

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
**TDHCA Governing Board Approved Draft of the
Community Affairs Proposed Rule Changes to 10 TAC Chapter 6 Community Affairs Programs
Notice for Public Comment**

Disclaimer

Attached is a draft of the **Community Affairs Proposed Rule Changes to 10 TAC Chapter 6 Community Affairs Programs** that was approved by the TDHCA Governing Board on September 5, 2019. This document, including its preambles, is scheduled to be published in the September 20, 2019, 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.shtm>. 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 AM Austin local time on September 20, 2019 Ends: 5 PM Austin local time on October 21, 2019

Comments received after 5 PM Austin local time on October 21, 2019 will not be accepted.

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

Texas Department of Housing and Community Affairs
Attn: Gavin Reid
P.O. Box 13941
Austin, Texas 78711-3941
Email: gavin.reid@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.

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Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 6 Community Affairs Programs

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of Chapter 6, Community Affairs Programs, including Subchapter A, General Provisions; Subchapter B, Community Services Block Grant; Subchapter C, Comprehensive Energy Assistance Program; and Subchapter D, Weatherization Assistance Program. The purpose of the proposed repeal is to eliminate outdated rules that warrant revision while adopting new updated rules under separate action.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. Robert 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 re-adoption making a change to an existing activity, the administration of Community Affairs 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 workload 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 they are being replaced by new rules simultaneously to provide for revisions.
6. The proposed action will repeal existing regulations, but is associated with a simultaneous re-adoption making changes to an existing activity, of the rules governing the administration of Community Affairs programs.
7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule's applicability.
8. The proposed repeal will not negatively nor 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 the proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

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

2. The rules relate to the Department's administration of all Community Affairs programs which include the Community Services Block Grant (CSBG), the Low Income Home Energy Assistance Program (LIHEAP) which can be further divided into the Comprehensive Energy Assistance Program and LIHEAP Weatherization Assistance Program (WAP), and the Department of Energy WAP (DOE WAP). Other than a Subrecipient of funds for any of these programs who may consider itself a small or micro-business, which would not generally be the case, no small or micro-businesses are subject to the rules. However, if a Subrecipient considers itself a small or micro-business, the rule changes provide greater clarity and streamline the crisis assistance activity.

3. The Department has determined that because the rules apply only to existing Subrecipients, 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 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 rules as to their possible effects on local economies and has determined that for the first five years the proposed repeal will be in effect there would be no economic effect on local employment because the rules relate only to regulations which have already been in effect for existing Subrecipients; 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 the rules pertain to all Subrecipients throughout the state, regardless of location, there are no "probable" effects of the revised rules on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has also 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 chapter would be an updated, more streamlined, and clearer version of the rules governing Community Affairs programs. There will not be economic costs to individuals required to comply with the repealed chapter.

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.

g. REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 20, 2019, to October 21, 2019, to receive input on the proposed repealed chapter. Written comments may be mailed to the Texas Department of Housing and Community Affairs, Gavin Reid, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-3935; or email to gavin.reid@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, October 21, 2019.

STATUTORY AUTHORITY. The repeal is adopted pursuant to TEX. GOV'T CODE, §2306.053, which authorizes the Department to adopt rules. Except as described herein the repeal affects no other code, article, or statute.

10 TAC Chapter 6 Community Affairs Programs.

Subchapter A., General Provisions.

§6.1. Purpose and Goals.

§6.2. Definitions.

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§6.211. Board Administrative Requirements.

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Subchapter C. Comprehensive Energy Assistance Program.

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§6.308. Allowable Subrecipient Administrative and Program Services Costs.
§6.309. Types of Assistance and Benefit Levels.
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Subchapter D. Weatherization Assistance Program.
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§6.402. Purpose and Goals.
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§6.407. Program Requirements.
§6.408. Department of Energy Weatherization Requirements.
§6.409. LIHEAP Weatherization Requirements.
§6.410. Liability Insurance and Warranty Requirement..
§6.411 Customer Education.
§6.412. Mold-like Substances.
§6.413. Lead Safe Practices.
§6.414. Eligibility for Multifamily Dwelling Units.
§6.415. Health and Safety and Unit Deferral.
§6.416. Whole House Assessment.
§6.417. Blower Door Standards.

Preamble for proposed new 10 TAC Chapter 6 Community Affairs Programs

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 6. Community Affairs Programs. including Subchapter A, General Provisions; Subchapter B, Community Services Block Grant; Subchapter C, Comprehensive Energy Assistance Program; and Subchapter D, Weatherization Assistance Program. The purpose of the proposed new chapter is to update the rules to provide greater clarity for Subrecipients while administering Community Affairs programs (i.e., CSBG, LIHEAP, and DOE WAP).

Tex. Gov't Code §2001.0045(b) does not apply to the rules proposed for action because it is exempt under §2001.0045(c)(4), which exempts rule changes necessary to receive a source of federal funds or to comply with federal law. This revision is being proposed to update, streamline, and make clearer the rules governing the administration of Community Affairs programs. The Department does not anticipate any costs associated with this proposed rule action. Compliance with the proposed rules are intended to ensure adherence to federal statute while operating federal grants.

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

1. The proposed rules do not create or eliminate a government program, but relate to the repeal, and simultaneous re-adoption making changes to an existing activity, the administration of Community Affairs 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 proposed new rules significant enough to reduce workload to a degree that eliminates any existing employee positions.
3. The proposed rule changes do not require additional future legislative appropriations.
4. The proposed rule changes 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 new regulations, except that they are replacing rules being repealed simultaneously to provide for revisions.
6. The proposed rules will not expand, limit, or repeal existing regulations.
7. The proposed rules will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The proposed rules 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. The Department, in drafting the 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, §2306, Subchapter E.

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

2. The rules relate to the Department's administration of all Community Affairs programs which include the Community Services Block Grant (CSBG), the Low Income Home Energy Assistance Program (LIHEAP) which can be further divided into the Comprehensive Energy Assistance Program and LIHEAP Weatherization Assistance Program (WAP), and the Department of Energy WAP (DOE WAP). Other than a Subrecipient of funds for any of these programs who may consider itself a small or micro-business, which would not generally be the case, no small or micro-businesses are subject to the rules. However, if a Subrecipient considers itself a small or micro-business, the rule changes provide greater clarity and streamline the crisis assistance activity.

3. The Department has determined that because the rules apply only to existing Subrecipients, 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 effect on local economies and has determined that for the first five years the proposed rules will be in effect there would be no economic effect on local employment because the rules relate only to a process which has already been in effect for existing Subrecipients; 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 the rules pertain to all Subrecipients throughout the state, regardless of location, 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 also determined that, for each year of the first five years the new chapter is in effect, the public benefit anticipated as a result of the new chapter would be an updated, more streamlined, and clearer version of the rules governing Community Affairs programs. There will not be

economic costs to individuals required to comply with the new chapter because the rules have already been in place through the rules found at the chapter 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 chapter is in effect, enforcing or administering the new chapter does not have any foreseeable implications related to costs or revenues of the state or local governments.

g. REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 20, 2019, to October 21, 2019, to receive input on the proposed new chapter. Written comments may be mailed to the Texas Department of Housing and Community Affairs, Gavin Reid, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-3935; or email to gavin.reid@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, October 21, 2019.

STATUTORY AUTHORITY. The new chapter is proposed pursuant to TEX. GOV'T CODE, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new chapter affects no other code, article, or statute.

[Note that these rules are shown in blackline form below for the purpose of the posting of Board materials but will be shown as clean proposed new language when submitted to the Texas Register.]

10 TAC Chapter 6 Community Affairs Programs.

TITLE 10 COMMUNITY DEVELOPMENT PART 1 TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS CHAPTER 6 COMMUNITY AFFAIRS PROGRAMS

SUBCHAPTER A GENERAL PROVISIONS

§6.1. Purpose and Goals.

(a) The rules established herein are for CSBG, LIHEAP, and DOE-WAP. Additional program specific requirements are contained within each program subchapter and Chapters 1 and 2 of this title [\(relating to Administration and Enforcement, respectively\)](#).

(b) Programs administered by the Community Affairs ("CA") Division of the Texas Department of Housing and Community Affairs (the "Department") support the Department's statutorily assigned mission.

(c) The Department accomplishes its mission chiefly by acting as a conduit for federal grant funds and other assistance for housing and community affairs programs. Ensuring program compliance with the state and federal laws that govern the CA 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) In instances of a disaster, the Department may pursue waivers or explore flexibilities as addressed in [CSBG IM --HHS Information Memorandum \(IM\) 154](#) (and any other subsequent guidance or similar guidance for LIHEAP or DOE WAP) through HHS or DOE within the CA programs in order to serve low income Texans.

§6.2. Definitions.

(a) To ensure a clear understanding of the terminology used in the context of the CSBG, LIHEAP, and DOE-WAP programs of the Community Affairs Division, a list of terms and definitions has been compiled as a reference. Any capitalized terms not specifically defined in this section or any section referenced in this chapter shall have the meaning as defined in Chapter 2306 of the Tex. Gov't Code, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), or applicable federal regulations.

(b) The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise. Refer to Subchapters B, C, and D of this chapter for program specific definitions.

(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) Awarded Funds--The amount of funds or proportional share of funds committed by the Department's Board to a Subrecipient or service area.

(3) Categorical Eligible/Eligibility--A method where a Subrecipient must deem a Household to be eligible for LIHEAP or DOE benefits if that Household includes at least one member that receives assistance under specific federal programs as identified in §§6.307 and 6.406, as applicable.

~~(A) SSI payments from the Social Security Administration; or~~

~~(B) Means Tested Veterans Program payments. See paragraph (30) of this subsection.~~

(4) Child--Household member not exceeding ~~eighteen~~ (18) years of age.

(5) 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.

(6) Community Action Agencies ("~~CAAs~~")--Private Nonprofit Organizations and Public Organizations that carry out the Community Action Program, which was established by the 1964 Economic Opportunity Act to fight poverty by empowering the poor in the United States.

(7) Community Services Block Grant ("~~CSBG~~")--An HHS-funded program which provides funding for CAAs and other Eligible Entities that seek to address poverty at the community level.

(8) Comprehensive Energy Assistance Program ("~~CEAP~~")--A LIHEAP-funded program to assist low-income Households, in meeting their immediate home energy needs.

(9) Concern--A policy, practice or procedure that has not yet resulted in a Finding or Deficiency, but if not changed will or may result in a Finding, or Deficiencies and/or disallowed costs.

(10) Contract--The executed written agreement between the Department and a Subrecipient performing an activity related to a program that describes performance requirements and responsibilities assigned by the document, for which the first day of the Contract ~~T~~ term is the point at which program funds may be considered by a Subrecipient for Expenditure, unless otherwise directed in writing by the Department.

(11) Contract System--A web-based data collection platform which allows Subrecipients of Community Services programs to sign and view Contracts and submit performance and financial reports online.

(12) Contract Term--The period of Expenditure under a Contract.

- (~~41~~13) Contracted Funds--The gross amount of funds Obligated by the Department to a Subrecipient as reflected in a Contract.
- (~~42~~14) Cost Reimbursement--A Contract sanction whereby reimbursement of costs incurred by the Subrecipient is made only after the Department has conducted such review as it deems appropriate, which may be complete or limited, such as on a sampling basis, and approved backup documentation provided by the Subrecipient to support such costs. Such a review and approval does not serve as a final approval and all uses of advanced funds remain subject to review in connection with future or pending reviews, monitoring, or audits.
- (~~43~~15) Declaration of Income Statement ("~~DIS~~")--A Department-approved form used only when it is not possible for an applicant to obtain third party or firsthand verification of income.
- (~~44~~16) Deficiency--Consistent with the CSBG Act, a Deficiency exists when an Eligible Entity has failed to comply with the terms of an agreement or a State plan, or to meet a State requirement. The Department's determination of a Deficiency may be based on the Eligible Entity's failure to provide CSBG services, or to meet appropriate standards, goals, and other requirements established by the State, including performance objectives, or as provided for in §2.203(b) of this title. A Finding, Observation, or Concern that is not corrected, or is repeated, may become a Deficiency.
- (~~45~~17) Deobligate/Deobligation--The partial or full removal of Contracted Funds from a Subrecipient. Partial Deobligation is the removal of some portion of the full Contracted Funds from a Subrecipient, leaving some remaining balance of Contracted Funds to be administered by the Subrecipient. Full Deobligation is the removal of the full amount of Contracted Funds from a Subrecipient. This definition does not apply to CSBG non-Discretionary funds.
- (~~46~~18) Department of Energy ("~~DOE~~")--Federal department that provides funding for a weatherization assistance program.
- (~~47~~19) Department of Health and Human Services ("~~HHS~~")--Federal department that provides funding for CSBG and LIHEAP energy assistance and weatherization.
- (20) Discretionary Funds--CSBG funds, excluding the 90% of the state's annual allocation that is designated for statewide allocation to CSBG Eligible Entities under §6.203 of this subchapter (relating to Formula for Distribution of CSBG Funds) and state administrative funds, maintained by the Department, at its discretion, for CSBG allowable uses as authorized by the CSBG Act.
- (~~48~~21) Dwelling Unit--A house, including a stationary mobile home, an apartment, a group of rooms, or a single room occupied as separate living quarters.
- (~~49~~22) Elderly Person--
- (A) ~~for~~ For CSBG, a person who is 55 years of age or older; and
 - (B) ~~for~~ For CEAP and WAP, a person who is 60 years of age or older.
- (23) Eligible Entity--Those local organizations in existence and designated by the federal and state government to administer programs created under the Federal Economic Opportunity Act of 1964. This includes CAAs, limited-purpose agencies, and units of local government. The CSBG Act defines an Eligible Entity as an organization that was an Eligible Entity on the day before the enactment of the Coats Human Services Reauthorization Act of 1998 (October 27, 1998), or is designated by the Governor to serve a given area of the state and that has a tripartite board or other mechanism specified by the state for local governance.
- (~~20~~24) Emergency--defined as:
- (A) ~~a~~ A natural disaster;
 - (B) ~~a~~ A significant home energy supply shortage or disruption;
 - (C) ~~significant~~ Significant increase in the cost of home energy, as determined by the Secretary

of HHS;

(D) ~~a~~A significant increase in home energy disconnections reported by a utility, a state regulatory agency, or another agency with necessary data;

(E) ~~a~~A significant increase in participation in a public benefit program such as the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. §§2011, et seq.), the national program to provide supplemental security income carried out under Title XVI of the Social Security Act (42 U.S.C. §§1381, et seq.) or the state temporary assistance for needy families program carried out under Part A of Title IV of the Social Security Act (42 U.S.C. §§601, et seq.), as determined by the head of the appropriate federal agency;

(F) ~~a~~A significant increase in unemployment, layoffs, or the number of Households with an individual applying for unemployment benefits, as determined by the Secretary of Labor; or

(G) ~~an~~An event meeting such criteria as the Secretary of HHS, at the discretion of the Secretary of HHS, may determine to be appropriate.

~~(2425)~~ Expenditure--Funds that have been accrued or remitted for purposes of the award, ~~or in the case of CEAP, funds that have been pledged.~~

~~(2226)~~ Families with Young Children--A Household that includes a Child age five or younger. For LIHEAP WAP only, a Family with Young Children also includes a Household that has a pregnant woman.

~~(27)~~ Federal Poverty Income Guidelines--The official poverty income guidelines as issued by HHS annually.

~~(2328)~~ 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 organizations 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 or may result in disallowed costs.

~~(2429)~~ High Energy Burden--A Households with-whose energy burden ~~which~~ exceeds 11% of annual gross income (as defined by the applicable program), determined by dividing a Household's annual home energy costs by the Household's annual gross income.

~~(2530)~~ High Energy Consumption--A Household that is billed more than \$1000 annually for related fuel costs for heating and cooling their Dwelling Unit.

~~(2631)~~ Household--Any individual or group of individuals, excluding unborn children, who are living together as one economic unit. For DOE WAP this includes all persons living in the Dwelling Unit. For CSBG/LIHEAP it includes these persons customarily ~~purchase-purchasing~~ residential energy in common or ~~make-making~~ undesignated payments for energy. In CSBG/LIHEAP a live-in aide, or a Renter with a separate lease that includes a separate bill for utilities ~~would not be~~ is not considered a Household member.

~~(2732)~~ Inverse Ratio of Population Density Factor--The number of square miles of a county divided by the number of poverty Households of that county.

~~(2833)~~ Low Income Household--defined as:

(A) For DOE WAP, a Household whose total combined annual income is at or below 200% of the HHS-Federal Poverty Income guidelines, or a Household who is Categorically Eligible;

(B) For CEAP and LIHEAP WAP, a Household whose total combined annual income is at or below 150% of the HHS-Federal Poverty Income guidelines, or a Household who is Categorically Eligible; and

(C) For CSBG, a Household whose total combined annual income is at or below 125% of the

~~HHS-Federal~~ Poverty Income guidelines.

~~(2934)~~ Low Income Home Energy Assistance Program ("~~LIHEAP~~")--An HHS-funded program which serves Low Income Households who seek assistance for their home energy bills and/or weatherization services.

~~(3035)~~ Means Tested Veterans Program--A program whereby applicants receive payments under §§41315, 1521, 1541, or 1542 of Title 38, United States Code, or under §306 of the Veterans' and Survivors' Pension Improvement Act of 1978. Benefit letters under 38 U.S.C. §§1315, 1541, and 1542 must include language indicating dependency and indemnity compensation. Benefit letters under 38 U.S.C. §1521 must indicate that it is for a veteran's pension, rather than for a service connected disability.

~~(3136)~~ Mixed Status Household--A Household that contains one or more members that are U.S. Citizens, U.S. Nationals, or Qualified Aliens, and one or more members that are Unqualified Aliens.

(37) Monthly Performance and Expenditure Report--Two separate but linked reports indicating a Subrecipient's or Eligible Entity's performance and financial information, due to the Department on or before the fifteenth day of each month of the Contract Term following the reporting month. If the fifteenth falls on a weekend or holiday, the reports must still be entered on or before the fifteenth. The data the Department collects is subject to change based on changes required by DOE or HHS.

~~(3238)~~ Obligation--Funds become obligated upon approval of an award to Subrecipient by the Department's Governing Board, unless the Department does not receive sufficient funding from the cognizant federal entity.

~~(3339)~~ Observation--A notable policy, practice or procedure observed through the course of monitoring.

~~(3440)~~ Office of Management and Budget ("~~OMB~~")--Office within the Executive Office of the President of the United States that oversees the performance of federal agencies and administers the federal budget.

~~(3541)~~ OMB Circulars--Instructions and information issued by OMB to Federal agencies that set forth principles and standards for determining costs for federal awards and establish consistency in the management of grants for federal funds. Uniform cost principles and administrative requirements for local governments and for nonprofit organizations, as well as audit standards for governmental organizations and other organizations expending federal funds are set forth in 2 CFR Part 200, unless different provisions are required by statute or approved by OMB.

~~(3642)~~ Outreach--The method used by a Subrecipient that attempts to identify customers who are in need of services, alerts these customers to service provisions and benefits, and helps them use the services that are available. Outreach is utilized to locate, contact and engage potential customers.

~~(3743)~~ Performance Statement--A document which identifies the services to be provided by a Subrecipient.

~~(3844)~~ Persons with a DisabilitiesDisability--Any individual who is:

(A) ~~an~~An individual described in 29 U.S.C. §701 or has a disability under 42 U.S.C. §§12131 - 12134;

(B) ~~disabled~~Disabled as defined in 42 U.S.C. 1382(a)(3)(A), 42 U.S.C. §423, or in 42 U.S.C. §15001; ~~or~~

(C) ~~receiving~~Receiving benefits under 38 U.S.C. Chapter 11 or 15; or

(D) ~~a~~An individual with a disability as defined in §1.202(4).

