TDHCA Governing Board Approved Draft of
10 Texas Administrative Code (TAC) §7.31, Purpose; 10 TAC §7.34, Local Competition for Funds; 10 TAC §7.36, General Threshold Criteria under a Department NOFA; 10 TAC §7.41, Contract Term, Expenditure Benchmarks, and Return of Funds; 10 TAC §7.42, General Administrative Requirements; 10 TAC §7.43, Program Income; and 10 TAC §7.44, Program Participant Eligibility and Program Participant Files

Disclaimer

Attached is a draft of 10 TAC §7.31, Purpose; 10 TAC §7.34, Local Competition for Funds; 10 TAC §7.36, General Threshold Criteria under a Department NOFA; 10 TAC §7.41, Contract Term, Expenditure Benchmarks, and Return of Funds; 10 TAC §7.42, General Administrative Requirements; 10 TAC §7.43, Program Income; and 10 TAC §7.44, Program Participant Eligibility and Program Participant Files, that was approved by the TDHCA Governing Board on February 27, 2020. This draft incorporates changes made by the Board as a result of public comment at the meeting. This document, including its preamble, is scheduled to be published in the March 13, 2020 edition of the Texas Register and that published version will constitute the official version for purposes of public comment. The version herein is informational only and should not be relied upon as the basis for public comment.

Public Comment

Public Comment Period: Starts: **Friday, March 13, 2020**

Comments received after 5:00pm, Austin local time on Monday, April 13, 2020, will not be accepted.

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

Texas Department of Housing and Community Affairs
Attn: Naomi Cantu
P.O. Box 13941
Austin, Texas 78711-3941
Fax: 512-475-0220
Email: naomi.cantu@tdhca.state.tx.us

TDHCA will hold a public hearing to receive comment on the proposed rule changes. The details on the public hearing are as follows:

Date: Monday, March 30, 2020
Time: 1:00 p.m.
Location: Texas Department of Housing and Community Affairs
221 E. 11th St. Room 116
Written comments may be submitted in hard copy, fax, or email formats within the designated public comment period. Those making public comment are encouraged to reference the specific draft rule, policy, or plan related to their comment as well as a specific reference or cite associated with each comment.

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

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
Street Address: 221 East 11th Street, Austin, TX 78701
Mailing Address: PO Box 13941, Austin, TX 78711-3941
Main Number: 512-475-3800   Toll Free: 1-800-525-0657
Email: info@tdhca.state.tx.us   Web: www.tdhca.state.tx.us
Attachment A: Preamble, including required analysis, for proposed repeal of 10 TAC §7.31, Purpose; 10 TAC §7.34, Local Competition for Funds; 10 TAC §7.36, General Threshold Criteria under a Department NOFA; 10 TAC §7.41, Contract Term, Expenditure Benchmarks, and Return of Funds; 10 TAC §7.42, General Administrative Requirements; 10 TAC §7.43, Program Income; and 10 TAC §7.44, Program Participant Eligibility and Program Participant Files

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC §7.31, Purpose; 10 TAC §7.34, Local Competition for Funds; 10 TAC §7.36, General Threshold Criteria under a Department NOFA; 10 TAC §7.41, Contract Term, Expenditure Benchmarks, and Return of Funds; 10 TAC §7.42, General Administrative Requirements; 10 TAC §7.43, Program Income; and 10 TAC §7.44, Program Participant Eligibility and Program Participant Files. The purpose of the proposed repeals is to eliminate outdated rules 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. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect:
   1. The proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the administration of the Emergency Solutions Grant Program.
   2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.
   3. The proposed repeal does not require additional future legislative appropriations.
   4. The proposed repeal does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
   5. The proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
   6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity: the administration of homeless programs.
   7. The proposed repeal will not increase or decrease the number of individuals subject to the rule’s applicability.
   8. The proposed repeal will not negatively or positively affect this state’s economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV’T CODE §2006.002. The Department has evaluated this proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

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

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

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

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held March 13, 2020, to April 13, 2020, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Naomi Cantu, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email naomi.cantu@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, APRIL 13, 2020.

