

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
TDHCA Governing Board Approved Draft of  
10 TAC §1.21, Action by Department if Outstanding Balances Exist

Disclaimer

Attached is a draft of proposed 10 TAC §1.21, Action by Department if Outstanding Balances Exist, that was approved by the TDHCA Governing Board on July 14, 2020. This action will entail the repeal of the current rule at 10 TAC §1.21, and a contemporaneous new rule being proposed to replace it. This document, including its preamble, is expected to be published in the July 31, 2020, 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 July 31, 2020

End: 5:00 p.m. Austin local time on August 31, 2020

Comments received after 5:00 p.m. Austin local time on August 31, 2020, will not be accepted.

Written comments may be submitted, in hard copy or electronic formats within the designated public comment period to:

Texas Department of Housing and Community Affairs  
Attn: Brooke Boston  
Rules Comments  
P.O. Box 13941  
Austin, Texas 78711-3941  
Email: [bboston@tdhca.state.tx.us](mailto:bboston@tdhca.state.tx.us)

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)

Attachment 1: Preamble, including required analysis, for proposed repeal of §1.21, Action by Department if Outstanding Balances Exist

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC §1.21, Action by Department if Outstanding Balances Exist. The purpose of the proposed repeal is to clarify the applicability of this rule.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the proposed repeal would be in effect:

1. The proposed repeal does not create or eliminate a government program but relates to changes to an existing activity: previous participation reviews.
2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The proposed repeal does not require additional future legislative appropriations.
4. The proposed repeal 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 repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The proposed repeal will not expand, limit, or repeal an existing regulation.
7. The proposed repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed repeal will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

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

The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no

economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the changed sections would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held July 31, 2020, to August 31, 2020, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, August 31, 2020.

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

§1.21, Action by Department if Outstanding Balances Exist

Attachment 2: Preamble, including required analysis, for proposed new §1.21, Action by Department if Outstanding Balances Exist

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC of §1.21, Action by Department if Outstanding Balances Exist. The purpose of the proposed new section is to make minor clarifications to the handling of requests to the Department when outstanding balances are due. The proposed new rule clarifies that this rule is applicable to cases of applications for awards, and makes other minor modifications.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the proposed new section would be in effect:

1. The proposed new section does not create or eliminate a government program but relates to changes to an existing activity, previous participation reviews.
2. The proposed new section does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The proposed new section does not require additional future legislative appropriations.
4. The proposed new section 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 new section is not creating a new regulation, except that they are replaced sections being repealed simultaneously to provide for revisions.
6. The proposed new section will not expand, limit, or repeal an existing regulation.
7. The proposed new section will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed new section will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the proposed new section and determined that it will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed new section does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

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

The Department has evaluated the proposed new section as to their possible effects on local economies and has determined that for the first five years the proposed new section would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed new section is in effect, the public benefit anticipated as a result of the new section would be an updated rule. There will not be economic costs to individuals required to comply with the new sections.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held July 31, 2020, to August 31, 2020, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, August 31, 2020.

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

## §1.21, Action by Department if Outstanding Balances Exist

(a) Purpose. The purpose of this section is to inform Persons or entities requesting awards of new funds or resources, Form(s) 8609, application amendments, LURA amendments, new Contracts (with the exception of a Household Commitment Contract), Contract amendments, ~~Contract extensions, Contract renewals~~ or loan modifications that, with the exceptions noted by this rule, if fees or loan payments (principal or interest) are past due, or Disallowed Costs have not been repaid, to the Department, the request may be denied, delayed, or the Subrecipient/Administrator/Developer/~~'s~~ Owner's Contract(s) terminated.

(b) Definitions.

(1) Capitalized words used herein have the meaning assigned in the specific Chapters and Rules of this Part that govern the program associated with the request, or assigned by federal or state law.

(2) Disallowed Costs: Expenses claimed by a Subrecipient/Administrator/Developer/Owner, paid by the Department, and subsequently determined by the Department to be ineligible and subject to repayment.

(c) Except in the case of interim construction loans, if Disallowed Costs, fees, or loan payments are past due -the Department will not: issue Form(s) 8609; amend applications, or LURAs; or Contracts, extend or renew Contracts or modify loan documents if fees or loan payments are past due to the Department, related to the subject of the request.

(d) Except in the case of Contracts for CSBG non-discretionary funds, the Department will not make awards of new funds or resources, issue enter into new Contracts, or amend Contracts when Disallowed Costs, fees, or loan payments identified by the Department remain unpaid, unless the entity has entered into, and is complying with, an agreed-upon repayment plan that is approved by the Department's Executive Director or Enforcement Committee.

(e) Once the Department notifies a Person or entity that they are responsible for the payment of a Disallowed Costs, required fee or payment that is past due, if no corrective action is taken within five seven business-days of notification, the Executive Director may deny the requested action for failure to comply with this rule.

(f) Exception for a Work Out Development. If fees (not including application or amendment fees) or payments affiliated with a work out Development are past due, then the past due amounts affiliated with a work out Development may be excepted from this rule, so long as the work out is actively underway by Department staff. In which case, in the Department's sole discretion, LURA or any other kinds of amendments may be considered for the subject Development or Contract.

(g) In accordance with Subchapter C of this Chapter (relating to Previous Participation Reviews), if a Person or entity applies for funding or an award from the Department, any fees, Disallowed Costs, or payment of principal or interest to the Department that is past due beyond any grace period provided for in the applicable loan documents and any past due fees (not just those related to the subject of the request) will be reported to the EARAC.