- (3945) Population Density--The number of persons residing within a given geographic area of the state.
- ~~(40) Poverty Income Guidelines--The official poverty income guidelines as issued by HHS annually.~~
- (4146) 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 and that is not a Public Organization.
- (4247) Production Schedule--The estimated monthly and quarterly performance targets and Eexpenditures for a Contract period. The Production schedule must be signed by the applicable approved signatory and approved by the Department in writing.
- (4348) Program Year--January 1 through December 31 of each calendar year for CSBG and LIHEAP; ~~and~~ July 1 through June 30 of each calendar year for DOE WAP.
- (4449) Public Organization--A unit of government, as established by the Legislature of the State of Texas. Includes, but may not be limited to, cities, counties, and councils of governments.
- (4550) Qualified Alien--A person that is not a U.S. Citizen or a U.S. National and is described at 8 U.S.C. §1641(b) and (c).
- (4651) Referral--The documented process of providing information to a customer Household about an agency, program, or professional person that can provide the service(s) needed by the customer.
- (4752) Reobligation--The reallocation of Deobligated funds to other Subrecipients.
- (53) Service Area--The geographical area where a Subrecipient must provide services under a Contract.
- (4854) Single Audit--The audit required by ~~Office of Management and Budget (OMB)~~, 2 CFR Part 200, Subpart F, or Tex. Gov't Code, Chapter 738, Uniform Grant and Contract Management, as reflected in an audit report.
- (4955) State--The State of Texas or the Department, as indicated by context.
- (5056) Subcontractor--A person or an organization with whom the Subrecipient contracts with to provide services.
- ~~(51) 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.~~
- ~~(52) Subgrantee--The legal entity to which a Subgrant is awarded and which is accountable to the Subrecipient for the use of the funds provided.~~
- (5357) Subrecipient--An organization that receives federal funds passed through the Department to operate the CSBG, CEAP, DOE WAP and/or LIHEAP program(s).
- (5458) Supplemental Security Income (SSI)--A means tested program run by the Social Security Administration.
- (5559) System for Award Management ("SAM")--Combined federal database that includes the Excluded Parties List System ("EPLS").
- (5660) Systematic Alien Verification for Entitlements ("SAVE")--Automated intergovernmental database that allows authorized users to verify the immigration status of applicants.
- (5761) Texas Administrative Code ("TAC")--A compilation of all state agency rules in Texas.
- (5862) Uniform Grant Management Standards ("UGMS")--The standardized set of financial management procedures and definitions established by Tex. Gov't Code Chapter 783 to promote the efficient use of public funds by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. State agencies

are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state. This includes all Public Organizations. In addition, Tex. Gov't Code Chapter 2105, subjects Subrecipients of federal block grants (as defined therein) to the Uniform Grant and Contract Management Standards.

(~~5963~~) United States Code ("~~U.S.C.~~")--A consolidation and codification by subject matter of the general and permanent laws of the United States.

(~~6064~~) Unqualified Alien--A person that is not a U.S. Citizen, U.S. National, or a Qualified Alien.

(~~6465~~) Vendor Agreement--An agreement between the Subrecipient and energy vendors that contains assurances regarding fair billing practices, delivery procedures, and pricing for business transactions involving LIHEAP beneficiaries.

(~~6266~~) Vulnerable Populations--Elderly persons, Persons with a Disability, and Households with a Child at or below the age of five.

(~~6367~~) Weatherization Assistance Program ("~~WAP~~")--DOE and LIHEAP funded program designed to reduce the energy cost burden of Low Income Households through the installation of energy efficient weatherization materials and education in energy use.

§6.3. Subrecipient Contract.

(a) Subject to prior Board approval, the Department and a Subrecipient shall enter into and execute a Contract for the disbursement of program funds. The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver authorized modifications and/or amendments to the contract, as allowed by state and federal laws and rules.

(b) The governing body of the Subrecipient must pass a resolution authorizing its Executive Director or his/her designee to have signature authority to enter into contracts, sign amendments, and review and approve reports. All Contract actions including extensions, amendments or revisions must be ratified by the governing body at ~~at the next~~ subsequent regularly scheduled meeting no later than 120 calendar days from the Contract action. Minutes relating to this resolution must be on file at the Subrecipient level.

(c) Within 45 calendar days following the conclusion of a Contract issued by the Department, the Subrecipient shall provide a final expenditure and final performance report regarding funds expended under the terms of the Contract.

(d) A ~~P~~performance ~~S~~statement and budget are attachments to the Contract between the Subrecipient and the Department. Execution of the Contract enables the Subrecipient to access funds through the Department's Community Affairs ~~C~~contract ~~S~~system.

(e) Amendments and Extensions to Contracts.

(1) Except for quarterly amendments to non-~~D~~iscretionary CSBG Contracts to add funds as they are received from HHS, and excluding amendments that move funds within budget categories but do not extend time or add funds, amendments and extension requests must be submitted in writing by the Subrecipient, and will not be granted if any of the following circumstances exist:

(A) ~~if~~ if the award for the Contract was competitively awarded and the amendment would materially change the scope of Contract performance;

(B) ~~if~~ if the Subrecipient is delinquent in the submission of their Single Audit or the Single Audit Certification form required by §1.403, (relating to Single Audit Requirements), in Chapter 1 of this title (relating to Administration);

(C) ~~if~~ if the Subrecipient owes the Department disallowed amounts in excess of \$1,000 and a

Department-approved repayment plan is not in place or has been violated;

(D) ~~for~~ For amendments adding funds (not applicable to amendments for extending time) if the Department has cited the Subrecipient for violations within §6.10 of this subchapter (related to Compliance Monitoring) and the corrective action period has expired without correction of the issue or a satisfactory plan for correction of the issue; or

(E) ~~a~~ A member of the Subrecipient's board has been debarred and has not been removed.

(2) Within 30 calendar days of a Subrecipient's request for a Contract amendment or extension request the request will be processed or denied in writing. If denied, the applicable reason from this subsection or other applicable reason will be cited. The Subrecipient may appeal the decision to the Executive Director consistent with Chapter 1, §1.7, of this title, (relating to the Appeals Process).

§6.4. Income Determination.

(a) Eligibility for program assistance is determined under the Federal Poverty Income Guidelines and calculated as described herein (some forms of income may qualify the Household as Categorically Eligible for assistance in §6.2(b)(3), however Categorical Eligibility does not determine the level of benefit, which is determined through the Income Determination process).

(b) Income means cash receipts earned and/or received by the applicant all Household members 18 years of age and older before taxes during applicable tax year(s), but not the excluded income listed in paragraph (2) of this subsection. Income is to be based on the Gross Annual Income (defined as the total amount of non-excluded income earned annually before taxes or any deductions) for all Household members 18 years of age and older. is to be used, not net income,

(c) Exceptions to the use of Gross Income are:

(1) that fFrom non-farm or farm self-employment net receipts must be used (i.e., receipts from a person's own business or from an owned or rented farm after deductions for business or farm expenses); and

(2) From net income from gambling or lottery winnings net income must be used.

(d)(1) If an income source is not excluded below, it must be included when determining income eligibility. (2) Excluded Income:

(A1) Capital gains;

(B2) Any assets drawn down as withdrawals from a bank;

(C3) Balance of funds in a checking or savings account;

(D4) Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002 (Pub. L. 107-110, 42 U.S.C. 604(h)(4));

(E5) Proceeds from the sale of property, a house, or a car;

(F6) One-time payments from a welfare agency to a family or person who is in temporary financial difficulty;

(G7) Tax refunds, Earned Income Tax Credit refunds;

(H8) Jury duty compensation;

(I9) Gifts, loans, and lump-sum inheritances;

(J10) One-time insurance payments, or compensation for injury;

(K11) Non-cash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits;

(L12) Reimbursements (for mileage, gas, lodging, meals, etc.);

(M13) Employee fringe benefits such as food or housing received in lieu of wages;

(N14) The value of food and fuel produced and consumed on farms;

(~~Q15~~) The imputed value of rent from owner-occupied non-farm or farm housing;

(~~P16~~) Federal non-cash benefit programs as Medicare, Medicaid, SNAP, WIC, and school lunches, and housing assistance (Medicare deduction from Social Security Administration benefits should not be counted as income);

(~~Q17~~) Combat zone pay to the military;

(~~R18~~) College scholarships, Pell and other grant sources, assistantships, fellowships and work study, VA Education Benefits ("~~GI Bill~~"), Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);

(~~S19~~) Child support payments (amount paid by payor may not be deducted from income);

(~~F20~~) Income of Household members under 18 years of age including payment to children under the age of 18 made payable to a person over the age of 18;

(~~U21~~) Stipends from senior companion programs, such as Retired Senior Volunteer Program and Foster Grandparents Program;

(~~V22~~) AmeriCorps Program payments, allowances, earnings, and in-kind aid;

(~~23W~~) Depreciation for farm or business assets;

(~~24X~~) Reverse mortgages;

(~~25Y~~) Payments for care of Foster Children;

(~~26Z~~) Payments or allowances made under the Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));

(~~27AA~~) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602(c));

(~~28BB~~) Major disaster and emergency assistance received by individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (93, as amended) and comparable disaster assistance provided by States, local governments, and disaster assistance organizations (42 U.S.C. 5155(d));

(~~29CC~~) Allowances, earnings, and payments to individuals participating in programs under the Workforce Innovation and Opportunity Act (29 U.S.C.3101));

(~~DD30~~) Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056(g));

(~~31EE~~) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858(q));

(~~32FF~~) Certain payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));

(~~33GG~~) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459(e));

(~~34HH~~) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (94, §6);

(~~35H~~) The first \$2,000 of per capita shares received from judgment funds awarded by the National Indian Gaming Commission or the U.S. Claims Court, the interests of individual Indians in trust or restricted lands, and the first \$2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407 - 1408). This exclusion does not include proceeds of gaming operations regulated by the Commission;

(~~36J~~) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund

(101) or any other fund established pursuant to the settlement in In Re Agent Orange Liability Litigation, M.D.L. No. 381 (E.D.N.Y.);

~~(KK37)~~ Payments received under the Maine Indian Claims Settlement Act of 1980 (96, 25 U.S.C. 1728);

~~(LL38)~~ Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (95);

~~(39MM)~~ Any allowance paid under the provisions of 38 U.S.C. 1833(c) to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802 - 05), children of women Vietnam veterans born with certain birth defects (38 U.S.C. 1811 - 16), and children of certain Korean service veterans born with spina bifida (38 U.S.C. 1821);

~~(40NN)~~ Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b));

~~(QQ41)~~ Payments from any deferred U.S. Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts (42 U.S.C. §1437a(b)(4));

~~(PP42)~~ A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled Elouise Cobell et al. v. Ken Salazar et al., 816 F.Supp.2d 10 (Oct. 5, 2011 D.D.C.), for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010 (Pub. L. 111-291);

~~(QQ43)~~ Per capita payments made from the proceeds of Indian Tribal Trust Cases as described in PIH Notice 2013-30 "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a));

(44) Payments of up to \$100,000 a year from an account established under the Achieving a Better Life Experience Act of 2014 or the ABLE Act of 2014 (P.L. 113-295) to a qualified beneficiary that are expended on qualified disability expenses; and

~~(RR45)~~ Any other items which are excluded by virtue of federal or state legislation or by ~~properly~~ adopted federal regulations that have taken effect. The Department will, from time to time, provide on its website updated links to such federal or state exceptionexclusions. Notwithstanding such information, a Subrecipient may rely on any adopted federal or state exception-exclusion on and after the date on which it took effect.

~~(eb)~~ The requirements for determining whether an applicant Household is eligible for assistance require the Subrecipient to annualize the Household income based on verifiable documentation of income, within 30 days of the application date. ~~Income is based on the Gross Annual Income for all household members 18 years or older. Annual gross income is the total amount of money earned annually before taxes or any deductions.~~

~~(fe)~~ The Subrecipient must document all sources of income, including excluded income, for 30 days prior to the date of application, for all household members 18 years of age or older.

~~(gd)~~ Identify all income sources, not on the excluded list, for income calculation.

(1) The Subrecipient must calculate projected annual income by annualizing current income. Income that may not last for a full 12 months should be calculated assuming current circumstances will last a full 12 months, unless it can be documented that employment is less than 12 months/year and pay is not prorated over the entire 12 month period. For incomes not able to be annualized over a twelve month period, the income shall be calculated on the total annual earning period (e.g., for a teacher paid only nine months a year, the annual income should be the income earned during those nine months). In limited cases where income is not paid hourly, weekly, bi-weekly, semi-monthly nor monthly, the Subrecipient may contact the

Department to determine an alternate calculation method in unique circumstances on a case-by-case basis.

(2) For all customers including those with categorical eligibility, the Subrecipient must collect verifiable documentation of Household income received in the 30 days prior to the date of application.

(3) Once all sources of income are known, Subrecipient must convert reported income to an annual figure. Convert periodic wages to annual income by multiplying:

(A) Hourly wages by the number of hours worked per year (2,080 hours for full-time employment with a 40-hour week and no overtime);

(B) Weekly wages by 52;

(C) Bi-weekly wages (paid every other week) by 26;

(D) Semi-monthly wages (paid twice each month) by 24; and

(E) Monthly wages by 12.

(F) One-time employment income should be added to the total after the income has been annualized.

~~(4) Except where a more frequent period is required by federal regulation, re-certification of income eligibility must occur at least every twelve months.~~

~~(h)~~ If a federal or state requirement provides an updated definition of income or method for calculating income, the Department will provide written notice to Subrecipients about the implementation date for the new requirements.

~~(i)~~ If proof of income is unobtainable, the applicant must complete and sign a Declaration of Income Statement (DIS).

~~(j)~~ For CSBG and LIHEAP, a live in aide or attendant is not considered part of the Household for purposes of determining Household income, but is considered for a benefit based on the size of the Household. Example 4(1): A Household applies for assistance. There are four people in the Household. One of the four people is a live-in aide. To determine if the Household is qualified, annualize the income of the other three Household members and compare it to the three person income limit. However, if the amount of benefit is based on Household size (such as benefit level based on the number of people in the Household), then this is a four person Household.

~~(k)~~ A Subrecipients shall not discourage anyone from applying for assistance. Subrecipients shall provide all potential customers with an opportunity to apply for programs.

§6.5. Documentation and Frequency of Determining Customer Eligibility.

(a) For CEAP and CSBG, income must be verified annually, with a new application each Program Year.

(b) For WAP, income must be verified at the initial application. If the customer is on a wait-list for over 12 months since initial application, Household income must be updated within at least 12 months of the unit being initially inspected.

§6.6. Subrecipient Contact Information and Required Notifications.

(a) In accordance with §1.22 of this title (relating to Providing Contact Information to the Department), Subrecipients will notify the Department through the CA Contract System and provide contact information for key management staff (Executive Director, Chief Financial Officer, Program Director/Manager/Coordinator or any other person, regardless of title, generally performing such duties) vacancies and new hires within 30 days of such occurrence.

(b) For Eligible Entities, a As vacancies exceed the 90 day threshold within the organization's

Eligible Entity's Board of Directors or for a Public Organization for the advisory board of directors, the Department will be notified of such vacancies and, if applicable, the sector the advisory board member or advisory board member represented.

(c) Contact information for all members of the Board of Directors or advisory board of directors must be provided to the Department and shall include: each board member's name, the position they hold, their term, their mailing address (which must be different from the organization's mailing address), phone number (different from the organization's phone number), fax number (if applicable), and the direct e-mail address for the chair of the advisory board.

(d) The Department will rely solely on the contact information supplied by the Subrecipient in the Department's web-based Community Affairs 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 CA Contract System will be deemed delivered to the Subrecipient. Correspondence from the Department may be directly uploaded to the Subrecipient's CA contract account using a secure electronic document attachment system. Once uploaded, notification of the attachment will be sent electronically to the email address listed in the CA Contract System. 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.

(e) Upon the hiring of a new program Coordinator-coordinator (e.g., the weatherization program coordinator) for an activity funded by non-discretionary CSBG, LIHEAP, or DOE-WAP the Subrecipient is required to contact the Department with written notification within 30 calendar days of the hiring, and to request training and technical assistance.

(f) Contact information for a primary and secondary contact are required to be provided to the Department and accurately maintained as it relates to the handling of disaster response and emergency services as provided for in §6.207(d).

§6.7. Subrecipient Reporting Requirements.

(a) Subrecipient must submit the a Monthly Performance and Expenditure Report through the Community Affairs Contract System not later than the fifteenth (15th) day of each month following the reported month of the Contract Period. Reports are required even if a fund reimbursement or advance is not being requested. It is the responsibility of the Subrecipient to upload information into the Department's designated database.

(b) Subrecipient shall reconcile their expenditures with their performance on at least a monthly basis before seeking a request for funds for the following month. If the Subrecipient is unable to reconcile on a month-to-month basis, the Subrecipient must provide at the request of the Department, a written explanation for the variance and take appropriate measures to reconcile the subsequent month. It is the responsibility of a Subrecipient to demonstrate the compliant use of all funds provided during the Contract Term. ~~ensure that it has documented the compliant use of all funds provided prior to receipt of additional funds, or if this cannot be done to address the repayment of such funds.~~

~~(c) Subrecipient shall electronically submit to the Department no later than 45 days after the end of the Subrecipient Contract term a final expenditure or reimbursement and programmatic report utilizing the expenditure report and the performance report.~~

~~(c)~~ If the Department has provided funds to a Subrecipient in excess of the amount of reported Expenditures in the ensuing month's report, no additional funds will be released until those excess funds have been expended. For example, in January a Subrecipient requests and is advanced \$50,000. In February, if the Subrecipient reports \$10,000 in Expenditures and an

anticipated need for \$30,000, no funds will be released.

(d) Subrecipient shall electronically submit to the Department, no later than 45 days after the end of the Subrecipient Contract Term, a final accounting of the Contract's expenditure or reimbursement utilizing the final Monthly Performance and Expenditure Report. If this or a later reconciliation results in funds owed to the Department, Subrecipient shall, within ten calendar days, either send funds to the Department, or -contact the Department to enter into a time-limited Department approved repayment plan.

(e) CSBG Annual Report and National Survey. Federal requirements mandate all states to participate in the preparation of an annual performance measurement report. To comply with the requirements of 42 U.S.C. §9917, all CSBG Eligible Entities and other organizations receiving CSBG funds are required to participate.

(f) The Subrecipient shall submit other reports, data, and information on the performance of the DOE and LIHEAP-WAP program activities as required by DOE pursuant to 10 CFR §440.25 or by the Department.

(g) Subrecipient shall submit other reports, data, and information on the performance of the federal program activities as required by the Department.

(h) A Subrecipient may refer a Contractor to the Department for Debarment consistent with §2.401, regarding Debarment from Participation in Programs Administered by the Department, of this title.

§6.8. Potential Applicant/Applicant/Customer Denials and Appeal Rights.

(a) This section does not apply to entities that only receive Discretionary CSBG funds.

(b) Subrecipient shall establish a written procedure for the handling of denials of service when the denial involves an individual inquiring or applying for services/assistance whom is communicating or behaving in a threatening or abusive manner.

