

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
**TDHCA Governing Board Approved Proposed New  
10 TAC, Chapter 7, Subchapter A  
General Provisions, §§7.1-7.11**

**Disclaimer**

Attached is a draft of **10 TAC, Chapter 7, Subchapter A, General Provisions, §§7.1-7.11** that was approved by the TDHCA Governing Board on April 26, 2018. This proposed rule, including its preamble, is scheduled to be published in the May 11, 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 May 11, 2018 Ends: 5:00 P.M. Austin local time on June 11, 2018**

Comments received after 5:00 P.M. Austin local time on June 11, 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) 475-1671  
Email: [naomi.cantu@tdhca.state.tx.us](mailto: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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## Background

The new 10 TAC Chapter 7, Subchapter A, General Provisions, is proposed to clarify general requirements for the Emergency Solutions Grants (“ESG”) Program, Homeless Housing and Services Program (“HHSP”) and to add the Ending Homelessness (“EH Fund”) to the basic framework for administration. These three programs will be known collectively as the Homeless Programs.

Note changes specific to ESG, as outlined in 10 TAC Chapter 7, Subchapter C, Emergency Solutions Grants, and a new rule specifically for the EH Fund are not currently proposed. The EH Fund was created during the 85<sup>th</sup> Regular Legislative Session, per Tex. Gov’t Code §502.415 to provide grant funding to counties and municipalities for the purpose of combating homelessness. The Department plans to propose new 10 TAC Chapter 7, Subchapter C, and a new rule governing the specific use of the EH Fund during the summer of 2018. In addition, the changes to 10 TAC Chapter 7, Subchapter A, General Provisions, would not apply to the 2018 ESG Contracts (except if required by federal or state statute or regulation), since the applications under which the 2018 ESG awards are anticipated to be made were submitted under the current rule. The purpose of repealing and replacing the State Homeless Programs Rule under Subchapter A is to add clarification to the framework for the Homeless Programs’ administration. The ESG and EH Fund rules will be in effect by the time this rule becomes applicable to new awards.

A summary of proposed changes to 10 TAC Chapter 7, Subchapter A, General Provisions, is below.

### **§7.1 Purpose and Goals**

Expansion of the purpose and goals of Chapter 7 to include the Ending Homelessness Fund, and addition of a rule waiver provision for the Department’s Governing Board to use at their discretion.

### **§7.2 Definitions**

Updates to the definitions removing terms no longer in use and adding terms that will be used in Rule, the Contract, or the Notice of Funding Availability (“NOFA”).

### **§7.3 Construction Requirements**

Inclusion of more detail on Land Use Restriction Agreements (“LURAs”) as to when a LURA would apply, how long a LURA lasts, and what is needed from the Subrecipient to enter into a LURA. Addition of details regarding inspection requirements for construction activities.

### **§7.4 Subrecipient Contract**

Clarification to Subrecipient Contracts regarding subcontracting and subawards, amendment request timing, cost reimbursement processes for underperforming Subrecipients, process to voluntarily de-obligate unused funds before the contract end date, and restriction on using funds for sectarian or explicitly religion activities.

### **§7.5 Subrecipient Reporting**

Updates to Subrecipient reporting including clarification on reimbursement process and one time working capital advance request processes, change of due date for the monthly reports, more detail on submission of reports, and clarification on annual reporting requirements, which may extend over multiple Contract periods.

### **§7.6 Subrecipient Data Collection**

Clarification that performance targets will be indicated in the Contract.

### **§7.7 Subrecipient Contact Information**

Clarification as to when to provide updated Subrecipient contact information.

### **§7.8 Records Retention**

More detail given on record retention periods.

### **§7.9 Contract Termination and Deobligation**

Removal of the need for final reports.

### **§7.10 Inclusive Marketing**

No changes to the Inclusive Marketing section.

### **§7.11 Compliance Monitoring**

Updates to Compliance Monitoring notification process from Department to the Subrecipients, and updates to resolution process for Findings and Concerns.

## Proposed Rule

The Texas Department of Housing and Community Affairs (the “Department”) proposes the new 10 TAC Chapter 7, Subchapter A §§7.1-7.11, concerning General Provisions. The purpose of the proposed new Subchapter is to restructure the program rules to improve compliance with federal and state requirements, and to provide for consistency with other provisions of the Department’s rules. The proposed repeal of existing Chapter 7, Subchapter A, is published concurrently with this rulemaking.

**FISCAL NOTE.** Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

**GOVERNMENT GROWTH IMPACT STATEMENT.** Mr. Irvine also has determined that, for the first five years a rule would be in effect:

The proposed rule does not create or eliminate a government program;

The proposed rule will not require a change in the number of employees of the Department;

The proposed rule will not require additional future legislative appropriations;

The proposed rule will result in neither an increase nor a decrease in fees paid to the Department;

The proposed rule will not create a new regulation;

The proposed rule will not expand an existing regulation, except that some matters previously incorporated into contract are being memorialized in the rule;

The proposed rule will not increase the number of individuals subject to the rule's applicability; and will neither positively or negatively affect this state's economy.