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

10 TAC §7.31, Purpose
10 TAC §7.34, Local Competition for Funds
10 TAC §7.36, General Threshold Criteria under a Department NOFA
10 TAC §7.41, Contract Term, Expenditure Benchmarks, and Return of Funds
10 TAC §7.42, General Administrative Requirements
10 TAC §7.43, Program Income
10 TAC §7.44, Program Participant Eligibility and Program Participant Files
Attachment B: Preamble for proposed new 10 TAC §7.31, Purpose; 10 TAC §7.34, Local Competition for Funds; 10 TAC §7.36, General Threshold Criteria under a Department NOFA; 10 TAC §7.41, Contract Term, Expenditure Benchmark, Return of Funds, and Performance Targets; 10 TAC §7.42, General Administrative Requirements; 10 TAC §7.43, Program Income; and 10 TAC §7.44, Program Participant Eligibility and Program Participant Files.

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC §7.31, Purpose; 10 TAC §7.34, Local Competition for Funds; 10 TAC §7.36, General Threshold Criteria under a Department NOFA; 10 TAC §7.41, Contract Term, Expenditure Benchmark, Return of Funds, and Performance Targets; 10 TAC §7.42, General Administrative Requirements; 10 TAC §7.43, Program Income; and 10 TAC §7.44, Program Participant Eligibility and Program Participant Files. The purpose of the proposed new sections is to update the rules to use the most updated sources of data when calculating the Allocation Formula; ensuring an appeal process is available for Applicants in a Local Competition; update threshold requirements for Applications; clarify the Contract extension process; clarify the voluntary return of funds; clarify the redistribution of returned funds; clarify that deposits should be returned to the Program Participant; rearrange and update reporting and administration requirements; and provide more detail for Program Participant eligibility and files.

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

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

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV’T CODE §2001.0221. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

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

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

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

2. There are unlikely to be any small or micro-businesses subject to the proposed rule because these funds are limited to private nonprofits and local governments per 24 CFR §576.202.

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

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

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV’T CODE §2001.024(a)(6).

The Department has evaluated the rules as to their possible effects on local economies and has determined that for the first five years the rules will be in effect the new rules have no economic effect on local employment because this rule will channel funds, which may be limited, only to municipalities and nonprofits; it is not anticipated that the amount of funds would be enough to support additional employment opportunities, but would add to the services provided. Alternatively, the rules would also not cause any negative impact on employment. Therefore no local employment impact statement is required to be prepared for the rule.

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

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

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held March 13, 2020, to April 13, 2020, to receive input on the new proposed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Naomi Cantu, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email naomi.cantu@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, APRIL 13, 2020.
STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov’t Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

10 TAC §7.31 Purpose

(a) The purpose of this rule is to provide guidance and procedures for the Emergency Solutions Grant (ESG) Program as authorized by Tex. Gov’t Code §2306.053. ESG funds are federal funds awarded to the State of Texas by HUD and administered by the Department.

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

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

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

10 TAC §7.34 Local Competition for Funds

(a) TDHCA may procure contractors for the purpose of administering a local competition within a CoC. The contractor selected will be the designated ESG Coordinator for the CoC region or CoC regions in which a contract is awarded.

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

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

(d) Applications not recommended by the ESG Coordinator for funding must be retained by the ESG Coordinator for a minimum of five years in accordance with 24 CFR §576.500 and must be made available to the Department upon request.
(e) The ESG Coordinator must establish an appeals process wherein Applicants may appeal scoring procedures, and such appeals must be reviewed by the governing body of the ESG Coordinator. Results of the Local Competition submitted to the Department are final, and Applicants in a Local Competition may not appeal the final determination of the ESG Coordinator to the Executive Director or to the Board.

