

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
**TDHCA Governing Board Approved Draft of
10 TAC Chapter 20, Single Family Programs Umbrella Rule**

Attached is a draft of the proposed 10 TAC Chapter 20, Single Family Programs Umbrella Rule that was approved by the TDHCA Governing Board on September 2, 2021. This action includes repeal of the current rule, and adoption of a new rule in its place. However, the document attached reflects all changes proposed in tracked changes to facilitate review. This document, including its preamble, is scheduled to be published in the September 17, 2021 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: 8:00 a.m. Austin local time on September 17, 2021**
Ends: 5:00 pm. Austin local time on October 18, 2021

Comments received after 5:00 p.m. Austin local time on October 18, 2021 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: Abigail Versyp
SF Umbrella Rule Public Comment
P.O. Box 13941
Austin, Texas 78711-3941
Email: abigail.versyp@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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Attachment A: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 20, Single Family Programs Umbrella Rule

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 20, Single Family Programs Umbrella Rule. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.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.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, 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, administration of the Department's Single Family 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 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 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 the Department's Single Family 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 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 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 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 section would be an updated and more germane rule. 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 September 17, 2021, to October 18, 2021, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email HOME@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, October 18, 2021.

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 Chapter 20, Single Family Programs Umbrella Rule

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Attachment B: Preamble for proposed new 10 TAC Chapter 20, Single Family Programs Umbrella Rule

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 20, Single Family Programs Umbrella Rule. The purpose of the proposed new sections is to implement a more germane rule and better align administration to federal and state requirements.

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 rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to administration of the Department's Single Family Programs.
2. The proposed new rule does 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 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 a decrease in fees paid to the Department.
5. The proposed rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The proposed rule will not expand or repeal an existing regulation.
7. The proposed rule will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed rule 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, §2306.111.

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 approximately 60 rural communities currently participating in construction activities under Single Family Programs that are subject to the proposed rule for which no economic impact of the rule is projected during the first year the rule is in effect.

3. The Department has determined that because the rule serves to clarify and update existing requirements and does not establish new requirements for which there would be an associated cost, 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 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 rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed rule has no economic effect on local employment because the rule serves to clarify and update existing requirements and does not establish new requirements or activities that may positively or negatively impact local economies.

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 participation in the Department's Single Family Programs is at the discretion of the local government or other eligible subrecipients, 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). Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be a more germane rule that better aligns administration to federal and state requirements. There will not be any economic cost to any individuals required to comply with the new section because the processes described by the rule have 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 section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because the rule updates and clarifies existing requirements and does not impose new requirements.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 17, 2021, to October 18, 2021, to receive input on the new proposed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email abigail.versyp@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, October 18, 2021.

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.

CHAPTER 20 SINGLE FAMILY PROGRAMS UMBRELLA RULE

§20.1 Purpose

This ~~Chapter~~chapter sets forth the common elements of the Texas Department of Housing and Community Affairs' (the Department) single family Programs, which include the Department's HOME Investment Partnerships Program (HOME), ~~State~~Texas Housing Trust Fund (~~SHTF~~Texas HTF), Texas Neighborhood Stabilization Program (NSP), and Office of Colonia Initiatives (OCI) Programs and other single family Programs as developed by the Department. Single family Programs are designed to improve and provide affordable housing opportunities to low-income individuals and families in Texas and in accordance with Chapter 2306 of the Tex. Gov't Code and any applicable statutes and federal regulations.

§20.2 Applicability

(a) This ~~Chapter~~chapter only applies to single family Programs. Program Rules may impose additional requirements related to any provision of this chapter. Where a Program Rule is less restrictive and ~~the item is not preempted by~~ does not preempt the item, federal law, the provisions of this chapter will govern Program decisions.

~~(b) Excluded from this Chapter are~~ (b) Activities performed under Chapter 27 (relating to Texas First Time Homebuyer Program Rule) and Chapter 28 (related to Taxable Mortgage Program) of this title ~~Part are excluded from this chapter.~~

§20.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context indicates otherwise. 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, the Program Rules, the Texas Administrative Code (TAC), or applicable federal regulations.

(1) Activity--The assistance provided to a specific Household or Administrator by which funds are used for acquisition, new construction, reconstruction, rehabilitation, refinance of an existing Mortgage, tenant-based rental assistance, or other Department approved Expenditure under a single family housing Program.

(2) Administrator--A unit of local government, Nonprofit Organization or other entity acting as a subrecipient, Developer, or similar organization that has an executed written Agreement with the Department.

(3) Affirmative Marketing Plan--HUD Form 935.2B or equivalent plan created in accordance with HUD requirements to direct specific marketing and outreach to potential tenants and homebuyers who are considered "least likely" to know about or apply for housing based on an evaluation of market area data. May be referred to as "Affirmative Fair Housing Marketing Plan" (AFHMP).

(4) Affiliate--If, directly or indirectly, either one Controls or has the power to Control the other or a third person Controls or has the power to Control both. The Department may determine Control to include, but not be limited to:

(A) Interlocking management or ownership;

(B) Identity of interests among family members;

(C) Shared facilities and equipment;

(D) Common use of employees; or

(E) A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

(5) Affiliated Party--A person or entity with a contractual relationship with the Administrator as it relates to a Program, the form of assistance under a Program, or an Activity.

(6) Agreement--Same as "Contract." May be referred to as a "Reservation System Agreement" or "Reservation Agreement" when providing access to the Department's Reservation System as defined in this chapter.

(7) Amy Young Barrier Removal Program--A program designed to remove barriers and address immediate health and safety issues for Persons with Disabilities as outlined in the Program Rule.

(8) Annual Income--The definition of Annual Income and the methods utilized to establish eligibility for housing or other types of assistance as defined under the Program Rule.

(9) Applicant--An individual, unit of local government, nonprofit corporation or other entity, as applicable, who has submitted to the Department or to an Administrator an Application for Department funds or other assistance.

(10) Application--A request for a Contract award or a request to participate in a Reservation System submitted by an Applicant to the Department in a form prescribed by the Department, including any exhibits or other supporting material.

~~(11)~~ (11) Area Median Family Income (AMFI)--The income limits published annually by the U.S. Department of Housing and Urban Development (HUD) for the Housing Choice Voucher Program that is used by the Department to determine the income eligibility of Households to participate in Single Family Programs.

~~(12)~~ (12) Borrower--a Household that is borrowing funds from or through the Department for the acquisition, new construction and/or rehabilitation of the Household's Principal Residence.

(13) Certificate of Occupancy--Document issued by a local authority to the owner of premises attesting that the structure has been built in accordance with building ordinances.

~~(14)~~ (14) CFR--Code of Federal Regulations.

(15) Combined Loan to Value (CLTV)--The aggregate principal balance of all the Mortgage Loans, including Forgivable Loans, divided by the appraised value.

~~(16)~~ (16) Competitive Application Cycle--A defined period of time that Applications may be submitted according to a published Notice of Funding Availability (NOFA) that will include a submission deadline and selection or scoring criteria.

~~(17)~~ (17) Concern--A policy, practice or procedure that has not yet resulted in a Finding, but if not changed will or may result in a Finding, or disallowed costs.

~~(18)~~ (18) Contract--The executed written ~~Agreement~~ agreement between the Department and an Administrator performing an Activity related to a single family Program that describes performance requirements and responsibilities. May also be referred to as "Agreement."

~~(19)~~ (19) Contract Term—The timeframe in which funds may be expended under the Contract or Agreement for certain administrative costs and for all the hard and soft costs of Activities, as further described in the Contract or Agreement.

(20) Control--The possession, directly or indirectly, of the power to direct or cause the direction of the management, operations or policies of any person or entity, whether through the ownership of voting securities, ownership interests, or by contract or otherwise.

~~(1721)~~ Debt--A duty or obligation to pay money to a creditor, lender, or person which can include car payments, credit card bills, loans, child support payments, and student loans.

~~(1822)~~ Debt-to-Income Ratio--The percentage of gross monthly income from Qualifying Income that goes towards paying off Debts and is calculated by dividing total recurring monthly Debt by gross monthly income expressed as a percentage.

~~(1923)~~ Deobligate--The cancellation of or release of funds under a Contract or Agreement as a result of expiration of, termination of, or reduction of funds under a Contract or Agreement.