**PUBLIC BENEFIT/COST NOTE.** Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be increased clarity and consistency to improve compliance with federal and state requirements. There will not be any economic cost to any individuals required to comply with the new sections, because the requirements imposed by the rule are have been in place for these programs though contractual obligations or other federal and state requirements.

**ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES.**

The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held May 11, 2018, to June 11, 2018, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, 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](mailto:naomi.cantu@tdhca.state.tx.us). **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M.** Austin local time JUNE 11, 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 A. General Provisions.

§7.1. Purpose and Goals.

(a) The rules established herein for Chapter 7 the "Homeless Programs" Subchapter A "General Provisions" applies to all of the Homeless Programs, unless otherwise noted. Additional program specific requirements are contained within each program subchapter.

(b) The Homeless Programs administered by the Texas Department of Housing and Community Affairs (the "Department") support the Department's statutorily assigned mission to address the problem of homelessness among Texans.

(c) The Department accomplishes this mission by acting as a conduit for state and federal funds for homelessness programs. Ensuring program compliance with the state and federal laws that govern these programs is another important part of the Department's mission. Oversight and program mandates ensure state and federal resources are expended in an efficient and effective manner.

(d) Unless otherwise noted herein or required by federal law or regulation, or state statute, all provisions of this chapter apply to any Application received for federal funds and any Contract of state funds on or after September 1, 2018.

(e) The Department's Governing Board (the "Board") may waive rules subject to this chapter for good cause to meet the purpose of the Homeless Programs described further in subsection (b) of

this section. However, any waiver cannot conflict with the federal or state statutes or regulations governing any of the Homeless Programs. Waivers may not be granted for items that impact federally imposed obligation or Expenditure deadlines governing the ESG Program or state Expenditure deadlines governing HHSP.

#### §7.2. Definitions.

(a) To ensure a clear understanding of the terminology used in the context of the Department's Homeless Programs, a list of terms and definitions has been compiled as a reference.

(b) The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise. Other definitions may be found in Chapters 1 or 2 of this Part, or in federal or state law.

(1) Affiliate--An entity related to an Applicant that controls by contract or by operation of law the Applicant or has the power to control the Applicant or a third entity that controls, or has the power to control both the Applicant and the entity. Examples include but are not limited to entities submitting under a common application, or instrumentalities of a unit of government. This term also includes any entity that is required to be reported as a component entity under Generally Accepted Accounting Standards, is required to be part of the same Single Audit as the Applicant, is reported on the same IRS Form 990, or is using the same federally approved indirect cost rate.

(2) Allocation Formula--Mathematical relationship among factors that determines how much funding is available in an area or region.

(3) Applicant--A unit of local government, nonprofit corporation or other entity, as applicable, who has submitted to the Department or to an ESG Coordinator an Application for Department funds or other assistance.

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

(5) At-risk of Homelessness--As defined by 24 CFR §576.2, except that Program Participants for state funds are subject to income limits set by Subrecipients that, at a minimum, do not exceed the moderate income level pursuant to Tex. Gov't Code §2306.152.

(6) Code of Federal Regulations ("CFR")--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

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

(8) Continuum of Care ("CoC")--The CoC Program is a HUD-funded program designed to assist sheltered and unsheltered homeless people by providing the housing and/or services needed to help individuals move into transitional and permanent housing, with the goal of long-term stability. HUD requires representatives of relevant organizations to form a CoC to serve a specific geographic area; the Department and the CoCs are required by HUD to coordinate relating to the ESG Program as set forth in 24 CFR §576.400. This does not include any funds given from the State to a specific CoC.

(9) CoC Lead Agency--CoC collaborative applicant per 24 CFR §578.3.

(10) Contract--The executed written agreement between the Department and a Subrecipient performing a program activity that describes performance requirements and responsibilities assigned by the document.

(11) Contract System--Either the Community Affairs Contract System or the Housing Contract

System established by the Department, as required by the program.

(12) Contract Term--Period of time identified in the contract during which program activities may be conducted.

(13) Contracted Funds--The gross amount of funds obligated by the Department to a Subrecipient as reflected in a Contract.

(14) Cost Reimbursement--A Contract sanction whereby reimbursement of costs incurred by the Subrecipient is made only after the Department has reviewed and approved backup documentation provided by the Subrecipient to support such costs.

(15) Declaration of Income Statement ("DIS")--A Department-approved form used only when it is not possible for a Subrecipient to obtain third party or firsthand verification of income, per 24 CFR §576.500(e)(4).

(16) Department of Housing and Urban Development ("HUD")--Federal department that provides funding for ESG.

(17) Dwelling Unit--A residence that meets Habitability Standards that is not an emergency shelter, hotel, jail, institution, or similar temporary lodging. Transitional Housing is included in this definition unless the context clearly states otherwise. Common areas supporting the Dwelling Unit are also included in this definition.

