

Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.401 Definitions, §1.402 Cost Principles and Administrative Requirements, §1.403 Single Audit Requirements, §1.404 Purchase and Procurement Standards, §1.407 Inventory Report and §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 the repeal of 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.401 Definitions; §1.402 Cost Principles and Administrative Requirements; §1.403 Single Audit Requirements; §1.404 Purchase and Procurement Standards; §1.407 Inventory Report; and §1.411 Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code.

The purpose of the proposed repeal is to clarify requirements for participants of the Department's program; to implement changes related to Texas' Grant Management Standards; and to permit subrecipients of the certain programs to receive a reasonable fee for their administration of certain programs under the State Housing Trust Fund rather than reimbursement based on documentation of incurred administrative expenses.

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, Executive Director, has determined that, for the first five years the proposed repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to changes to existing guidance for program subrecipients. These amendments implement changes related to Texas' Grant Management Standards and provide regulatory authority to permit subrecipients of the certain programs to receive a reasonable fee for their administration of certain programs under the State Housing Trust Fund rather than reimbursement based on documentation of incurred administrative expenses.
2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the repeal significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The repeal does not require additional future legislative appropriations.
4. The 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 repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The repeal will not expand, limit, or repeal an existing regulation.
7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The 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. The Department has evaluated the rules and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed 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. Tex. 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 the rules pertain to all Subrecipients throughout the state, regardless of location, there are no "probable" effects of the revised rules on particular geographic regions.

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.

g. REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 17, 2021, to October 18, 2021, 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 bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, October 18, 2021.

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.

§1.401 Definitions

§1.402 Cost Principles and Administrative Requirements

§1.403 Single Audit Requirements

§1.404 Purchase and Procurement Standards

§1.407 Inventory Report

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

Attachment 2: Preamble, including required analysis, for proposed new 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.401 Definitions; §1.402 Cost Principles and Administrative Requirements; §1.403 Single Audit Requirements; §1.404 Purchase and Procurement Standards; §1.407 Inventory Report; and §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 10 TAC Chapter 1, Administration, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, which includes new §1.401 Definitions; §1.402 Cost Principles and Administrative Requirements; §1.403 Single Audit Requirements; §1.404 Purchase and Procurement Standards; §1.407 Inventory Report; and §1.411 Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code.

The purpose of the proposed new sections is to clarify requirements for participants of the Department's program; to implement changes related to Texas' Grant Management Standards; and to permit subrecipients of the certain programs to receive a reasonable fee for their administration of certain programs under the State Housing Trust Fund rather than reimbursement based on documentation of incurred administrative expenses.

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, Executive Director, has determined that, for the first five years the proposed new sections would be in effect:

1. The new sections do not create or eliminate a government program but relates to changes to existing regulations applicable to Department subrecipients.
2. The new sections do 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 new sections do not require additional future legislative appropriations.
4. The new sections will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new sections are not creating a new regulation, except that they are replacing sections being repealed simultaneously to provide for revisions.
6. The new sections will not expand, limit, or repeal an existing regulation.
7. The new sections will not increase or decrease the number of individuals subject to the rule's applicability.
8. The new sections 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 sections and determined that the proposed actions 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 sections do 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 sections as to their possible effects on local economies and has determined that for the first five years the proposed new sections 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 sections are in effect, the public benefit anticipated as a result of the new sections would be an updated and more germane 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 sections are 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 September 17, 2021, to October 18, 2021, to receive input on the proposed new sections. 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 bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, October 18, 2021.

STATUTORY AUTHORITY. The proposed new sections are made 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.

10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds

§1.401. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Capitalized words used herein have the meaning assigned in the specific Chapters and Rules of this ~~part~~title that govern the program associated with the request, or assigned by federal or state law.

(1) Affiliate--Shall have the meaning assigned by the specific program or programs described in this ~~part~~title.

(2) Department--The Texas Department of Housing and Community Affairs.

(3) Equipment--tangible personal property having a useful life of more than one year or a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by entity for financial statement purposes, or \$5,000. ~~Entities not subject to UGMS do not have to include information technology systems unless the item exceeds the lesser of the capitalization level established by entity for financial statement purposes, or \$5,000.~~

(4) Executive Award Review and Advisory Committee (EARAC)--the Committee established in Tex. Gov't Code chapter 2306, that recommends the award or allocation of any Department funds or resources.