~~(2024)~~ Developer--Any person, general partner, Affiliate, or Affiliated Party or affiliate of a person who owns or proposes a Development or expects to acquire control of a Development and is the person responsible for performing under the Contract with the Department.

~~(2125)~~ Development--A residential housing project for homeownership that consists of one or more units owned by the Developer during the development period and financed under a common plan which has applied for Department funds. This includes a project consisting of multiple units of housing that are located on scattered sites.

~~(2226)~~ Domestic Farm Laborer--Individuals (and the Household) who receive a substantial portion of their income from the production or handling of agricultural or aquacultural products.

~~(2327)~~ Draw--~~Funds requested~~ Request--a request submitted to the Department, by the ~~Administrator, approved by seeking reimbursement of Program funds for completing an expenditure relating to the Department and subsequently disbursed to the Administrator~~ Program.

~~(2428)~~ Enforcement Committee--The Committee as defined in Chapter 2 of this ~~title~~ Part (relating to Enforcement).

~~(2529)~~ Finding--An Administrator's material failure to comply with rules, regulations, the terms of the Contract, or to provide services under a Program to meet appropriate standards, goals, and other requirements established by the Department or funding source (including performance objectives). A Finding impacts the organization's ability to achieve the goals of the program and may jeopardize continued operations of the Administrator. A Finding includes the identification of an action or failure to act that results or may result in disallowed costs.

~~(2630)~~ Forgivable Loan--Financial assistance in the form of a Mortgage Loan that is not required to be repaid if the terms of the Mortgage Loan are met.

~~(2731)~~ HOME Program--A HUD funded Program authorized under the HOME Investment Partnerships Program at 42 U.S.C. §§12701 - 12839.

~~(2832)~~ Household--One or more persons occupying a rental unit or owner-occupied Single Family Housing Unit as their primary residence. May also be referred to as a "family" or "beneficiary."

~~(2933)~~ Housing Contract System (HCS)~~—~~—The electronic information system or systems that ~~is~~are part of the "central database" established by the Department to be used for tracking, funding, and reporting single family Contracts and Activities.— May also be known as Contract System.

~~(30) Housing Trust Fund or State Housing Trust Fund (SHTF)—State-funded Programs authorized under Chapter 2306 of Tex. Gov't Code.~~

~~(3134)~~ HUD--The United States Department of Housing and Urban Development or its successor.

~~(3235)~~ Improvement Survey--A boundary survey plus land improvements by a Texas surveyor with a surveyor's seal, license number, and signature, meeting the requirements of the Texas Board of Professional Land Surveying under Chapter 663, Part 29, Title 2 of the TAC, showing (at a minimum) the accompanying legal description; all boundaries clearly labeled with calls and distance found on the ground and per the legal description; the location of all improvements, structures, visible utilities, fences, or walls; any boundary or visible encroachments; all adjoinders and recording information; location of all easements, setback lines, and utilities; or other recorded matters affecting the use of the property.

~~(3336)~~ Life-of-Loan Flood Certification--Tracks the flood zone of the Single Family Housing Unit for the life of the Mortgage Loan.

~~(3437)~~ Limited English Proficiency (LEP)--Refers to persons who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.

~~(3538)~~ Loan Assumption--An agreement between the buyer and seller of Single Family Housing Unit that the buyer will make remaining payments and adhere to terms and conditions of an existing Mortgage Loan on the Single Family Housing Unit and Program requirements. A Mortgage Loan assumption requires written Department approval.

~~(3639)~~ Manufactured Housing Unit (MHU)--A structure that meets the requirements of Texas Manufactured Housing Standards Act, Chapter 1201 of the Texas Occupations Code or ~~FHA~~Federal Housing Administration (FHA) guidelines as required by the Department.

~~(3740)~~ Mortgage--Has the same meaning as defined in §2306.004 of the Tex. Gov't Code.

~~(3841)~~ Mortgage Loan--Has the same meaning as defined in §2306.004 of the Tex. Gov't Code.

~~(3942)~~ Neighborhood Stabilization Program (NSP)--A HUD-funded program authorized by HR3221, the "Housing and Economic Recovery Act of 2008" (HERA) and Section 1497 of the Wall Street Reform and Consumer Protection Act of 2010, as a supplemental allocation to the CDBG Program.

(4043) NOFA--Notice of Funding Availability or announcement of funding published by the Department notifying the public of available funds for a particular Program with certain requirements.

(4144) Nonprofit Organization--An organization in which no part of its income is distributable to its members, directors or officers of the organization and has a current tax exemption classification status from the Internal Revenue Service in accordance with the Internal Revenue Code.

(4245) Office of Colonia Initiatives--A division of the Department authorized under Chapter 2306 of Tex. Gov't Code, which acts as a liaison to the colonias and manages some Programs in the colonias.

(4346) Parity Lien--A lien position whereby two or more lenders share a security interest of equal priority in the collateral.

(4447) Persons with Disabilities--Any person who has a physical or mental impairment that substantially limits one or more major life activities; or has a record of such an impairment; or is being regarded as having such impairment. Included in this meaning is the term handicap as defined in the Fair Housing Act, and disability as defined by other applicable federal or state law.

(4548) Principal Residence--The primary Single Family Housing Unit that a Household inhabits. May also be referred to as "primary residence."

(4649) Program--The specific fund source from which single family funds are applied for and used.

(4750) Program Income--Gross income received by the Administrator or Affiliate directly generated from the use of single family funds, including, but not limited to gross income received from matching contributions under the HOME Program.

(4851) Program Manual--A set of guidelines designed to be an implementation tool for a single family Program ~~which allows the Administrator to search for terms, statutes, regulations, forms and attachments.~~ A Program Manual is developed by the Department and amended or supplemented from time to time.

(4952) Program Rule--Chapters of Part 1 of this title ~~Part~~ which pertain to specific single family Program requirements.

~~(50) Qualified Inspector--Defined by Program Rule or federal requirement.~~

(51)(53) Qualifying Income--The income used to calculate the ~~Applicant and co-Applicant's~~ Borrower's debt-to-income ratio and excludes the total of any income not received consistently for the past 12 months from the date of Application including, but not limited to, income from a full or part time job that lacks a stable job history, potential bonuses, commissions, and child support. Income received for less than 12 months such as retirement annuity or court ordered payments will be considered only if it is expected to continue at least 24 months in the foreseeable future.

~~(5254)~~ Reservation--Funds set-aside for a Household submitted through the Department's Reservation System.

~~(5355)~~ Reservation System--The Department's online tracking system that allows Administrators to reserve funds for a specific Household.

~~(5456)~~ Resolution--Formal action by a corporate board of directors or other corporate body authorizing a particular act, transaction, or appointment. Resolutions must be in writing and state the specific action that was approved and adopted, the date the action was approved and adopted, and the signature of person or persons authorized to sign resolutions. Resolutions must be approved and adopted in accordance with the corporate bylaws of the issuing organization.

~~(5557)~~ Reverse Mortgage--A Home Equity Conversion Mortgage insured by the FHA.

~~(5658)~~ Self-Help--Housing Programs that allow ~~low, very low, and extremely~~ low-income families to build or rehabilitate their Single Family Housing Units through their own labor or volunteers.

~~(5759)~~ Service-Area-- The geographical area where an Administrator conducts Activities under a Contract.

~~(60)~~ Single Family Housing Unit--A residential dwelling designed and built for a Household to occupy as its primary residence where single family Program funds are used for rental, acquisition, construction, reconstruction or rehabilitation Activities of an attached or detached housing unit, including Manufactured Housing Units after installation. May be referred to as a single family "home," "housing," "property," "structure," or "unit."

~~(5861)~~ State Median Family Income (SMI)--The median income for the state adjusted for household size and published annually by the U.S. Department of Housing and Urban Development (HUD).

~~(62)~~ TAC--Texas Administrative Code.

~~(5963)~~ Texas Housing Trust Fund (Texas HTF)—Funding source for state-funded Programs authorized under Chapter 2306 of Tex. Gov't Code.

~~(64)~~ TMCS--Texas Minimum Construction Standards ~~located at <http://www.tdhca.state.tx.us/single-family/training/index.htm>.~~

§20.4 Eligible Single Family Activities

(a) Availability of funding for and specific Program requirements related to the Activities described in subsection (b)(1) - (7) of this section are defined in each Program's Rules.

