

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
TDHCA Governing Board Approved Draft of
10 TAC §1.19. Reallocation of Financial Assistance

Disclaimer

Attached is a draft of proposed new 10 TAC §1.19, Reallocation of Financial Assistance, that was approved by the TDHCA Governing Board on June 28, 2018. This action will entail the repeal of the current rules at §1.19, Reallocation of Financial Assistance, and a contemporaneous new rule being proposed to replace it. This document, including its preamble, is expected to be published in the July 13, 2018, edition of the Texas Register and that published version will constitute the official version for purposes of public comment and can be found at the following link: <https://www.sos.texas.gov/texreg/index.shtml>.

Public Comment

Public Comment Period: Start: 8:00 a.m. Austin local time on July 16, 2018
End: 5:00 p.m. Austin local time on August 16, 2018

Comments received after 5:00 p.m. Austin local time on August 16, 2018, 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: Brooke Boston
Rules Comments
P.O. Box 13941
Austin, Texas 78711-3941
Email: brooke.boston@tdhca.state.tx.us

Written comments may be submitted in hard copy 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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Mailing Address: PO Box 13941, Austin, TX 78711-3941
Main Number: 512-475-3800 Toll Free: 1-800-525-0657
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Preamble for proposed new 10 TAC §1.19. Reallocation of Financial Assistance

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC §1.19, Reallocation of Financial Assistance. The purpose of the proposed new section is to provide compliance with Tex. Gov't Code §2161.003 and §2306.111(h), add the purpose of the rule, make some sections more concise, add that the receipt of program income is an instance when reallocation may need to occur, add that Notices of Funding Availability may also be a governing document for reallocation decisions, remove the requirement that \$1 million in HOME funds is set aside annually for disaster relief as this is now addressed in the program planning documents, and improve readability and clarity.

FISCAL NOTE. Timothy K. Irvine, Executive Director, 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.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years a rule would be in effect:

1. The proposed rule does not create or eliminate a government program;
2. The proposed rule will not require a change in the number of employees of the Department;
3. The proposed rule will not require additional future legislative appropriations;
4. The proposed rule will result in neither an increase nor a decrease in fees paid to the Department;
5. The proposed rule will not create a new regulation, except that it is replacing a rule being repealed simultaneously to provide for the updating and improved clarity of that rule;
6. The proposed rule will not expand an existing regulation;
7. The proposed rule will not increase the number of individuals subject to the rule's applicability; and
8. The proposed rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be ensuring a rule that provides for clear guideline and improved clarity. There will not be any economic cost to any individuals required to comply with the new section, because the processes described by the rule have been in place through the rule found at this section being repealed.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held July 16, 2018, to August 16, 2018, to receive input on the new section. 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, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time AUGUST 16, 2018.

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.

§1. 1.19. Reallocation of Financial Assistance

(a) Purpose. As provided for by Tex. Gov't Code §2306.111(h), this rule provides the policy for the reallocation of financial assistance, including assistance related to bonds, administered by the Department if the Department's obligation with respect to that assistance is prematurely terminated.

(b) It is the policy of the Department to take prudent measures to ensure that, when funds are provided to recipients for assistance, they are timely and lawfully utilized and that, if they cannot be timely and lawfully utilized by the initial recipient, there are mechanisms in place to reallocate those funds to other recipients in order to ensure their full utilization while maximizing assistance to beneficiaries.

(c) The reallocation of federal or state financial assistance administered by the Department may be required when:

- (1) an administrator, subrecipient, owner, or contractor returns contracted funds;
- (2) reserved funds are not fully utilized at completion of an activity;
- (3) balances on contracts remain unused;
- (4) funds in a contract or reservation are partially or fully recaptured or terminated; or
- (5) required benchmarks or expenditure deadlines have not been achieved within the time frames agreed; or
- (6) there is program income.

(d) Reallocation of financial assistance for specific federal or state funding sources or programs administered by the Department is also governed by or provided for in:

- (1) federal regulations and requirements; (2) state rules adopted in other Sections of this Part;
- (3) funding plans authorized by the Board governing federal or state resources that may have been reviewed and approved by the federal funding agency;
- (4) Notices of Funding Availability or NOFAS; or
- (5) written agreements and contracts relating to the administration of such funds.

(e) To the extent that programs or funding sources are governed by any of the items provided for in subsection (d) of this section, and the specific documents listed in subsection (d) do not require further Board approval, no additional approval to take action on such reallocation is required. Reallocation of funding not governed by subsection (d) of this section will require Board approval.

(f) To the extent that certain programs are required to regionally allocate their annual allocations of funds, funds reallocated under this section do not require subsequent regional allocation.

(g) Funds made available under this section may be aggregated over a period of time prior to being reallocated.

(h) Consistent with the requirements of Tex. Gov't Code §2306.111(h), if the Department's obligation of financial assistance related to bonds is terminated prior to issuance, the assistance will be reallocated among other activities permitted by that bond issuance and any indenture associated with those bonds, as approved by the Board.