

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
**TDHCA Governing Board Approved Draft of
Proposed Amendment to 10 TAC Chapter 2 Enforcement,
Subchapter B Enforcement for Noncompliance with Program Requirements of Chapters 6 and 7,
§2.203 Termination and Reduction of Funding for CSBG Eligible Entities**

Disclaimer

Attached is a draft of the proposed amendment to 10 TAC Chapter 2, Subchapter B, §2.203 Termination and Reduction of Funding for CSBG Eligible Entities that was approved by the TDHCA Governing Board on March 9, 2023. This document, including its preamble, is scheduled to be published in the March 24, 2023, 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.

Summary of the Document and the Changes Proposed: TDHCA last amended 10 TAC §2.203 Termination and Reduction of Funding for CSBG Eligible Entities in October 2019. As part of the four-year rule review under Tex. Gov't Code §2001.039, staff is recommending a proposed revision to the rule to make it clear that the process described in 10 TAC §2.203 does not apply to contracts awarded under CSBG Discretionary funding. Enforcement for noncompliance with CSBG Discretionary contracts are detailed in §2.201 Cost Reimbursement and §2.202 Sanctions and Contract Closeout. The proposed change to §2.203 will update the TAC to align with federal requirements.

In compliance with Texas Government Code, §2001.023(c), a summary of the proposed document is provided above. Also in compliance with Texas Government Code, §2001.023(c), this cover sheet and summary are provided in both English and Spanish.

Public Comment

**Public Comment Period: Starts: 8AM Austin local time on March 24, 2023
Ends: 5PM Austin local time on April 24, 2023**

Comments received after 5PM Austin local time on April 24, 2023, will not be accepted.

Written comments may be submitted, in hard copy or electronic format to:

Texas Department of Housing and Community Affairs
Attn: Gavin Reid
P.O. Box 13941
Austin, Texas 78711-3941
Email: gavin.reid@tdhca.state.tx.us

Written comments may be submitted in hard copy or email format 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

DEPARTAMENTO DE VIVIENDA Y ASUNTOS COMUNITARIOS DE TEXAS
**Borrador aprobado por la Junta Directiva del TDHCA de
la modificación propuesta a la sección (§) 2.203 [“Cancelación y reducción de la financiación para entidades
elegibles para CSBG”] del subcapítulo B [“Ejecución por incumplimiento de los requisitos de programas de los
capítulos 6 y 7”] del capítulo 2 [“Ejecución”] del título 10 del Código Administrativo de Texas (TAC)**

Descargo de responsabilidad

Se adjunta un borrador de la modificación propuesta a la sección (§) 2.203 [“Cancelación y reducción de la financiación para entidades elegibles para CSBG”] del subcapítulo B del capítulo 2 del título 10 del Código Administrativo de Texas (TAC), aprobado por la Junta Directiva del TDHCA el 9 de marzo de 2023. Se espera que este documento, incluyendo su preámbulo, se publique en la edición del *Texas Register* del 24 de marzo de 2023. Esa versión publicada constituirá la versión oficial para fines de comentarios del público. La versión aquí mencionada es solo informativa y no debe considerarse como fundamento para comentarios del público.

Resumen del documento y los cambios propuestos: el TDHCA modificó por última vez la sección (§) 2.203 [“Cancelación y reducción de la financiación para entidades elegibles para CSBG”] del título 10 del TAC en octubre de 2019. Como parte de la revisión de normas cada cuatro años en virtud de la sección (§) 2001.039 del Código de Gobierno de Texas, el personal recomienda una revisión propuesta de la norma para dejar en claro que el proceso descrito en la sección (§) 2.203 del título 10 del TAC no se aplica a los contratos adjudicados bajo la financiación discrecional de la Subvención en Bloque para Servicios Comunitarios (CSBG). La ejecución por incumplimiento de los contratos bajo la financiación discrecional de la CSBG se detalla en las secciones (§) 2.201 [“Reembolso de costos”] y 2.202 [“Sanciones y liquidación de contratos”]. El cambio propuesto a la sección (§) 2.203 actualizará el TAC para armonizarse con los requisitos federales.