(b) Activity Types for eligible single family housing Activities include the following, as allowed by the Program Rule or NOFA:

- (1) Rehabilitation, or new construction of Single Family Housing Units;
- (2) Reconstruction of an existing Single Family Housing Unit on the same site;
- (3) Replacement of existing owner-occupied housing with a new MHU;
- (4) Acquisition of Single Family Housing Units, including acquisition with rehabilitation and accessibility modifications;
- (5) Refinance of an existing Mortgage or Contract for Deed mortgage;
- (6) Tenant-based rental assistance; and
- (7) Any other single family Activity as determined by the Department.

§20.5 Funding Notices

- (a) The Department will make funds available for eligible Administrators for single family activities through NOFAs, requests for qualifications (RFQs), request for proposals (RFPs), or other methods describing submission and eligibility guidelines and requirements.
- (b) Funds may be allocated through Contract awards by the Department or by Department authority to submit Reservations.
- (c) Funds may be subject to regional allocation in accordance with Chapter 2306 of the Tex. Gov't Code.
- (d) Eligible Applicants must comply with the provisions of the Application materials and funding notice and are responsible for the accuracy and timely submission of all Applications and timely correction of all deficiencies.

§20.6 Administrator Applicant Eligibility

- (a) Eligible Applicants ~~may include~~ seeking to administer a single family Program are limited to entities such as units of local government, Nonprofit Organizations, or other entities as further provided described in the Program Rule and/or NOFA; and
- ~~(b) An Applicant shall~~ (1) Shall be in good standing with the Department, Texas Secretary of State, Texas Comptroller of Public Accounts and HUD, as applicable.
- ~~(c) An Applicant shall~~ (2) Shall comply with all applicable state and federal rules, statutes, or regulations including those administrative requirements in ~~Chapter~~ Chapters 1 and 2 of this titlePart (relating to Administration and Enforcement).

~~(d) An Applicant must~~ (3) Must provide Resolutions in accordance with the applicable Program Rule.

~~(e)~~ The actions described in the following paragraphs (1) - (3) of this subsection may cause an Applicant and any Applications they have submitted, to administer a Single Family Program to be ineligible:

(1) Applicant did not satisfy all eligibility and/or threshold requirements described in the applicable Program Rule and NOFA;

(2) Applicant is debarred by HUD or the Department; or

(3) Applicant is currently noncompliant or has a history of noncompliance with any Department Program. Each Applicant will be reviewed by the Executive Award and Review Advisory Committee (EARAC) for its compliance history by the Department, as provided in §1.302 (relating to Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter) and §1.303 (relating to Executive Award and Review Advisory Committee (EARAC)) of this ~~title~~ Part. An Application submitted by an Applicant found to be in noncompliance or otherwise violating the rules of the Department may be recommended with conditions or not recommended for funding by EARAC.

~~(f)~~ The Department reserves the right to adjust the amount awarded based on the Application's feasibility, underwriting analysis, the availability of funds, or other similar factors as deemed appropriate by the Department.

~~(g)~~ The Department may decline to fund any Application to administer a Single Family Program if the proposed Activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications ~~which are~~ received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department reserves the right to negotiate individual components of any Application.

~~(h)~~ If an Applicant/Administrator is originating or servicing a Mortgage Loan, the Applicant/Administrator must possess all licenses required under state or federal law for taking the Application of and/or servicing a residential mortgage loan and must be in good standing with respect thereto, unless Applicant/Administrator is specifically exempted from such licensure pursuant to the applicable state and federal laws and regulations regarding residential mortgage loans.

~~§20.7~~ Household Eligibility Requirements

~~(a) The method used to determine Annual Income will be provided in the Program Rule.~~

~~(b) A Household must occupy the Single Family Housing Unit as their Principal Residence for the entirety of the affordability period as established by the Program Rule. If the Household fails to do so, the Department may declare the Mortgage Loan in default and accelerate the note.~~

~~§20.8~~ §20.7 Single Family Housing Unit Eligibility Requirements

(a) A Single Family Housing Unit must be located in the State of Texas.

(b) Real property taxes assessed on an owner-occupied Single Family Housing Unit must be current prior to the date of Mortgage Loan closing or effective date of the grant agreement. Delinquent property taxes will result in disapproval of the Activity unless one or more of the following conditions are satisfied:

(1) Household must be satisfactorily participating in an approved installment agreement in accordance with Texas Tax Code §33.02 with the taxing authority, and must be current for at least three consecutive months prior to the date of Application;

(2) Household must have qualified for an approved tax deferral plan agreement in accordance with Texas Tax Code §§33.06 or 33.065; or

(3) Household must have entered into an installment agreement under Texas Tax Code §§31.031 or 31.032, have made at least one payment under the agreement, and be current on the installment plan.

(c) A Single Family Housing Unit must not be encumbered with any liens which impair the good and marketable title as of the date of the Mortgage Loan closing or effective date of the grant agreement.

(d) Prior to any Department assistance, the owner must be current on any existing Mortgage Loans or home equity loans.

(e) Housing that is built through new construction or reconstruction must meet the requirements of Texas Gov't Code §2306.514 (relating to accessibility), 10 TAC Chapter 21 (relating to Energy Efficiency), and applicable building codes.— Plans submitted for housing under new construction or reconstruction must be prepared or certified by an architect or engineer licensed by the state of Texas.

§20.98 Fair Housing, Waitlist Policy, Affirmative Marketing and Procedures, Homebuyer Housing Counseling, Denials, Notice to Applicants, Reasonable Accommodations, and Limited English Proficiency

(a) Fair Housing. In addition to Chapter 1, Subchapter B of this ~~title~~Part (relating to Accessibility and Reasonable Accommodations), an Administrator must comply with all applicable state and federal rules, statutes, or regulations, involving accessibility including the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and the Architectural Barriers Act as well as state and local building codes that contain accessibility requirements; where local, state, or federal rules are more stringent, the most stringent rules shall apply. Administrators receiving Federal or state funds must comply with the Age Discrimination Act of 1975.

(b) Preferences. Administrators of the Amy Young Barrier Removal Program may have a preference prioritizing Households to prevent displacement from permanent housing, or to foster returning to permanent housing related to inaccessible features of the unit.

(c) Waitlist Policy. An Administrator receiving Federal funds must have a Waitlist Policy. The Waitlist Policy must be submitted to the Department each time the Administrator applies for a new contract or a new type of activity. The Administrator may submit a previously approved Waitlist Policy if no changes need to be made. The Waitlist Policy must be submitted at a minimum of every three years if the Administrator continues to accept new ~~applications~~Applications. An Administrator receiving Federal funds must submit a Waitlist Policy with an Affirmative Fair Housing Marketing Plan as described in §20.9(c)(8)(d), relating to Affirmative Marketing and Procedures.

(1) A Waitlist Policy must include any Department approved preferences used in selecting Applicants from the list. An Administrator that has defined preferences in its written waitlist procedures or tenant selection plans, as applicable, will employ preferences first and select Applicants from the waiting list of Applicants meeting that meet the defined preference, still using the neutral random selection process. An Administrator of a federally funded Program may only request to establish preferences that are included in Department planning documents, specifically the One Year Action Plan or Consolidated Plan, or as otherwise allowed for CDBG funded Activities. ~~EXAMPLE: A HOME Program Administrator has specific program requirements to assist one in every four Households at 30% area median family income. This Administrator should use a neutral random selection process to rank Applicants, and select going down the list. When the Administrator must assist a Household at or below 30% area median income they will then go down the list and select, in order, a Household at the 30% income level.~~

(2) An Administrator must accept Applications from possible eligible Applicants for a minimum of a 21 calendar day period. A first-come, first-served basis may not be ~~used when initially selecting among eligible Applicants.~~implemented during initial selection. At the close of the minimum 21 calendar day ~~application~~Application acceptance period, an Administrator must select ~~Applicants~~Applications through a neutral random selection process that the Administrator ~~has described in its written.~~Only after policies and procedures. After the Administrator has allowed for the minimum 21 calendar day period to accept ~~applications~~Applications and has used a neutral random selection process to assist Households, ~~may~~ the Administrator ~~then~~may accept ~~applications~~Applications on a first-come, first-served basis if funds remain in the current contract or Activity type. ~~A HOME Tenant Based Rental Assistance Reservation System Applicant or Administrator applying for disaster funds may request that the~~The Director of Programs, or designee, may approve an exemption from the 21 calendar day period and the neutral random selection process for Administrators of HOME disaster set-aside Tenant Based Rental Assistance, as necessary to respond to the disaster.