(b)(1) Subrecipient shall establish a denial of service complaint procedure to address written complaints from program applicants/customers. At a minimum, the procedures described in paragraphs (b)(1) - (8) of this subsection shall be included:

(1) Subrecipient shall provide a written denial of assistance notice to applicant within ~~ten~~(10) calendar days of the determination. Such a determination is defined as a denial of assistance, but does not include a level of assistance lower than the possible program limits or a reduction in assistance, as long as such process is in accordance with the Subrecipient's written policy. This notification shall include written notice of the right of a hearing and specific reasons for the denial by program. The applicant wishing to appeal a decision must provide written notice to Subrecipient within ~~twenty~~(20) calendar days of receipt of the denial notice.

(2) A Subrecipient must establish an appeals committee composed of at least three persons. Subrecipient shall maintain documentation of appeals in their customer files.

(3) Subrecipient shall hold a private appeal hearing (unless otherwise required by law) by phone or in person in an accessible location within ~~ten~~(10) business days after the Subrecipient received the appeal request from the applicant and must provide the applicant notice in writing of the time/location of the hearing at least seven ~~(7)~~calendar days before the appeal hearing.

(4) Subrecipient shall record the hearing.

(5) The hearing shall allow time for a statement by Subrecipient staff with knowledge of the case.

(6) The hearing shall allow the applicant at least equal time, if requested, to present relevant information contesting the decision.

(7) Subrecipient shall notify applicant of the decision in writing. The Subrecipient shall mail the

notification by close of business on the third calendar day following the decision (three day turn-around).

(8) If the denial is solely based on income eligibility, the provisions described in paragraphs (2) - (7) of this subsection do not apply, ~~and but~~ the applicant may request a recertification of income eligibility based on initial documentation provided at the time of the original application. The recertification will be an analysis of the initial calculation based on the documentation received with the initial application for services and will be performed by an individual other than the person who performed the initial determination. If the recertification upholds the denial based on income eligibility documents provided at the initial application, the applicant must be notified in writing.

(~~e~~) If the applicant is not satisfied with Subrecipient's decision, the applicant may further appeal the decision in writing to the Department within ~~ten (10)~~ calendar days of notification of an adverse decision.

(~~d~~) Applicants/customers who allege that the Subrecipient has denied all or part of a service or benefit in a manner that is unjust, violates discrimination laws, or without reasonable basis in law or fact, may request a contested hearing under Tex. Gov't Code, Chapter 2001.

(~~e~~) The hearing under subsection (d) shall be conducted by the State Office of Administrative Hearings on behalf of the Department in the locality served by the Subrecipient, for which the procedures are further described in §1.13, (relating to Contested Case Hearing Procedures), of this title.

(~~f~~) If the applicant/customer appeals to the Department, the Subrecipient's funds that could be pledged to that Household should remain unencumbered until the Department completes its decision.

§6.9. Training Funds for Conferences.

The Department may provide financial assistance to Subrecipients for training and technical activities for state sponsored, federally sponsored, and other relevant workshops and conferences. Subrecipients may use program training funds to attend conferences provided the conference agenda includes topics directly related to administering the program. Costs to attend the conference must be prorated by program for the appropriate portion. Only staff billed to the specific program, directly or indirectly, may charge any training and travel costs to the program.

§6.10. Compliance Monitoring.

(a) Purpose and Overview.

(1) This section provides the procedures that will be followed for monitoring for compliance with the programs in 10 TAC Chapter 6.

(2) Any entity administering any or all of the programs detailed in 10 TAC Chapter 6 is a Subrecipient. A Subrecipient may also administer other programs, including programs administered by other state or federal agencies and privately funded programs. If the Subrecipient has contracts for other programs through the Department, including but not limited to the Emergency Solutions Grants, Ending Homelessness Fund, Homeless Housing and Services Program, HOME Partnerships Program, the Neighborhood Stabilization Program, or the Texas State Housing Trust Fund, the Department may, but is not required to and does not commit to, coordinate monitoring of those programs with monitoring of Community Affairs Division programs-funds under this subchapter.

(3) Any entity administering any or all of the programs provided for in subsection (a) of this

section as part of a Memorandum of Understanding ("MOU"), contract, or other legal agreement with a Subrecipient is a Subgrantee.

(b) Frequency of Reviews, Notification, and Information Collection.

(1) In general, a Subrecipients or Subgrantees will be scheduled for monitoring based on state or federal monitoring requirements and/or a risk assessment. Factors to be included in the risk assessment include but are not limited to: the number of Contracts administered by the Subrecipient ~~or Subgrantee~~, the amount of funds awarded and expended, the length of time since the last monitoring, findings identified during previous monitoring, issues identified through the submission or lack of submission of a single audit, complaints received by the Department, and reports of fraud, waste and/or abuse. The risk assessment will also be used to determine which Subrecipients ~~or Subgrantees~~ will have an onsite review and which may have a desk review.

(2) The Department will provide a Subrecipient ~~or Subgrantee~~ with written notice of any upcoming onsite or desk monitoring review, and such notice will be given to the Subrecipient and Subgrantee by email to the Subrecipient's ~~and Subgrantee's~~ chief executive officer at the email address most recently provided to the Department by the Subrecipient ~~or Subgrantee~~. In general, a 30 day notice will be provided. However, if a credible complaint of fraud or other egregious noncompliance is received the Department reserves the right to conduct unannounced monitoring visits. It is the responsibility of the Subrecipient to provide to the Department the current contact information for the organization and the Board in accordance with §6.6 of this chapter (relating to Subrecipient Contact Information) and §1.22 of this title (relating to Providing Contact Information to the Department).

(3) Upon request, a Subrecipients or Subgrantees must make available to the Department all books and records that the Department determines are reasonably relevant to the scope of the Department's review. Typically, these records may include (but are not limited to):

(A) Minutes of the governing board and any committees thereof, together with all supporting materials;

(B) Copies of all internal operating procedures or other documents governing the Subrecipient's operations;

(C) The Subrecipient's Board approved operating budget and reports on execution of that budget;

(D) The Subrecipient's strategic plan or comparable document if applicable and any reports on the achievement of that plan;

(E) Correspondence to or from any independent auditor;

(F) Contracts with any third parties for goods or services and files documenting compliance with any applicable procurement and property disposition requirements;

(G) All general ledgers and other records of financial operations (including copies of checks and other supporting documents);

(H) Applicable customer files with all required documentation;

(I) Applicable human resources records;

(J) Monitoring reports from other funding entities;

(K) Customer files regarding complaints, appeals and termination of services; and

(L) Documentation to substantiate compliance with any other applicable Department contract provisions and state or federal requirements including, but not limited to UGMS, 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, Audit Requirements for Federal Awards, ~~the Davis-Bacon Act~~, Lead Based Paint, the Personal Responsibility and Work Opportunity Act,

and limited English proficiency requirements.

(c) Post Monitoring Procedures.

(1) In general, within 30 calendar days of the last day of the monitoring visit, a written monitoring report will be prepared for the Subrecipient describing the monitoring assessment and any corrective actions, if applicable. The monitoring report will be emailed to the Board Chair and the Subrecipient's ~~and Subgrantee~~ Executive Director. For a Private Nonprofit Organization, all Department monitoring reports and Subrecipient responses to monitoring reports must be provided to the governing body of the Subrecipient at the next regularly scheduled meeting. For a Public Organization all Department monitoring reports and Subrecipient responses to monitoring reports must be provided to the governing body of the Subrecipient, and for a CSBG Subrecipient to the advisory board at the next regularly scheduled meeting. Issues of concern over which there is uncertainty or ambiguity may be discussed by the Department with the staff of cognizant agencies overseeing federal funding. Certain types of suspected or observed improper conduct may trigger requirements to make reports to other oversight authorities, state and federal, including but not limited to the State Auditor's Office and applicable Inspectors General.

(2) Subrecipient Response. If there are any findings of noncompliance requiring corrective action, the Subrecipient will be provided 30 calendar days, from the date of the email, to respond which may be extended by the Department for good cause. In order to receive an extension, the Subrecipient must submit a written request to the ~~Director~~ Chief of Compliance within the corrective action period, stating the basis for good cause that justifies the extension. The Department will approve or deny the extension request within five ~~(5)~~ calendar days.

(3) Monitoring Close Out. Within 45 calendar days after the end of the corrective action period, a close out letter will be issued to the Subrecipient. If the Subrecipient supplies evidence establishing continual compliance that negates the finding of noncompliance, the issue of noncompliance will be rescinded. If the Subrecipient's timely response satisfies all findings and concerns noted in the monitoring letter, the issue of noncompliance will be noted as corrected. In some circumstances, the Subrecipient may be unable to secure documentation to correct a finding. In those instances, if there are mitigating circumstances, the Department may note the finding is not corrected but close the issue with no further action required. If the Subrecipient's response does not correct all findings noted, the close out letter will identify the documentation that must be submitted to correct the issue.

(4) Options for Review. If, following the submission of corrective action documentation, Compliance staff continues to find the Subrecipient ~~or Subgrantee~~ in noncompliance, and the Subrecipient disagrees, the Subrecipient may request or initiate review of the matter using the following options, where applicable:

(A) If the issue is related to a program requirement or prohibition of a federal program, the Subrecipient~~s~~ may contact the applicable federal program officer for guidance or request that the Department contact applicable federal program officer for guidance without identifying the Subrecipient.

(B) If the issue is related to application of a provision of the Contract or a requirement of the Texas Administrative Code, the Subrecipient may request to submit an appeal to the Executive Director consistent with §1.7, Staff Appeals Process, in Chapter 1 of this ~~Title~~ title.

(C) A Subrecipient~~s~~ may request Alternative Dispute Resolution ("ADR"). ~~A~~ Subrecipient ~~may~~ should send a proposal to the Department's Dispute Resolution Coordinator to initiate ADR pursuant to §1.17 of this title (relating to Appeals Process).

(5) If a Subrecipients does not respond to a monitoring letter or fail to provide acceptable evidence of compliance, the matter will be handled through the procedures described in Chapter 2 of this Title, (relating to Enforcement).

SUBCHAPTER B COMMUNITY SERVICES BLOCK GRANT

§6.201. Background and Definitions.

(a) In addition to this subchapter, except where noted, the rules established in Subchapter A of this chapter (relating to General Provisions) and Chapters 1 and 2 (relating to Administration and Enforcement, respectively) of this Part apply to the CSBG Program. The CSBG Act was amended by the "Community Services Block Grant Amendments of 1994" and the Coats Human Services Reauthorization Act of 1998. The Secretary is authorized to establish a community services block grant program and make grants available through the program to states to ameliorate the causes of poverty in communities within the states. Although Eligible Entities receive an allocation of CSBG funds, the CSBG program is not an entitlement program for eligible customers.

(b) The Texas Legislature designates the Department as the lead agency for the administration of the CSBG program pursuant to Tex. Gov't Code, §2306.092. CSBG funds are made available to Eligible Entities to carry out the purposes of the CSBG program.

(c) Except as otherwise noted herein all references in this subchapter to an Eligible Entity's board means both the governing board of the Private Nonprofit or the advisory board of the Public Organization.

(d) Definitions.

(1) Community Action Plan ("CAP")--~~An annual~~ plan required by the CSBG Act which describes the local Eligible Entity service delivery system, how coordination will be developed to fill identified gaps in services, how funds will be coordinated with other public and private resources, and how the local entity will use the funds to support innovative community and neighborhood based initiatives related to the grant. ~~A comprehensive CAP developed with extensive input from the local community and an engaged tripartite board is a fundamental underpinning of an Eligible Entity's role in administering its programs to ameliorate poverty and its causes and to transition eligible Households it serves out of poverty.~~

(2) CSBG Act--The CSBG Act is a law passed by Congress authorizing the Community Services Block Grant. The CSBG Act was amended by the Community Services Block Grant Amendments of 1994 and the Coats Human Services Reauthorization Act of 1998 under 42 U.S.C. §§9901, *et seq.* The CSBG Act authorized establishing a community services block grant program to make grants available through the program to states to ameliorate the causes of poverty in communities within the states.

(3) Direct Customer Support--includes salaries and fringe benefits of case management staff as well as direct benefits provided to customers.

~~(4) Discretionary Funds--CSBG funds, excluding the 90% of the state's annual allocation that is designated for statewide allocation to CSBG Eligible Entities under §6.203 of this Subchapter and state administrative funds, maintained by the Department, at its discretion, for CSBG allowable uses as authorized by the CSBG Act.~~

~~(5) Eligible Entity--Those local organizations in existence and designated by the federal and state government to administer programs created under the Federal Economic Opportunity Act of 1964. This includes CAAs, limited purpose agencies, and units of local government. The CSBG Act~~

~~defines an eligible entity as an organization that was an eligible entity on the day before the enactment of the Coats Human Services Reauthorization Act of 1998 (October 27, 1998), or is designated by the Governor to serve a given area of the state and that has a tripartite board or other mechanism specified by the state for local governance.~~

~~(46)~~ National Performance Indicator ("NPI")--A federally defined measure of performance within the Department's Community Affairs Contract System for measuring performance and results of Subrecipients of funds.

~~(57)~~ Needs Assessment--An assessment of community needs in the areas to be served with CSBG funds.

~~(68)~~ Quality Improvement Plan ("QIP")--A plan developed by a CSBG Eligible Entity to correct Deficiencies identified by the Department as further described in §§2.203 and 2.204 of this title (Termination and Reduction of Funding for CSBG Eligible Entities and Contents of a Quality Improvement Plan, respectively).

~~(79)~~ Results Oriented Management and Accountability (ROMA)--ROMA provides a framework for continuous growth and improvement among Eligible Entities. ROMA implementation is a federal requirement for receiving federal CSBG funds, outlined in HHS IM 152.

~~(8)~~ Strategic Plan--A planning document which takes into consideration the needs of the targeted community and identifies an organization's vision and mission; its strengths, weaknesses, opportunities, and threats; external and internal factors impacting the organization; and utilizes this information to set goals, objectives, strategies, and measure to meet over an identified period of time.

(9) Transitioned Out of Poverty ("TOP")--a Household who was CSBG eligible and as a result of the delivery of CSBG-supported case management services attains an annual income in excess of 125% of the poverty guidelines for 90 calendar days.

~~(ed)~~ Use of certain terminology. In these rules and in the Department's administration of its programs, including the CSBG program, certain terminology is used that may not always align completely with the terminology employed in the CSBG Act. The term "monitoring" is used interchangeably with the CSBG Act term "review" as used in 42 U.S.C. §9915 of the CSBG Act. Similarly, the terms "findings," "concerns," and "violations" are used interchangeably with the term "deficiencies" as used in 42 U.S.C. §9915 of the CSBG Act although, in a given context, they may be assigned more specific, different, or more nuanced meanings, as appropriate.

§6.202. Purpose and Goals.

The Department passes through CSBG funds to ~~a network of~~ Public Organizations and Private Nonprofits that are to comply with the purposes of the CSBG Act.

§6.203. Formula for Distribution of CSBG Funds.

(a) The CSBG Act requires that no less than 90% of the state's annual allocation be allocated to Eligible Entities. The Department currently utilizes a multi-factor fund distribution formula to equitably provide CSBG funds throughout the state to the CSBG Eligible Entities. The formula is subject to adjustment from time to time when amended as part of the CSBG State Plan.

(b) The distribution formula incorporates the most current U.S. Census Bureau Decennial Census and data from the American Community Survey for information on persons not to exceed 125% of poverty. The formula is applied as follows:

(1) ~~each~~ Each Eligible Entity receives a \$50,000 base award;

(2) ~~then~~ Then, the factors of poverty population, weighted at 98% and inverse population density,

weighted at 2%, are applied to the state's allocation required to be distributed among Eligible Entities;

(3) ~~if~~If the base combined with the calculation resulting from the weighted factors in subparagraph (2) do not reach a minimum floor of \$150,000, then a minimum floor of \$150,000 is reserved for each of those CSBG eligible entities, resulting in a proportional reduction in other funds available for formula-based distribution;

(4) ~~then~~Then, the formula is re-applied to the balance of the 90% funds for distributing the remaining funds to the remaining CSBG eligible entities.

(c) Following the use of the decennial Census data, then on a biennial basis, the Department will use the most recent American Community Survey five year estimate data that is available. To the extent that there are significant reductions in CSBG funds received by the Department, the Department may revise the CSBG distribution formula through a rulemaking process.

(d) In years where permitted by the federal government, an Eligible Entity~~Subrecipients~~ that does not obligate more than 20% of ~~their~~its base allocation in a Program Year (excluding any additional funds that may be distributed by the Department) by the end of the first quarter of the year following the allocation year for two consecutive years will have funding recaptured consistent with 42 U.S.C. §9907(a)(3). This recapture of funds does not trigger the procedures or protections of HHS ~~Information Memorandum~~IM 116. The Subrecipient of the funds will be provided a Contract for the average percentage of funds that they expended over the last two years. The Eligible Entity will be provided an opportunity to redistribute the funds through a competitive request for proposals to a Private Nonprofit Organization, located within the community served by the Eligible Entity. If the Eligible Entity selects this option it will be responsible for monitoring the Private Nonprofit Organization selected. If the Subrecipient does not provide them to an eligible Private Nonprofit Organization, located within the community served by the Subrecipient, the Department in accordance with ~~CSBG~~HHS IM 42 shall redistribute the funds to another Eligible Entity to be used in accordance with the CSBG and Department rules.

(e) Five percent of the Department's annual allocation of CSBG funds may be expended on activities listed in 42 U.S.C. §9907(b)(A) - (H) and further described in the annual plan or by Board approval. The Department may also opt to distribute unexpended funds described in subsection (f) of this section for these activities.

(f) Up to 5% of the State's annual allocation of CSBG funds will be used for the Department's administrative purposes consistent with state and federal law.

§6.204. Use of Funds.

CSBG funds are contractually obligated to Eligible Entities, and accessed through the Department's web-based Community Affairs ~~C~~eontract ~~S~~system. Prior to executing a Contract for CSBG funds, the Department will verify that neither the entity, nor any member of the Eligible Entity's Board is federally debarred or excluded. Unless modified by Contract, the annual allocation has a beginning date of January 1 and an end date of December 31, regardless of the Eligible Entity's fiscal year. Eligible Entities may use the funds for administrative support and/or for direct services such as: education, employment, housing, health care, nutrition, transportation, linkages with other service providers, youth programs, emergency services, *i.e.*, utilities, rent, food, ~~S~~shelter, clothing, etc.

§6.205. Limitations on Use of Funds.

- (a) Construction of Facilities. CSBG funds may not be used for the purchase, construction or improvement of land, or facilities as described in (42 U.S.C. §9918(a)).
- (b) The CSBG Act prohibits the use of funds for partisan or nonpartisan political activity; any political activity associated with a candidate, contending faction, or group in an election for public or party office; transportation to the polls or similar assistance with an election; or voter registration activity, (for example, contacting a congressional office to advocate for a change to any law is a prohibited activity).
- (c) Utility and rent deposit refunds from vendors must be reimbursed to the Subrecipient and not the customer. Refunds must be treated as program income, and returned to the Department within ten calendar days of receipt.

§6.206. CSBG Community Assessment, Community Action Plan, and Strategic Plan.