(18) Elderly Person--

(A) For state funds, a person who is 60 years of age or older; and

(B) For ESG, a person who is 62 years of age or older.

(19) Ending Homelessness ("EH") Fund--The voluntary-contribution state program established by Texas Transportation Code §502.415.

(20) Emergency Solutions Grants ("ESG")--A HUD-funded program which provides funds for services necessary to help persons that are at risk of homelessness or homeless quickly regain stability in permanent housing.

(21) ESG Coordinator--CoC Lead Agency or its designee that administers a competition for funds in its CoC region and recommends ESG awards to the Department based on its competition.

(22) ESG Interim Rule--The regulations with amendments promulgated at 24 CFR Part 576 as published by HUD for the ESG Program.

(23) Expenditure--An amount of money accounted for by a Subrecipient as spent.

(24) Finding--A Subrecipient's material failure to comply with rules, regulations, the terms of the Contract or to provide services under each 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 jeopardizes continued operations of the Subrecipient. Findings include the identification of an action or failure to act that results in disallowed costs.

(25) Head of Household--As defined in the most recent Homeless Management Information System ("HMIS") Data Dictionary issued by HUD.

(26) HMIS-Comparable Database--Database established and operated by a victim service provider or legal service provider that is comparable to HMIS and collects client-level data over time.

(27) HMIS Data Dictionary--The Dictionary published by HUD which defines terms for the use of HMIS and comparable databases.

(28) HMIS Data Standards--Manual published by HUD which documents the requirements for the programming and use of all HMIS and comparable databases.

- (29) HMIS Lead Agency--The entity designated by the CoC to operate the CoC's HMIS on its behalf.
- (30) Homeless or Homeless Individual--An individual as defined by 42 U.S.C. §§11371 - 11378 and 24 CFR §576.2. For state funded programs, a homeless individual may have right of occupancy because of a signed lease, but still qualify as homeless if his or her primary nighttime residence is an emergency shelter or place not meant for human habitation.
- (31) Homeless Housing and Services Program ("HHSP")--The state-funded program established under Tex. Gov't Code §2306.2585.
- (32) Homeless Management Information System ("HMIS")--Information system designated by the CoC to comply with the HUD's data collection, management, and reporting standards and used to collect client-level data and data on the provision of housing and services to homeless individuals and families and persons at-risk of homelessness.
- (33) Homeless Programs--Reference to programs that have the specific purpose of addressing homelessness administered by the Department, including ESG Program, HHSP, and EH Fund.
- (34) Homeless Subpopulations--Persons experiencing Homelessness who are part of the following population categories, or as defined in the most recent Point In Time Data Collection guidance issued by HUD:
- (A) Children of Parenting Youth;
  - (B) Parenting Youth;
  - (C) Persons Experiencing Chronic Homelessness;
  - (D) Persons Experiencing Severe Mental Illness;
  - (E) Persons with Chronic Substance Use Disorder;
  - (F) Persons with HIV/AIDS;
  - (G) Unaccompanied Youth;
  - (H) Veterans; and
  - (I) Victims of Domestic Violence.
- (35) Household--A Household is a single individual or a group of persons who apply together for assistance and who live together in one (1) Dwelling Unit, or, for persons who are not housed or in a shelter, who would live together in one (1) Dwelling Unit if they were housed, or as defined in the most recent HMIS Data Dictionary issued by HUD.
- (36) Households Served--A single individual or a group of persons who apply for Homeless Program assistance, meets a Homeless Program's eligibility requirements, receives a Homeless Program's services, and whose data is entered into an HMIS or comparable database.
- (37) Land Use Restriction Agreement ("LURA")--An agreement, regardless of its title, between the Department and the shelter property owner which is a binding covenant upon the shelter property owner and successors in interest, that, when recorded, encumbers the property with respect to the requirements of the programs for which it receives funds.
- (38) Local competition--ESG Coordinators running a competition for ESG funding on behalf of the Department for their respective CoC regions.
- (39) Match--A program requirement of ESG which is governed by 24 CFR §576.201.
- (40) Means-Tested Veterans Program--A program whereby applicants receive payments under Sections 415, 521, 541, or 542 of Title 38, United States, or under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978.
- (41) Monthly Expenditure Report--Information on Expenditures from Subrecipients to the Department.
- (42) Monthly Expenditure Report Guide--Document posted on the Department website which