(d) Affirmative Marketing and Procedures. An Administrator receiving Federal funds must have an Affirmative Fair Housing Marketing Plan (AFHMP) and satisfy the requirements of this subsection. The AFHMP must be submitted to the Department each time the Administrator applies for a new contract or a new type of activity, and reflect marketing activities specific to the activity type. The Administrator may submit a previously approved AFHMP if no changes need to be made. The plan must be submitted

at a ~~minimum of every~~ least one time in any three-year period if the Administrator continues to accept new ~~applications~~ Applications.

(1) Administrators must use the AFHMP form on the Department's website, HUD Form 935.2B, or create an equivalent AFHMP that includes:

(A) Identification of the population "least likely to apply" for the Administrator's Program(s) without special outreach efforts. Administrators may use the Department's single family affirmative marketing tool to determine populations "least likely to apply." If Administrators use another method to determine the populations "least likely to apply" the AFHMP must provide a detailed explanation of the methodology used. Persons with Disabilities must always be included as a population least likely to apply.

(B) Identification of the methods of outreach that will be used to attract persons identified as least likely to apply. Outreach methods must include identification of a minimum of three organizations with whom the Administrator plans to conduct outreach, and whose membership or clientele consists primarily of protected class members in the groups least likely to apply. If the Administrator is unable to locate three such groups, the reason must be documented in the file.

(C) Identification of the methods to be used for collection of data and periodic evaluation to determine the success of the outreach efforts. If efforts have been unsuccessful, the Administrator's AFHMP should be revised to include new or improved outreach efforts.

(D) Description of the fair housing trainings required for Administrator staff, including delivery method, training provider and frequency. For programs involved in homebuyer transactions, training must include requirements of the Fair Housing Act relating to financing and advertising, expected real estate broker conduct, as well as redlining and zoning for all programs, and discriminatory appraisal practices.

(E) A description ~~for the provision~~ of applicable housing counseling programs and educational materials that will be offered to Applicants. An Administrator offering any TDHCA Mortgage Loan utilizing federal funds must require that ~~potential home purchasers~~ Households receive ~~homeownership~~ housing counseling ~~and education at prior to the time assistance is approved~~ date of the Mortgage Loan closing. Housing counseling may take place in-person or by telephone. Counseling may be provided online only if it is customized to the individual Household. Counseling must address pre- and/or post-purchase topics, as applicable to the Borrower's needs. A certificate of completion of counseling must be dated not more than 12 months ~~from prior to~~ the date of submission of Mortgage Loan application Application. For an Applicant who will receive construction assistance from a federally funded Program on or after August 1, ~~2020, homeownership~~ 2021, housing counseling must be provided by HUD-certified counselors working for agencies participating in HUD's Housing Counseling Program.

(2) Applicability.

(A) Affirmative marketing is required as long as an Administrator of federal funds is accepting ~~applications~~Applications or until all dwelling units are sold in the case of single family homeownership programs.

(B) An Administrator that currently has an existing list of Applicants and ~~are~~is not accepting new ~~Applicants~~Applications or establishing a waitlist ~~are~~is not required to affirmatively market until preparing to accept new Applications, but must develop a plan as described in this subsection. ~~EXAMPLE: An Administrator has an active HOME Reservation System Participation Agreement with a closed waiting list. The Administrator must develop an affirmative marketing plan, but does not have to affirmatively market that portion of its Program. The Administrator should serve its waitlist. When the Administrator is nearing the bottom of the waitlist it should begin to affirmatively market the program, open up the program to new Applicants, finish serving the existing Households on the waitlist, and all new Applicants will be held for 21 calendar days, and then selected based on the neutral random selection process as described in §20.9(b)(2), relating to Waitlist Policy.~~

(C) An Administrator providing assistance in more than one ~~service area~~Service Area must provide a separate plan for each market area in which the housing assistance will be provided.

~~(D) Administrator must conduct an analysis of the AFHMP at the close out of the contract or Activity and attach it to any subsequent AFHMP submitted for the same program.~~

~~(E)~~(D) Administrators must include the Equal Housing Opportunity logo and slogan on any commercial and other media used in marketing outreach.

~~(E)~~ Copies of all outreach and media ads must be kept and made available to the Department upon request.

(e) ~~Homebuyer~~Mobility Counseling. An Administrator offering homeownership or rental assistance that allows the Household to relocate from their current residence must provide the Household access to mobility counseling. For homeownership, mobility counseling may be included in ~~homeownership~~housing counseling and education trainings, and must cover the criteria noted in paragraphs (1) - (3) of this paragraph.

(1) Mobility counseling must, at a minimum, include easily understandable information that the Household can use in determining areas of opportunity within a ~~service area~~Service Area, which must at minimum include the following: which areas have lower poverty rates, average income information of different areas, school ratings, crime statistics, available area services, public transit, and other items the Administrator deems appropriate in helping the Household make informed choices when identifying housing.

(2) Mobility counseling may be offered online or in-person, and must be customized for the Household.

(3) An Administrator must collect signed certifications from Applicants acknowledging they have received mobility counseling. ~~Certifications may be collected as a standalone form or may be integrated into existing program forms.~~

(f) Denials. In the case of any Applicant's denial from a program, a letter providing the specific reason for the denial must be provided to the Applicant within ~~seven~~fourteen calendar days of the denial. Administrators must keep a record of all denied Applicants including the basis for denial. Such records must be retained for the record retention period described by the Agreement or other sources.

(g) Notice to Applicants. Administrator must provide Applicants with eligibility criteria, which shall include the procedures for requesting a reasonable accommodation to the Administrator's rules, policies, practices, and services, including but not limited to, as it relates to the Application process.

(h) A copy of all Reasonable Accommodation requests and the Administrator's compliant responses to such requests, in accordance with §1.204 of this ~~title~~Part (relating to Reasonable Accommodations), must be kept as stated in §1.409 of this ~~title~~Part (relating to Records Retention).

(i) Provisions Related to Limited English Proficiency.

(1) Administrator must have a Language Access Plan that ensures persons with Limited English Proficiency (LEP) have meaningful access and an equal opportunity to participate in services, activities, programs, and other benefits.

(2) Materials that are critical for ensuring meaningful access to an Administrator's major activities and programs, including but not limited to Applications, mortgage loan ~~applications~~Applications, consent forms and notices of rights, should be translated for any population considered least likely to apply that meets the threshold requirements of Safe Harbor LEP provisions as provided by HUD and published on the Department's website. Materials considered critical for ensuring meaningful access should be outlined in the Administrator's Language Access Plan.

(3) The Administrator is required to translate Vital Documents under Safe Harbor guidelines, they must include in their Language Access Plan how such translation services will be provided (e.g., whether the Administrator will use voluntary or contracted qualified translation services, telephonic services, or will identify bilingual staff that will be available to assist Applicants in completing vital documents and/or accessing vital services). If the Administrator plans to use bilingual staff in its translation services, contact information for bilingual staff members must be provided.

(4) The Language Access Plan must be submitted to the Department upon request and be available for review during monitoring visits. HUD and the Department of Justice have issued requirements to ensure meaningful and appropriate access to programs for LEP individuals.

(5) Administrators must offer reasonable accommodations information and Fair Housing rights information in both English and Spanish, and other languages as required by the inclusion of "least likely to apply" groups to reach populations identified as least likely to apply.

(j) ~~The plans noted in subsections (b)(1) and (d)(1) of this section~~ Waitlist Policy and AFHMP, any documentation supporting the plans, and any changes made to the plans, must be kept in accordance with recordkeeping requirements for the specific Program, and in accordance with 10 TAC §1.409.

§20.109 Inspection Requirements for Construction Activities

(a) The inspection requirements in this section are applicable to all construction activities, ~~except for the Amy Young Barrier Removal Program, to the extent funded with SHTE.~~

~~(1b)~~ Interim inspections of construction progress are required for a Draw ~~request~~ Request.