- (a) In accordance with the CSBG Act, each Eligible Entity must submit a Community Action Plan on an annual basis. The Community Action Plan is required to be submitted to the Department by a date directed by the Department, for approval prior to execution of a Contract.
- (b) Consistent with organizational standards relating to Data Analysis and Performance, the Eligible Entity must present to its governing board for review or action, at least every twelve months, an analysis of the agency's outcomes and any operational or strategic program adjustments and improvements identified as necessary; and the organization must submit its annual CSBG Information Survey data report which reflects customer demographics and organization-wide outcomes.
- (c) Every three ~~(3)~~ years each Eligible Entity shall complete a Community Assessment (may also be called "Community Needs Assessment" or "CNA"), upon which the annual ~~CAP~~ Community Action Plan will be based. Guidance on the content and requirements of the Community Assessment will be released by the Department. Information related to the Community Assessment shall be submitted to the Department on or before a date specified by the Department in the previous year's Contract. The Community Assessment will require, among other things, that the top five needs of the ~~S~~ service Area are identified.
- (d) Services to Poverty Population. An Eligible Entity ~~administering services to customers in one or more CSBG service area counties in its CSBG Service Area~~ shall ensure that such services are rendered reasonably and in an equitable manner to ensure fairness among all potential applicants eligible for services. Services rendered must reflect the poverty population ratios in the ~~S~~ service Area and services should be distributed based on the proportionate representation of the poverty population within a county. A variance of greater than plus or minus 20% may constitute a Deficiency. An Eligible Entity ~~administering services to customers in one or more with a service area counties of a single county~~ shall demonstrate marketing and outreach efforts to make available direct services to a reasonable percentage of the county's eligible population based on the most recent census or American Community Survey data, as directed by the Department. Services should also be distributed based on the proportionate representation of the poverty population within a county. Other CSBG-funded organizations shall ensure that services are rendered in accordance with requirements of the CSBG ~~C~~ contract.
- (e) The ~~CAP~~ Community Action Plan shall be derived from the Community Assessment and at a minimum include a budget, a description of the delivery of case management services, in accordance with the National Performance Indicators, and include a ~~P~~ performance ~~S~~ statement that describes the services, programs, activities, and planned outcomes to be delivered by the organization.

(f) The ~~CAP~~ Community Action Plan must take into consideration the outcomes expected by previous ~~CAP~~ Community Action Plan(s). If past outcomes were not achieved as reported in the CA ~~Contract~~ System, or outcomes exceed the targeted goals, the Subrecipient must assess the reasons for the variance in outcomes, determine what will be done differently if continuing to include those outcome goals, and identify how any of issues or obstacles will be mitigated or addressed. An effective CAP should be constantly monitored and adjusted to optimize achievement of results consistent with CSBG Act goals.

(g) The Community Assessment and the CAP both require Department approval; those that do not meet the Department's requirements as articulated in these rules, in federal guidance, or in ~~Department-Subrecipient's Contract~~ actions described and contemplated in these rules will be required to be revised until they meet the Department's satisfaction.

(h) If circumstances warrant amendments to the Community Assessment or the CAP, a Subrecipient must provide a written request to the Department identifying the specific requested change(s) to the document with a justification for each change. The Department will approve or deny amendment requests in writing.

(i) Hearing. In conjunction with the submission of the CAP, the Eligible Entity must annually submit to the Department a certification from its board that a public hearing was posted, and conducted on the proposed use of that year's funds.

(j) At least eEvery five ~~(5)~~ years, each Eligible Entity shall ~~complete-develop~~ a Strategic Plan using the full ROMA cycle or a comparable system. The Strategic Plan shall meet the requirements of CSBG Organizational Standards (specifically Organization Standards 4.3, 6.1 through 6.5, and 9.3) and meet, with which the annual Community Action Plan should be consistent the requirements in the Department's Strategic Plan guidance. Information related to t The Strategic Plan shall be submitted to the Department on or before a date specified by the Department in the previous year's Contract.

(k) Each CSBG Subrecipient must develop a Performance Statement which identifies the services, programs, and activities to be administered by that organization.

§6.207. Subrecipient Requirements.

(a) An Eligible ~~Entities~~ Entity shall submit information regarding the planned use of funds as part of the CAP as described in §6.206 of this subchapter.

(b) HHS issues terms and conditions for receipt of funds under the CSBG. Subrecipients will comply with the requirements of the terms and conditions of the CSBG award.

(c) CSBG Eligible Entities, and other CSBG organizations where applicable, are required to coordinate CSBG funds and form partnerships and other linkages with other public and private resources and coordinate and establish linkages between governmental and other social service programs to assure the effective delivery of services and avoid duplication of services.

(d) CSBG Eligible Entities will provide, on an emergency basis, the provision of supplies and services, nutritious foods, and related services as may be necessary to counteract the conditions of starvation and malnutrition among low-income individuals. The nutritional needs may be met through a referral source that has resources available to meet the immediate needs.

(e) CSBG Eligible Entities and other CSBG organizations are required to coordinate for the provision of employment and training activities through local workforce investment systems under the Workforce Innovation and Opportunity Act, as applicable.

(f) CSBG Eligible Entities are required to inform custodial parents in single-parent families that participate in programs, activities, or services about the resources available through the Texas

Attorney General's Office with respect to the collection of child support payments and refer eligible parents to the Texas Attorney General's Office of Child Support Services Division.

(g) Documentation of Services. Subrecipient must maintain a record of referrals and services provided.

(h) Intake Form. To fulfill the requirements of 42 U.S.C. §9917, CSBG Subrecipients must complete and maintain an intake form that screens for income, assesses customer needs, and captures the demographic and household characteristic data required for the Mmonthly Pperformance and Expenditure Report, referenced in Subchapter A of this chapter (relating to General Provisions), for all Households receiving a community action service. CSBG Subrecipients must complete and maintain a manual or electronic intake form for all customers for each program year.

(i) Case Management.

(1) An Eligible Entity ~~Subrecipients are-is~~ required to provide integrated case management services. Subrecipients ~~are-is~~ required to identify and set goals for Households they serve through the case management process. Subrecipients ~~isare~~ required to evaluate and assess the effect ~~their-its~~ case management system has on the short-term (less than three months) and long-term (greater than three months) impact on customers, such as enabling the customer to move from poverty to self-sufficiency, to maintain stability. CSBG funds may be used for short term case management to meet immediate needs. In addition, CSBG funds may be used to provide long-term case management to persons working to transition out of poverty and achieve self-sufficiency.

(2) An Eligible Entity ~~Subrecipients~~ must have and maintain documentation of case management services provided.

(3) An Eligible ~~Entities-Entity are-is each~~ assigned a minimum TOP goal by the Department. Eligible Entities must provide ongoing case management services for these ~~transitioning out of poverty~~ "TOP" Households. The case management services must include the components described in subparagraphs (A) - (L) of this paragraph. Subrecipients must also provide case management clients with a Customer Satisfaction Survey, described in subparagraph (M) of this paragraph, for the client to complete anonymously. ~~And, a~~ At least annually, Subrecipients must evaluate the effectiveness of their case management services, as described in subparagraph (N) of this paragraph. The forms or systems utilized for each component may be manual or electronic forms provided by the Department or manual or electronic forms created by the Eligible Entity that at minimum contain the same information as the Department-issued form, which include the same components as those described in subparagraphs (A) – (L) of this paragraph. including but not limited to:

(A) Self-Sufficiency Customer Questionnaire to assess a customer's status in the areas of employment, job skills, education, income, housing, food, utilities, child care, child and family development, transportation, healthcare, and health insurance;

(B) Self-Sufficiency Outcomes Matrix to assess the customer's status in the self-sufficiency domains noted in subparagraph (A) of this paragraph;

(C) Case Management Screening Questions to assess the customer's willingness to participate in case management services on an ongoing basis;

(D) For customers who are willing to engage in long term case management services, a Case Management Agreement between Subrecipient and customer;

(E) Release of Information Form;

(F) Case Management Service Plan to document planned goals agreed upon by the case manager and customer along with steps and timeline to achieve goals;

(G) Case management follow-up, ~~—A~~ which provides a system to document customer progress at completing steps and achieving goals. Case management follow-up should occur, at a minimum, every 30 days, either through a meeting, phone call or email. In person meetings should occur, at a minimum, once a quarter;

(H) A record of referral resources and documentation of the results;

(I) A system to document services received and to collect and report NPI data;

(J) A system to document case closure for persons that have exited case management;

(K) A system to document income for persons that have maintained an income level above 125% of the Federal Poverty Income Guidelines for 90 days;

(L) A system to document and notify customers of termination of case management services;

(M) Customer Satisfaction Survey; and

(N) ~~Evaluation System. On-On~~ an annual basis, an Eligible ~~Entities-Entity~~ should determine the effectiveness of ~~their-its~~ case management services and identify strategies for improvement, including identification of reasons for customer terminations and strategies to limit their occurrence.

(j) Effective January 1, 2016, Eligible Entities shall meet the CSBG Organizational Standards as issued by HHS ~~in Information Memorandum #IM~~ 138 (as revised), except that where the word bylaws is used the Department has modified the standards to read Certificate of Formation/Articles of Incorporation and bylaws; also, Eligible Entities must follow the requirements in UGMS including the State of Texas Single Audit Circular. Failure to meet the CSBG Organizational Standards as described in this subsection may result in HHS ~~Information Memorandum #IM~~ 116 proceedings as described in Chapter 2 of this title (relating to Enforcement).

§6.208. Designation and Re-designation of Eligible Entities in Unserved Areas.

If any geographic area of the state ceases to be served by an Eligible Entity, the requirements of 42 U.S.C. §9909 will be followed.

§6.209. CSBG Requirements for Tripartite Board of Directors.

(a) General Board Requirements:

(1) The Coats Human Services Reauthorization Act (Public Law 105-285) addresses the CSBG program and requires that Eligible Entities administer the CSBG program through a tripartite board. The Act requires that governing boards or a governing body be involved in the development, planning, implementation, and evaluation of the programs serving the low-income sector.

(2) Federal requirements for establishing a tripartite board require board oversight responsibilities for public entities, which differ from requirements for private organizations. Where differences occur between private and public organizations, requirements for each entity have been noted in related sections of the rule.

(b) Each CSBG Eligible Entity shall comply with the provisions of this rule and if necessary, the Eligible Entity's by-laws/Certificate of Formation/Articles of Incorporation shall be amended to reflect compliance with these requirements.

§6.210. Board Structure.

(a) Eligible Entities that are Private Nonprofit Organizations shall administer the CSBG program through a tripartite board that fully participates in the development, planning, implementation,

and evaluation of the program to serve low-income communities. Records must be retained for all seated board members in relation to their elections to the board for the longer of the board member's term on the Board, or the federal record retention period. Some of the members of the board shall be selected by the Private Nonprofit Organization, and others through a democratic process; the board shall be composed so as to assure that the requirements of the CSBG Act are followed and are composed as:

(1) One-third of the members of the board shall be elected public officials, holding office on the date of the selection, or their representatives. In the event that there are not enough elected public officials reasonably available and willing to serve on the board, the entity may select appointive public officials to serve on the board. The public officials selected to serve on the board may each choose one permanent representative or designate an alternate to serve on the board. Appointive public officials or their representatives or alternates may be counted in meeting the 1/3 requirement.

(2) Not fewer than 1/3 of the members are persons chosen in accordance with the Eligible Entity's Board-approved written democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhood served; and each representative of low-income individuals and families selected to represent a specific neighborhood within a community resides in the neighborhood represented by the member;

(3) The remainder are members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served.

(b) For a Public Organization that is an Eligible Entity, the entity shall administer the CSBG grant through an advisory board that fully participates in the development, planning, implementation and evaluation of programs that serve low-income communities or through another mechanism specified by the state and that satisfies the requirements of a tripartite board in subsection (a) [above of this section](#). The advisory board is the only alternative mechanism for administration the Department has specified.

(c) [An Eligible Entities-Entity](#) administering the Head Start Program must comply with the Head Start Act (42 U.S.C. §9837) that requires the governing body membership to comply with the requirements of §642(c)(1) of the Head Start Act.

[\(d\) Residence Requirement. Board members must follow any residency requirements outlined in 42 U.S. Code §9910, or federal regulations made pursuant to that section. Low income representatives must reside in the CSBG Service Area.](#)

~~(d)~~ Selection.

(1) Public Officials:

(A) Elected public officials or appointed public officials, selected to serve on the board, shall have either general governmental responsibilities or responsibilities which require them to deal with poverty-related issues; and

(B) Permanent Representatives and Alternates. The public officials selected to serve on the board may each choose one permanent representative or designate an alternate to serve on the board.

(i) Permanent Representatives. The representative need not be a public official but shall have full authority to act for the public official at meetings of the board. Permanent representatives may hold an officer position on the board. If a permanent representative is not chosen, then an alternate may be designated by the public official selected to serve on the board. Alternates may not hold an officer position on the board.

(ii) Alternate Representatives. If the Private Nonprofit Entity or Public Organization advisory board chooses to allow alternates, the alternates for low-income representatives shall be elected

at the same time and in the same manner as the board representative is elected to serve on the board. Alternates for representatives of private sector organizations may be designated to serve on the board and should be selected at the same time the board representative is selected. In the event that the board member or alternate ceases to be a member of the organization represented, he/she shall no longer be eligible to serve on the board. Alternates may not hold an officer position on the board.

(2) Low-Income Representatives:

(A) The CSBG Act and its amendments require representation of low-income individuals on boards. The CSBG statute requires that not fewer than one-third of the members shall be representatives of low-income individuals and families and that they shall be chosen in accordance with democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhoods served; and that each representative of low-income individuals and families selected to represent a specific neighborhood within a community resides in the neighborhood represented by the member.

(B) Board members representing low-income individuals and families must be selected in accordance with a democratic procedure. This procedure, as detailed in subparagraph (D) of this paragraph, may be either directly through election, public forum, or, if not possible, through a similar democratic process such as election to a position of responsibility in another significant service or community organization such as a school PTA, a faith-based organization leadership group; or an advisory board/governing council to another low-income service provider; For a Private Nonprofit Entity the democratic selection process must be detailed in the agency's Certificate of Formation/Articles of Incorporation or Bylaws, but the method detailed in the Bylaws (if so described) must not be inconsistent with any method of selection of Board members outlined in the Certificate of Formation/Articles of Incorporation; failure to comply could result in a default procedure that does not meet the CSBG requirements and potentially jeopardizes the Eligible Entity status of the organization as detailed in §6.213 of this Subchapter. For a Public Organizations the democratic procedure must be written in the advisory board's procedures, and approved at a board meeting.

(C) Every effort should be made by the Private Nonprofit Entity or Public Organization to assure that low-income representatives are truly representative of current residents of the CSBG geographic area to be servedService Area, including racial and ethnic composition, as determined by periodic selection or reselection by the community. "Current" should be defined by the recent or annual demographic changes as documented in the needs/Community Assessment. This does not preclude extended service of low-income community representatives on boards, but it does suggest that continued board participation of longer term members be revalidated and kept current through some form of democratic process.

(D) The procedure used to select the low-income representative must be documented to demonstrate that a democratic selection process was used. Among the selection processes that may be utilized, either alone or in combination, are:

(i) Selection and elections, either within neighborhoods or within the community as a whole; at a meeting or conference, to which all neighborhood residents, and especially those who are poor, are openly invited;

(ii) Selection—selection of representatives to a community-wide board by members of neighborhood or sub-area boards who are themselves selected by neighborhood or area residents;

(iii) Selectionselection, on a small area basis (such as a city block); or

(iv) ~~Selection~~selection of representatives by existing organizations whose membership is predominately composed of poor persons.

(E) A Public Organization must not adopt a democratic selection process that requires all of the low-income representatives to reside in the political boundaries of the Public Organization, or that excludes all residents not in the political boundaries of the Public Organization from all participation in the democratic selection of all of the low-income representatives.

(3) Representatives of Private Groups and Interests:

(A) The Private Nonprofit or Public Organization shall select the remainder of persons to represent the private sector on the board or it may select private sector organizations from which representatives of the private sector organization would be chosen to serve on the board; and

(B) The individuals and/or organizations representing the private sector ~~shall~~should be selected in such a manner as to assure that the board will benefit from broad community involvement. The board composition for the private sector shall draw from officials or members of business, industry, labor, religious, law enforcement, education, school districts, representatives of education districts and other major groups and interests in the community served.

~~(ef)~~ An Eligible Entity ~~types~~ must have written procedures under which a low-income individual, community organization, religious organization, or representative of such may petition for adequate representation ~~as described in (a) – (d) of this section if such persons or organizations consider there to be inadequate representation~~ on the board of the Eligible Entity. Such petitions must be heard at a subsequent board meeting not more than 120 days after receiving the petition.

(g) Improperly Constituted Board. If the Department determines that a board of an Eligible Entity is improperly constituted, the Department shall prescribe the necessary remedial action, a timeline for implementation, and possible sanctions as described in §2.202 of this Title (relating to Sanctions and Contract Closeout).

§6.211. Board Administrative Requirements.

(a) Compensation. Board members are not entitled to compensation for their service on the board. Reimbursement of reasonable and necessary expenses incurred by a board member in carrying out his/her duties is allowed.

(b) Conflict of Interest. No board member may participate in the selection, award, or administration of a ~~S~~subcontract supported by CSBG funds if the board member has the following financial or personal interests in the entity or person selected to perform a subcontract:

(1) ~~the~~The board member;

(2) ~~any~~Any member of his/her family related within three degrees of consanguinity, adoption, or by marriage;

(3) ~~the~~The board member's partner or Household member; or

(4) ~~any~~Any ~~organization~~entity or person which employs or is about to employ any of the individuals described in paragraphs (1) - (3) of this subsection. ~~has a financial or person interest in the firm or person selected to perform a subcontract.~~

(c) No employee of the local CSBG Subrecipient or of the Department may serve on the board.

(d) A seated board member is permitted to be appointed to serve as an interim Executive Director for up to 180 days so long as the Department is so notified, the board member did not participate in the vote that designated them as the interim Executive Director, the board member does not vote during the period for which they serve as the interim Executive Director, and the member is not considered a member for purposes of quorum. In such cases, ~~the~~The board member seat is not

considered vacated, and is available for that board member to return.

§6.212. Board Size.

(a) Board Service Limitations for Private Nonprofit Entities and Public Organizations. ~~Subrecipient boards~~The Eligible Entity may establish term limits and/or procedures for the removal of board members.

(b) Vacancies/Removal of Board Members.

(1) Vacancies. In no event shall the board allow 25% or more of either the public, private, or low-income sector board positions to remain vacant for more than 90 days. ~~CSBG Subrecipients An~~Eligible Entity shall report the number of board vacancies by sector in ~~their-its M~~monthly P~~performance and Expenditure R~~reports. Compliance with the CSBG Act requirements for board membership is a condition for Eligible Entities to receive CSBG funding. There is no provision for a waiver or exception to these requirements.

(2) Removal of Board Members/Private Nonprofit Entities. Public officials or their representatives, may be removed from the board either by the board or by the entity that appointed them to serve on the board. Other members of the board may be removed by the board or pursuant to any procedure provided in the private nonprofit's Certificate of Formation/Articles of Incorporation or bylaws.

(3) Removal of Board Members/Public Organizations. Public officials or their representatives may be removed from the advisory board by the Public Organization, or by the advisory board if the board is so empowered by the Public Organization. The advisory board may petition the Public Organization to remove an advisory board member. All other board members may be removed by the advisory board.

(4) In order to meet the 1/3 requirement for the Public Official representation detailed in §6.210 of this rule, board size shall be a number divisible by ~~three~~3.

§6.213. Board Responsibility.

(a) Tripartite boards have a fiduciary responsibility for the overall operation of the Eligible Entity. Members are expected to carry out their duties as any reasonably prudent person would do.

