

Preamble and amendment of Subchapter E, §23.51, Contract For Deed (CFD) General Requirements

The Texas Department of Housing and Community Affairs (the "Department") proposes an amendment to 10 TAC Chapter 23, Single Family HOME Program, Subchapter E, Contract for Deed Program, §23.51, Contract for Deed ("CFD") General Requirements.

The purpose of amending this rule is to expand the funding of CFD activities statewide, and to increase the AMFI for eligible households from 60 percent to 80 percent. Currently, the CFD Program is restricted to areas that meet the definition of a colonia as defined in Tex. Gov't Code, Chapter 2306. Newer, very large subdivisions that share characteristics of a colonia, but do not meet the Chapter 2306 definition would benefit from CFD funding but are unable to be funded under the current rule. Proposed amendments to §23.51 would continue to limit CFD funding to areas that meet the definition of a colonia, but only for a period of time; the CFD funds would then be made available in non-colonia areas. Because funds are currently not fully utilized it is hoped that by expanding the AMFI, more households in a contract for deed will be eligible to participate.

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 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. 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 amending this rule which makes narrow changes to adjust the eligibility within an existing activity, the Contract for Deed activity within 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.
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 proposed amendment as to its possible effects on local economies and has determined that for the first five years the rule amendment will be in effect the proposed rule amendment may provide a possible positive economic effect on local employment. This amendment provides the possibility that program applicants not currently accessing these funds may do so, which could infuse funds into the local financial market. However because location of where program funds or development are directed is not determined in rule, that impact is not able to be quantified for any given community.

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 to allow CFD funds to be used in Contract for Deed situations that occur outside of a colonia and to assist households up to 80 percent AMFI. 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 expanded opportunities for eligibility to apply for 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.

§23.51. Contract for Deed (CFD) General Requirements.

(a) Program funds may be used for the following under this subchapter:

(1) ~~acquisition~~ Acquisition or acquisition and Rehabilitation, Reconstruction, or New Construction of single family housing units occupied by the purchaser as shown on an executory contract for conveyance; or

(2) ~~refinance~~ Refinance with Rehabilitation, Reconstruction, or New Construction of single family housing units occupied by the purchaser as shown on an executory contract for conveyance provided construction costs exceed the amount of debt that is to be refinanced;

(b) An MHU is not an eligible property type for Rehabilitation. MHUs must be installed according to the manufacturer's installation instructions and in accordance with Federal and State laws and regulations.

(c) The Household's income must not exceed ~~60-80~~ percent (“AMFI”) and the Household must complete a homebuyer counseling program/class.

~~(d) The property assisted must be located in a Colonia as defined in Texas Government Code, Chapter 2306. The Colonia must have a Colonia Classification Number, as assigned by the Office of the Texas Secretary of the State. The Department shall limit the availability of funds for CFD for a minimum of 60 calendar days for Activities proposing to serve Households whose income does not exceed 60 percent “AMFI”, and for properties located in a Colonia as defined in Tex. Gov’t Code §2306.083.~~

(e) The Department will require a first lien position.

(f) Direct Activity Costs, exclusive of Match funds, are limited to:

(1) ~~refinance~~ Refinance, acquisition and closing costs: \$35,000. In the case of a contract for deed housing unit that involves the refinance or acquisition of a loan on an existing MHU and/or the loan for the associated land, the Executive Director may grant an exception to exceed this amount, however, the Executive Director will not grant an exception to exceed \$40,000 of assistance;

(2) Reconstruction and New Construction of site-built housing: the lesser of \$90 per square foot of conditioned space or \$100,000, or for Households of five or more Persons the lesser of \$90 per square foot of conditioned space or \$110,000 for a four-bedroom unit;

(3) ~~replacement~~ Replacement with an energy efficient MHU: \$75,000; and

(4) Rehabilitation that is not Reconstruction: \$60,000, or up to \$100,000 for properties listed in or identified as eligible for listing in the National Register of Historic Places.

(g) In addition to the Direct Activity Costs allowable under subsection (d) of this section, a sum not to exceed \$10,000 may be used to pay for any of the following:

(1) ~~necessary~~ Necessary environmental mitigation as identified during the Environmental review process;

(2) ~~installation~~ Installation of an aerobic septic system; or

(3) ~~homeowner~~ Homeowner requests for accessibility features.

(h) Activity soft costs eligible for reimbursement for Activities of the following types are limited to:

(1) ~~acquisition~~ Acquisition and closing costs: no more than \$1,500 per housing unit;

(2) Reconstruction or New Construction: no more than \$10,000 per housing unit;

(3) ~~replacement~~ Replacement with an MHU: no more than \$3,500 per housing unit;

(4) Rehabilitation that is not Reconstruction: \$7,000 per housing unit. This limit may be exceeded for lead-based remediation and only upon prior approval of the Division Director. The costs of testing and assessments for lead-based paint are not eligible Activity soft costs for housing units that are reconstructed or if the existing housing unit was built after December 31, 1977.

(i) Funds for administrative costs are limited to no more than ~~4~~ four percent of the Direct Activity Costs, exclusive of Match funds.

(j) The assistance to an eligible Household shall be in the form of a loan in the amount of the Direct

Activity Costs excluding Match funds. The loan will be at zero percent interest and include deferral of payment and annual pro rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254. For refinancing activities, the minimum loan term and affordability period is ~~fifteen~~ (15) years, regardless of the amount of HOME assistance.

(k) To ensure affordability, the Department will impose resale and recapture provisions established in this Chapter.

(l) For Reconstruction and New Construction, site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes, standards, ordinances, and zoning requirements. In addition, Reconstruction and New Construction housing is required to meet 24 CFR §92.251(a)(2) as applicable. Housing that is Rehabilitated under this ~~Chapter~~ chapter must meet the Texas Minimum Construction Standards (TMCS) and all other applicable local codes, Rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule. Housing units that are provided assistance for acquisition only must meet all applicable state and local housing quality standards and code requirements. In the absence of such standards and requirements, the housing units must meet the Housing Quality Standards (HQS) in 24 CFR §982.401.

(m) Each unit must meet the design and quality requirements described in paragraphs (1) - (4) of this subsection:

(1) ~~include~~ Include the following amenities: Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room; Blinds or window coverings for all windows; Oven/Range; Exhaust/vent fans (vented to the outside) in bathrooms; Energy-Star or equivalently rated lighting in all rooms, which may include compact florescent bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans;

(2) ~~contain~~ Contain no less than two bedrooms. Each unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;

(3) ~~each~~ Each bedroom must be no less than 100 square feet; have a length or width no less than ~~8~~ eight feet; be self contained with a door; have at least one window that provides exterior access; and have at least one closet that is not less than ~~2~~ two feet deep and ~~3~~ three feet wide and high enough to contain at least ~~5~~ five feet of hanging space; and

(4) ~~be~~ Be no less than 800 total net square feet for a two bedroom home; no less than 1,000 total net square feet for a three bedroom and two bathroom home; and no less than 1,200 total net square feet for a four bedroom and two bathroom home.

(n) Housing proposed to be constructed under this subchapter must meet the requirements of Chapters 20 and 21 of this title (relating to Single Family Programs Umbrella Rule and Minimum Energy Efficiency Requirements for Single Family Construction Activities, respectively) and must be certified by a licensed architect or engineer.

(1) The Department will reimburse only for the first time a set of architectural plans are used, unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer; and

(2) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.