~~(2c)~~ Final inspections are required for all single family construction Activities. The inspection must document that the Activity is complete; meets all applicable codes, requirements, zoning ordinances; and has no known deficiencies related to health and safety standards. A copy of the final inspection report must be provided to the Department and to the Household.

~~(A) A copy of the final inspection report must be provided to the Department and to the Household.~~

~~(B) Administrator, or third party code or Qualified Inspector certification of compliance with the Minimum Energy Efficiency Requirements for Single Family Construction Activities under 10 TAC Chapter 21 is required, as applicable.~~

~~(b)~~ (d) New construction requirements.

(1) A Certificate of Occupancy shall be issued prior to final payment for construction, as applicable. In instances where the local jurisdiction does not issue a Certificate of Occupancy for the Activity undertaken, the Administrator must provide to the Department documentation evidencing that the Single Family Housing Unit ~~has passed all required building codes in accordance to~~ complies with subsection ~~(a)~~ (2c) of this section.

(2) Applicant must demonstrate compliance with Tex. Gov't Code §2306.514, "Construction Requirements for Single Family Affordable Housing," and applicable Program Rules.

~~(e)~~ Reconstruction requirements.

(1) The initial inspection must identify ~~all~~ substandard conditions listed in TMCS along with any other health or safety concerns, unless the unit has been condemned or in the case of a HOME and CSHC Activity, the unit to be reconstructed is an MHU.

(A) A copy of the initial inspection report must be provided to the Department and to the Household as applicable. The initial inspection may be waived if the local building official certifies that the extent of the subject property's substandard conditions is beyond repair, or the property has been condemned.

(B) ~~All substandard~~ Substandard conditions identified in the initial inspection report ~~shall be addressed in the work write-up and cost estimate in~~ must provide adequate detail to ~~document~~ evidence the need for reconstruction.

(2) A Certificate of Occupancy shall be issued prior to final payment for construction, as applicable. In instances where the local jurisdiction does not issue a Certificate of Occupancy for the Activity undertaken, the Administrator must provide to the Department documentation evidencing that the Single Family Housing Unit ~~has passed all required building codes in accordance~~ complies with subsection ~~(a)~~ (2c) of this section.

(3) Applicant must demonstrate compliance with Tex. Gov't Code §2306.514, "Construction Requirements for Single Family Affordable Housing," and applicable Program Rules.

~~(d)~~ Rehabilitation requirements.

~~(1) Single Family Housing Units that have been condemned by the Municipality, County, or the State are not eligible for rehabilitation.~~

(2) The initial inspection must identify all substandard conditions listed in TMCS, along with any other health and safety concerns.

(A) A copy of the initial inspection report must be provided to the Department and to the Household.

(B) All substandard conditions identified in the initial inspection report shall be addressed in the work write-up and cost-estimate ~~in adequate detail to ensure that all substandard conditions are properly corrected.~~

~~(23)~~ Final inspections must document that all substandard and health and safety issues identified in the initial inspection have been corrected. ~~Also, all~~ All deficient items noted on the final inspection report must be corrected prior to approval of the final draw of funds Draw Request.

~~(34)~~ Administrator shall meet the applicable requirements of the TMCS. ~~— Exceptions to specific provisions of TMCS requirements may be waived only through~~ granted in accordance with the TMCS exception request process provided in §20.16 of this chapter (relating to Appeals).

(45) Correction of cosmetic issues, such as paint, wall texture, etc., will not be required if acceptable to the Program as outlined in the Program Rule, or if utilizing a Self-Help Construction Program.

~~(e)~~ Inspector Requirements.

~~(1) Inspectors hired selected by the Administrator to verify compliance with this chapter must meet Program requirements as outlined~~ be certified by the Administrator to have sufficient professional certifications, relevant education or experience in the Program Rule, as applicable.

~~(2) Within city limits a field directly related to home inspection, which may include but is not limited to installing, servicing, repairing or maintaining the structural, mechanical, plumbing and extraterritorial jurisdictions, municipal code inspectors shall conduct all inspections for local code requirements as applicable~~ electrical systems found in Single Family Housing Units.

~~(3) For areas not within a city or an extraterritorial jurisdiction, all Qualified (2) Inspectors shall conduct inspections using applicable construction standards prescribed by the Department, and utilize Department-approved inspection forms and, checklists as applicable, and standards when conducting inspections.~~

(fh) The Department reserves the right to reject any inspection report if, in its sole and reasonable determination, the report does not accurately represent the property conditions or if the inspector does not meet Program requirements. All related construction costs in a rejected inspection report may be disallowed until the deficiencies are adequately cured.

~~(g) A Single Family Housing Unit condemned by a unit of government will not be rehabilitated.~~

§20.1110 Survey Requirements

~~(a) The Amy Young Barrier Removal Program is excluded from the survey requirements in subsections (b) – (d),~~ to the extent funded with ~~SHTF~~ the Texas HTF.

(b) When Program funds are used for acquisition or construction, an Improvement Survey is required when:

(1) The rehabilitation project is enlarging the footprint; or

(2) The Activity is reconstruction, new construction, or acquisition of an existing home.

(c) If allowed by the Program Rules or NOFA, existing surveys for acquisition only activities may be used if the owner certifies that no changes were made to the footprint of any building or structure, or to any improvement on the Single Family Housing Unit, and the title company accepts the certification and survey.

(d) The Department reserves the right to determine the survey requirements on a per Activity basis if additional survey requirements would, at the sole discretion of the Department, benefit the Activity.

§20.1211 Insurance and Title Requirements

(a) The Amy Young Barrier Removal Program is excluded from this section, to the extent funded with ~~SHTF~~ the Texas HTF.

(b) Title Insurance Requirements. A "Mortgagee's Title Insurance Policy" is required for all Department Mortgage Loans, exclusive of subordinate lien Mortgage Loans for down payment assistance and closing costs.

(1) The title insurance policy shall be issued by an entity that is licensed and in good standing with the Texas Department of Insurance.

(2) The policy must be in the amount of the Mortgage Loan. The mortgagee named shall be: "Texas Department of Housing and Community Affairs."

(3) The policy must include survey deletion coverage.

(c) Title Reports.

(1) Title reports are acceptable only for grants ~~when title insurance is not available.~~

(2) Title reports must disclose the current ownership, easements, restrictions, and liens relating to the property, and include a search for judgements, mortgages or liens, affidavits, deed restrictions, building setback and easements, and any other factors which may impair the good and marketable title to the property.

(3) The preliminary title report may not be older than six months from the date of submission of the Activity to the Department.

(d) Builder's Risk. Builder's Risk (non-reporting form only) is required when the Department provides construction funds for a Single Family Housing Unit. At the end of the construction period, the binder must be endorsed to remove the "pending disbursements" clause.

(e) Hazard Insurance. If Department funds are provided in an amount that exceeds \$20,000, then:

(1) The Department requires property insurance for fire and extended coverage;

(2) Homeowner's policies or package policies that provide property and liability coverage are acceptable. All risk policies are acceptable;

(3) The amount of hazard insurance coverage should be no less than 100% of the current insurable value of improvements as of the date of Mortgage Loan closing or effective date of the grant agreement; and

(4) The Department must be named as a loss payee and mortgagee on the hazard insurance policy for any Activity receiving a Mortgage Loan from the Department.

(f) Flood Insurance. Flood insurance must be maintained for all structures located in special flood hazard areas as determined by the U.S. Federal Emergency Management Agency (FEMA).

(1) A Household may elect to obtain flood insurance even though flood insurance is not required. However, the Household may not be coerced or required to obtain flood insurance unless it is required in accordance with this section.

(2) Evidence of insurance, as required in this chapter, must be obtained prior to Mortgage Loan funding. A one year insurance policy must be paid. For Amortizing Mortgage Loans, a minimum of two months of reserves must be collected at the closing of the Mortgage Loan. The Department must be named as the loss payee on the policy.

§20.1312 Loan, Lien and Mortgage Requirements for Activities

~~(a) The term "Borrower" in this section means the Household that is borrowing funds from or through the Department for the acquisition, new construction and/or rehabilitation of a Principal Residence.~~

~~(b)~~ (a) The fees to be paid by the Department or Borrower upfront or through the closing must be reasonable for the service rendered, in accordance with the typical fees paid in the market place for such activities and:

(1) Fees charged by third party Mortgage lenders are limited to the greater of 2% of the Mortgage Loan amount or \$3,500, including but not limited to origination, loan application, and/or underwriting fees, and

(2) Fees paid to other parties that are supported by an invoice and/or reflected on the Closing Disclosure will not be included in the limit in paragraph (1) of this subsection.