(b) At a minimum, board members are expected to:

(1) Maintain regular attendance of board and committee meetings;

(2) Develop thorough familiarity with core agency information as appropriate, such as the agency's bylaws, Certificate of Formation/Articles of Incorporation, sources of funding, agency goals and programs, federal and state CSBG statutes;

(3) Exercise careful review of materials provided to the board;

(4) Make decisions based on sufficient information;

(5) Ensure that proper fiscal systems and controls, as well as a legal compliance system, are in place;

(6) Maintain knowledge of all major actions taken by the agency; and

(7) Receive regular reports that include:

(A) Review and approval of all funding requests (including budgets);

(B) Review of reports on the organization's financial situation;

(C) Regular reports on the progress of goals specified in the P~~performance~~ S~~statement~~ or program proposal;

(D) Regular reports addressing the rate of expenditures as compared to those projected in the budget;

(E) Updated modifications to policies and procedures concerning employee's and fiscal operations; ~~and~~

(F) Updated information on community conditions that affect the programs and services of the organization; and

(G) Reports on any monitoring correspondence transmitted by the Department.

(c) Individuals that agree to participate on a tripartite governing board, accept the responsibility to assure that the agency they represent continues to:

(1) ~~assess~~ Assess and respond to the causes and conditions of poverty in their community;

(2) ~~achieve~~ Achieve anticipated family and community outcomes; and

(3) ~~remains~~ Remains administratively and fiscally sound.

(4) Excessive absenteeism of board members compromises the mission and intent of the program.

~~(d) Residence Requirement. All board members shall reside within the Subrecipient's CSBG service area designated by the CSBG Contract. Board members must be selected so as to provide representation for all geographic areas within the designated service area; however, greater representation may be given on the board to areas with greater low income population. Low-income representatives must reside in the area that they represent.~~

~~(e) Improperly Constituted Board. If the Department determines that a board of an Eligible Entity is improperly constituted, the Department shall prescribe the necessary remedial action, a timeline for implementation and possible sanctions which may include:~~

~~(1) Cost Reimbursement;~~

~~(2) withholding of funds;~~

~~(3) Contract suspension; or~~

~~(24) termination of funding.~~

§6.214. Board Meeting Requirements.

(a) A Board of an Eligible Entity must meet and have a quorum at least once per calendar quarter, and at a minimum five ~~(5)~~ times per year and, must give each Board member a notice of meeting five ~~(5)~~ calendar days in advance of the meeting.

(b) Tex. Gov't Code, Chapter 551, Texas Open Meetings Act, addresses specific requirements regarding meetings and meeting notices. Tex. Gov't Code, §551.001(3)(J), includes in the definition of a governmental body ~~and of a~~ nonprofit corporation that is eligible to receive funds under the federal CSBG program, and that is authorized by the state to serve a geographic area of the state. ~~All~~ Thus, all Eligible Entities must follow the requirements of the Texas Open Meetings Act. As set forth in that law, there is the potential for individual criminal liability for violations.

(c) Tex. Gov't Code, §551.005 requires elected or appointed officials to receive training in Texas Open Government laws. The Department requires that all board members or advisory board members receive training in Texas Open Government laws, according to the requirements of §551.005.

(d) A copy of the attendance roster for all Board trainings shall be maintained at the Subrecipient level.

(e) The minimum number of members required to meet quorum is three unless the Subrecipient's Certification of Formation/Articles of Incorporation, Bylaws, or the Texas Open Meetings Act requires a greater number.

SUBCHAPTER C COMPREHENSIVE ENERGY ASSISTANCE PROGRAM

§6.301. Background and Definitions.

(a) The Comprehensive Energy Assistance Program ("CEAP") is funded through the Low Income Home Energy Assistance Act of 1981 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, as amended). LIHEAP has been in existence since 1982. LIHEAP is a federally funded block grant program that is implemented to serve Low Income Households who seek assistance for their home energy bills. LIHEAP is not an entitlement program, and there are not sufficient funds to serve all eligible customers or to provide the maximum benefit for which a customer may qualify.

(b) Definitions.

~~(1) Crisis Assistance--A type of CEAP assistance limited to Households who meet the requirements related to Extreme Weather Conditions, Life Threatening Crisis, or a Disaster.~~

~~(2) Customer Obligations--Funds become obligated upon a Subrecipient's pledge of payment to a specific Household toward a service or form of assistance and it being recorded in Subrecipient's client tracking software.~~

~~(3) Disaster--An event declared by the President of the United States or the Governor of the State of Texas.~~

~~(4) Extreme Weather Conditions--For winter months (November, December, January, and February), extreme cold weather conditions will exist when the temperature has been at least 2 two degrees below the lowest winter month's temperature or below 32 degrees, for at least three days during the client's billing cycle. For summer months (June, July, August, and September), extreme hot weather conditions exist when the temperature is at least 2-two degrees above the highest summer month's temperature for at least three days during the client's billing cycle. Extreme Wweather Ceonditions will be based on either data for "1981-2010 Normals" temperatures recorded by National Centers for Environmental Information of the National Oceanic and Atmospheric Administration ("NOAA") and available at~~

~~<https://www.ncdc.noaa.gov/cdo-web/datatools/normals>~~

~~<http://www.ncdc.noaa.gov/cdo-web/datatools/normals>, or on data determined by the Subrecipient, and approved by the Department in writing. Subrecipient must maintain documentation of local temperatures and reflect their standard for Eextreme Wweather Ceonditions in its Service Delivery Plan.~~

~~(2) Household Crisis--A bona fide Household Crisis exists when extraordinary events or situations resulting from extreme weather conditions and/or fuel supply shortages have depleted or will deplete Household financial resources and/or have created problems in meeting basic Household expenses, particularly bills for energy so as to constitute a threat to the well being of the Households, particularly Vulnerable Population Households.~~

~~(53) Life Threatening Crisis--A Llife Tthreatening Cerisis exists when the life of at least one person in the applicant Household who is a U.S. Citizen, U.S. National, or a Qualified Alien would likely be endangered if utility assistance or heating and cooling assistance is not provided due to a Household member who needs electricity for life-sustaining equipment or whose medical professional has prescribed that the person with a medical condition requires that the ambient air temperature be maintained at a certain temperature.adversely affected without the Subrecipient's utility assistance, because there is a shut-off notice or a delivered fuel source is below a ten (10) day supply (by customer report) to the degree that, in the opinion of a reasonable person, the effect could cause loss of life. Examples of life-sustaining equipment~~

include, but are not limited to, kidney dialysis machines, oxygen concentrators, and cardiac monitors, ~~and in some cases heating and air conditioning when ambient temperature control is prescribed by a medical professional~~. Documentation must not be requested about the medical condition of the applicant, ~~customer~~ but the applicant must state that such a device is required in the Dwelling Unit to sustain life.

~~(64)~~ Low on Fuel--A reference to propane tanks which are below 20% supply (according to customer).

~~(7)~~ Natural Disaster--A Disaster that is primarily not of man-made origins.

~~(85)~~ Vendor Refund--A sum of money refunded by a utility company or supplier due to a credit on the account or due to a deposit. See §6.312 of this subchapter for more information.

§6.302. Purpose and Goals.

The purpose of CEAP is to assist low-income Households, particularly those with the lowest incomes, and High Energy Consumption Households to meet their immediate home energy needs. The LIHEAP Statute requires priority be given to those with the highest home energy needs, meaning Low Income Households with High Energy Consumption, a High Energy Burden and/or the presence of Vulnerable Population in the Household. CEAP services include: energy education, needs assessment, budget counseling (as it pertains to energy needs), utility payment assistance, repair of existing heating and cooling units, and crisis-related purchase of portable heating and cooling units.

§6.303. Distribution of CEAP Funds.

(a) The Department distributes funds to Subrecipients by an allocation formula.

(b) The formula allocates funds based on the number of Low Income Households in a service area and takes into account the special needs of individual service areas. The need for energy assistance in an area is addressed through a weather factor (based on heating and cooling degree days). The extra expense in delivering services in sparsely populated areas is addressed by an inverse population density factor. The lack of additional services available in very poor counties is addressed by a county median income factor. Finally, the Elderly are given priority by giving greater weight to this population. The five factors used in the formula are calculated as:

(1) County Non-Elderly Poverty Household Factor (weight of 40%)--Defined by the Department as the number of Non-Elderly Poverty Households in the county divided by the number of Non-Elderly Poverty Households in the State;

(2) County Elderly Poverty Household Factor (weight of 40%)--Defined by the Department as the number of Elderly Poverty Households in the county divided by the number of Elderly Poverty Households in the State; and

(3) County Inverse Household Population Density Factor (weight of 5%)--Defined by the Department as:

(A) The number of square miles of the county divided by the number of Poverty Households of the county (equals the Inverse Poverty Household Population Density of the county); and

(B) Inverse Poverty Household Population Density of the county divided by the sum of Inverse Household Densities.

(4) County Median Income Variance Factor (weight of 5%)--Defined by the Department as:

(A) State Median Income minus the County Median Income (equals county variance); and

(B) County Variance divided by sum of the State County Variances.

(5) County Weather Factor (weight of 10%)--Defined by the Department as:

(A) County heating degree days plus the county cooling degree days, multiplied by the poverty Households, divided by the sum of county heating degree days and county cooling degree days of counties (equals County Weather); and

(B) County Weather divided by the total sum of the State County Weather.

~~(c)(C)~~ All demographic factors are based on the most recent decennial U.S. Census for which Census Bureau published information is available.

~~(d)(D)~~ ~~The T~~total sum of paragraphs (1) - (5) of this subsection multiplied by total funds allocation equals the county's allocation of funds. The sum of the county allocations within each Subrecipient service area equals the Subrecipient's total allocation of funds.

~~(e)~~ ~~To the extent balances remain in Subrecipient contracts that the Subrecipient appears to be unable to utilize or should additional funds become available, those funds will be allocated using the formula set out in this section or other method approved by the Board to ensure full utilization of funds within a limited timeframe.~~

~~(e)~~ The Department may, in the future, undertake to repro cure the Subrecipients entities that comprise the network of CEAP providers, in which case this allocation formula will be reassessed and, if material changes are needed, amended by rulemaking.

§6.304. Deobligation and Reobligation of CEAP Funds.

(a) The Department may ~~determine to~~ Deobligate funds from all budget categories from Subrecipients whose combined Expenditures and ~~e~~Customer Obligations are less than 3045% as of the May-April 15 Monthly Performance and Expenditure Report~~report~~, ~~unless an exception is approved by the Department in writing for extenuating circumstances.~~ Subrecipient may avoid Deobligation at this point if one of the following has occurred:

(1) On or before the first business day in April, the Subrecipient has submitted a written request for an exception due to extenuating circumstances with a plan to improve Expenditures and Customer Obligations. The request and plan must be approved by the Department in writing; or

(2) Subrecipients that On or before the first business day in April, the Subrecipient has submitted a written request for training and/or technical assistance, may avoid Deobligation at this phase if they request such assistance on or before the filing of the May 15 report. Once such assistance has been delivered, as determined by the Department, the Subrecipient must submit a clear specific plan, as outlined by the Department, for improving utility Expenditures and Customer eObligations, and that plan must be approved by the Department in writing.

(b) The Department may Deobligate funds from all budget categories from ~~a~~Subrecipients whose combined Expenditures and ~~C~~ustomer Obligations are less than 570% as of the July-June 15 Monthly Performance and Expenditure Report~~report~~, unless on or before the first business day in June the Subrecipient submits a written request for an exception due to extenuating circumstances with a plan to improve Expenditures and Customer Obligations. The request and plan must be is approved by the Department in writing~~for extenuating circumstances.~~

~~(c) Funds Deobligated under this section, or additional funds should they become available, will be reobligated. The cumulative amount of Deobligated funds will be allocated~~ proportionally by the formula described in §6.303 of this subchapter (relating to Distribution of CEAP Funds), or if six months or less remain for the Department to expend the funds another method approved by the Department's Board amongst all Subrecipients that did not have any funds Deobligated- to ensure full utilization of funds.

(d) A Subrecipient which has had funds Deobligated under subsection (a) or (b) of this section that fully Expends the reduced amount of its Contract by January 31 of the following year as

reported in the Monthly Performance and Expenditure Report due February 15, will have access to the full amount of the following Program Year CEAP allocation. A Subrecipient which has had funds Deobligated under subsection (a) or (b) of this section that fails to fully expend the reduced amount of its Contract will automatically have the following Program Year CEAP allocation Deobligated by the lesser of 24.99%, or the proportional amount that had been Deobligated ~~in~~from the prior year Contract.

(e) The cumulative balance of the funds made available through subsection (d) of this section will be allocated proportionally by the formula described in §6.303 of this subchapter to the Subrecipients not having funds reduced under that subsection.

(f) In no event will involuntary Deobligations that occur through any of the clauses above exceed 24.99% of the Subrecipient's Program Year CEAP Contracted Funds, without an opportunity for a hearing as required by Tex. Gov't Code, Chapter 2105.

(g) Failure by the Subrecipient to fully Expend a prior year Contract by the Monthly Performance and Expenditure Report due April 15th of the subsequent year for two consecutive original Contract Terms is good cause for nonrenewal of a Contract.

§6.305. Subrecipient Eligibility.

(a) The Department administers the program through the existing Subrecipients that have demonstrated that they are operating the program in accordance with their Contract, the Economic Opportunity Act of 1964, the Low-Income Home Energy Assistance Act of 1981, as amended (42 U.S.C. §§8621, *et seq.*), and the Department rules. If a Subrecipient is successfully administering the program, the Department may offer to renew the Contract.

(b) If the Department determines that a Subrecipient is not administering the program satisfactorily, the Subrecipient will be notified of such a Finding as provided for in §6.10 of this chapter, and required to take corrective actions to remedy the problem. If Subrecipient fails to correct the Finding, in order to ensure continuity of services, the Department may reassign up to 24.99% of the funds for the service area to one or more other existing Subrecipients.

(c) If the Subrecipient does not complete the corrective action within the required timeframe, the Department may conduct a solicitation for selection of an interim Subrecipient. The affected Subrecipient may request a hearing in accordance with the Tex. Gov't Code, §2105.204.

(d) If it is necessary to designate a new Subrecipient to administer CEAP, the Department shall give special consideration to Subrecipients Eligible Entities and entities receiving funds under LIHEAP or DOE WAP, administering Weatherization in the service area in accordance with Assurance 6 of the Low Income Home Energy Assistance Act of 1981.

§6.306. Service Delivery Plan.

Prior to any Expenditure of funds, Subrecipients ~~are~~is required to submit on an annual basis a Department formatted Service Delivery Plan ("SDP"), which includes information on how they plan to implement CEAP in their service area. The Department will notify CEAP Subrecipients when the SDP template and the annual updated forms are posted on the Department's website. The SDP must establish a Subrecipient's ~~the~~ priority rating sheet and priority Households; ~~the~~ alternate billing method; ~~;~~ how customer education is being addressed; ~~;~~ ~~and~~ how the Subrecipient is determining the number of payments to be made and which types of Households are qualified for a given number of payments; ~~;~~ and ~~identify~~ the local standard to be used for Extreme Weather Conditions.

§6.307. Subrecipient Requirements for Customer Eligibility Criteria, Provision of Services, and Establishing Priority for Eligible Households.

(a) The customer income eligibility level is at or below 150% of the federal poverty level in effect at the time the customer makes an application for services.

(b) Categorical Eligibility for CEAP benefits exists when at least one person in the Household receives assistance from:

(1) SSI payments from the Social Security Administration; or

(2) Means Tested Veterans Program payments. See paragraph (35) of §6.2 of this chapter (relating to Definitions).

~~(c)~~ A complete application is required for all Households. Subrecipient shall determine customer income using the definition of income and process described in §6.4 of this chapter (relating to Income Determination) ~~of this chapter~~. Household income documentation must be collected by the Subrecipient for the purposes of determining the Household's benefit level.

~~(d)~~ Social security numbers are not required for applicants ~~for CEAP~~.

~~(e)~~ Subrecipient must establish a written procedure to serve Households that have a Vulnerable Population Household member, Households with High Energy Burden, and Households with High Energy Consumption. High Energy Burden shall be the highest rated item in sliding scale priority determinations. The Subrecipient must maintain documentation of the use of the criteria.

~~(f)~~ A Dwelling Unit cannot be served if the meter is utilized by another Household that is not a part of the application for assistance. In instances where separate structures share a meter and the applicant is otherwise eligible for assistance, Subrecipient must provide services if:

~~(1) The~~ members of the separate structures that share a meter meet the definition of a Household per §6.2 of this ~~Chapter~~ chapter (relating to Definitions);

~~(2) the~~ The members of the separate structures that share a meter submit one application as one Household; and

~~(3) all~~ All persons and applicable income from each structure are counted when determining eligibility.

~~(g)~~ United States Citizen, United States National, or Qualified Alien. Except for items described in 10 TAC §6.310(~~ec~~)(~~2~~), (~~4~~), (~~5~~) and (~~76~~), Unqualified Aliens are not eligible to receive CEAP benefits. Mixed Status Households shall not be denied CEAP assistance based solely on the presence of a non-qualified member, except if the member is the sole member of the Household. A Public Organization must verify U.S. Citizen, U.S. National, or Qualified Alien status of all household members using SAVE.

(h) Subrecipient must begin providing utility assistance services to customers upon receipt of Contract and throughout the Contract Term unless Subrecipient has expended its entire Contract.

§6.308. Allowable Subrecipient Administrative and Program Services Costs.

(a) Funds available for Subrecipient administrative activities will be calculated by the Department as a percentage of direct services ~~E~~expenditures. Administrative costs shall not exceed the maximum percentage of total direct services ~~E~~expenditures, as indicated in the Contract. All other administrative costs, exclusive of administrative costs for program services, must be paid with nonfederal funds. Allowable administrative costs for administrative activities includes costs for general administration and coordination of CEAP, and all indirect (or overhead) costs, and activities as described in paragraphs (1) - (7) of this subsection:

(1) ~~salaries~~ Salaries;

(2) ~~fringe~~ Fringe benefits;

- (3) ~~non~~Non-training travel;
 - (4) ~~equipment~~Equipment;
 - (5) ~~supplies~~Supplies;
 - (6) ~~audit~~Audit (limited to percentage of the contract expenditures, excluding training/travel costs as indicated in the Contract); and
 - (7) ~~office~~Office space (limited to percentage of the contract expenditures, excluding training/travel costs as indicated in the Contract).
- (b) Program Services costs shall not exceed the maximum percentage of total direct services Expenditures, as indicated in the Contract. Program Services costs are allowable when associated with providing customer direct services. Program services costs may include outreach activities and expenditures on the information technology and computerization needed for tracking or monitoring required by CEAP, and activities as described in paragraphs (1) - (9) of this subsection:
- (1) ~~direct~~Direct administrative cost associated with providing the customer direct service;
 - (2) ~~salaries~~Salaries and benefits cost for staff providing program services;
 - (3) ~~supplies~~Supplies;
 - (4) ~~equipment~~Equipment;
 - (5) ~~travel~~Travel;
 - (6) ~~postage~~Postage;
 - (7) ~~utilities~~Utilities;
 - (8) ~~rental~~Rental of office space; and
 - (9) ~~staff~~Staff time to provide energy conservation education, needs assessments, and referrals.

§6.309. Types of Assistance and Benefit Levels.