De conformidad con la sección (§) 2001.023(c) del Código de Gobierno de Texas, anteriormente se facilita un resumen del documento propuesto. Asimismo, de conformidad con la sección (§) 2001.023(c) del Código de Gobierno de Texas, esta portada y resumen se ofrecen tanto en inglés como en español.

Comentarios del público

**Periodo de comentarios del público: Inicio: 8 a. m., hora local de Austin, del 24 de marzo de 2023
Fin: 5 p. m., hora local de Austin, del 24 de abril de 2023**

No se aceptarán los comentarios que se reciban después de las 5:00 p. m., hora local de Austin, del 24 de abril de 2023.

Los comentarios por escrito pueden presentarse en formatos impreso, fax o electrónico a:

Departamento de Vivienda y Asuntos Comunitarios de Texas
A la atención de: Gavin Reid
P.O. Box 13941
Austin, Texas 78711-3941
Correo electrónico: gavin.reid@tdhca.state.tx.us

Los comentarios por escrito pueden presentarse en formato impreso o por correo electrónico dentro del período designado de comentarios del público. Se anima a quienes formulen comentarios públicos a que hagan referencia al borrador de la norma, política o plan específico relacionado con su comentario, así como una referencia o cita específica asociada a cada comentario.

Tenga en cuenta que todos los comentarios enviados al TDHCA se considerarán información pública.

DEPARTAMENTO DE VIVIENDA Y ASUNTOS COMUNITARIOS DE TEXAS
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The Texas Department of Housing and Community Affairs (the Department) proposes amendments to §2.203 Termination and Reduction of Funding for CSBG Eligible Entities. The rule amendments clarify that the process described in §2.203 does not apply to contracts awarded under CSBG Discretionary funding.

FISCAL NOTE. Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the amendment to the rule 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.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Wilkinson also has determined that, for the first five years the amendment would be in effect:

1. The proposed amendment to the rule will not create or eliminate a government program;
2. The proposed amendment to the rule will not require a change in the number of employees of the Department;
3. The proposed amendment to the rule will not require additional future legislative appropriations;
4. The proposed amendment to the rule will result in neither an increase nor a decrease in fees paid to the Department;
5. The proposed amendment to the rule will not create a new regulation;
6. The proposed amendment to the rule will not repeal an existing regulation;
7. The proposed amendment to the rule will not increase or decrease the number of individuals subject to the rule's applicability; and
8. The proposed amendment to the rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Wilkinson also has determined that, for each year of the first five years the amendment to the rule is in effect, the public benefit anticipated as a result of the action will be to further clarify which programs are applicable to the rule. There will not be any economic cost to any individual required to comply with the amendment.

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. All comments or questions in response to this action may be submitted in writing from March 24, 2023, through April 24, 2023. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Gavin Reid, P.O. Box 13941, Austin, Texas 78711-3941, or email greid@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 pm Austin local time, April 24, 2023.