~~(c)~~ (b) A Loan made by a third-party lender in conjunction with Mortgage Loan from a federal source must be fixed-rate and may not include pre-payment penalties, balloon payments, negative amortization, or interest-only periods.

~~(d)~~ (c) Mortgage Loan Underwriting Requirements. The requirements in this ~~paragraph~~ subsection (c) shall apply to all non-forgivable amortizing Mortgage Loans.

(1) Debt-to-Income Ratio. The Household's total Debt-to-Income Ratio shall not exceed 45% of Qualifying Income (unless otherwise allowed or dictated by a participating lender providing a fixed rate Mortgage Loan that is insured or guaranteed by the federal government or a conventional Mortgage Loan that adheres to the guidelines set by Fannie Mae and Freddie Mac.) A potential Borrower's spouse who does not apply for the Mortgage Loan will be required to execute the information disclosure form(s) and the deed of trust as a "non-purchasing" spouse. The "non-purchasing" spouse will not be required to execute the note. For credit underwriting purposes all debts and obligations of the primary potential Borrower(s) and the "non-purchasing" spouse will be considered in the potential Borrower's total Debt-to-Income Ratio.

(2) Credit Qualifications.

~~(A) Potential Borrowers must have a credit history that indicates reasonable ability and willingness to meet debt obligations. In order for the Department to make a reasonable determination, all Borrowers must provide a credit release form.~~ (A) The Department may utilize credit reports ~~if less~~ submitted by the Administrator that are not more than 90 days old as part of the Mortgage Loan ~~application~~ Application or may obtain tri-merge credit reports on all potential Borrowers submitted to the Department for approval at the time of Mortgage Loan ~~application~~ Application. In addition to the initial credit report, the Department may, at its discretion, obtain one or more additional credit reports before Mortgage Loan closing to ensure the potential Borrower still meets Program requirements. Acceptable outstanding debt means that all accounts are paid as agreed and are current.

(B) Unacceptable Credit. Applicants meeting one or more of the following criteria will not be qualified to receive a single family Mortgage Program Loan from the Department:

(i) A credit history reflecting payments on any open consumer, retail and/or installment account (e.g., auto loans, signature loans, payday loans, credit cards or any other type of retail and/or installment loan, with the exception of a medical account) which have been delinquent for more than 30 days on two or more occasions within the last 12 months and must be current for the six months immediately preceding the date of the Mortgage Loan ~~application~~ Application;

(ii) A foreclosure or deed-in-lieu of foreclosure or a potential Borrower in default on a mortgage at the time of the short sale any of which had occurred or been completed within the last 24 months prior to the date of Mortgage Loan ~~application~~ Application;

(iii) An outstanding Internal Revenue Service tax lien or any other outstanding tax liens where the potential Borrower has not entered into a satisfactory repayment arrangement and been current for at least 12 months prior to the date of Mortgage Loan ~~application~~ Application;

(iv) A court-created or court-affirmed obligation or judgment caused by nonpayment that is outstanding at the date of Mortgage Loan ~~application~~ Application or any time prior to closing of the Mortgage Loan;

(v) Any account (with the exception of a medical account that is delinquent or has been placed for collection) that has been placed for "collection," "profit and loss" or "charged off," or repossession within the last 24 months prior to the date of Mortgage Loan ~~application~~ Application;

(vi) Any reported delinquency on any government debt at the date of Mortgage Loan ~~application~~ Application;

(vii) A bankruptcy that has been filed within the past 24 months prior to the date of the Mortgage Loan;
or

(viii) Any reported child support payments in arrears unless the potential Borrower has evidence of having met satisfactory payment arrangements for at least 12 months prior to the date of the Mortgage Loan.

(C) Mitigation for Unacceptable Credit. The following exceptions will be considered as mitigation to the unacceptable credit criteria in subparagraph (B) of this paragraph- (2) of this subsection (c).

(i) The potential Borrower is a Domestic Farm Laborer and receives a substantial portion of his/her income from the production or handling of agriculture or aquacultural products, and has demonstrated the ability and willingness to meet debt obligations as determined by the Department.

(ii) The potential Borrower provides documentation to evidence that the outstanding delinquency or unpaid account has been paid or settled or the potential Borrower has entered into a satisfactory repayment arrangement or debt management plan and been current for at least 12 consecutive months prior to the date of Mortgage Loan.

(iii) The potential Borrower submits to the Department a written explanation of the cause for the previous delinquency, which has since been brought current and is acceptable to the Executive Director or his or her designee.

(iv) Any and all outstanding judgments must be released prior to closing of Mortgaged Loan.

(v) If a potential Borrower is currently participating in a debt management plan, and the trustee or assignee provides a letter to the Department stating they are aware and agree with the potential borrower applying for a Mortgage Loan. If a potential Borrower filed a bankruptcy, the bankruptcy must have been discharged or dismissed more than 12 months prior to the date of Mortgage Loan ~~application~~Application and the potential Borrower has re-established good credit with at least one existing or new active consumer account or credit account that is in good standing with no delinquencies for at least 12 months prior to the date of Mortgage Loan ~~application~~Application.

(vi) If a Chapter 13 Bankruptcy was filed, a potential Borrower must have satisfactorily made 12 consecutive payments and obtain court trustee's written approval to enter into Mortgage Loan.

(D) Liabilities.

(i) The potential Borrower's liabilities include all revolving charge accounts, real estate loans, alimony, child support, installment loans, and all other debts of a continuing nature with more than 10 monthly payments remaining. Debts for which the potential borrower is a co-signer will be included in the total monthly obligations. For payments with 10 or fewer monthly payments remaining, there shall be no late payments within the past 12 months or the debt will be included into the Debt-to-Income Ratio calculation. Payments on installment debts which are paid ~~off~~in full prior to ~~funding~~the date of closing are not included for qualification purposes. Payments on all revolving debts ~~(e.g., including~~credit cards,

payday loans, lines of credit, unsecured loans), and ~~certain types of~~ installment loans that ~~appear to be recurring in nature~~ have been opened within three months of closing a prior account with the same lender will be included in the Debt-to-Income Ratio calculation, even if the potential Borrower intends to pay off the accounts, ~~since the potential Borrower can reuse those credit sources,~~ unless the account is paid off in full and closed. ~~If the credit report shows a~~ Any revolving account with an outstanding balance but no specific minimum payment, the reflected on the credit report and no monthly statement showing the required monthly payment must be will include a payment amount calculated as the greater of 5% of the outstanding balance or \$10. ~~If the potential Borrower provides a copy of the current statement reflecting the monthly payment that amount may be used for the Debt to Income Ratio calculation.~~

(ii) if a potential Borrower provides written evidence that a debt will be deferred at least 12 months from the date of closing, the debt will not be included in the Debt-to-Income Ratio calculation. Payments on any type of loan that have been deferred or have not yet commenced, including student loans and accounts in forbearance, will be calculated using ~~4.5%~~ 1.5% of the outstanding balance or monthly payment reported on the potential Borrower's credit report, whichever is less. Other types of loans with deferred payment will be calculated using the monthly payment shown on the potential Borrower's credit report. If the credit report does not include a monthly payment for the loan, the monthly payment shown in the loan agreement or payment statement will be utilized.

~~(E) Non-Traditional Credit and Insufficient Credit. If sufficient credit history is not evidenced based on subparagraph (A) of this paragraph, an Applicant must provide three lines of nontraditional credit such as utility payments, auto insurance, cell phone payments, child care or other credit, as approved by the Department, listed in their name and reflecting no more than one 30 day delinquency on payments due to nontraditional creditors within the last 12 months. The Non-Traditional Credit provided must not qualify as Unacceptable Credit as specified in subparagraph (B) of this paragraph.~~

~~(F)~~ (E) Equal Credit Opportunity Act. The Department and/or the Administrator on behalf of the Department will comply with all federal and state laws and regulations relating to the extension of credit, including the Equal Credit Opportunity Act (ECOA) (15 U.S.C. 1691 et seq.) and its implementing regulation at 12 CFR Part 1002 (Regulation B) when qualifying potential Borrower(s) to receive a single family Mortgage Loan from the Department.

