

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
TDHCA Governing Board Approved Draft of
10 TAC, Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds,
§1.411 Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code

Disclaimer

Attached is a draft of proposed new rule at 10 TAC, Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.411 Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code, that was approved by the TDHCA Governing Board on November 8, 2018. 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: Brooke Boston
Rules Comments
P.O. Box 13941
Austin, Texas 78711-3941
Email: brooke.boston@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 Web: www.tdhca.state.tx.us

Attachment 1: Preamble for proposing new 10 TAC §1.411 Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code.

The Texas Department of Housing and Community Affairs (the "Department") proposes new §1.411 Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code. The purpose of the proposed section is to provide compliance with Tex. Gov't Code Chapter 2105 which governs the administration of federal block grants, and provide one uniform rule that provides Subrecipients and Administrators under the Community Services Block Grant ("CSBG") program, the Low Income Home Energy Assistance Program ("LIHEAP") and the Community Development Block Grant ("CDBG") Program, which funds the Colonia Self-Help Centers, with clear rule-based guidance relating to Chapter 2105.

Tex. Gov't Code §2001.0045(b) does not apply to the rule being adopted under item (9) of that section, ensuring Department compliance with legislation. Despite this exception, it should be noted that no costs are associated with this action that would have prompted a need to be offset.

The Department has analyzed this 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. Irvine has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but provides guidance for how the Department and its subrecipients of certain federal funds, will comply with Tex. Gov't Code, Chapter 2105, regarding Administration of Block Grants.
2. The new rule does not reduce work load such that any existing employee positions can be eliminated nor does it create work that require new employee positions.
3. The new rule does not require additional future legislative appropriations.
4. The new rule does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new rule is creating a new regulation, but only to the extent that it provides clear guidance to Subrecipient on adherence to Tex. Gov't Code, Chapter 2105, regarding Administration of Block Grants.
6. The new rule will not expand or repeal an existing regulation.
7. The new rule will neither increase nor decrease the number of individuals subject to the rule, as Administrators and Subrecipients are already subject to the provisions of Tex. Gov't Code, Chapter 2105, regarding Administration of Block Grants.
8. The new rule 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, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code Chapter 2306, Subchapter E.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.
2. There are no small or micro-businesses subject to the rule for which the economic impact of the rule is projected to impact. There are no rural communities subject to the rule for which the economic impact of the rule is projected to impact.
3. The Department has determined that because this rule is only applicable to nonprofits and local governments that are designated as community action agencies that are already subject to Tex. Gov't Code, Chapter 2105, regarding Administration of Block Grants, there will be no economic effect on small or micro-business or rural communities.

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

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

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

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that this rule merely provides guidance on how subrecipients and administrators will be subject to Tex. Gov't Code, Chapter 2105, regarding Administration of Block Grants, and that the rule is applied statewide, the rule does not change issues affecting employment, and there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be clear guidance provided to Subrecipients and Administrators on compliance with Tex. Gov't Code, Chapter 2105, regarding Administration of Block Grants.

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

g. REQUEST FOR PUBLIC COMMENT The public comment period will be held November 23, 2018, to December 27, 2018, to receive input on the proposed new section. 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, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time DECEMBER 27, 2018.

STATUTORY AUTHORITY. The new section is adopted pursuant to TEX GOV'T CODE, §2306.053, which authorizes the Department to adopt rules and Chapter 2105. Except as described herein the new section affects no other code, article, or statute.

§1.411 Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code

(a) Purpose. The purpose of this rule is to inform compliance with Tex. Gov't Code Ch. 2105, Administration of Block Grants.

(b) Applicability. This rule applies to all funds administered by the Department that are subject to Tex. Gov't Code Ch. 2105. The activities administered by the Department that are currently subject to Tex. Gov't Code Chapter 2105 are those funded by the Community Services Block Grant ("CSBG") funds that are required to be distributed to Eligible Entities, the Low Income Home Energy Assistance Program ("LIHEAP") funds that are distributed to Subrecipients, and the funds that the Department administers and distributes to Subrecipients from the annual allocation from the Community Development Block Grant ("CDBG") Program. If additional block grant funds that would be subject to Tex. Gov't Code Ch. 2105 by its terms are assigned to the Department, they too would be subject to this rule. Capitalized terms used in this section are defined in the applicable Rules or Chapters of this Title or as assigned by federal or state law.

(c) Hearings required to be held by Subrecipients. Consistent with Tex. Gov't Code §2105.058, Subrecipients that receive more than \$5,000 from one or more of the programs noted in subsection (b) of this section must annually submit evidence to the Department that a public meeting or hearing was held solely to seek public comment on the needs or uses of block grant funds received by the Subrecipient. This meeting or hearing may be held in conjunction with another meeting or hearing if the meeting or hearing is clearly noted as being for the consideration of the applicable block grant funds under this subsection.