- provides guidance for Subrecipients to complete a Monthly Expenditure Report.
- (43) Monthly Performance Report--Information on program participants and program activities from Subrecipients to the Department.
- (44) Monthly Performance Report Guide--Document posted on the Department website which provides guidance for Subrecipients to complete a Monthly Performance Report.
- (45) Notice of Funding Availability ("NOFA")--Notice of Funding Availability or announcement of funding published by the Department notifying the public of available funds for a Program with certain requirements.
- (46) Observation--A notable policy, practice or procedure observed though the course of monitoring.
- (47) Office of Management and Budget ("OMB")--Office within the Executive Office of the President of the United States that oversees the performance of federal agencies and administers the federal budget.
- (48) OMB Circulars--Instructions and information issued by OMB to Federal agencies that set forth principles and standards for determining costs for federal awards and establish consistency in the management of grants for federal funds. Uniform cost principles and administrative requirements for local governments and for nonprofit organizations, as well as audit standards for governmental organizations and other organizations expending federal funds are set forth in 2 CFR Part 200, unless different provisions are required by statute or approved by OMB.
- (49) Outcome--A benefit or change achieved by a Program Participant served by the Department's homeless programs.
- (50) Performance Target--Number of persons/Households served, outcomes reached, or construction/rehabilitation/conversion that the Subrecipient commits to accomplish during the Contract Term.
- (51) Private Nonprofit Organization--An organization described in §501(c) of the Internal Revenue Code (the "Code") of 1986 and which is exempt from taxation under subtitle A of the Code, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance. This does not include a governmental organization such as a public housing authority or a housing finance agency.
- (52) Project--A group of eligible activities identified in an Application or Contract to the Department, and designated in HMIS or HMIS-comparable database.
- (53) Program Participant--An individual or Household that is assisted by a Homeless Program.
- (54) Program Year--Contracts with funds from a specific federal allocation (ESG) or year of a state biennium (HHSP).
- (55) Service Area--The city(ies), county(ies) and/or place(s) identified in the Application (as applicable), and Contract that the Subrecipient will serve.
- (56) Single Audit--The audit required by OMB, 2 CFR Part 200, Subpart F, or the State of Texas Single Audit Circular, as reflected in an audit report.
- (57) State--The State of Texas or the Department, as indicated by context.
- (58) Subcontractor--A person or an organization with whom the Subrecipient contracts to provide services.
- (59) Subgrant--An award of financial assistance in the form of money made under a grant by a Subrecipient to an eligible Subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases.
- (60) Subgrantee--The legal entity to which a Subgrant is awarded and which is accountable to the Subrecipient for the use of the funds provided.

- (61) Subrecipient--An organization that receives federal or states funds passed through the Department to operate ESG and/or state funded homeless programs.
- (62) Supplemental Security Income ("SSI")--A means tested program run by the Social Security Administration.
- (63) Texas Administrative Code ("TAC")--A compilation of all state agency rules in Texas.
- (64) Uniform Grant Management Standards ("UGMS")--The standardized set of financial management procedures and definitions established by Tex. Gov't Code Chapter 783 to promote the efficient use of public funds, by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. State agencies are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state. This includes Housing Authorities, and Housing Finance Agencies. See Chapter 1, Subchapter D of this Part for additional information.
- (65) Unit of General Purpose Local Government--A unit of government which has, among other responsibilities, the authority to assess and collect local taxes and to provide general governmental services.
- (66) United States Code ("U.S.C.")--A consolidation and codification by subject matter of the general and permanent laws of the United States.
- (67) United States Department of Veteran Affairs ("VA")--Federal department that serves America's Veterans and their families with medical care, benefits, social support, and lasting memorials promoting the health, welfare, and dignity of all Veterans in recognition of their service.

### §7.3. Construction Activities.

- (a) A Subrecipient of Homeless Program funds that constructs or rehabilitates a building or Dwelling Unit, or converts a building(s) for use as a shelter may be required to enter into a LURA. No new construction of a shelter, or construction or rehabilitation of a Dwelling Unit is allowed with ESG funds.
- (b) For construction under the ESG Program, the term of the LURA will be ten (10) years from the date of execution of the LURA when the cost of major rehabilitation or conversion exceeds seventy-five percent of the value of the building prior to rehabilitation or conversion, regardless of the amount of the ESG investment. The value of the building prior to conversion or rehabilitation must be evidenced by the submission of the most recent tax records showing the value of the property, an appraisal reflecting the value of the property prior to improvements, or other valuation method approved by the Department.
- (c) The term of the LURA in other circumstances where construction was funded under the ESG Program shall be three years from the date of execution of the LURA.
- (d) For state funds only, Tex. Gov't Code §2306.185 requires certain multifamily rental developments to have, among other provisions, a 30-year land use restriction agreement.
- (e) A Subrecipient that intends to expend funds for new construction, rehabilitation, or conversion must submit a copy of the activity budget inclusive of all sources and uses of funding, documents for a construction plan review, and identification of the entity and signature authorization of the individual (name and title) that will execute the LURA. These documents must be submitted no less than ninety calendar days prior to the end of the Contract Term under which funds for the activity are provided.
- (f) A Subrecipient must request a final construction inspection within 30 calendar days of

construction completion. The inspection will cover the Shelter and Housing Standards, Uniform Physical Construction Standards, 2000 International Residential Code (or municipality adopted later version), Minimum Energy Efficiency Requirements for Single Family Construction Activities, and the Accessibility Standards in Chapter 1, Subchapter B, as applicable for the Homeless Program and activity.

