

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
**TDHCA Governing Board Approved Draft of
Proposed New
10 TAC, Chapter 7, Subchapter D
Ending Homelessness Fund (“EH Fund”), §§7.61–7.65**

Disclaimer

Attached is a draft **10 TAC, Chapter 7, Subchapter D, Ending Homelessness Fund (“EH Fund”), §§7.61–7.65** that was approved by the TDHCA Governing Board on September 6, 2018. This document, including its preamble, is scheduled to be published in the September 21, 2018 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 21, 2018 Ends: 5:00 p.m. Austin local time on October 22, 2018

Comments received after 5:00 p.m. Austin local time on October 22, 2018 will not be accepted.

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

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

Written comments may be submitted in hard copy, fax, or email formats within the designated public comment period. Those making public comment are encouraged to reference the specific draft rule, policy, or plan related to their comment as well as a specific reference or cite associated with each comment.

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

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
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Attachment 1: Preamble, including required analysis, for proposed new 10 TAC Chapter 7, Subchapter D, Ending Homelessness Fund

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 7, Subchapter D, Ending Homelessness Fund. The purpose of the proposed new section is to provide compliance with Tex. Transportation Code §502.415(g) and outline the purpose and use of funds, subrecipient application and selection, availability of funds, application review process, and contract terms and limitations.

Tex. Gov’t Code §2001.0045(b) does not apply to the rule proposed for action pursuant to §2001.0045(c)(9), which exempts rule changes necessary to implement legislation. This proposed rule implements Tex. Transportation Code §502.415, which requires that the Department establish rules to govern the Ending Homelessness Fund.

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. Irvine has determined that, for the first five years the proposed new rule would be in effect, the proposed rule provides for the implementation of a new program, the Ending Homelessness Fund, which is established in legislation at Tex. Transportation Code §502.415. To minimize the administrative burden on potential program Subrecipients the new program is proposed to streamline the use of the EH Fund alongside two other existing homeless programs administered by the Department, the Homeless Housing and Services Program (“HHSP”) and the Emergency Solutions Grants Program (“ESG”), until the EH Fund exceeds \$500,000 in a state fiscal year.
2. The proposed new rule does not require a change in work that would require the creation of new employee positions. While some additional work by the Department will be required associated with the receipt and review of EH Fund Applications, creation of Contracts, and review of reporting, the Department anticipates handling this additional work with existing staff resources. The rule changes do not reduce workload such that any existing employee positions could be eliminated.
3. The proposed rule changes do not require additional future legislative appropriations.
4. The proposed rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The proposed rule is creating a new regulation to fulfill requirements of Tex. Transportation Code §502.415(g), which requires that the Department adopt rules governing application for grants from the Ending Homelessness Fund and the issuance of those grants.
6. The proposed rule will not expand, limit, or repeal an existing regulation, since this is a new proposed rule.
7. The proposed rule does increase the number of individuals subject to the rule’s applicability as described in item one above.
8. The proposed rule will not negatively affect the state’s economy, and may be considered to have a positive effect on the state’s economy because the new rule works to provide activities to decrease the number of persons experiencing homelessness or at-risk of homelessness who may be possibly accessing other more-expensive public options, such as hospitals or jails. The Department is not

able to quantify or determine the possible extent of the reduction at this time because, in addition to the difficulty in fully projecting the full value of these outcomes, the amount of the funding used for this program is dependent on voluntary donations which may vary over time.

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.

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

(2) There are no small or micro-businesses subject to the proposed rule because Tex. Transportation Code §502.415 limits the EH Fund to counties and municipalities. There are minimal rural communities subject to the proposed rule because as proposed, only counties and municipalities that have or will have ESG and HHSP are eligible applicants that generally are not rural communities.