- (a) Allowable CEAP ~~E~~xpenditures include customer education, utility payment assistance, repair of existing heating and cooling units, and crisis-related purchase of portable heating and cooling units.
- (b) Total maximum possible annual Household benefit (all allowable benefits combined) shall not exceed \$5,9400 during a Program Year.
- (c) Benefit determinations are based on the Household's income (even if the Household is Categorically Eligible), the Household size, Vulnerable Populations in the Household, plus other priority status, whether a Household has one or more Unqualified Aliens for which calculation adjustments must be made as described in paragraphs (1) and (2) of this subsection, and the availability of funds.
 - (1) Count income for all Household members ~~eighteen~~18 years of age and older, including Unqualified Aliens; and
 - (2) Adjust the Household size for determining eligibility and benefit assistance level to exclude all Unqualified Aliens.
- (d) For purposes of determining Categorical Eligibility or Vulnerable Populations (i.e. priority status), the Household is not considered to satisfy the definition of having Categorical Eligibility or Vulnerable Population if the only individual(s) in the Household with that Categorical Eligibility or Vulnerable Population status are Unqualified Aliens. For purposes of reporting, all individuals in the Households should be reported.
- (e) Benefit determinations for the Utility Payment Assistance Component and the ~~Household Crisis~~Crisis Assistance Component cannot exceed the sliding scale described in paragraphs (1) - (3) of this subsection:

- (1) Households with Incomes of 0 to 50% of Federal Poverty Guidelines may receive an amount not to exceed \$1,200 per Component;
- (2) Households with Incomes of 51% to 75% of Federal Poverty Guidelines may receive an amount not to exceed \$1,100 per Component; and
- (3) Households with Incomes of 76% to at or below 150% of Federal Poverty Guidelines may receive an amount not to exceed \$1,000 per Component. ~~and~~
- (f) Service and Repair of existing heating and cooling units. Households may receive up to \$3,500 for service and repair of existing heating and cooling units when the Household has an inoperable heating or cooling system based on requirements in §6.310 for Non-Vulnerable Population Households and §6.311 for Vulnerable Population Households, ~~Relating to Household Crisis Component.~~
- (g) Assistance with service and repair or purchase of portable air conditioning/evaporative coolers and heating units ~~can not to exceed \$3,500. for Households that include a Vulnerable Population member, when the Household does not have an operable or non-existing heating or cooling system, regardless of weather conditions. Refer to §6.310(c)(9) of this subchapter for requirements relating to service and repair or purchase of portable air conditioning/evaporative coolers and heating units.~~
- (h) Subrecipients shall provide only the types of assistance described in paragraphs (1) - ~~(911)~~ of this subsection with funds from CEAP. Energy bills already paid may not be reimbursed by the program. Funds from CEAP shall not be used to weatherize dwelling units, for medicine, food, transportation assistance (e.g., vehicle fuel), income assistance, or to pay for penalties or fines assessed to customers.
- (1) Payment to vendors and suppliers of fuel/utilities, goods, and other services, such as past due or current bills related to the procurement of energy for heating and cooling needs of the residence, not to include security lights and other items unrelated to energy assistance as follows:
 - (A) Subrecipient may make utility payments on behalf of Households based on the previous ~~twelve (12)~~ month's home energy consumption history, including allowances for cost inflation. If a ~~twelve (12)~~ month's home energy consumption history is unavailable, Subrecipient may base payments on current Program Year's bill or utilize a Department-approved alternative method. Subrecipient will note such exceptions in customer files. Benefit amounts exceeding the actual bill shall be treated as a credit for the customer with the utility company.
 - (B) Vulnerable Population Households can receive benefits to cover up to the eight highest remaining bills within the Program Year, and up to two utility disconnection notice payments as long as the cost does not exceed the maximum annual benefit. The first bill payment may cover two separate fuel sources.
 - (C) Non-Vulnerable Population Households ~~that do not contain a Vulnerable Population member~~ can receive benefits to cover up to the six highest remaining bills within the Program Year as long as the cost does not exceed the maximum annual benefit. The first bill payment may cover two separate fuel sources.
- (2) Payment to vendors ~~– may only~~ include one energy bill payment per month except in the case of subparagraphs 1(B) and 1(C) of this subsection;
- (3) Needs assessment and energy conservation tips, coordination of resources, and referrals to other programs;
- (4) Payment of water, ~~waste water~~ wastewater and solid waste charges are not an allowable LIHEAP expense even in cases where those charges are an inseparable part of a utility bill. Whenever possible, Subrecipient shall negotiate with the utility providers to pay only the "home

energy" (heating and cooling) portion of the bill or utilize other funds to pay for the water related charges;

~~(5) Energy bills already paid may not be reimbursed by the program;~~

~~(56)~~ Payment of reconnection fees in line with the registered tariff filed with the Public Utility Commission and/or Texas Railroad Commission. Payment cannot exceed that stated tariff cost. Subrecipient shall negotiate to reduce the costs to cover the actual labor and material and to ensure that the utility does not assess a penalty for delinquency in payments;

~~(67)~~ Payment of security deposits only when state law requires such a payment, or if the Public Utility Commission or Texas Railroad Commission has listed such a payment as an approved cost, and where required by law, tariff, regulation, or a deferred payment agreement includes such a payment. Subrecipient shall not pay such security deposits that the energy provider will eventually return to the customer;

~~(78)~~ While rates and repair charges may vary from vendor to vendor, Subrecipient shall negotiate for the lowest possible payment. Prior to making any payments to an energy vendor a Subrecipient shall have a signed vendor agreement on file from the energy vendor receiving direct CEAP payments from the Subrecipient;

~~(89)~~ Subrecipient may make payments to landlords on behalf of eligible renters who pay their utility and/or fuel bills indirectly. Subrecipient shall notify each participating Household of the amount of assistance paid on its behalf. Subrecipient shall document this notification. Subrecipient shall maintain proof of utility or fuel bill payment. Subrecipient shall ensure that amount of assistance paid on behalf of customer is deducted from customer's rent; and

~~(910)~~ In lieu of deposit required by an energy vendor, Subrecipient may make advance payments. The Department does not allow CEAP Expenditures to pay deposits, except as noted in paragraph ~~(67)~~ of this subsection. Advance payments may not exceed an estimated two months' billings; and

~~(11) Funds for the CEAP shall not be used to weatherize dwelling units, for medicine, food, transportation assistance (e.g., vehicle fuel), income assistance, or to pay for penalties or fines assessed to customers.~~

§6.310. Household Crisis Assistance Component.

(a) Crisis Assistance can be provided to persons who have already lost service or are in immediate danger of losing service only under one of the conditions listed in paragraphs (1) to (3) of this subsection, and shall not exceed the caps as defined in §6.309:

(1) Extreme Weather Conditions, as defined in §6.301 of this subchapter, with assistance provided within 48 hours;

(2) Disaster, as defined in §6.301 of this subchapter, with assistance provided within 48 hours; or

(3) Life Threatening Crisis, as defined in §6.301 of this subchapter, with assistance provided within 18 hours.

(b) In order to resolve the crisis, Subrecipient shall ensure that for customers assisted through Crisis Assistance services are provided within the timeframes as described in (a) of this section. The time limit commences upon completion of the application process. The application process is considered complete when an agency representative accepts an application and completes the eligibility process. Subrecipient must maintain written documentation in customer files showing crises resolved within the appropriate timeframe. The Department may disallow improperly documented Expenditures.

(c) Low Income Households as defined in §6.2 of this chapter (relating to Definitions) may be

eligible for any one or more of the types of assistance listed in paragraphs (1) to (11) of this subsection:

(1) Payment of utilities or fuel bills and utility bill deposits necessary to retain heating or cooling.

(2) Temporary Shelter in the limited instances that supply of power to the Dwelling Unit is disrupted causing a temporary evacuation.

(3) Emergency deliveries of fuel up to 250 gallons per crisis per Household, at the prevailing price. This benefit may include coverage for tank pressure testing.

(4) Cost to temporary Shelter or house individuals in hotel, apartments or other living situations in which homes have been destroyed or damaged when health and safety is endangered by loss of access to heating and cooling.

(5) Costs for transportation (i.e., cars, shuttles, buses) to move the individuals away from the crisis area to Shelters when health and safety is endangered by loss of access to heating and cooling.

(6) Utility reconnection costs.

(7) Blankets, as tangible benefits to keep individuals warm.

(8) For Non-Vulnerable Populations meeting the conditions described in subsection (a) of this section, service and repair of existing heating and cooling units when the Household has an inoperable heating or cooling system. If a component(s) of the heating or cooling system cannot be repaired using parts, the Subrecipient can replace the component(s) in order to repair the heating or cooling system.

(9) When a Household meets the definition of Life Threatening Crisis, purchase of portable heating and/or cooling units is allowable. Units must be Energy Star®. In cases where the type of unit is not Energy Star®, or if Energy Star® units are not available due to supply shortages, Subrecipient may purchase the highest rated unit available. Purchase of more than two portable heating and/or cooling units, which require performance of electrical work for proper installation, requires prior written approval from the Department.

(10) Purchase of fans. The number, type, size and cost of these items may not exceed the minimum needed to resolve the crisis.

(11) If necessary, the purchase of a generator is allowable when a Household meets the definition of Life Threatening Crisis.

(d) The 18 and 48-hour timeframes do not apply in the case of a Natural Disaster.

(e) Benefit Level for Crisis Assistance:

(1) Crisis Assistance for one Household cannot exceed the maximum allowable benefit level in one Program Year as defined in §6.309 of this subchapter (relating to Types of Assistance and Benefit Levels). If a Household's Crisis Assistance needs exceed that maximum allowable benefit, Subrecipient may pay up to the Crisis Assistance limit only if the remaining amount of Household need can be paid from other funds. If the Household's crisis requires more than the Household limit to resolve and no other funds are available, the crisis exceeds the scope of this component.

(2) Payments may not exceed Household's actual utility bill.

(3) Payments may not exceed the Maximum Household allowable assistance benefit level.

(4) Service and repair or purchase of heating or cooling, or heating and cooling units for up to \$3,500 will not be counted towards the total maximum Household allowable assistance under the utility assistance and crisis components.

(5) Temporary Shelter not to exceed the annual Households benefit limit for the duration of the contract period.

~~(a) Crisis assistance can be provided under the following conditions:~~

- ~~(1) A Life Threatening Crisis exists, as defined in §6.301 of this Subchapter;~~
- ~~(2) Disconnection notice a utility disconnection notice may constitute a Household Crisis. Assistance provided to Households based on a utility disconnection notice is limited to two (2) payments per year. Weather criterion is not required to provide assistance due to a disconnection notice. The notice of disconnection must have been issued within 60 days of receipt by the Subrecipient; or,~~
- ~~(3) Extreme Weather Conditions exist, as defined in §6.301 of this Subchapter.~~
- ~~(b) Benefit Level for Crisis Assistance.~~
- ~~(1) Crisis assistance payments cannot exceed the minimum amount needed to resolve the crisis; e.g. when a shut-off notice requires a certain amount to be paid to avoid disconnection and the same notice indicates that there are balances due other than the required amount. Crisis assistance payments that are less than the amount needed to resolve the crisis may only be made when other funds or options are available to resolve the Household's remaining crisis need and are documented in the customer file.~~
- ~~(2) Crisis assistance for one Household cannot exceed the maximum allowable benefit level in one Program Year as defined in §6.309 of this Subchapter relating to Types of Assistance and Benefit Levels. If a Household's crisis assistance needs exceed that maximum allowable benefit, Subrecipient may pay up to the Household crisis assistance limit only if the remaining amount of Household need can be paid from other funds. If the Household's crisis requires more than the Household limit to resolve and no other funds are available, the crisis exceeds the scope of this component.~~
- ~~(3) Payments may not exceed Household's actual utility bill.~~
- ~~(4) Crisis funds, whether for utility payment assistance, disconnection notice, life threatening crisis, temporary shelter, emergency fuel deliveries, assistance related to natural disasters shall be considered part of the total maximum Household allowable assistance.~~
- ~~(5) Service and repair or purchase of heating or cooling, or heating and cooling units for up to \$3,000 will not be counted towards the total maximum Household allowable assistance under the utility assistance and crisis components.~~
- ~~(c) Where necessary to prevent undue hardships from a qualified crisis, Subrecipients may provide:~~
- ~~(1) Payment of utility bill(s) during the month(s) when Extreme Weather Conditions exist, as defined in §6.301 of this Subchapter.~~
- ~~(2) Temporary shelter not to exceed the annual Household expenditure limit for the duration of the contract period in the limited instances that supply of power to the dwelling is disrupted causing temporary evacuation;~~
- ~~(3) Emergency deliveries of fuel up to 250 gallons per crisis per Household, at the prevailing price. This benefit may include coverage for tank pressure testing;~~
- ~~(4) For Non Vulnerable Population Households, service and repair of existing heating and cooling units when the Household has an inoperable heating or cooling system when the county is experiencing Extreme Weather Conditions. If any component of the heating or cooling, or heating and cooling system cannot be repaired using parts, the Subrecipient can replace the component in order to repair the heating or cooling, or heating and cooling system. Documentation of service/repair and related warranty must be included in the customer file. Costs are not to exceed \$3,000 during the Contract period.~~
- ~~(5) For Vulnerable Population Households, regardless of weather conditions, service and repair of existing heating and cooling units or purchase of portable air conditioning/evaporative coolers~~

~~and heating units (portable electric heaters are allowable only as a last resort), when the Household has an inoperable or there is a nonexistent heating or cooling system. If any component of the heating or cooling, or heating and cooling system cannot be repaired using parts, the Subrecipient can replace the component in order to repair the heating or cooling, or heating and cooling system. Any service or repair of air conditioning or heating units must comply with the 2015 International Residential Code ("IRC") to ensure proper installation. Documentation of service/repair and related warranty must be included in the customer file. Costs are not to exceed \$3,000 during the Contract period.~~

~~(6) When a Household's crisis meets the definition of Life Threatening Crisis and the Household has a utility disconnection notice or is low on fuel, regardless of whether the county is experiencing Extreme Weather Conditions, utility or fuel assistance can be provided.~~

~~(d) When portable heating/cooling units are purchased or repaired, the following requirements must be met:~~

~~(1) Purchase of more than two portable heating or cooling, or heating and cooling units per Household requires prior written approval from the Department;~~

~~(2) Purchase of portable heating or cooling, or heating and cooling units which require performance of electrical work for proper installation requires prior written approval from the Department;~~

~~(3) Replacement of central systems and combustion heating units is not an approved use of crisis funds; and~~

~~(4) Portable heating or cooling, or heating and cooling units must be Energy Star®. In cases where the type of unit is not rated by Energy Star®, or if Energy Star® units are not available due to supply shortages, Subrecipient may purchase the highest rated unit available.~~

~~(e) When natural disasters result in energy supply shortages or other energy related emergencies, CEAP will allow home energy related expenditures for:~~

~~(1) Costs to temporarily shelter or house individuals in hotels, apartments or other living situations in which homes have been destroyed or damaged, i.e., placing people in settings to preserve health and safety and to move them away from the crisis situation;~~

~~(2) Costs for transportation (such as cars, shuttles, buses) to move individuals away from the crisis area to shelters, when health and safety is endangered by loss of access to heating or cooling;~~

~~(3) Utility reconnection costs;~~

~~(4) Blankets, as tangible benefits to keep individuals warm;~~

~~(5) Crisis payments for utilities and utility deposits; and~~

~~(6) Purchase of fans, air conditioners and generators. The number, type, size and cost of these items may not exceed the minimum needed to resolve the crisis.~~

~~(f) Time Limits for Assistance. Subrecipients shall ensure that for customers who have already lost service or are in immediate danger of losing service, some form of assistance to resolve the crisis shall be provided within a 48 hour time limit (18 hours in life threatening situations). The time limit commences upon completion of the application process. The application process is considered to be complete when an agency representative accepts an application, and completes the eligibility process.~~

~~(g) Subrecipients must maintain written documentation in customer files showing crises resolved within appropriate timeframes. Subrecipients must maintain documentation in customer files showing that a utility bill used as evidence of a crisis was received by the Subrecipient during the effective contract term. The Department may disallow improperly documented expenditures.~~

§6.311. Utility Assistance Component.

(a) ~~A~~ Subrecipients may use home energy payments to assist Low Income Households to reduce their home energy costs. Subrecipients shall combine home energy payments with energy conservation tips, participation by utilities, and coordination with other services in order to assist ~~L~~ow ~~i~~ncome Households to reduce their home energy needs.

(b) Subrecipients must make payments directly to vendors and/or landlords on behalf of eligible Households.

(c) For Vulnerable Population Households, service and repair of existing heating and cooling units is allowed when the Household has an inoperable heating or cooling system. If a component(s) of the heating or cooling system cannot be repaired using parts, the Subrecipient can replace the component(s) in order to repair the heating or cooling system. The cost shall not exceed \$3,500 and will not be counted towards the total maximum per Household allowable under the Utility Assistance Component. Subrecipients may leverage this type of assistance with LIHEAP and/or DOE Weatherization.

§6.312. Payments to Subcontractors and Vendors.

(a) A bi-annual Vendor Agreement is required to be implemented by the Subrecipient and shall contain assurances as to fair billing practices, delivery procedures, and pricing procedures for business transactions involving CEAP beneficiaries. The Subrecipient must use the Department's current Vendor Agreement template, found on the CEAP Program Guidance page of the Department's website. These agreements are subject to monitoring procedures performed by the Department staff.

(b) Subrecipient shall maintain proof of payment to Subcontractors and vendors as required by Chapter 1, Subchapter D, of this ~~part~~ title.

(c) Subrecipient shall notify each participating Household of the amount of assistance to be paid on its behalf. Subrecipient shall document this notification.

(d) Subrecipients shall use the Vendor Payment method for CEAP components. Subrecipient shall not make cash payments directly to eligible Household for any of the CEAP components.

(e) Payments to Vendors for which a valid Vendor Agreement is not in place may be subject to disallowed costs unless prior written approval is obtained from the Department.

(f) A Vendor Refund is program income and must be reimbursed to the Subrecipient, and not the customer. ~~(g)~~ When a Vendor Refund is issued, Subrecipient shall determine which TDHCA Contract the payment(s) was charged to, the Household associated to the payment, and if the Contract remains open.

(1) If the Contract remains open, Subrecipient must enter the amount into the Contract System in the appropriate budget line item into the adjustment column in the next monthly report, and make the appropriate note in the system. This will credit back the Vendor Refund for the Subrecipient to expend on eligible expenses.

(2) If the Contract is closed, Subrecipient must return the Vendor Refund ~~(g)~~ to the Department within ten calendar days of receipt. The payment must contain the Contract number and appropriate budget line item associated with the refund.

§6.313. Outreach, Accessibility, and Coordination.

(a) The Department may continue to develop interagency collaborations with other low-income program offices and energy providers to perform outreach to targeted groups.

(b) Subrecipients shall conduct outreach activities. ~~(c)~~ Outreach activities may include:

- (1) ~~providing~~ Providing information through home visits, site visits, group meetings, or by telephone for disabled low-income persons;
 - (2) ~~distributing~~ Distributing posters/flyers and other informational materials at local and county social service agencies, offices of aging, Social Security offices, etc.;
 - (3) ~~providing~~ Providing information on the program and eligibility criteria in articles in local newspapers or broadcast media announcements;
 - (4) ~~coordinating~~ Coordinating with other low-income services to provide CEAP information in conjunction with other programs;
 - (5) ~~providing~~ Providing information on one-to-one basis for applicants in need of translation or interpretation assistance;
 - (6) ~~providing~~ Providing CEAP applications, forms, and energy education materials in English and Spanish (and other appropriate language(s));
 - (7) ~~working~~ Working with energy vendors in identifying potential applicants;
 - (8) ~~assisting~~ Assisting applicants to gather needed documentation; and
 - (9) ~~mailing~~ Mailing information and applications.
- ~~(c)~~ ~~Subrecipients shall accept applications at sites that are geographically and physically accessible to all Households requesting assistance. If Subrecipient's office is not accessible, Subrecipient shall make-handle Reasonable Accommodation requests, in accordance with 10 TAC §1.204 of this title (relating to Reasonable Accommodations), to ensure that all Households can apply for assistance.~~
- ~~(d)~~ ~~Subrecipients~~ shall coordinate with other social service agencies through cooperative agreements to provide services to customer Households. Cooperative agreements must clarify procedures, roles, and responsibilities of all involved entities.
- ~~(e)~~ ~~Subrecipients~~ shall coordinate with other energy related programs. Specifically, Subrecipient shall make documented referrals to the local WAP Subrecipient.
- ~~(f)~~ ~~Subrecipients~~ shall coordinate with local energy vendors to arrange for arrearage reduction, reasonably reduced payment schedules, or cost reductions.