(5) Professional services--for a unit of government is as defined by state law. For Private Nonprofit Organizations it means services:

(A) within the scope of the practice, as defined by state law, of:

- (i) accounting;
- (ii) architecture;
- (iii) landscape architecture;
- (iv) land surveying;
- (v) medicine;
- (vi) optometry;
- (vii) professional engineering;
- (viii) real estate appraising;
- (ix) professional nursing; or
- (x) legal services; or

(B) provided in connection with the professional employment or practice of a person who is licensed or registered as:

- (i) a certified public accountant;
- (ii) an architect;
- (iii) a landscape architect;
- (iv) a land surveyor;
- (v) a physician, including a surgeon;
- (vi) an optometrist;
- (vii) a professional engineer;
- (viii) a state certified or state licensed real estate appraiser;
- (ix) attorney; or
- (x) a registered nurse.

(6) Single Audit--The audit required by Office of Management and Budget (OMB), 2 CFR Part 200, Subpart F, or Tex. Gov't Code, chapter 783, Uniform Grant and Contract Management, as reflected in an audit report.

(7) Single Audit Certification Form--A form that lists the source(s) and amount(s) of Federal funds and/or State funds expended by the Subrecipient during their fiscal year along with the outstanding balance of any loans made with federal or state funds if there are continuing compliance requirements other than repayment of the loan.

(8) Subrecipient--Includes an entity receiving or applying for federal or state funds from the Department under Chapters 6, 7, or 20, or as identified by Contract or in this subchapter. Except as otherwise noted in this subchapter or by Contract, the definition does not include Applicants/Owners who have applied for and/or received funds under a program administered by the Multifamily Finance Division, except for CHDO Operating funds, a grant made to a unit of government or nonprofit organization, or Affiliate, or TCAP-RF funds where the entity is funded through a grant or Subrecipient Contract grants or loans when made to a unit of government or nonprofit organization or Affiliate. A Subrecipient may also be referred to as Administrator.

(9) Supplies--means tangible personal property other than "Equipment" in this section.

(10) ~~Uniform Texas~~ Grant Management Standards (~~UTx~~GMS)--The standardized set of financial management procedures and definitions established by Tex. Gov't Code, chapter 783 regarding Uniform Grant and Contract Management 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 all Public Organizations including public housing and housing finance agencies. In addition, Tex. Gov't Code Chapter 2105, regarding Administration of Block Grants, subjects subrecipients of federal block grants (as defined therein) to ~~the Uniform Grant and Contract Management Standards~~ TxGMS.

(11) Uniform Grant Management Standards (UGMS)--the standardized set of financial management procedures used by the Department in Contracts that began before January 1, 2022.

§1.402. Cost Principles and Administrative Requirements.

(a) Subrecipients shall comply with the cost principles and uniform administrative requirements set forth as applicable in UTxGMS or UGMS provided, however, that all references therein to "local government" shall be construed to mean Subrecipient. A Subrecipient that is administering a housing Program under Chapters 24 or 26 of this Title, may receive a fixed amount of administrative funds. Private Nonprofit Subrecipients of Emergency Solutions Grant (ESG), HOME Investments Partnership Program (HOME), Neighborhood Stabilization Program (NSP), National Housing Trust Fund (NHTF), Low Income Household Water and Wastewater Program (LIHWAP) and Department of Energy Weatherization Assistance Program (DOE WAP) do not have to comply with UTxGMS unless otherwise required by Notice of Funding Availability (NOFA) or Contract. For federal funds, Subrecipients will also follow 2 CFR Part 200, as interpreted by the federal funding agency.

(b) In order to maintain adequate separation of duties, the Subrecipient shall ensure that no individual has the ability to perform more than one of the functions described in paragraphs (1) - (5) that might result in a release of funds without appropriate controls:

- (1) Requisition authorization;
- (2) Encumbrance into software;
- (3) Check creation and/or automated payment disbursement;
- (4) Authorized signature/electronic signature; and
- (5) Distribution of paper check.

(c) For Subrecipients with fewer than five paid employees, demonstration of sufficient controls to similarly satisfy the separation of duties required by subsection (b) of this section, must be provided at the time that funds are applied for.

(d) Subrecipient will sign a Contract with the applicable Assurances in Appendix 6 of TxGMS as required by and in the form and substance acceptable to the Department's Legal Division.

§1.403. Single Audit Requirements.

(a) For this section, the word Subrecipient also includes Multifamily Development Owners who have applied for or received Direct Loan Funds, grants, or 811 PRA funds from the Department who are or have an Affiliate that is required to submit a Single Audit, i.e. units of government, nonprofit organizations.

(b) Procurement of a Single Auditor. A Subrecipient or Affiliate must procure their single auditor in the following manner unless subject to a different requirement in the Local Government Code:

(1) Competitive Proposal procedures whereby competitors' qualifications are evaluated and a contract awarded to the most qualified competitor. Proposals should be advertised broadly, which may include going outside the entity's service area, and solicited from an adequate number (usually two or more) of qualified sources. Procurements must be conducted in a manner that prohibits the use of in-state or local geographical preferences in the evaluation of bids or proposals;

(2) A Subrecipient may not use the sealed bid method for procurement of the Single Auditor. There is no requirement that the selected audit firm be geographically located near the Subrecipient. If a Subrecipient does not receive proposals from firms with appropriate experience or responses with a price that is not reasonable compared to the cost price analysis, the submissions must be rejected and procurement must be re-performed.