~~(ed)~~ (ed) The Department reserves the right to deny assistance in the event that the senior lien conditions are not to the satisfaction of the Department, as outlined in the Program Rules.

~~(fe)~~ (fe) Lien Position Requirements.

(1) A Mortgage Loan made by the Department shall be secured by a first lien on the real property if the Department's Mortgage Loan is the largest Mortgage Loan secured by the real property; or

(2) The Department may accept a Parity Lien position if the original principal amount of the leveraged Mortgage Loan is equal to or greater than the Department's Mortgage Loan; or

(3) The Department may accept a subordinate lien position if the original principal amount of the leveraged Mortgage Loan is at least 55% of the combined repayable or amortized loans; however, liens related to other subsidized funds provided in the form of grants and non-amortizing Mortgage Loans, such as deferred payment or Forgivable Loans, must be subordinate to the Department's payable Mortgage Loan.

(~~g~~f) Loan Terms. All Mortgage Loan terms must meet all of the following criteria:

(1) May not exceed a term of 30 years;

(2) May not be for a term of less than five years; and

(3) Interest rate may be as low as 0% as provided in the Program Rules.

(~~h~~g) Loan Assumption. A Mortgage Loan may be assumable if the Department determines the potential Borrower assuming the Mortgage Loan is eligible according to the underwriting criteria of this section and complies with all Program requirements in effect at the time of the assumption.

(~~i~~h) Cash Assets. An Applicant with unrestricted cash assets in excess of \$25,000 must use such excess funds towards the acquisition of the property in lieu of loan proceeds. Unrestricted cash assets for this purpose are Net Family Assets defined in 24 CFR §5.603.

(~~j~~i) Appraisals.

(1) An appraisal is required by the Department on each property that is part of an acquisition Activity, except for down payment assistance only, prior to closing to determine the current market value.

(2) The appraisal must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation.

(3) The Appraiser must have an active and current license by the Texas Appraisal Licensing and Certification Board.

(~~k~~j) Combined Loan to Value. The Combined Loan to Value ratio of the property may not exceed 100% of the cost to acquire the property. The lien amounts of Forgivable Loans shall be included when determining the Combined Loan to Value ratio. The cost to acquire the property may exceed the appraised value only for an amount not to exceed the closing costs but in no case may result in cash back to the Borrower or exceed the limits under subsection (~~b~~)(1)a of this section.

(~~k~~) Escrow Accounts.

(1) An escrow account for real estate taxes, hazard and flood insurance premiums, and other related costs must be established if:

(A) The Department holds a first lien Mortgage Loan which is due and payable on a monthly basis to the Department; or

(B) The Department holds a subordinate Mortgage Loan and the first lien lender does not require an escrow account, ~~the Department will require an escrow account to be established.~~

(2) If an escrow account held by the Department is required under one of the provisions described in this subsection, (k), then the following provisions described in subparagraphs (A) - (F) of this paragraph (2) of this subsection (k) are applicable:

(A) The Borrower must contribute monthly payments to cover the anticipated costs, as calculated by the Department, of real estate taxes, hazard and flood insurance premiums, and other related costs as applicable;

(B) Escrow reserves shall be calculated based on land and completed improvement values;

(C) The Department may require up to two months of payment reserves for hazard and/or flood insurance, and property taxes to be collected at the time of closing to establish the required amounts in the escrow account;

(D) In addition, the Department may also require that the property taxes be prorated at the time of closing and those funds be deposited with the Department;

(E) The Borrower will be required to deposit monthly funds to an escrow account ~~with~~ managed by the Mortgage Loan servicer ~~in order to pay for~~ payment of the taxes and insurance on the property. This will ensure that funds are available to pay for the cost of real estate taxes, insurance premiums, and other assessments when they come due;

(F) These funds are included in the Borrower's monthly loan payment to the Department or to the Mortgage Loan servicer; and

(G) The Department will establish and administer the escrow accounts in accordance with the Real Estate Settlement and Procedures Act of 1974 (RESPA) under 12 U.S.C. §2601 and its implementing regulations at 12 CFR Part 1024 (Regulation X), as applicable.

~~(m)~~ Requirements for Originating Mortgage Loans for the Department.

(1) Any Administrator or staff member of an Administrator originating Mortgage Loans for the Department must be properly licensed and registered as a residential mortgage loan originator in accordance with Chapters 157 and 180 of the Texas Finance Code and its implementing regulations at

Chapter 81, Part 4 of Title 7 of the TAC, unless exempt from licensure or registration pursuant to the applicable state and federal laws and regulations regarding residential mortgage loans.

(A) The Department reserves the right to reject any Mortgage Loan ~~application~~Application originated by an Administrator or individual that is not properly licensed or registered.

(B) The Department will not reimburse any expenses related to a Mortgage Loan ~~application~~Application received from an Administrator or individual that is not properly licensed or registered.

(2) Only Administrators approved by the Department may issue initial mortgage disclosures, including the Loan Estimate and other integrated disclosures for Mortgage Loans made by the Department as required under RESPA, ~~and its implementing~~ Regulation X, the Dodd Frank Wall Street Reform and Consumer Protection Act (Dodd Frank) at 124 Stat.1375, the Truth in Lending Act (TILA) at 15 U.S.C. §1601 and its implementing regulations at 12 CFR §1026 (Regulation Z), and any applicable Texas laws, statutes, and regulations regarding consumer disclosures for residential mortgage loan transactions.

(A) The Department reserves the right to reject any ~~application for~~ Mortgage Loan Application and Loan Estimate submitted by an Administrator that has not received Department approval because the loan product as disclosed is not offered or the Borrower does not qualify for that loan product.

(B) The Department will not reimburse any expenses related to a Loan Estimate or Application received from an Administrator that does not have Department approval.

(3) Only an Administrator approved by the Department may issue final mortgage disclosures, including the Closing Disclosures and other integrated disclosures, for Mortgage Loans made by the Department as required under RESPA, ~~---~~Regulation X, Dodd Frank, TILA, Regulation Z), and any applicable Texas laws, statutes, and regulations regarding consumer disclosures for residential mortgage loan transactions.

(A) The Department reserves the right to reject any Closing Disclosure issued by an Administrator or title company without Department approval.

(B) The Department reserves the right to refuse to fund a Mortgage Loan with a Closing Disclosure that does not have Department approval.

(4) The Department will not allow disbursement of any portion of the Department's Mortgage Loan for acquisition until seller delivers to the Borrower a fully executed deed to the property. After execution of the deed, the deed must be recorded in the records of the county where the property is located.

(5) The first monthly mortgage payment upon closing of the Mortgage Loan with monthly scheduled payments will be due one full month after the last day of the month in which the Mortgage Loan closed. ~~For example, if the Mortgage Loan closed on May 10th or May 30th, the first Mortgage payment will be due July 1st.~~

(am) Principal Residence. Loans are only permitted for potential Borrowers who will occupy the property as their Principal Residence. The property must be occupied by the potential Borrower within the later of 60 days after Mortgage Loan closing or construction completion of the final Draw of Department funds for rehabilitation, whichever occurs last. It must remain the Household's Principal Residence as defined in the Mortgage Loan documents or in the case of Forgivable Loans, until the forgiveness period has concluded in accordance with the Mortgage documents.

(en) Life-of-Loan Flood Certifications will be required to monitor for FEMA flood map revisions and community participation status changes for the term of the Mortgage Loan.

(po) Requirements for Subordinating to a Refinanced Loan. The Department may consent to the refinancing of the Household's superior third-party lender mortgage and execute a subordination agreement when the following conditions are met:

- (1) Borrower is not refinancing into an adjustable rate mortgage;
- (2) Combined loan balances do not exceed 100% of appraised value;
- (3) There is no increase in principal or interest payments, with the exception made for Borrowers refinancing from a 30-year term to a shorter loan term;
- (4) The Borrower will not receive any proceeds from the transaction unless it is for overpayment of Borrower's costs;
- (5) All lienholders have consented to the refinancing; and
- (6) In the case of Reverse Mortgages insured by the federal government (e.g. Home Equity Conversion Mortgage insured by the Federal Housing Administration), all other requirements are met.

§20.1413 Amendments to Written Agreements and Contracts

(a) The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver amendments to any written Agreement or Contract that is not a Household commitment contract, provided that the requirements of this section are met unless otherwise indicated in the Program Rules.