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

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

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

The Department has evaluated the 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 this rule will channel funds, which may be limited, only to counties and municipalities who have ESG or HHSP funds; it is not anticipated the amount of funds would be enough to support additional employment opportunities, but would add to the services provided. Alternatively, the rule would also not cause any negative impact on employment. Therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that no impact is expected on a statewide basis, there are also 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). Timothy K. Irvine, 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 compliance with Tex. Transportation Code §502.415(g), and as EH funds are distributed, will result in decreased number of persons experiencing or at-risk of homelessness. There is no state cost to program participants who participate in the activities proposed under the EH Fund. There will not be any economic cost to any individuals required to comply with the new section because the processes described by the rule apply to counties and municipalities.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2018, to October 22, 2018, to receive input on the new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Naomi Cantu, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email naomi.cantu@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time, OCTOBER 22, 2018.

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

SUBCHAPTER D. ENDING HOMELESSNESS FUND

§7.61. Purpose and Use of Funds.

(a) As authorized by Tex. Transp. Code §502.415, the Ending Homelessness Fund (“EH Fund”) provides grant funding only to counties and municipalities for the purpose of combating homelessness.

(b) Permitted EH Fund eligible activities include any activity determined to be eligible under Subchapter B of this Chapter, Homeless Housing and Services Program (“HHSP”), or under Subchapter C of this Chapter, Emergency Solutions Grants (“ESG”), as applicable, and as otherwise described in this Subchapter and Subchapter A of this Chapter.

(c) Capitalized terms used in this Subchapter shall follow the meanings defined in Subchapter A of this Chapter unless the context clearly indicates otherwise. Additionally any words and terms not defined in this section but defined or given specific meaning in 24 CFR Part 576, or used in that Part and defined elsewhere in state or federal law or regulation, when used in this Chapter, shall have the meanings defined therein, unless the context herein clearly indicates otherwise.

(d) Funds awarded under the EH Fund are not subject to any Match requirements, but may be used as Match for other programs that do require Match.

§7.62. EH Fund Subrecipient Application and Selection.

(a) The Department will produce an Application which, if properly completed by an eligible Applicant and approved by the Department, may satisfy the Department’s requirements to receive an award of funds under the EH Fund. Applicants that have an existing ESG or HHSP Contract or are applying for ESG or HHSP funds may be eligible to submit an abbreviated EH Fund Application if such Application is made available by the Department.

(b) Funds will be available to Applicants determined to be eligible for the EH Fund under §7.63(b)(1) of this Subchapter, or as specified in a NOFA as defined in and under §7.63(b)(2) of this Subchapter, as applicable.

(c) Application for funds. All Applicants for an award from the EH Fund must submit items (1) through (5) of this subsection:

(1) a complete Application including an Applicant certification of compliance with state rules, federal laws, rules and guidance governing the EH Fund as provided in the Application;

(2) all information required under 10 TAC Subchapter C to conduct a Previous Participation and Executive Award Review and Advisory Committee review;

(3) a proposed budget in the format required by the Department;

(4) proposed performance targets in the format required by the Department; and

(5) activity descriptions, including selection of administration under Subchapter B of this Chapter related to HHSP or Subchapter C of this Chapter related to ESG.

(d) For Applications submitted by existing ESG or HHSP Subrecipients or Applicants for ESG or HHSP, eligible activities are limited to those activities in ESG or HHSP, except that the EH Fund is not subject to limitations on the amount of funds that may be spent for any given activity type.

(e) The Department must receive all Applications within 30 calendar days of notification of eligibility to Applicants per §7.63(b)(1) of this Subchapter, or as specified in the NOFA, as applicable.

§7.63. Availability of Funds.

(a) Funds available under the EH Fund will be made available at least once per state fiscal year to eligible Applicants dependant on the amount of funding made available.

(b) The balance of the EH Fund will determine the distribution method.

(1) For an annual balance that does not exceed \$500,000 as of the end of the state fiscal year, the total of available EH funds will be distributed equally, up to the amount requested, among the total number of entities satisfying all of the following requirements:

(A) are Subrecipients or awarded Applicants of ESG or HHSP;

(B) are counties or municipalities;

(C) have indicated that they wish to participate in the EH Fund; and

(D) have identified the minimum amount of funds they would accept and the maximum amount of funds they would be able to expend during the Contract Term.