#### §7.4. Subrecipient Contract.

(a) Subject to prior Board approval, the Department and a Subrecipient shall enter into and execute a Contract for the disbursement of program funds. The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver authorized modifications and/or amendments to the Contract, as allowed by state and federal laws and rules.

(b) Subrecipient may subcontract for the delivery of client assistance without obtaining Department's prior approval, but must obtain the Department's written permission before subgranting federal funds.

(c) The Subrecipient is responsible for ensuring that the performance rendered under all subcontracts, subgrants and other agreements are rendered so as to comply with Homeless Program requirements, as if such performance rendered were rendered by Subrecipient. Department maintains the right to monitor and require Subrecipient's full compliance with the terms of the Subrecipient Contract.

(d) A performance statement and budget are attachments to the Contract between the Subrecipient and the Department. Execution of the Contract enables the Subrecipient to access funds through the Department's Contract System.

(e) Amendments and Extensions to Contracts.

(1) Except for amendments that only move funds within budget categories, the Department reserves the right to deny amendment requests if any of the following conditions exist:

(A) the request for an amendment was received in writing less than 30 calendar days from the end of the Contract Term;

(B) if the award for the Contract was competitively awarded and the amendment would materially change the scope of the Contract performance or affected the score;

(C) if the funds associated with the Contract will reach their federal or state expiration date within forty-five (45) calendar days of the request;

(D) if the Subrecipient is delinquent in the submission of their Single Audit or their Single Audit Certification form required by §1.403 in Chapter 1 of this Part;

(E) if the Subrecipient owes the Department disallowed amounts in excess of \$1,000 and a Department-approved repayment plan is not in place or has been violated;

(F) for amendments adding funds (not applicable to amendments for extending time), if the Department has cited the Subrecipient for violations within §7.11 of this Subchapter (related to Compliance Monitoring) and the corrective action period has expired without correction of the issue or a satisfactory plan for correction of the issue;

(G) the Contract has expired; or

(H) a member of the Subrecipient's board has been debarred and has not been removed.

(2) Denial of an amendment may be subject to §1.7 of this Part, regarding Staff Appeals.

(f) The Department reserves the right to use a Cost Reimbursement method of payment whereby reimbursement of costs incurred by a Subrecipient is made only after the Department has reviewed and approved backup documentation provided by the Subrecipient to support such

costs for all funds if at any time the following apply:

(1) Department determines that Subrecipient has maintained cash balances in excess of need.

(2) Department identifies significant deficiency in the cash controls or financial management system used by Subrecipient, or

(3) Subrecipient fails to comply with the reporting requirements in §7.5 and §7.6 of this Subchapter.

(g) Voluntary deobligation. The Subrecipient may fully relinquish funds in the form of a written request signed by the signatory, or successor thereto, of the Contract. The Subrecipient may partially relinquish funds under a Contract in the form of a written request from the signatory if the partial relinquishment in performance measures and budget would not have impacted the award of the Contract. Voluntary relinquishment of a Contract does not limit a Subrecipient's ability to participate in future funding.

(h) Funds provided under a Contract may not be used for sectarian or explicitly religious activities such as worship, religious instruction or proselytization, and must be for the benefit of persons regardless of religious affiliation.

#### §7.5. Subrecipient Reporting.

(a) The Subrecipient may be reimbursed for the amount of actual cash disbursements as reflected in Monthly Expenditure Reports, with the exception of a one-time working capital advance.

(b) Subrecipient may request a one-time working capital advance for 30 calendar day cash needs up to eight percent of the Contract amount or an advance of \$5,000, whichever is greater. In order to request an advance payment, Subrecipient must submit to Department a properly completed Monthly Expenditure Report that includes a request for advance funds. If the advance is not utilized, funds will be returned to the Department within 60 calendar days.

(c) Subrecipients must submit a Monthly Performance Report and a Monthly Expenditure Report through the Contract System not later than the last day of each month which reflects performance and expenditures conducted in the prior month.

(d) For performance reports, Program Participants that are assisted continuously as a Contract ends and a new Contract begins in the same program will count as new Program Participants for the new Contract. However, the start of a new Contract does not require new eligibility determination or documentation for Program Participants, except as required by federal rule for ESG.

(e) Subrecipient shall reconcile their Expenditures with their performance at least monthly before seeking a request for funds for the following month. If the Subrecipient is unable to reconcile on a month-to-month basis, the Subrecipient must provide at the request of the Department, a written explanation for the variance and take appropriate measures to reconcile the subsequent month. It is the responsibility of a Subrecipient to ensure that it has documented the compliant use of all funds provided prior to receipt of additional funds, or if this cannot be done to address the repayment of such funds.