10 TAC §7.36 General Threshold Criteria under a Department NOFA

(a) Applications submitted to the Department in response to a NOFA are subject to general threshold criteria. Applications which do not meet the general threshold criteria or which cannot resolve an administrative deficiency related to general threshold criteria are subject to termination. Applicants applying directly to the Department to administer the ESG Program must submit an Application on or before the deadlines specified in the NOFA, and must include items in paragraphs (1)-(13) of this subsection:
   (1) Application materials as published by the Department including, but not limited to, program description, budget, and performance statement.
   (2) An ESG budget that does not exceed the total amount available within the CoC region or other geographic limitation, as applicable.
   (3) A copy of the Applicant's written standards that comply with the requirements of 24 CFR §576.400 and certification of compliance with these standards. Any occupancy standard set by the Subrecipient must not conflict with local regulations or Texas Property Code §92.010.
   (4) A copy of the Applicant's policy for termination of assistance that complies with the requirements of 24 CFR §576.402 and certification of compliance with these standards.
   (5) For a NOFA under the Allocation Formula, a Service Area which consists of at least the entirety of one county or multiple counties within the CoC region under which Application is made, unless a CoC region does not include an entire county. When the CoC region does not encompass at least the entirety of one county, the Service Area must encompass the entire CoC region. The Service Area selected within an Application must be fully contained within one CoC region.
   (6) Commitment in the budget to the provision of 100% Match, or request for a Match waiver, as applicable. Match waivers will be considered by the Department based on the rank of the Application. Applicants requesting an award of funds in excess of $50,000 are not eligible to request or receive a Match waiver. In the event that the Match waivers requested exceed $100,000, the waivers will be considered only for the highest scoring eligible Applications, subject to availability of excess match provided by ESG Applicants. Applicants that do not receive the waiver and are unable to provide a source of Match funding will be ineligible for an ESG award.
   (7) For a NOFA under the Allocation Formula, evidence from the CoC Lead Agency in the region that the Applicant consulted with the CoC in the preparation of their ESG application and that the CoC Lead Agency agrees that the Application meets CoC priorities for serving persons experiencing homelessness and/or persons At-risk of Homelessness.
   (8) Applicant certification of compliance with State and federal laws, rules and guidance governing the ESG Program as provided in the Application.
   (9) Evidence of Data Universal Numbering System (DUNS) number for Applicant.
   (10) Documentation of existing Section 501(c) tax-exempt status, as applicable.
   (11) Completed previous participation review materials, as outlined in 10 TAC Chapter 1, Subchapter C of this title (relating to Previous Participation) for Applicant.
   (12) Local government approval per 24 CFR §576.202(a)(2) for Applicant that will be
providing shelter activities with ESG or as ESG Match, as applicable. This documentation must be submitted no later than 30 calendar days after the Application submission deadline as specified in the NOFA. If the documentation is not received by the Department within 30 calendar days of the Application submission deadline, the emergency shelter obligating ESG funding components in the Application will be removed from consideration in the Application review; the amount requested will be reduced by the amount that had been designated for emergency shelter funding; any points requested for emergency shelter activities will be deducted from the self-score and final score; and performance for emergency shelter component will be removed from expected deliverables.

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

(A) Authorization of the submission of the Application;

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

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

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

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

(a) The Contract Term for allocated funds may not exceed 12 months under a one-year funding cycle. The initial Contract Term for allocated funds and may not exceed 12 months under a two-year funding cycle, but may be amended to include an additional 12 months if allocated funds are awarded to the Applicant in Contract must be expended by the second year Subrecipient on or before the expiration of the funding cycle. The Contract Term for a two-year funding cycle shall not exceed 24 months, as amended, unless an extension has been granted in accordance with this section. A request to extend the Contract Term must show evidence that the extension is necessary to provide services required under the Contract, and provide good cause for failure to timely expend the funds. Extensions of Contract Terms are considered on a case-by-case basis, but are subject to Section 7.4(e) of this Title, concerning Amendments and Extensions of Contracts.

(b) Expenditure benchmarks are ineligible for extension, except that an extension may be granted for expenditure benchmark two or four. A request to extend an expenditure benchmark must support that the extension is necessary to provide services required under the Contract, must evidence good cause for failure to meet the benchmark, and is subject to approval by the Department.

(1) The Division Director or his or her designee may approve an extension to the Contract Term or Expenditure benchmark two or four that do not exceed one month.

(2) The Executive Director or his or her designee may approve an extension to the Contract
Term or Expenditure benchmark two or four that does not exceed three months of up to six months from the original Contract Term.

(3) If (2) Board approval is required if the Subrecipient requests to extend the Contract Term or Expenditure benchmark for more than three months, but less than six months, Board approval is required. Extensions for greater than six months may not be granted from the original Contract Term.

(4) Extensions will be considered on a cumulative basis.

(c) Expenditure benchmarks for 12 or 24 month Contracts are listed in paragraphs (1) – (4) of this paragraph, unless otherwise stated in the Contract as amended. For Contracts with a 12-month term, the third and fourth Expenditure benchmarks do not apply.

(1) Expenditure benchmark one: Amendments of Expenditure requirements will not be granted by the Executive Director or the Board when such action would cause the Department to miss a federal expenditure deadline.

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

(2) Expenditure benchmark two: A Subrecipient is required to have reported expenditures in its first 12 Monthly Expenditure Reports reflecting at least 100% of the Contracted funds. A Subrecipient that has not met the second Expenditure benchmark, or that has not timely submitted Monthly Expenditure Reports, is subject to deobligation of funds.