(1) Time extensions. The Executive Director or his/her designee may grant up to a cumulative 12 months extension to the end date of any Contract unless otherwise indicated in the Program Rules. Any additional time extension beyond a cumulative 12 months granted by the Executive Director shall include a statement by the Executive Director identifying the unusual, non-foreseeable or extenuating circumstances justifying the extension. If more than a cumulative 12 months of extension is requested and the Department determines there are no unusual, non-foreseeable, or extenuating circumstances,

it will be presented to the Board for approval, approval with revisions, or denial of the requested extension.

(2) Award or Contract Reductions. The Department may decrease an award for any good cause including but not limited to the request of the Administrator, insufficient eligible costs to support the award, or failure to meet deadlines or benchmarks.

(3) Changes in ~~Household~~ Households Served. Reductions in Contractual deliverables and the number of Households to be served shall require an amendment to the Contract. ~~Increases in Contractual deliverables and Households that do not shift funds, or cumulatively shift less than 10% of total award or Contract funds, shall be completed through an amendment to the Contract and be approved administratively.~~ If such amendment is not approved, the Applicant will have the right to appeal in accordance with §1.7 of this ~~title~~ Part (relating to Appeals Process).

(4) Increases in Award and Contract Amounts.

~~(A) For a specific single family Program's Contract, the Department can award a cumulative increase of funds up to 50% of the original award amount.~~

~~(B)~~ (A) Requests for increases in funding will be evaluated by the Department on a first-come, first-served basis to assess the capacity to manage additional funding, the demonstrated need for additional funding and the ability to expend the increase in funding within the Contract ~~period~~ Term.

~~(C)~~ (B) The considerations to approve an increase in funding shall include, at a minimum, fund availability, and Administrator's ability to continue to meet existing deadlines, benchmarks, and reporting requirements.

~~(D)~~ (C) Increases in funds may come from Program funds, Deobligated funds, or Program Income.

~~(E)~~ (D) Qualifying requests will be recommended to the Executive Director or his/her designee for approval.

~~(F)~~ (E) The Board must approve requests for increases in Program funds in excess of ~~the cumulative increase threshold established in this subsection~~ 25% of the original Contract amount.

(5) The ~~single family Program Directors~~ Division Director may approve Contract budget amendments that meet the requirements of paragraphs (A) – (D) of this subsection if:

~~(A) Funds must be available in a budget line item;~~

~~(B) The budget change(s) are less than 10% of the total Contract's budget;~~

~~(C) If units or Activities are desired to be increased, but~~ move unexpended funds must be shifted from one eligible cost category to another budget line item in which units or Activities from that budget line item if the amendment would not have been completed; and impacted the award of funds

~~(D) The cumulative total of a Contract's budget modifications cannot exceed 10% of the original total Contract's budget amount.~~

(6) The Division Director may approve other amendments to a Contract or an Agreement, including amendments to the Administrator's ~~service area~~Service Area, benchmarks, or selection of Activities administered under a Contract or an Agreement, provided that the amendment would not have negatively impacted the priority of Board approved Applications.

(b) The Department may terminate a Contract in whole or in part if the Administrator does not achieve performance benchmarks as outlined in the Program Rule and/or Contract, or for any other reason in the Department's reasonable discretion.

(c) In all instances noted in this section, where an expected Mortgage Loan transaction is involved, Mortgage Loan documents will be modified accordingly at the expense of the Administrator/borrower.

~~§20.1514~~ Compliance and Monitoring

(a) The Department will perform monitoring of single family Program Contracts and Activities in order to ensure that applicable requirements of federal laws and regulations, and state laws and rules have been met, and to provide Administrators with clear communication regarding the condition and operation of these Contracts and Activities so they understand clearly, with a documented record, how they are performing in meeting obligations.

(1) The physical condition of assisted properties and Administrator's documented compliance with contractual and Program requirements may be subject to monitoring.

(2) The Department may contract with an independent third party to monitor an Activity for compliance with any conditions imposed by the Department in connection with the award of any Department funds, and appropriate state and federal laws.

(b) If an Administrator has Contracts for more than one single family Program, or other programs through the Department or the State, the Department may, at its discretion, coordinate monitoring of those programs with monitoring of single family Contracts under this chapter.

(c) In general, Administrators will be scheduled for monitoring based on federal or state monitoring requirements, or a risk assessment process including but not limited to: the number of Contracts administered by the Administrator, 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, and reports of fraud, waste and/or abuse. The risk assessment will also be used to determine which Administrators will have an onsite review, and which may have a desk review.

(d) The Department will provide an Administrator with written notice of any upcoming onsite or desk monitoring review, and such notice will be given to the Administrator by email to the Administrator's chief executive officer at the email address most recently provided to the Department by the Administrator. In general, a 30 calendar day notice will be provided. However, if a credible complaint of fraud is received, the Department reserves the right to conduct unannounced monitoring visits, or provide a shorter notice period. If the Department receives a complaint under §1.2 of this ~~title~~Part (relating to Department Complaint System to the Department), it will follow the procedures outlined therein instead of this section. It is the responsibility of the Administrator to maintain current contact information with the Department for the organization, key staff members, and governing body in accordance with §1.22 of this ~~title~~Part (relating to Providing Contact Information to the Department).

(e) Upon request, an Administrator 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, along with access to assisted properties.

(f) Post Monitoring Procedures. After the review, a written monitoring report will be prepared for the Administrator describing the monitoring assessment and any corrective actions, if applicable. The monitoring report will be emailed to the Administrator. 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.

(g) Administrator Response. If there are any Findings and/or Concerns of noncompliance requiring corrective action, the Administrator will be provided a 30 day corrective action period, which may be extended for good cause. In order to receive an extension, the Administrator must submit a written request to the Compliance Division within the corrective action period, stating the basis for good cause that the Administrator believes justifies the extension. In general, the Department will approve or deny the extension request within three business days. Failure to timely respond to a corrective action notice and/or failure to correct all Findings will be taken into consideration if the Administrator applies for additional funding and may result in suspension of the Contract, referral to the Enforcement Committee, or other action under this ~~title~~Part.

(h) Monitoring Close Out. After completion of the monitoring review, a close out letter will be issued to the Administrator. If the Administrator supplies evidence establishing continual compliance that negates the Finding of noncompliance, the issue of noncompliance will be rescinded. If the Administrator's response satisfies all Findings and Concerns noted in the monitoring letter, the issue of noncompliance will be noted as resolved. In some circumstances, the Administrator may be unable to secure documentation to resolve a Finding. In those instances, if there are mitigating circumstances, the Department may note the Finding is not resolved but may close the issue with no further action required. If the Administrator's response does not correct all Findings noted, the close out letter will identify the

documentation that must be submitted to correct the issue. Results of monitoring Findings may be reported to the EARAC for consideration relating to Previous Participation.

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

(1) If the issue is related to a federal program requirement or prohibition, Administrators may contact an applicable federal program officer for guidance, or request that the Department contact applicable federal program officer for guidance without identifying the Administrator.

(2) If the issue is related to a provision of the Contract or a requirement of the TAC, or a provision of UGMS, or TxGMS (as applicable), the Administrator may submit an appeal to the Executive Director consistent with §1.7 of this titlePart (relating to Appeals Process).

(3) An Administrator may request Alternative Dispute Resolution (ADR). An Administrator must send a proposal to the Department's Dispute Resolution Coordinator to initiate ADR pursuant to §1.17 of this titlePart (relating to Alternative Dispute Resolution).

(j) If an Administrator does not respond to a monitoring letter or fails to provide acceptable evidence of timely compliance after notification of an issue, the matter will be reported to the Department's Enforcement Committee for consideration of administrative penalties, full or partial cost reimbursement, or suspension.

(k) An Administrator must provide timely response to corrective action requirements imposed by other agencies. Administrator records may be reviewed during the course of monitoring or audit of the Department by HUD, the Office of the Inspector General, the State Auditor's Office, or others. If a Finding or Concern is identified during the course of a monitoring or audit by another agency, the Administrator is required to provide timely action and response within the conditions imposed by that agency's notice.

§20.1615 Appeals

Appeal of Department staff decisions or actions will follow requirements in Program Rules and Chapter 1 of this titlePart (relating to Administration).