, to assemble, temporarily manage and dispose of vacant land for the purposes of stabilizing neighborhoods and encouraging re-use or redevelopment of urban property.

(4) Obligated--When Texas SFNSP funding has been encumbered through contracts for goods, services or acquisition of property, or other forms of similar transactions requiring payment that have been determined by the Department to meet Texas SFNSP requirements.

(5) Subgrantee--A Subrecipient or a Developer.

(6) Subrecipient--Units of General Local Government and nonprofit organizations with whom the Department contracts and provides funding in order to undertake activities eligible for such assistance.

(7) Texas SFNSP--Texas Single Family Neighborhood Stabilization Program.

§29.3. General Provisions

(a) All assisted properties must be located in eligible areas as defined by HUD and by the applicable NOFA.

(b) The Contract term is based upon varying types of activities included in the Contract between the Department and the Department's Subgrantee. Exhibit C, Project Implementation Schedule, of the Contract, provides an outline of specific timelines, milestones and thresholds. Performance under the Contract will be evaluated according to the benchmarks described in each Contract.

(c) Administrative Threshold. Administrative draw requests are funded from the administration or developer fee line item in Exhibit B, Budget, of the Contract. Reimbursement of eligible administrative expenses is regulated as described in paragraphs (1) - (5) of this subsection:

(1) Threshold 1. Cumulative administrative draw requests may allow up to 10 percent of the administration or developer fee line item to be drawn prior to the start of any project activity included in the performance statement of the Contract (provided that all pre-draw requirements, as described in the Contract, for administration have been met). This draw may be limited by NOFA, underwriting report, or by Contract. Subsequent administrative expenditures will be reimbursed in the percentage amounts indicated, provided that all Contract benchmark requirements have been met, as identified in Exhibit C, Project Implementation Schedule, described in subsection (b) of this section;

(2) Threshold 2. Subsequent administrative draw requests are allowed in proportion to the direct project funds drawn on the Contract, up to 90 percent of the total administration or developer fee line item. The cumulative total percentage of administrative funds requested may not exceed the cumulative total percentage of project funds expended for hard and/or soft costs directly attributable to activities under the Contract;

(3) Threshold 3. The final 10 percent of the administration or developer fee line item is the administrative retainage. The final 10 percent may be drawn after the final loan closing or upon Contract close-out.

(d) Forbearances. Contract expenditure thresholds and milestones are included in Exhibit C, Project Implementation Schedule, of the Contract; violations of which will subject the Subgrantee to the requirements found in this chapter. At the Department's discretion, forbearances of thresholds and milestones may be granted upon request and documentation of extenuating circumstances.

(e) Waivers. Program administrative regulations set forth in any Texas SFNSP NOFA by the Department's Governing Board or terms in the Contract may be waived by the Department, acting by and through its Executive Director or his/her designee, up to the limits of Texas SFNSP regulations and guidance as previously established, periodically updated, or updated in the future by HUD. The Executive Director or his/her designee may waive the Texas SFNSP purchase discount to the limits of the purchase discount as allowed by the NSP Bridge Notice. The Texas NSP NOFA and the NSP *Federal Register* Notice (Docket No. FR-5255-N-01) published in the *Federal Register* (73 FR 58330), require a minimum discount of 5 percent for any individual property and 15 percent for a portfolio of properties to be acquired utilizing Texas SFNSP funds. (If only acquiring one property, the one property constitutes a portfolio.) The NSP Bridge Notice allows for up to a 1 percent discount for individual properties and portfolios.

§29.4. Reassignment of Funds

Deobligated funds may either be reassigned utilizing the amendment process described 10 TAC §20.14 of this Title, or be subject to redistribution through a methodology to be approved by the Board.