(f) Failure of a Subrecipient to provide reports within the Contract term may be sufficient reason or the Department to deobligate funds for which a Monthly Expenditure Report has not been submitted.

(g) If Subrecipient fails to submit within 45 calendar days of its due date, any report or response required by this section and responses to monitoring reports, Department may, in its sole discretion, suspend payments, place Subrecipient on Cost Reimbursement method of payment, and initiate proceedings to terminate any active Contract.

(h) Subrecipient must submit information requested by the Department for annual or biannual reporting. The annual reporting may extend over multiple Contracts.

(1) ESG Subrecipients will submit information yearly as required for the Consolidated Annual Performance and Evaluation Report, including, but not limited to:

(A) HMIS exports as required HUD; and

(B) Section 3 provision of the HUD Act of 1968, as required per HUD.

(2) Subrecipients of state funds will submit information for biennial reporting to the Texas Legislature, including, but not limited to:

(A) the successes and challenges of the program, including using state funding in ways that cannot be used by other funding sources; and

(B) how funds were used to leverage other funding sources to persons experiencing homelessness.

#### §7.6. Subrecipient Data Collection.

(a) Subrecipients must ensure that data on all persons served and all activities assisted under Homeless Programs is entered into the applicable HMIS or HMIS-comparable database for domestic violence or legal service providers in order to integrate data from all homeless assistance and homelessness prevention projects in a CoC.

(b) The Performance Targets shall be indicated in the Contract.

#### **§7.7. Subrecipient Contact Information.**

(a) In accordance with §1.22 of this Part (relating to Providing Contact Information to the Department), Subrecipients will notify the Department and provide contact information for staff that approve the Contract or submit/approve reports in the Contract System, including, but not limited to Executive Director, Program Director/Manager/Coordinator or any other person, regardless of title, generally performing such duties. The notification will be sent to the Department by updating its Contract System access request information.

(b) Subrecipients will notify the Department and provide contact information for subgrants or subcontractors, within 30 calendar days of the effective date of Subcontract. Contact information for the entities with which the Subrecipients subgrant or subcontract must be provided to the Department, including: organization name, name and title of authorized person who entered into the subgrant or subcontract, phone number, e-mail address, and type of services provided.

(c) Within 30 calendar days of contact information changes, including entering into subcontracts or agreements for service delivery, Subrecipients will notify the Department of contact information used for the public to receive assistance through Homeless Programs. The contact information for the public should include, but is not limited to: organization name, phone number to receive assistance, email to receive assistance, type of assistance offered, and service area that the assistance is offered.

(d) The Department will rely solely on the contact information supplied by the Subrecipient as indicated in the Department's web-based Contract System. It is the Subrecipient's sole responsibility to ensure such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in the Contract System will be deemed delivered to the Subrecipient. The Department is not required to send a paper copy and if it does so it does as a voluntary and non-precedential courtesy only.

#### §7.8. Records Retention.

- (a) Records must be kept in accordance with §1.409 of this Part (relating to Records Retention).
- (b) Record retention for construction/rehabilitation/conversion of emergency shelters or Dwelling Units must be retained until the expiration of the LURA.
- (c) For ESG, retention for records relevant to the ESG Contract (including but not limited to shelter and habitability inspections) shall be kept in accordance with 24 CFR §576.500 and UGMS, as applicable except if any litigation, claim, negotiation, audit, monitoring, inspection or other action has started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later. The record retention period does not begin until one year after the expiration of the Contract.
- (d) For state funds, retention for records relevant to the Contract (including but not limited to shelter and habitability inspections) shall be kept in accordance with UGMS, and retained by Subrecipient for a period of three years from the expiration of the Contract except if any litigation, claim, negotiation, audit, monitoring, inspection or other action has started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

#### §7.9. Contract Termination and Deobligation.

- (a) When a Contract is terminated or voluntarily relinquished, the procedures described in this subsection will be implemented.
- (b) The terminology of a “terminated” Subrecipient is intended to include the Subrecipient that is voluntarily terminating their Contract, but does not include Contracts naturally reaching the end of their Contract Term.
  - (1) The Department will issue a termination letter to the Subrecipient no less than 30 calendar days prior to terminating the Contract. The Department may determine to take any of the following actions: suspend funds immediately or allow a temporary transfer to another Subrecipient; or provide instructions to the Subrecipient to prepare a proposed budget and written plan of action that supports the closeout of the Contract. The plan must identify the name and current job titles of staff that will perform the closeout and an estimated dollar amount to be incurred. The plan must identify the CPA or firm which will perform the Single Audit. The Department will issue an official termination date to allow all parties to calculate deadlines which are based on such date.
  - (2) No later than 30 calendar days after the Contract is terminated, the Subrecipient will take a physical inventory of Program Participant files, including case management files.
  - (3) The terminated Subrecipient will have 30 calendar days from the date of the physical inventory to make available to the Department all Program Participant files. Current and active case management files also must be inventoried.
  - (4) Within 60 calendar days following the Subrecipient due date for preparing and boxing client files, Department staff will retrieve the files.
  - (5) The terminated Subrecipient will prepare and submit no later than 30 calendar days from the date the Department retrieves the files, a final report containing a full accounting of all funds expended under the Contract.
  - (6) A Monthly Expenditure Report and a Monthly Performance Report for all remaining expenditures incurred during the closeout period must be received by the Department no later than 45 calendar days from the date the Department determines that the closeout of the program

and the period of transition are complete.