SUBCHAPTER D WEATHERIZATION ASSISTANCE PROGRAM

§6.401. Background.

The Weatherization Assistance Program was established by the Energy Conservation in Existing Buildings Act of 1976, as amended 42 U.S.C. §§6851, *et seq.* The Department funds the Weatherization Programs through the Department of Energy Weatherization Assistance Program (DOE-WAP) which is funded through the U.S. Department of Energy Weatherization Assistance Program for Low Income Persons grant and the Low Income Home Energy Assistance Program Weatherization Assistance Program ("LIHEAP-WAP") which is funded through the U.S. Department of Health and Human Services' Low-Income Home Energy Assistance Program (LIHEAP) grant.

§6.402. Purpose and Goals.

(a) DOE-WAP and LIHEAP-WAP offers awards to Private Nonprofit Organizations, and Public Organizations with targeted beneficiaries being Households with low incomes, with priority given to Vulnerable Populations, High Energy Burden, and Households with High Energy Consumption. In addition to meeting the income-eligibility criteria, the weatherization measures to be installed must meet specific energy-savings goals. Neither of these programs are entitlement programs

and there are not sufficient funds to serve all customers that may be eligible.

(b) The programs fund the installation of weatherization materials and provide energy conservation education. The programs help control energy costs to ensure a healthy and safe living environment.

(c) Organizations administering a Department-funded weatherization program must administer both the DOE-WAP and the LIHEAP-WAP. Organizations that have one Weatherization program removed will have both programs removed. If it is necessary to designate a new Subrecipient to administer WAP, the Department shall give special consideration to Subrecipients receiving funds under LIHEAP or DOE WAP, in accordance with Assurance 6 of the Low Income Home Energy Assistance Act of 1981.

(d) The Department shall administer and implement the DOE-WAP program in accordance with DOE rules (10 CFR Part 440), except that Categorical Eligibility will follow the eligibility reflected in the LIHEAP plan. The Department shall administer and implement the LIHEAP-WAP program in accordance with a combination of LIHEAP statute (42 U.S.C. §§6861, *et seq.*) and DOE rules. LIHEAP Weatherization measures may be leveraged with DOE Weatherization measures in which case all DOE rules and requirements as described in this title and in the Contract will apply.

§6.403. Definitions.

(a) Department of Housing and Urban Development ("~~HUD~~")--Federal department that provides funding for certain housing and community development activities.

(b) Electric Base-Load Measure (EBL)--Weatherization measures which address the energy efficiency and energy usage of lighting and appliances.

(c) Energy Audit--The energy audit software and procedures used to determine the cost effectiveness of Weatherization measures to be installed in a Dwelling Unit. The Energy Audit shall be used for any Dwelling Unit weatherized utilizing DOE funds.

(d) Energy Repairs--Weatherization-related repairs necessary to protect or complete regular Weatherization energy efficiency measures.

(e) Multifamily Dwelling Unit--A structure containing more than one Dwelling Unit.

(f) Priority List--For LIHEAP-WAP only, a list developed by the Department, as may be updated from time to time, included in the Contract, and which provides the prescribed method to be used by Subrecipients when addressing weatherization measures.

~~(g)~~ Rental Unit--A Dwelling Unit occupied by a person who pays rent for the use of the Dwelling Unit.

~~(g)~~ Renter--A person who pays rent for the use of the Dwelling Unit.

~~(h)~~ Reweathering--Consistent with 10 CFR §440.18(e)(2), if a Dwelling Unit has been damaged by fire, flood, or act of God and repair of the damage to Weatherization materials is not paid for by insurance; or if a Dwelling Unit was partially weatherized under a federal program during the period September 30, 1975, through September 30, 1994, the Dwelling Unit may receive further financial assistance for Reweathering.

~~(i)~~ Shelter--a Dwelling Unit or Units whose principal purpose is to house on a temporary basis individuals who may or may not be related to one another and who are not living in nursing homes, prisons, or similar institutional care facilities.

~~(j)~~ Significant Energy Savings--A Savings to Investment Ratio (SIR) of 1.0 or greater.

~~(k)~~ Single Family Dwelling Unit--A structure containing no more than one Dwelling Unit.

~~(l)~~ Weatherization Assistance Program Policy Advisory Council ("~~WAP PAC~~")--The WAP PAC was established by the Department in accordance with 10 CFR §440.17 to provide advisory services

in regards to the DOE WAP program.

~~(#n)~~ Weatherization Material--The material listed in Appendix A of 10 CFR Part 440.

~~(#o)~~ Weatherization--A program conducted to reduce heating and cooling demand of Dwelling Units that are energy inefficient.

§6.404. Distribution of WAP Funds.

(a) Except for the reobligation of deobligated funds, the Department distributes funds to Subrecipients by an allocation formula.

(b) The allocation formula allocates funds based on the number of Low Income Households in a service area and takes into account certain special needs of individual service areas, as set forth below. The need for energy assistance in an area is addressed through a weather factor (based on heating and cooling degree days). The extra expense in delivering services in sparsely populated areas is addressed by an inverse Population Density factor. The lack of additional services available in very poor counties is addressed by a county median income factor. Finally, the Elderly are given priority by giving greater weight to this population. The five factors used in the formula are calculated as follows:

(1) County Non-Elderly Poverty Household Factor--The number of Non-Elderly Poverty Households in the County divided by the number of Non-Elderly Poverty Households in the State;

(2) County Elderly Poverty Household Factor--The number of Elderly Poverty Households in the county divided by the number of Elderly Poverty Households in the State;

(3) County Inverse Household Population Density Factor--

(A) The number of square miles of the county divided by the number of Households of the county (equals the inverse Household population density of the county); and

(B) Inverse Household Population density of the county divided by the sum of inverse Household densities.

(4) County Median Income Variance Factor--

(A) State median income minus the county median income (equals county variance); and

(B) County variance divided by sum of the State county variances;

(5) County Weather Factor--

(A) County heating degree days plus the county cooling degree days, multiplied by the poverty Households, divided by the sum of county heating and cooling degree days of counties (equals County Weather); and

(B) County Weather divided by the total sum of the State County Weather.

~~(c)~~ The five factors carry the following weights in the allocation formula: number of Non-Elderly Poverty Households (40-~~percent~~), number of poverty Households with at least one member who is 60 years of age or older (40-~~percent~~), Household density as an inverse ratio (5-~~percent~~), the median income of the county (5-~~percent~~), and a weather factor based on heating degree days and cooling degree days (10-~~percent~~). All demographic factors are based on the most current decennial U.S. Census. The formula is as follows:

~~(1)~~ County Non-Elderly Poverty Household Factor (0.40) plus;

~~(2)~~ County Elderly Poverty Household Factor (0.40) plus;

~~(3)~~ County Inverse Household Population Density Factor (0.05) plus;

~~(4)~~ County Median Income Variance Factor (0.05) plus;

~~(5)~~ County Weather Factor (0.10);

~~(6)~~ ~~total~~ Total sum of ~~paragraphs (1) through (5)~~ clauses (i) -- (v) of this subsection ~~paragraph is~~ multiplied by ~~the~~ total funds allocation ~~to generate~~ equals the county's allocation of funds.

~~(Zvii)~~ The sum of the county allocation within each Subrecipient service area equals the Subrecipient's total allocation of funds.

~~(c) To the extent that Contract funds have been deobligated, or should additional funds become available, those funds will be allocated using this formula or other method approved by the Department's Board to ensure full utilization of funds within a limited timeframe, including possible allocation of WAP funds to Subrecipients in varying populations from each funding source (DOE and LIHEAP), based on availability of the source.~~

(d) In the event that a Subrecipient who has been awarded LIHEAP WAP funds elects to voluntarily transfer some portion of their LIHEAP WAP funds to the LIHEAP CEAP activity, a request to do so must be submitted prior to August 1 of the first year of the federal LIHEAP award period. The amount of funds being voluntarily transferred will be returned to the Department and redistributed among LIHEAP CEAP providers to ensure appropriate coverage among counties. This may mean the LIHEAP funds are awarded to that same Subrecipient having made the request, but alternatively could mean that the funds may be awarded to one or more other CEAP Subrecipients providing CEAP services in the counties for which the WAP funds were transferred. The Department will distribute the funds proportionally to the affected counties and CEAP Subrecipients in the service area using the allocation formula in §6.303 of this title (relating to Distribution of CEAP Funds).

~~(e) Subrecipients that do not expend more than 20 percent of Program Year formula allocation (excluding any additional funds that may be distributed by the Department and any funds voluntarily transferred to LIHEAP CEAP) by the end of the first quarter of the year following the Program Year for two consecutive years will have funding recaptured. LIHEAP WAP funding recapture will be consistent with Chapter 2105. The Subrecipient of the funds will be provided a Contract for the average percentage of funds that they expended over the last two years.~~

~~(f) The cumulative balance of the funds made available through subsection (e) of this section will be allocated proportionally by formula to the entities that expended 90 percent of the prior year's Contract, excluding adjustments made in subsection (e), by the end of the original Contract Term.~~

~~(ee)~~ To the extent federal funding awarded to Texas is limited from one of the two WAP funding sources, possible allocations of funds to Subrecipients may be made in varying proportions from each source to maximize efficient program administration.

~~(hf)~~ The Department may, in the future, undertake to reprocur the Subrecipients entities that comprise the network of Weatherization providers, in which case this allocation formula will be reassessed and, if material changes are needed, amended by rulemaking.

§6.405. Deobligation and Reobligation of Awarded Funds.

(a) A Subrecipient that does not expend more than 20% of its Program Year formula allocation (excluding any additional funds that may be distributed by the Department and any funds voluntarily transferred to LIHEAP CEAP) by the end of the first quarter of the Contract Term following the Program Year for two consecutive years will have funding recaptured. A Subrecipient's Contract will be amended to reflect the average percentage of funds that expended over the last two years. LIHEAP-WAP funding recapture will be consistent with Tex. Gov't Code, Chapter 2105.

(b) The cumulative balance of the funds made available in subsection (a) of this section will be allocated proportionally by formula to Subrecipients that expended 90% of the prior year's Contract, excluding adjustments made in subsection (a), by the end of the original Contract Term.

(ca) At any time that a Subrecipient believes they may be at risk of meeting one of the criteria

noted in subsection (n) of this section relating to criteria for Deobligation of funds, notification must be provided to the Department unless excepted under subsection (om) of this section.

(db) A written "Notification of Possible Deobligation" will be sent to the Executive Director of the Subrecipient by the Department as soon as the Department identifies that a criterion listed in subsection (n) of this section is at risk of not being met. Written notice will be sent electronically and/or by mail. The notice will include an explanation of the criteria met. A copy of the written notice will be sent to the Board of Directors or other governing body of the Subrecipient by the Department on or after at least ten (10) calendar days after the notice to the Executive Director has been released. A Notification will not be sent, and the steps in this section not triggered, if an Amendment increasing funds by at least 20% has been provided to the Subrecipient in the prior 90 calendar days.

(ee) Within fifteen (15) calendar days of the date of the "Notification of Possible Deobligation" referenced in subsection (db) of this section, a Mitigation Action Plan must be submitted to the Department by the Subrecipient in the format prescribed by the Department unless excepted under subsection (om) of this section.

(fe) A Mitigation Action Plan is not limited to but must include:

(1) Explanation of why the identified criteria under this section occurred setting out all fully relevant facts.

(2) Explanation of how the criteria will be immediately, permanently, and adequately mitigated such that funds are expended during the Contract Period. For example, if production or expenditures appear insufficient to complete the Contract timely, the explanation would need to address how production or expenditures will be increased in the short- and long-term to restore projected full Expenditure and timely execution of the contract.

(3) If applicable because of failure to produce Unit Production or Expenditure targets under the existing Production Schedule, a detailed narrative of how the Production Schedule will be adjusted, going forward, to assure achievement of sufficient, achievable Unit Production and Expenditures to ensure timely and compliant full utilization of all funds.

(4) An explanation of how the other criteria under this section will be mitigated. For example, if Unit Production criteria for a time period were not met, then the explanation will need to include how the other criteria will not be triggered.

(5) If relating to a Unit Production or Expenditure criteria, a description of activities currently being undertaken including an accurate description of the number of units in progress, broken down by number of units in each of these categories: units that have been qualified, audited, assessed, contracted, inspected, and invoiced and as reflected in an updated Production Schedule.

(6) Provide any request for a reduction in Contracted Funds, reasons for the request, desired Contracted Funds amount, and revised Production Schedule reflecting the reduced Contracted Funds.

(ge) At any time after sending a Notification of Deobligation, the Department or a third-party assigned by the Department may monitor, conduct onsite visits, ~~or perform~~ perform other assessments, or engage in any other oversight of the Subrecipient that is determined appropriate by the Department under the facts and circumstances.

(hf) The Department or a third-party assigned by the Department will review the Mitigation Action Plan, and where applicable, assess the Subrecipient's ability to meet the revised Production Schedule or remedy other Concern.

(ig) After the Department's receipt of the Mitigation Action Plan, the Department will provide the

Subrecipient a written Corrective Action Notice which may include one or more of the criteria identified in this section (relating to deobligation and other mitigating actions) or other acceptable solutions or remedies.

~~(j)~~ The Subrecipient has seven ~~(7)~~ calendar days from the date of the Corrective Action Notice to appeal the Corrective Action Notice to the Executive Director. Appeals may include:

- (1) ~~A r~~Request to retain ~~for~~ the full Fund Award if Partial Deobligation was indicated;
- (2) ~~A r~~Request for only partial Deobligation of the full Contracted Fund if full Deobligation was indicated in the Corrective Action Notice; or
- (3) Request for other lawful action consistent with the timely and full completion of the ~~C~~contract and Production Schedule for all Contracted Funds.

~~(k)~~ In the event that an appeal of a staff decision under this section is submitted to the Executive Director, the Executive Director may grant extensions or forbearance of targets included in the Production Schedule, may provide for continued operation of a Contract, may authorize Deobligation, or may take other lawful action that is designed to ensure the timely and full completion of the Contract for all Contracted Funds.

~~(l)~~ In the event an appeal is not submitted within seven calendar days from the date of the Corrective Action Notice, the Corrective Action Notice will automatically become final without need of any further action or notice by the Department, and the Department will amend/terminate the Contract with the Subrecipient to effectuate the Corrective Action Notice.

~~(m)~~ In the event the Executive Director denies an appeal of a staff decision under this section, the Subrecipient ~~will have the opportunity to have their appeal presented at the next meeting of the Department's governing board for which the matter may be posted in accordance with law and submitted for final determination by the Board.~~ may appeal that decision in accordance with §1.7(f) of this title (relating to the Process for Filing an Appeal of the Executive Director's Decision to the Board).

~~(k)~~ In the event an appeal is not submitted within seven (7) calendar days from the date of the Corrective Action Notice, the Corrective Action Notice will automatically become final without need of any further action or notice by the Department, and the Department will amend/terminate the contract with the Subrecipient to effectuate the Corrective Action Notice.

~~(n)~~ Any one or more of ~~T~~ the criteria noted in this subsection will prompt the Deobligation process under this rule. If the criteria are met, then notification and ensuing processes discussed elsewhere in this subchapter will apply.

(1) Subrecipient fails to provide the Department with a Production Schedule for ~~its~~their current Contract within 30 calendar days of receipt of the draft Contract. The Production Schedule must be signed by the Subrecipient's ~~s~~ Executive Director/Chief Executive Officer, ~~and~~ approved by the Department in writing;

(2) By the third program reporting deadline, Subrecipient must report at least one unit weatherized for each Weatherization ~~C~~contract;

(3) By the fifth program reporting deadline, less than 25% of total expected unit production has occurred based on the Production Schedule, or less than 20% of total Awarded Funds have been expended;

(4) By the seventh program reporting deadline, less than 50% of total expected unit production has occurred based on the Production Schedule, or less than 50% of total Awarded Funds have been expended; or

(5) The Subrecipient fails to submit a required monthly report explaining any variances between the Production Schedule and actual ~~results on~~ Production Schedule criteria. ~~;~~

~~(om)~~ Notification of Deobligation will not be required to be sent to a Subrecipient, and a Mitigation Action Plan will not be required to be provided to the Department, if any one or more of the following exceptions are satisfied:

(1) The total cumulative unit production for the Subrecipient, based on the monthly report as reported in the Community Affairs Cecontract Ssystem, is at least 75% of the total cumulative number of units to be completed as of the end of the month according to the Subrecipient's forecast unit production within the Production Schedule for the time period applicable (i.e. cumulative through the month for which reporting has been made).

(2) The total cumulative expenditures for the Subrecipient, based on the monthly report as reported in the Community Affairs Cecontract Ssystem, is at least 75% of the total cumulative estimated expenditures to be expended as of the end of the month according to the Subrecipient's forecast expenditures within the Production Schedule for the time period applicable (i.e., cumulative through the month for which reporting has been made).

(3) The Subrecipient's monthly reports as reported in the Community Affairs Cecontract Ssystem, for the prior two months, as required under the Contract, reflects unit production that is 80% or more of the expected unit production amount to be completed as of the end of the month according to the Subrecipient's forecast unit production within the Production Schedule.

~~(pA)~~ A Subrecipient that has funds Deobligated under this section but that fully expends the reduced amount of its Contract, will have access to the full amount of the following Program Year WAP allocation. A Subrecipient which has had funds Deobligated under this section that fails to fully expend the reduced amount of its Contract will automatically have its following Program Year WAP allocation Deobligated by the lesser of 24.99% or the proportional amount that had been Deobligated in the prior year.

(q) Funds deobligated under this section, funds voluntarily relinquished, or additional funds should they become available, will be reobligated proportionally by the formula described in §6.403 of this subchapter or other method approved by the Department's Board amongst all Subrecipients that did not have any funds Deobligated during this evaluation period to ensure full utilization of funds within a limited timeframe including possible allocation of WAP funds to Subrecipients in varying populations from each funding source (DOE and LIHEAP), based on availability of the source.

§6.406. Subrecipient Requirements for Establishing Priority for Eligible Households and Customer Eligibility Criteria.

(a) Subrecipient shall establish eligibility and priority criteria to increase the energy efficiency of dwellings owned or occupied by Low Income persons who are particularly vulnerable such as the Elderly, Persons with Disabilities, Families with Young Children, Households with High Energy Burden, and Households with High Energy Consumption.

~~(b) Subrecipient shall follow the Department rules and established state and federal guidelines for determining eligibility for Multifamily Dwelling Units as referenced in §6.414 of this subchapter (relating to Eligibility for Multifamily Dwelling Units).~~

~~(eb)~~ Subrecipient shall determine applicant income eligibility in compliance with §6.4 of this chapter (relating to Income Determination).

(c) Categorical Eligibility for DOE-WAP benefits exist when at least one person in the Hhousehold receives assistance payments under Title IV or XVI of the Social Security Act at any time during the 12-month period preceding the determination of eligibility. Categorical Eligibility for LIHEAP-WAP benefits are the same as those specified for CEAP benefits described in §6.307(b) of this

chapter.

