

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
**TDHCA Governing Board Approved Draft of**  
**10 TAC Chapter 23, Single Family HOME Program, Subchapter B, Availability Of Funds,**  
**Application Requirements, Review And Award Procedures, General Administrative**  
**Requirements, And Resale And Recapture Of Funds, §23.24, Administrative Deficiency Process**

**Disclaimer**

Attached is a draft of proposed amended 10 TAC Chapter 23, Single Family HOME Program, Subchapter B, Availability Of Funds, Application Requirements, Review And Award Procedures, General Administrative Requirements, And Resale And Recapture Of Funds, §23.24, Administrative Deficiency Process, which was approved by the TDHCA Governing Board on November 8, 2018. The purpose of the proposed amended section is to update the rule to allow the corrected Resolution after the application review deficiency deadline for all HOME applications to prevent termination of the application. This document, including its preamble, is expected to be published in the November 23, 2018, edition of the *Texas Register* and that published version will constitute the official version for purposes of public comment and can be found at the following link: <https://www.sos.texas.gov/texreg/index.shtml>.

**Public Comment**

**Public Comment Period:**        **Start: 8:00 a.m. Austin local time on November 23, 2018**  
   **End: 5:00 p.m. Austin local time on December 27, 2018**

Comments received after 5:00 p.m. Austin local time on December 27, 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: Abigail Versyp  
Rules Comments  
P.O. Box 13941  
Austin, Texas 78711-3941  
Email: [Abigail.versyp@tdhca.state.tx.us](mailto:Abigail.versyp@tdhca.state.tx.us)

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

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

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

Street Address: 221 East 11th Street, Austin, TX 78701  
Mailing Address: PO Box 13941, Austin, TX 78711-3941  
Main Number: 512-475-3800 Toll Free: 1-800-525-0657  
Email: [info@tdhca.state.tx.us](mailto:info@tdhca.state.tx.us) Web: [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

**Preamble, including required analysis, for proposed amendment of 10 TAC, §23.24, Administrative Deficiency Process**

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 23, Single Family HOME Program, Subchapter B, Availability Of Funds, Application Requirements, Review And Award Procedures, General Administrative Requirements, And Resale And Recapture Of Funds, §23.24, Administrative Deficiency Process. The purpose of the proposed amended section is to update the rule to allow the submission of a corrected Resolution after the application review deficiency deadline for all HOME applications to prevent termination of the application. The current HOME Rules state that administrative deficiencies of a HOME application that are not resolved to the Department's satisfaction by the deficiency cure period substantiate termination of the application. The proposed amendments to §23.24 allow a corrected Resolution in response to a deficiency to be submitted to the Department without penalty and avoid the termination of an application because of a minor clerical error that applicants may not resolve before the application deficiency deadline.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it has been determined that no costs are associated with this amendment, 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. Cervantes has determined that, for the first five years the proposed rulemaking would be in effect:

1. The proposed rule amendment does not create or eliminate a government program, but relates to the amending of this rule which makes changes to one narrow aspect of an existing activity, the acceptance of resolutions as it relates to the administration of the HOME Program.
2. The proposed amendment does not require a change in work that would require the creation of new employee positions, nor are the amendment changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The proposed amendment does not require additional future legislative appropriations.
4. The proposed amendment does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.
5. The proposed amendment is not creating a new regulation.
6. The proposed amendment will not expand, limit, or repeal an existing regulation, but merely clarifies an acceptable timeframe for receiving a corrected resolution from a subrecipient.
7. The proposed amendment will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed amendment will not negatively nor positively affect this state's economy.

**b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.** The Department has evaluated this proposed amendment and determined that none of the

adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed rule amendment 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 amendment has no economic effect on local employment because this rule only applies to the administrative process of application review; 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). David Cervantes, Acting Director, has determined that, for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of the amended section will be an updated and more flexible rule. There will not be any economic cost to any individuals required to comply with the amended section because the processes described by the rule have already been in place.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the amendment is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments because this rule only applies to a deficiency process already in place for applicants pursuing HOME funding.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 23, 2018, to December 26, 2018, to receive input on the amended section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Abigail Versyp, HOME and Homeless Programs, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220 or by email to the following address: HOME@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, on December 26, 2018. A copy of the amended section will be available on the Department's website at <http://www.tdhca.state.tx.us/public-comment.htm> under Items Open for Public Comment during the public comment period.

STATUTORY AUTHORITY. The amendment is proposed pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed amended sections affect no other code, article, or statute.

*§23.24. Administrative Deficiency Process.*

(a) 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 an email or if an email address is not provided in the Application, by facsimile to the Applicant. Responses are required to be submitted electronically to the Department. A review of the Applicant's response may reveal 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 being resolved. Department staff may in good faith provide an Applicant confirmation that an administrative deficiency response has been received 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 having fulfilled any requirements. Final determination regarding the sufficiency of documentation submitted to cure an administrative deficiency as well as the distinction between material and non-material missing information

are reserved for the Director of the HOME Program, Executive Director, and Board, as applicable.

(b) An Applicant may not change or supplement any part of an Application in any manner after submission to the Department, and may not add any set-asides, except in response to a direct request from the Department to remedy an administrative deficiency or by amendment of an Application after the Board approval of a HOME award. An administrative deficiency may not be cured if it would, in the Department's determination, substantially change an Application, or if the Applicant provides any new unrequested information to cure the deficiency.

(c) Administrative deficiencies for HOME Applications under an open application cycle NOFA, including an Application for an RSP Agreement. The time period for responding to a deficiency notice commences on the first business 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 fifth business day following the date of the deficiency notice, the application shall be terminated. The Department may accept a corrected Board Resolution submitted after the deficiency deadline on the condition that the corrected Board Resolution resolves the deficiencies to the satisfaction of the Department, but the Board Resolution must be received and deemed satisfactory by the Department before the RSP Agreement or Contract start date. Applicants that have been terminated may reapply, and the application fee shall be waived for an Application submitted within 30 days of the termination of an Application.

(d) Administrative deficiencies for HOME Applications under a Competitive Application Cycle NOFA. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then one ~~(4)~~ point shall be deducted from the selection criteria score for each additional business day the deficiency remains unresolved. If administrative deficiencies are not resolved by 5:00 p.m., Austin local time, on the seventh business day following the date of the deficiency notice, then the Application shall be terminated. The Department may accept a corrected Board Resolution submitted after the deficiency deadline on the condition that the corrected Board Resolution resolves the deficiencies to the satisfaction of the Department, but the Board Resolution must be received and deemed satisfactory by the Department before the Contract start date.