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

§2.203 Termination and Reduction of Funding for CSBG Eligible Entities

- (a) This section describes the Department's process for implementing HHS Information Memorandum 116 (Corrective Action, Termination, or Reduction of Funding) (IM 116) and 42 U.S.C. 9915. This process does not apply for Contracts awarded under CSBG Discretionary Funding.
- (b) Capitalized words used herein have the meaning assigned in, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 6 of this title (relating to Community Affairs Programs), or assigned by federal or state law.
- (c) A Deficiency may be identified through failure to resolve issues identified in an onsite monitoring review, a review of the Eligible Entity's Single Audit, a review prompted by a complaint, through the Department's procedures for reviewing performance and expenditure reports, or in any other review under 42 U.S.C. §9914(a)(1) - (4).
- (d) If a Deficiency is identified, the Eligible Entity will be notified in writing. The Department will also review the training and technical assistance that has been provided to the Eligible Entity to determine if further training and technical assistance germane to the Deficiency is warranted. If so, the Eligible Entity will be offered additional training and technical assistance that specifically focuses on the Deficiency.
- (e) If an Eligible Entity does not respond to the written notification, does not resolve the Deficiency, or does not propose a reasonable corrective action plan, the uncorrected Deficiency identified by the Department will be considered a final decision that the Eligible Entity has failed to comply with requirements in a review pursuant to the CSBG Act, and can be considered cause for proceedings to terminate Eligible Entity status or reduce funding in accordance with IM 116 and 42 U.S.C. §§9908(b)(8) and 9915. Such a determination will be issued in a final determination letter from the Department to the Eligible Entity.
- (f) If the Department determines that the development and implementation of a Quality Improvement Plan (QIP) is an appropriate requirement and/or that additional training and technical assistance are needed, that requirement will be stated in the final determination letter. The Eligible Entity will be provided 25 calendar days from the date of the final determination letter to submit a proposed QIP compliant with §2.204 of this subchapter and identifying dates for correction. In general, the Deficiency should be cured within 60 calendar days from the date of the final determination letter. If a Deficiency will require more than 60 calendar days, the Eligible Entity must explain why and propose a later date for correction, which the Department may elect to accept or deny. In the event a Deficiency cannot be corrected due to it being a singular past occurrence, the Eligible Entity must demonstrate to the

Department that the Deficiency's cause has been identified and properly addressed, so that the Deficiency will not reoccur.

(g) Within 25 calendar days from the date the proposed QIP is received, the Department will either approve it or specify the reasons it cannot be approved. While the Department is reviewing the submitted QIP, the Department will consider the corrective action timeline proposed by the Eligible Entity and may accept that timeline, or recommend an alternate timeline, based on the nature of the Deficiency, and the nature of the correction. The Eligible Entity's inability to resolve the Deficiency within a reasonable timeframe may trigger the commencement of formal legal proceedings to terminate Eligible Entity status.

(h) The Department approved QIP must be implemented as soon as possible and resolution of the Deficiency must be fully met within the specified and approved timelines agreed to by the Department.

(i) If it is determined and/or documented that training and technical assistance are not appropriate; that a QIP is not appropriate; the QIP has not been approved; the QIP has not been met within the specified and approved timeline agreed to within the QIP; or the processes described in subsection (f) of this section have failed to resolve the Deficiency, the Department will contact the Executive Director of the Eligible Entity, and all known members of the Eligible Entity's Board to notify them that staff will be requesting that the Department's Governing Board authorize staff to pursue a hearing with the State Office of Administrative Hearings (SOAH). Such notification will be made at least 45 calendar days prior to the date of the meeting of the Department's Governing Board. If approved by the Department's Governing Board, the Department will arrange and set a date for a hearing with SOAH. If the Eligible Entity does not respond or appear for the SOAH hearing, the consideration of termination of the Eligible Entity's status or reduction of funding will appear on the agenda at a subsequent regularly scheduled meeting of the Department's Governing Board. An Eligible Entity receiving notice of the initiation of a contested case before SOAH is reminded that they will need to read and comply with SOAH's requirements in the way they handle and respond to the matter.

(j) SOAH will issue a proposal for decision to the TDHCA Governing Board recommending whether there is cause, as defined by the CSBG Act, 42 U.S.C. §9908(c), to terminate or reduce funding to the Eligible Entity. The TDHCA Governing Board will be provided the proposal for decision and it will be considered as part of any final order by the Board in the matter.

(k) If the TDHCA Governing Board determines that there is cause to terminate or reduce funding, pursuant to 42 U.S.C. §9915, the Department will notify the Eligible Entity that it has the right under 42 U.S.C. §9915 to seek review of the decision by the HHS. If HHS does not overturn the decision or if the Eligible Entity does not seek HHS review, on the 90th calendar day after the TDHCA Governing Board decision, the CSBG funding will be reduced, or the entity will lose its status as an Eligible Entity under the CSBG Act and all active CSBG Contracts will be terminated.

(l) Any right or remedy given to the Department by this chapter does not preclude the existence

of any other right or remedy, nor shall any action or lack of action by the Department in the exercise of any right or remedy be deemed a waiver of any other right or remedy.