(d) Social Security numbers are not required for applicants.

(e) U.S. Citizen, U.S. National or Qualified Alien. Unqualified Aliens are not eligible to receive WAP benefits. Mixed Status Households shall not be denied WAP assistance based solely on the presence of a non-qualified member, except if the member is the sole member of the Household. A Public Organization must verify U.S. Citizen, U.S. National, or Qualified Alien status of all Household members using SAVE. Assistance shall be determined as follows:

(1) Count income for all Household members eighteen years of age and older, including Unqualified Aliens; and

(2) Adjust the Household size for determining eligibility and benefit assistance level to exclude all Unqualified Aliens.

(f) For purposes of determining Categorical Eligibility or Vulnerable Populations (e.g. priority status) the Household is not considered to satisfy the definition of having Categorical Eligibility or Vulnerable Population if the only individual(s) in the Household with Categorical Eligibility or Vulnerable Population status is an Unqualified Alien. For purposes of reporting, all individuals in the Household should be reported.

§6.407. Program Requirements.

(a) Each Dwelling Unit weatherized requires completion of a written whole house assessment. Subrecipient must perform the whole house assessment then let that assessment guide whether the Dwelling Unit is best served through DOE funds using the audit, through LIHEAP WAP funds using the priority list, or a combination of DOE and LIHEAP funds.

(b) Any Dwelling Unit that is weatherized using DOE funds must use the State of Texas approved Energy ~~a~~Audit as a guide for installed measures. A Subrecipient combining DOE funds with LIHEAP WAP funds on an individual Dwelling Unit or building may not mix the use of the Energy ~~a~~Audit and the P~~p~~riority L~~l~~ist.

(c) Any Dwelling Unit that is weatherized using LIHEAP only must be completed using the ~~p~~P~~p~~riority L~~l~~ist as a guide for installed measures. Failure to complete a written whole house assessment as indicated in §6.416 of this subchapter (relating to Whole House Assessment) prior to Weatherization may lead to unit failure during quality control inspection.

(d) If a Subrecipient's Weatherization work does not consistently meet DOE Standard Work Specifications Weatherization standards, the Department may proceed with the removal of the programs from the Subrecipient.

§6.408. Department of Energy Weatherization Requirements.

(a) In addition to cost principles and administrative requirements listed in §1.402 in Chapter 1 of this Part-part (relating to Cost Principles and Administrative Requirements), Subrecipients administering DOE programs must also adhere to 10 CFR Part 440, 10 CFR Part 600, and the applicable International Residential Code (IRC).

(b) WAP Policy Advisory Council. In accordance with Tex. Gov't Code, §2110.005 and 10 CFR §440.17, the Department shall establish the Weatherization Assistance Program Policy Advisory Council (WAP PAC), with which it will consult prior to the submission of the annual plan and award of funds to DOE.

(c) Adjusted Average Expenditure Per Dwelling Unit. Expenditures of financial assistance provided under DOE-WAP funding for the Weatherization services for labor, weatherization materials, and program support shall not exceed the DOE adjusted average expenditure limit for the current

Program Year per Dwelling Unit as provided by DOE, and as cited in the Contract, without special agreement via an approved waiver from the Department.

(d) Electric Base Load Measures. DOE has approved the inclusion of selected Electric Base Load (EBL) measures as part of the Weatherization of eligible residential units. ~~EBL measures must be determined cost effective with a Savings to Investment Ratio ("SIR") of one or greater by audit analysis.~~ Refrigerators must be metered for a minimum of two ~~(2)~~ hours when calculating the EBL and SIR.

(e) Subrecipients may not enter into vehicle lease agreements ~~for vehicles used in the WAP and paid for~~ with WAP funds.

~~(f) Energy Audit. Subrecipients are required to complete a State of Texas approved Energy Audit to determine allowable weatherization measures prior to commencing Weatherization work.~~

~~(fg)~~ Energy Audit Procedures.

(1) SIR for the Energy Audit procedures will determine the installation of allowable Weatherization measures. The Weatherization measures must result in energy cost savings over the lifetime of the measure(s), discounted to present value, that equal or exceed the cost of materials, and installation. An Energy Audit may consist of Incidental Repairs, Energy-Saving Measures (starting with Duct Sealing and Infiltration Reduction), and Health and Safety Measures. All Energy-Saving Measures must rank with an SIR of one or greater. The total Cumulative SIR, prior to Health and Safety measures, must be a one or greater in order to weatherize the dwelling unit.

(2) The Energy Audit has not been approved for multifamily buildings containing 25 or more units. Subrecipients that propose weatherizing a building containing 25 or more units must receive approval from~~contact~~ the Department ~~for assistance~~ prior to beginning any Weatherization activity.

(3) Energy Auditors must use the established R-values for existing measures provided in the International Energy Conservation Code ("~~IECC~~") when entering data into the Energy Audit. Subrecipients must follow minimum requirements set in the applicable State of Texas adopted International Residential Code ("IRC") or jurisdictions authorized by state law to adopt later editions.

(4) Subrecipients utilizing the Energy Audit must enter into the audit all materials and labor measures proposed to be installed.

§6.409. LIHEAP Weatherization Requirements.

(a) Allowable Expenditure per Dwelling Unit. Expenditures of financial assistance provided under LIHEAP-WAP funding for the weatherization services for labor, Weatherization materials, and program support shall not exceed the allowable figure as set forth in the current Contract ~~term~~, without prior written approval from the Department. The cumulative cost per unit (materials, labor and program support), shall not exceed the maximum allowable by the end of the C~~o~~contract T~~e~~rm.

(b) Allowable Activities. Subrecipients ~~are is limited to allowed to perform~~ Weatherization measures as detailed in the ~~p~~Priority ~~L~~List Exhibit to the Weatherization Contract. Measures must be ~~performed~~ addressed according to the instructions in the order detailed in the Exhibit. ~~Subrecipient shall include in the customer file detailed documentation to explain omitted measures.~~

(c) Outreach and Accessibility.

(1) Subrecipients shall conduct outreach activities, which may include but are not limited to:

- (A) ~~P~~roviding information through home visits, site visits, group meetings, or by telephone for disabled low-income persons;
- (B) ~~D~~istributing posters/flyers and other informational materials at local and county social service agencies, offices of aging, social security offices, etc.;
- (C) ~~P~~roviding information on the program and eligibility criteria in articles in local newspapers or broadcast media announcements;
- (D) ~~C~~oordinating with other low-income services to provide LIHEAP information in conjunction with other programs;
- (E) ~~P~~roviding information on one-to-one basis for applicants in need of translation or interpretation assistance;
- (F) ~~P~~roviding LIHEAP applications, forms, and energy education materials in English and Spanish (and other appropriate language);
- (G) ~~W~~orking with energy vendors in identifying potential applicants;
- (H) ~~A~~ssisting applicants to gather needed documentation; and
- (I) ~~M~~ailing information and applications.

~~(2) Subrecipients and their field offices shall accept applications at sites that are geographically accessible to all Households requesting assistance.~~

~~(d) Priority Assessment. Subrecipients must conduct an assessment of Dwelling Units using the LIHEAP Priority List, including all required Health and Safety and energy efficiency measures.~~

~~(de) LIHEAP Subrecipient Eligibility.~~

(1) The Department administers the program through the existing Subrecipients that have demonstrated that they are operating the program in accordance with their Contract, the Economic Opportunity Act of 1964, the Low-Income Home Energy Assistance Act of 1981, as amended (42 U.S.C. §§8621, *et seq.*), and the Department rules. If a Subrecipient is successfully administering the program, the Department may offer to renew the Contract.

(2) If the Department determines that a Subrecipient is not administering the program satisfactorily, the Subrecipient will be required to take corrective actions to remedy the problem within the timeframe referenced in the issued monitoring report, unless it is a case of customer health or safety. If Subrecipient fails to correct the Deficiency or Finding, in order to ensure continuity of services, the Department may take an action in accordance with §1.411(f) of this Title, (relating to Nonrenewal or Reduction of Block Grant Funds to a Specific Subrecipient). ~~reassign up to 24.99% of the funds for the service area to one or more other existing Subrecipient.~~

~~(3) If the Subrecipient does not complete the corrective action within the required timeframe, the Department may conduct a solicitation for selection of an interim Subrecipient. The affected Subrecipient may request a hearing in accordance with the Tex. Gov't Code, §2105.204.~~

~~(4) If it is necessary to designate a new Subrecipient to administer LIHEAP WAP, the Department shall give special consideration to Eligible Entities and entities administering CEAP in the service area.~~

§6.410. Liability Insurance and Warranty Requirement.

Subrecipient Weatherization work shall be covered by general liability insurance for an amount not less than combined total of materials, labor, support and health and safety. The Department strongly recommends Pollution Occurrence Insurance to be part of or an addendum to Subrecipients's general liability insurance coverage. Subrecipients must ensure that each Subcontractor performing Weatherization activities maintain adequate insurance coverage for all units to be weatherized. Weatherization contractors must provide a one-year warranty on

their work for parts and labor; the period for the warranty coverage shall begin at the completion of installation. If Subrecipient relinquishes its Weatherization program, Weatherization work completed within 12 months of the date of surrender of the program, must be covered by general liability insurance or contractor warranty. Public Organizations that have self insurance complying with Tex. Gov't Code Chapter 2259 covering weatherization work, may, but are not required to, purchase additional coverage.

§6.411. Customer Education.

Subrecipients shall provide customer education to each WAP customer on energy conservation practices. Subrecipients shall provide education to identify energy waste, manage Household energy use, and strategies to promote energy savings. Subrecipients ~~are~~ is encouraged to use oral, written, and visual educational materials.

§6.412. Mold-like Substances.

(a) If the Subrecipient's energy auditor discovers the presence of mold-like substances that the Weatherization Subcontractor cannot adequately address, then the Dwelling Unit shall be referred to the Texas Department of Licensing and Regulation or its successor agency.

(b) The Subrecipient shall provide the applicant written notification that their home cannot, at this time, be weatherized and why. Subrecipient shall also inform the applicant in writing that they should contact the Texas Department of Licensing and Regulation, or successor agency, to report the presence of mold-like substances. The applicant should be advised that when the issue is resolved they may reapply for Weatherization. Should the applicant reapply for Weatherization, the Subrecipient must obtain written documentation of resolution of the issue from the applicant prior to proceeding with any Weatherization work.

(c) If the energy auditor determines that the mold-like substance is treatable and covers less than the 25 contiguous square feet limit allowed to be addressed by the Texas Department of Licensing and Regulation's, or successor agency's, guidelines, the Subrecipient shall notify the applicant of the existence of the mold-like substance and potential health hazards, the proposed action to eliminate the mold-like substance, ~~and~~ that no guarantee is offered that the mold-like substance will be eliminated, and that the mold-like substance may return. The energy auditor must obtain written approval from the applicant to proceed with the Weatherization work, and maintain the documentation in the customer file.

(d) Subrecipient shall be responsible for providing mold training to their employees and Weatherization Subcontractors.

§6.413. Lead Safe Practices.

Subrecipients are required to document that its Weatherization staff as well as all Subcontractors follow the Environmental Protection Agency's Renovation, Repair and Painting Program (RRP) Final Rule, 40 CFR Part 745 and HUD's Lead Based Housing Rule, 24 CFR Part 35, as applicable.

§6.414. Eligibility for Multifamily Dwelling Units and Shelters.

(a) Multifamily building and Shelter weatherization is not considered a federal public benefit and the activity is exempt from the requirements of §6.406(e) and (f) of this subchapter.

(b) A Subrecipient may weatherize a building containing Rental Units if not less than 66% (50% for duplexes and four-unit buildings) of the Dwelling Units in the building are occupied by Low income Households, or will become occupied by Low-income Households within 180 days under

a Federal, State, or local government program for rehabilitating the building or making similar improvements to the building.

(~~cb~~) In order to weatherize large multifamily buildings containing twenty-five or more Dwelling Units or those with shared central heating (e.g., boilers) and/or shared cooling plants (e.g., cooling towers that use water as the coolant) regardless of the number of Dwelling Units, Subrecipient shall submit in writing to the Department a request for approval along with evidence which clearly shows that an investment of funds would result in Significant Energy Savings because of upgrades to equipment, energy systems, common space, or the building shell. When necessary, the Department will seek approval from DOE. Approvals from the Department in writing must be received prior to the installation of any Weatherization measures in this type of structure.

(~~de~~) In order to weatherize Shelters, Subrecipient shall submit a written request for approval from the Department. Written approval from the Department must be received prior to the installation of any Weatherization measures. Income determination is not required to be done for residents of Shelters.

(~~ed~~) If roof repair is to be considered as an eligible part of repair cost under the Weatherization process, the expenses must be shared equally by all eligible Dwelling Units weatherized under the same roof. If multiple storied buildings are weatherized, eligible ground floor units must be allocated a portion of the roof cost as well as the eligible top floor units. All Weatherization measures installed in multifamily units must meet the standards set in 10 CFR §440.18(d)(9) and (15), and Appendix A-Standards for Weatherization Materials.

(~~fe~~) ~~WAP~~ Subrecipients shall establish a multifamily master file for each multifamily project in addition to the applicable individual unit Dwelling Unit record-keeping requirements found in the ~~record-keeping requirement section of the eContract~~. The multifamily master file must include, at a minimum, the forms listed in paragraphs (1) - (6) of this subsection: (Forms available on the Department's website.)

(1) Multifamily Project Preparation Pre-Project Checklist Form;

(2) Multifamily Project Completion Post-Project Checklist Form;

(3) Landlord Permission to Perform an Assessment and Inspections for Rental Units for Multifamily Project Form;

(4) Landlord Agreement ~~Form~~;

(5) Landlord Financial Participation Form; and

(6) Multifamily Project Building Data Checklist Significant Data Required in all Multifamily Projects.

(~~g~~) Subrecipient shall contact the Department for record keeping guidance if it wishes to weatherize a Shelter.

(~~hf~~) For DOE WAP, if a public housing, or assisted multi-family or Low Income Housing Tax Credit (LIHTC) building has gone through the HUD Property Certification Procedure outlined in DOE Weatherization Program Notice 17-4 or is identified by the HUD and included on a list identified in Weatherization Program Notice 17-4 as having already gone through the HUD Property Certification Procedure published by DOE, that building meets ~~certain~~ income eligibility and may meet other WAP requirements without the need for further evaluation or verification by Subrecipient. A public housing, or assisted housing, and LIHTC building that does not appear on the list using HUD records may still qualify for the WAP. Income eligibility can be made on an individual basis by the Subrecipient based on information supplied by property owners and the Households in accordance with subsection (~~ba~~) of this section.

(j) For any Dwelling Unit that is weatherized using funding provided under DOE WAP, all Weatherization measures installed must be entered into an approved Energy Audit. Weatherization measures installed shall begin with repair items, then continue with those measures having the greatest SIR and proceed in descending order to the measures with the smallest SIR or until the maximum allowable per Dwelling Unit expenditures are achieved, and finishing with Health and Safety measures.

§6.415. Health and Safety and Unit Deferral.

(a) Health and Safety expenditures with DOE WAP may not exceed 15% of total expenditures for Materials, Labor, Program Support, and Health and Safety at the end of the Contract Term. Health and Safety expenditures with LIHEAP WAP may not exceed 20% of total expenditures for Materials, Labor, Program Support, and Health and Safety at the end of the Contract Term.

(b) Subrecipient shall provide Weatherization services with the primary goal of energy efficiency. The Department considers establishing a healthy and safe home environment to be important to ensuring that energy savings result from Weatherization work.

(c) Subrecipient must test for high carbon monoxide ("CO") levels and bring CO levels to acceptable levels before Weatherization work can start. The Department has defined maximum acceptable CO readings in its Standard Work Specifications.

(d) A Dwelling Unit shall not be weatherized when there is a potentially harmful situation that may adversely affect the occupants or the Subrecipient's Weatherization crew and staff, or when a Dwelling Unit is found to have structural concerns that render the Dwelling Unit unable to benefit from Weatherization. The Subrecipient must declare their intent to defer Weatherization on an eligible unit on the assessment form. The assessment form should include the customer's name and address, dates of the assessment, and the date on which the customer was informed of the issue in writing. The written notice to the customer must include a clear description of the problem, conditions under which Weatherization could continue, the responsibility of all parties involved, and any rights or options the customer has. A copy of the notice must be given to the customer, and a signed copy placed in the customer application file. Only after the issue has been corrected to the satisfaction of the Subrecipient shall Weatherization work begin.

(e) If structural concerns or health and safety issues identified (which would be exacerbated by any Weatherization work performed) on an individual Dwelling Unit cannot be abated within program rules or within the allowable WAP limits, the Dwelling Unit exceeds the scope of this program.

§6.416. Whole House Assessment.

(a) Subrecipients must conduct a whole house assessment on all eligible unitsDwelling Units. Whole house assessments must be used to determine whether the Priority List or an Energy Audit is most appropriate for the unit. Whole house assessments must include, but are not limited to the items described in paragraphs (1) - (15) of this subsection:

- (1) Wall--Condition, type, orientation, and existing R-values;
- (2) Windows--Condition, type material, glazing type, leakiness, and solar screens;
- (3) Doors--Condition, type;
- (4) Attic--Type, condition, existing R-values, and ventilation;
- (5) Foundation--Condition, existing R-values, and floor height above ground level;
- (6) Heating System--For all systems: unit type, fuel source (primary or secondary), thermostat, and output; for combustion systems only: vented or unvented efficiency, CO-levels, complete

fuel gas analysis, gas leaks, and combustion venting;

(7) Cooling System--Unit type, condition, area cooled, size in BTU rating, Seasonal Energy Efficiency Rating (SEER) or Energy Efficiency Rating ("EER"), manufacture date, and thermostat;

(8) Duct System--Condition, existing insulation level, evaluation of registers, duct infiltration, return air register size, and condition of plenum joints;

(9) Water Heater--For all water heaters: condition, fuel type, energy factor, recovery efficiency, input and output ratings, size, existing insulation levels, existing pipe insulation; for combustion water heaters only: carbon monoxide levels, draft test, complete fuel gas analysis;

(10) Refrigerator--Condition, manufacturer, manufacture date and make, model, and consumption reading (minutes and meter reading); customer refusal must be documented;

(11) Lighting System--Quantity, watts, and estimated hours used per day;

(12) Water Savers--Number of showerheads, estimated gallons per minute and estimated minutes used per day;

(13) Health and Safety--For all units: smoke detectors, wiring, minimum air exchange, moisture problems, lead paint present, asbestos siding present, condition of chimney, plumbing problems, mold; for units with combustion appliances: unvented space heaters, carbon monoxide levels on all combustion appliances, carbon monoxide detectors;

(14) Air Infiltration--To be determined from Blower Door testing; areas requiring air sealing will be noted; and

(15) Repairs--Measures needed to preserve or protect installed Weatherization measures may include lumber, shingles, flashing, siding, masonry supplies, minor window repair, gutters, downspouts, paint, stains, sealants, and underpinning.

(b) If using the Energy Audit, all allowable Weatherization measures needed must be entered. Measures will be performed in order of highest SIR to lowest depending on funds available. If using the Priority List, included Weatherization measures must be addressed according to the instructions in the Exhibit to the Weatherization Contract. in the order they appear on the list, or an explanation for excluding a measure must be provided.

§6.417. Blower Door Standards.

Subrecipients ~~are~~is required to use the blower door/duct blower data form adopted by the Department and available on the Department's website (<http://www.tdhca.state.tx.us/community-affairs/wap/index.htm>).