(d) Complaints. The Department will notify a Subrecipient of any complaint received concerning the Subrecipient services. As authorized by Tex. Gov't Code §2105.104, the Department shall consider the history of complaints regarding a Subrecipient in determining whether to award, increase, or renew a Contract with a Subrecipient.

(e) Right to Request a Hearing on Denial of Services or Benefits. As provided for in Tex. Gov't Code §§2105.151 and 2105.154, an affected person who alleges that a Subrecipient has denied all or part of a service or benefit funded by funds under a program that is subject to this subchapter in a manner that is unjust, discriminatory, or without reasonable basis in law or fact may request and have a timely hearing provided by the Department in the Service Area of the Subrecipient, and the requested hearing will be an administrative hearing under Tex. Gov't Code Ch. 2001.

(f) Nonrenewal or Reduction of Block Grant Funds to a Specific Subrecipient.

(1) As required by Tex. Gov't Code §2105.202(a), this section defines "good cause" for nonrenewal of a Subrecipient contract or a reduction of funding. Good cause may include any one or more of the following:

(A) consistent and repeated corroborated complaints about a Subrecipient's failure to follow substantive program requirements, as provided for in subsection (d) of this section;

(B) lack of compliance with 10 TAC §1.403 regarding Single Audit Requirements;

(C) statute, rule, or contract violations that have not been timely corrected and have prompted the Department to initiate proceedings under 10 TAC Chapter 2, Enforcement, and have resulted in a final order confirming such violation(s);

(D) disallowed costs in excess of \$10,000 that have not been timely repaid;

(E) failure by Subrecipient to select an option as provided for in §1.410 of this Title (as proposed) by the deadline;

(F) the ineffective rendition of services to clients, which may include a Subrecipient's failure to perform on a Contract, and which may include materially failing to expend funds;

(G) a failure to address an identified material lack of cost efficiency of programs;

(H) a material failure of the services of the Subrecipient to meet the needs of groups or classes of individuals who are poor or underprivileged or have a disability;

(I) providing services that are adequately addressed by other programs in that area;

(J) the extent to which clients and program recipients are involved in the Subrecipient's decision making;

- (K) providing services in a manner that unlawfully discriminates on the basis of protected class status; or
- (L) providing services outside of the designated geographic scope of the Subrecipient.

(2) Notification of Reduction, Termination, or Nonrenewal of a Contract and Opportunity for a Hearing. As required by Tex. Gov't Code §§2105.203 and 2105.301, the Department will send a Subrecipient a written statement specifying the reason for the reduction, termination, or nonrenewal of funds no later than the 30th day before the date on which block grant funds are to be reduced, terminated, or not renewed, unless excepted for by paragraph (4) of this subsection. After receipt of such notice for reduction or nonrenewal, a Subrecipient may request an administrative hearing under Tex. Gov't Code Ch. 2001 if the Subrecipient is alleging that the reduction is not based on good cause as identified in paragraph (f)(1) of this section or is without reasonable basis in fact or law. If a Subrecipient requests a hearing, the Department may, at its election, enter into an interim contract with either the Subrecipient or another provider for the services formerly provided by the provider while administrative or judicial proceedings are pending.

(3) Notification of Reduction of Block Grant funds for a Geographical Area. If required by Tex. Gov't Code §§2105.251 and 2105.252, the Department will send a Subrecipient a written statement specifying the reason for the reduction of funds no later than the 30th day before the date on which block grant funds are to be reduced.

(4) Exceptions. As authorized by Tex. Gov't Code §2105.201(b), the notification and hearing requirements for reduction or nonrenewal of funding provided for in paragraphs (2) and (3) of this subsection do not apply if a Subrecipient's block grant funding becomes subject to the Department's competitive bidding rules. The Department will require such competitive bidding for awarding block grant funding subject to Tex. Gov't Code Ch. 2105 for Subrecipients and in the Department's procuring of Subrecipients or contractors to administer or assist in administering such block grant funds, which includes the competitive release of Notices of Funding Availability and competitive Requests for Subrecipients or Providers. The criteria for evaluation of competitive responses shall be set forth in the applicable notices of funds availability, requests, or other procurement invitation document.

(5) Nothing in this section supersedes or is intended to conflict with the rights and responsibilities outlined in §2.203 concerning Termination and Reduction of Funding for CSBG Eligible Entities, in this Title.