(2) For an annual fund balance that exceeds \$500,000 as of the end of the state fiscal year, the total of available EH Funds may be made available through a NOFA, which may include being made available to counties and municipalities that are not existing ESG or HHSP Subrecipients or awarded Applicants. If the amount in the EH Fund is greater than \$500,000, an award made available through a NOFA shall not exceed \$250,000 per Applicant per state fiscal year, unless there are no other eligible Applicants.

§7.64. Application Review Process.

(a) Review of Applications. When not using a NOFA, an Application received in response to solicitation by the Department will be assigned a "Received Date" and processed as noted below. An Application will be prioritized for review based on its "Received Date." All Applications received by the deadline described in §7.62(e) of this Subchapter will be reviewed by the Department for completeness and administrative deficiencies to prepare for Board action and potential funding.

(b) The administrative deficiency process allows staff to request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. Staff will send the deficiency notice via email. Responses to the Department's deficiency notice must be submitted electronically to the Department. A review of the Applicant's response may reveal that additional administrative deficiencies are exposed or that issues initially identified as an administrative deficiency are actually determined to be beyond the scope of an administrative deficiency process, meaning that they are in fact matters of a material nature not susceptible to be resolved. For example, a response to an administrative deficiency that causes a new inconsistency which cannot be resolved without reversing the first deficiency response would be an example of an issue that is beyond the scope of an administrative deficiency. Department staff will make a good faith effort to provide an Applicant confirmation that an administrative deficiency response has been received and/or that such response is satisfactory. Communication from staff that the response was satisfactory does not establish any entitlement to points, eligibility status, or to any presumption of a final determination that the Applicant has fulfilled any other requirements.

(1) An Application with outstanding administrative deficiencies may be suspended from further review until all administrative deficiencies have been cured or addressed to the Department's satisfaction. The administrative deficiency process allows staff to request that an Applicant provide clarification, correction, or missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application.

(2) Applications that have completed the review process may be presented to the Board for approval with priority over Applications that continue to have administrative deficiencies at the time Board materials are prepared, regardless of "Received Date."

(3) If all funds available under a solicitation from the Department are awarded, all remaining Applicants will be notified and the remaining Applications will not be processed.

(c) Responses to administrative deficiencies. The time period for responding to a deficiency notice commences on the first calendar day following the deficiency notice date. If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m. Austin local time on the seventh calendar day following the date of the deficiency notice, the Application shall be terminated. Applicants that have been terminated may reapply unless the Application period has closed.

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

comprehensive list of all deficiencies in the Application. Termination of an Application may be subject to §1.7 of this Part, regarding appeals.

§7.65. Contract Term and Limitations.

(a) For EH Fund Applicants that do not have a current ESG or HHSP Contract, and have not been awarded ESG or HHSP funds, the Department requires evidence in the form of a certification or resolution adopted by the governing body of the Applicant specifying who is authorized to enter into a Contract on behalf of the Applicant. This certification or resolution is due to the Department no later than 90 calendar days after the award has been approved by the Board, must be received prior to execution of any Contract for EH funds, and must include:

- (1) authorization to enter into a Contract for EH Fund;
- (2) title of the person authorized to represent the organization and who also has signature authority to execute a Contract; and
- (3) date that the certification or resolution was adopted by the governing body, which must be within 12 months of Application submission.

(b) For the EH Fund, Applicants that have a current Contract or have been awarded ESG or HHSP funds for a subsequent period, the Contract Term of the EH funds may not extend past the Contract Term of the existing ESG or HHSP Contract or the subsequent ESG or HHSP Contract Term. For EH Fund Applicants that do not have current or awarded ESG or HHSP funds, the Contract Term may not exceed 24 months.