(c) A Subrecipient or Affiliate must confirm that it is contracting with an audit firm that is properly licensed to perform the Single Audit and is not on a limited scope status or under any other sanction, reprimand or violation with the Texas State Board of Public Accountancy. The Subrecipient must ensure that the Single Audit is performed in accordance with the limitations on the auditor's license.

(d) A Subrecipient is required to submit a Single Audit Certification form within two (2) months after the end of its fiscal year indicating the amount they expended in Federal and State funds during the fiscal year and the outstanding balance of any loans made with federal funds if there are continuing compliance requirements other than repayment of the loan.

(e) Subrecipients that expend \$750,000 or more in federal and/or state awards or have an outstanding loan balance associated with a federal or state resource of \$750,000 or more with continuing compliance requirements, or a combination thereof must have a Single Audit or program-specific audit conducted. If the Subrecipient's Single Audit is required by 2 CFR 200, subpart F, the report must be submitted to the Federal Audit Clearinghouse the earlier of 30 days after receipt of the auditor's report or nine (9) months after the end of its respective fiscal year. If a Single Audit is required but not under 2 CFR Part

200, subpart F, the report must be submitted to the Department the earlier of 30 days after receipt of the auditor's report or nine months after the end of its respective fiscal year.

(f) Subrecipients are required to submit a notification to the Department within five business days of submission to the Federal Audit Clearinghouse. Along with the notice, the Subrecipient must indicate if the auditor issued a management letter. If a management letter was issued by the auditor, a copy must be sent to the Department.

(g) The Department will review the Single Audit and issue a management decision letter for audit findings pertaining to the Federal award provided to the Subrecipient from the Department. If the Single Audit results in disallowed costs, those amounts must be repaid or an acceptable repayment plan must be entered into with the Department in accordance with 10 TAC §1.21, Action by Department if Outstanding Balances Exist.

(h) In evaluating a Single Audit, the Department will consider both audit findings and management responses in its review. The Department will notify Subrecipients and Affiliates (if applicable) of any Deficiencies or Findings from within the Single Audit for which the Department requires additional information or clarification and will provide a deadline by which that resolution must occur.

(i) All findings identified in the most recent Single Audit will be reported to EARAC through the Previous Participation review process described in Subchapter C of this Chapter. The Subrecipient may submit written comments for consideration within five business days of the Department's management decision letter.

(j) If the Subrecipient disagrees with the auditors finding(s), and the issue is related to administration of one of the Department's programs, an appeal process is available to provide an opportunity for the auditee to explain its disagreement to the Department. This is not an appeal of audit findings themselves. The Subrecipient may submit a letter of appeal and documentation to support the appeal. The Department will take the documentation and written appeal into consideration prior to issuing a management decision letter. If the Subrecipient does not disagree with the auditor's finding, no appeal to the Department is available.

(k) In accordance with 2 CFR Part 200 and the State of Texas Single Audit Circular §-225, with the exception of nondiscretionary CSBG funds except as otherwise required by federal laws or regulations, the Department may suspend and cease payments under all active Contracts, or refrain from executing a new Contract for any Board awarded contracts, until the Single Audit is received. In addition, the Department may elect not to renew an entity in accordance with ~~Section §1.411_(f)~~ of this Chapter (relating to Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code), or not amend or enter into a new Contract with a Subrecipient until receipt of the required Single Audit Certification form or the submission requirements detailed in subparagraph (e) of this section.

(l) In accordance with Subchapter C of this Chapter (relating to Previous Participation Reviews), if a Subrecipient applies for funding or an award from the Department, findings noted in the Single Audit and the failure to timely submit a Single Audit Certification Form or Single Audit will be reported to EARAC.

§1.404. Purchase and Procurement Standards.

(a) The procurement of all goods and services shall be conducted, to the maximum extent practical, in a manner providing full and open competition consistent with the standards of 2 CFR Part 200, UGMS, and ~~UTx~~GMS, as applicable.

(b) Subrecipients shall establish, and require its subrecipients/Subcontractors (as applicable by program regulations) to establish, written procurement procedures that when followed, result in procurements that comply with federal, state and local standards, and grant award contracts. Procedures must:

(1) include a cost or price analysis that provides for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Where appropriate, analyzing lease versus purchase alternatives, performing the proposed service in-house, and performing any other appropriate analysis to determine the most economical approach.