(7) The Subrecipient will submit to the Department no later than 45 calendar days after the termination of the Contract, an inventory of the non-expendable personal property acquired in whole or in part with funds received under the Contract.

(8) The Department may require transfer of Equipment title to the Department or to any other entity receiving funds under the program in question. The Department will make arrangements to remove Equipment covered by this paragraph within 90 calendar days following termination of the Contract.

(9) A current year Single Audit must be performed for all entities that have exceeded the federal expenditure threshold under 2 CFR Part 200, Subpart F or the State expenditure threshold under UGMS, as applicable. The Department will allow a proportionate share of program funds to pay for accrued audit costs, when an audit is required, for a Single Audit that covers the date up to the closeout of the Contract. To be reimbursed for a Single Audit, the terminated Subrecipient must have a binding contract with a CPA firm on or before the termination date of the Contract. The actual costs of the Single Audit and accrued audit costs including support documentation must be submitted to the Department no later than 45 calendar days from the date the Department determines the closeout is complete. See §1.403 of this Part (relating to Single Audit Requirements) for more information.

(10) Subrecipients shall submit within 45 calendar days after the date of the closeout process all financial, performance, and other applicable reports to the Department. The Department may approve extensions when requested by the Subrecipient. However, unless the Department authorizes an extension, the Subrecipient must abide by the 45 calendar day requirement of submitting all referenced reports and documentation to the Department.

#### §7.10. Inclusive Marketing.

(a) The purpose of this section is to highlight certain policies and/or procedures that are required to have written documentation. Other items that are required for written standards are included in the federal or state rules.

(b) Participant selection criteria:

(1) Selection criteria will be applied in a manner consistent with all applicable laws, including the Texas and Federal Fair Housing Acts, program guidelines, and the Department's rules.

(2) If the local CoC has adopted priority for certain Homeless subpopulations or a specific funding source has a statutory or regulatory preference, then those subpopulations may be given priority by the Subrecipient. Such priority must be listed in the participant selection criteria.

(3) Notifications on denial, non-renewal, or termination of Assistance must:

(A) State that a Person with a Disability may request a reasonable accommodation in relation to such notice.

(B) Include any appeal rights the participant may have in regards to such notice.

(C) Inform program participants in any denial, non-renewal or termination notice, include information on rights they may have under VAWA (for ESG only, in accordance with the Violence Against Women Reauthorization Act of 2013 ("VAWA") protections). Subrecipients may not deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking.

(c) Other policies and procedures:

(1) Affirmative Fair Housing Marketing Plan. Subrecipients providing project-based rental assistance must have an Affirmative Fair Housing Marketing Plan created in accordance with

HUD requirements to direct specific marketing and outreach to potential tenants who are considered "least likely" to know about or apply for housing based on an evaluation of market area data. Subrecipients must comply with HUD's Affirmative Fair Housing Marketing and the Age Discrimination Act of 1975.

(2) Language Access Plan. Subrecipients that interact with program participants or clients must create a Language Access Plan for Limited English Proficiency ("LEP") Requirements. Consistent with Title VI and Executive Order 13166, Subrecipients are also required to take reasonable steps to ensure meaningful access to programs and activities for LEP persons.

(3) Affirmative Outreach. If it is unlikely that outreach will reach persons of any particular race, color, religion, sex, age, national origin, familial status, or disability who may qualify for those facilities and services, the Subrecipient must establish policies and procedures that target outreach to those persons. The Subrecipients must take appropriate steps to ensure effective communication with persons with disabilities including, but not limited to, adopting procedures that will make available to interested persons information concerning the location of assistance, services, and facilities that are accessible to persons with disabilities. Subrecipients must make known that use of the facilities, assistance, and services are available to all on a nondiscriminatory basis.

(4) Reasonable Accommodation. The Subrecipient must comply with state and federal fair housing and antidiscrimination laws. Subrecipient's policies and procedures must address Reasonable Accommodation, including, but not limited to, consideration of Reasonable Accommodations requested to apply for assistance. See Chapter 1 Subchapter B for more information.

#### §7.11. Compliance Monitoring.

##### (a) Purpose and Overview

(1) This section provides the procedures that will be followed for monitoring for compliance with the programs in 10 TAC Chapter 7.