(3) Expenditure benchmark three: A Subrecipient awarded funds in the second year of a two-year funding cycle is required to have reported expenditures in its Monthly Expenditure Reports reflecting at least 75% of the Contracted funds by month 21 of the amended Contract. Subrecipients that have not met the third Expenditure benchmark evidencing the ability of the Subrecipient to expend the remaining funds by end of the amended Contract Term.

(4) Expenditure benchmark four: Subrecipients awarded funds in the second year of a two-year funding cycle are required to have reported expenditures in its last Monthly Expenditure Report reflecting at least 100% of the Contracted funds expended. Funds remaining after the deadline for submission of the last Monthly Expenditure Report are subject to deobligation of funds.

(d) Funds remaining at the end of Contract’s close out period will be automatically deobligated.

(cd) Not later than 60 days prior to the end of the Contract Term, deobligation of funds may affect future funding recommendations.

(e) Prior to the Expenditure benchmarks two and four, as applicable, a Subrecipient may submit a written request to voluntarily return some or all of its funds to the Department, if the Subrecipient expects it will not fully expend and wishes to avoid deobligation or a reduced second funding cycle if awarded during a two-year cycle. Voluntary return of funds prior to the Expenditure benchmark constitutes a reduction in the awarded amount, and returned funds at or prior to the Expenditure benchmark will not impact the consideration of deobligated funds for the purpose of future funding recommendations.

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

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

(gf) If additional funds become available through returned or deobligated amounts from an award made under the allocation formula or program income generated from an award made under the allocation formula, the funds will be offered to the ESG Subrecipients with active contracts that have not been amended to extend the Contract Term. Funds that become available subsequent to an allocation under a NOFA will be offered with priority given to ESG Subrecipients with the highest expenditure rate, as of the most recent Monthly Expenditure Report. These funds will be offered first to the eligible ESG Subrecipients within the CoC region from which the additional funds became available, and then available statewide. The funds may not be offered to any Subrecipient that returned funds, or from whom funds were deobligated. The Executive Director or designee may increase the Contract of an ESG Subrecipient one time or authorize a new Contract with a Subrecipient by up to 25% of the original Contract amount. Upon Board Approval, funds that become available after the initial allocation under a NOFA.

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

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

10 TAC §7.42 General Administrative Requirements

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

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

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

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

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

(f) Rental developments must comply with all construction or operational requirements governing the development or program to which ESG funds are comingle, and must comply with local health and safety codes.
(g) Subrecipient may be required to complete Contract orientation training prior to submission of the first Monthly Expenditure Report. Subrecipient must also complete training as requested by the Department in response to Findings or other issues identified while managing the Contract.

(h) Subrecipient must report on all measures in the Monthly Performance Report for demographics and Program Participant Services for which they are awarded.

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

(jj) In instances where a potential conflict of interest exists related to a beneficiary of ESG assistance, Subrecipient must submit a request to the Department to grant an exception to any conflicts prohibited using the procedures at 24 CFR §576.404. The request submitted to the Department must include a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict, a description of how the public disclosure was made, and an attorney’s opinion that the conflict does not violate State or local law. No ESG funds will be committed to assist a Household until HUD has granted an exception.

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

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

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

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

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

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

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

10 TAC §7.43 Program Income

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

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

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

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

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

10 TAC §7.44 Program Participant Eligibility and Program Participant Files

(a) Program participants must meet the applicable definitions of Homeless or At-risk of Homelessness.

Proof of the eligibility or ineligibility for Program Participants must be maintained in accordance with 24 CFR §576.500, Recordkeeping and reporting requirements.

(1) The Applicant must keep retain income documentation for Program Participants receiving homelessness prevention or being re-certified for and Program Participants receiving rapid re-housing. The Department offers Income Certification and Income Screening Tool forms, which may be used by that require annual Recertification. Program Participant income eligibility must be calculated and documented in accordance with the Applicant.

(2) The Requirements of HUD Handbook 4350, except that the Department’s Declaration of Income Statement (DIS) form must may be utilized if income cannot be documented for Program Participants receiving homelessness prevention or being recertified for rapid re-housing. Their in accordance with 24 CFR §576.500(e)(4). A DIS must be completed and signed by Program Participants for activities that have an income requirement. The DIS is not whom are subject to provisions in HUD Handbook 4350 income eligibility determination.

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

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

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