(2) Any entity administering any or all of the programs detailed in 10 TAC Chapter 7 is a Subrecipient. A Subrecipient may also administer other programs, including programs administered by other state or federal agencies and privately funded programs. If the Subrecipient has Contracts for other programs through the Department, including but not limited to the HOME Partnerships Program, the Neighborhood Stabilization Program, or the Texas Housing Trust Fund, the Department may, but is not required to and does not commit to, coordinate monitoring of those programs with monitoring of the programs under this Chapter.

(3) Any entity administering any or all of the programs provided for in subsection (a)(2) of this section as part of a Memorandum of Understanding ("MOU"), contract, or other legal agreement with a Subrecipient is a Subgrantee.

##### (b) Frequency of Reviews, Notification and Information Collection.

(1) In general, the Subrecipient or Subgrantee will be scheduled for monitoring based on state or federal monitoring requirements and/or a risk assessment. Factors to be included in the risk assessment include but are not limited to: the number of Contracts administered by the Subrecipient or Subgrantee, 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 received by the Department, and reports of fraud, waste and/or abuse. The risk assessment will also be used to determine which Subrecipients or Subgrantees will have an onsite review and which may have a desk review.

(2) The Department will provide the Subrecipient or Subgrantee with written notice of any upcoming onsite or desk monitoring review, and such notice will be given to the Subrecipient and Subgrantee by email to the Subrecipient's and Subgrantee's Contract contact at the email address most recently provided to the Department by the Subrecipient or Subgrantee. In general, a thirty (30) day notice will be provided. However, if a credible complaint of fraud or other egregious noncompliance is received the Department reserves the right to conduct unannounced monitoring visits. It is the responsibility of the Subrecipients to provide to the Department the current contact information for the organization and the Board in accordance with §7.10 of this chapter (relating to Subrecipient Contact Information) and §1.22 of this title (relating to Providing Contact Information to the Department).

(3) Upon request, Subrecipients or Subgrantees 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. Typically, these records may include (but are not limited to):

(A) Minutes of the governing board and any committees thereof, together with all supporting materials;

(B) Copies of all internal operating procedures or other documents governing the Subrecipient's operations;

(C) The Subrecipient's Board approved operating budget and reports on execution of that budget;

(D) The Subrecipient's strategic plan or comparable document if applicable and any reports on the achievement of that plan;

(E) Correspondence to or from any independent auditor;

(F) Contracts with any third parties for goods or services and files documenting compliance with any applicable procurement and property disposition requirements;

(G) All general ledgers and other records of financial operations (including copies of checks and other supporting documents);

(H) Applicable client files with all required documentation;

(I) Applicable human resources records;

(J) Monitoring reports from other funding entities;

(K) Client files regarding complaints, appeals and termination of services; and

(L) Documentation to substantiate compliance with any other applicable state or federal requirements including, but not limited to, the Davis-Bacon Act, HUD requirements for environmental clearance, Lead Based Paint, the Personal Responsibility and Work Opportunity Act, HUD LEP requirements, and requirements imposed by Section 3 of the Housing and Urban Development Act of 1968.

(c) Post Monitoring Procedures.

(1) In general, within 30 calendar days of the last day of the monitoring visit, a written monitoring report will be prepared for the Subrecipient describing the monitoring assessment and any corrective actions, if applicable. The monitoring report will be emailed to the Subrecipient's designated Contract contact, as applicable. 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. Certain types of suspected or observed improper conduct may trigger requirements to make reports to other oversight authorities, state and federal, including but not limited to the State Auditor's Office and applicable Inspectors General.

(2) Subrecipient Response. If there are any findings of noncompliance requiring corrective action, the Subrecipient will be provided 30 calendar days, from the date of the email, to respond which may be extended for good cause. In order to receive an extension, the Subrecipient must

submit a written request to the Chief of Compliance within the corrective action period, stating the basis for good cause that justifies the extension.

(3) Monitoring Close Out. Within 45 calendar days after the end of the corrective action period, a close out letter will be issued to the Subrecipient. If the Subrecipient's response satisfies all Findings and Concerns noted in the monitoring letter, the issue of noncompliance will be noted as resolved. If the Subrecipient's response does not correct all findings noted, the follow-up letter will identify the documentation that must be submitted to correct the issue.

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

(A) If the issue is related to a program requirement or prohibition of a federal program, the Subrecipient may contact the applicable federal program officer for guidance or request that the Department contact applicable federal program officer for guidance without identifying the Subrecipient.

(B) If the issue is related to application of a provision of the Contract or a requirement of the Texas Administrative Code, the Subrecipient may request to submit an appeal to the Executive Director consistent with §1.7, Staff Appeals Process, in Chapter 1 of this Title.

(C) The Subrecipient may request Alternative Dispute Resolution ("ADR"). The Subrecipient may send a proposal to the Department's Dispute Resolution Coordinator to initiate ADR pursuant to §1.17 of this title.

(5) If the Subrecipient does not respond to a monitoring letter or fail to provide acceptable evidence of compliance, the matter will be handled through the procedures described in Chapter 2 of this Title, relating to Enforcement.