(2) require that solicitations for goods and services provide for a clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition, but must contain requirements that the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals. A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards. The specific features of "brand name or equal value" that bidders are required to meet must be listed in the solicitation.

(3) include a method for conducting technical evaluations of the proposals received and for selecting awardees.

(c) Documentation of procurement processes, to include but not be limited to the items in paragraphs (1) to (9) of this subsection, must be maintained by the Subrecipient in accordance with the record retention requirements of the applicable program:

(1) rationale for the type of procurement,

(2) cost or price analysis,

(3) procurement package,

(4) advertising,

(5) responses,

(6) selection process,

(7) contractor selection or rejection,

(8) certification of conflict of interest requirements being satisfied, and

(9) evidence that the awardee is not an excluded entity in the System for Award Management (SAM).

(d) In accordance with 34 Texas Administrative Code, Part 1, Chapter 20, Subchapter D, Division 1, each Subrecipient shall make a good faith effort to utilize the state's Historically Underutilized Business Program in contracts for construction, services (including consulting and Professional Services) and commodities purchases.

(e) The State of Texas conducts procurement for many materials, goods, and appliances. Use of the State of Texas Co-Op Purchasing Program does not satisfy the requirements of 2 CFR Part 200. For more detail about how to purchase from the state contract, please contact: State of Texas Co-Op Purchasing

Program, Texas Comptroller of Public Accounts. If Subrecipients choose to use the Cooperative Purchasing Program, documentation of annual fee payment is required.

(f) All vehicles considered for purchase with state or federal funds must be pre-approved by the Department via written correspondence from the Department. Procurement procedures must include provisions for free and open competition. Any vehicle purchased without approval may result in disallowed costs.

(g) For procurement transactions not subject to UGMS or TxGMS, the Department has adopted a \$10,000 micropurchase and \$250,000 simplified acquisition threshold. For procurement transactions subject to UGMS or TxGMS, Subrecipient must follow a \$3,000 micropurchase threshold and a \$250,000 Texas Acquisition Threshold (which is tied to the federal simplified acquisition threshold). If the simplified acquisition threshold changes, as a result of 2 CFR §200.88, or if it is temporarily raised because of a federal disaster declaration, the Department will publish the new amount on its website.

§1.407. Inventory Report.

(a) The Department requires the submission of an inventory report for all Contracts ~~on an annual basis~~ to be submitted to the Department, no later than 45 days after the end of the Contract Term, or a more frequent period as reflected in the Contract. Real Property and Equipment must be inventoried and reported on the Department's required form. The form and instructions are found on the Department's website.

(b) Real property and Equipment purchased with funds under a Contract with the Department must be inventoried and reported to the Department during the Contract ~~T~~term.

(c) Aggregate Supplies of over \$5,000 must be reported to the Department at the end of the Contract Term using federal form SF-428, which is a standard form to collect information related to tangible personal property or other form required by the federal fund source.

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

(a) Purpose. The purpose of this ~~section~~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 ~~part~~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, for the preceding three year period, regarding a Subrecipient in determining whether to award, increase, or renew a Contract with a Subrecipient. The Department will not consider complaints in determining whether to award, increase, or renew a Contract with a Subrecipient that the Department has determined in accordance with 10 TAC §1.2 (relating to Department Complaint System to the Department) it has no authority to resolve, or that are not corroborated.

(e) Requests for Reconsideration. Subrecipient must establish written procedures for the handling of denials of service when the denial involves a household inquiring or applying for services/assistance. This procedure must include, at a minimum:

(1) A written denial of assistance notice being provided to the affected person within 10 calendar days of the determination. Such a determination is defined as a denial of assistance, but does not include a level of assistance lower than the possible program limits or a reduction in assistance, as long as such process is in accordance with the written policy. This notification shall include written notice of the right of a hearing or secondary review of income documentation, as applicable, the timeframe the affected person has to respond to the decision, and specific reasons for the denial of assistance. The Subrecipient may adopt a policy limiting the time period during which a request for a hearing will be accepted and the format for the request, but the Subrecipient must provide the affected person with at least 10 calendar days to request a hearing or secondary review.

(2) If requested by the affected person, Subrecipient shall hold a private, recorded hearing (unless otherwise required by law) either virtually, by phone, or in person in an accessible location within 15 calendar days after the Subrecipient received the hearing request from the affected person and must provide the affected person notice in writing of the time/location of the hearing at least seven calendar days before the hearing.

(3) The hearing shall allow time for a statement by the Subrecipient's staff with knowledge of the case.

(4) The hearing shall allow the affected person at least equal time, if requested, to present relevant information contesting the decision.

(5) If a denial is based solely on income eligibility, the provisions described in paragraphs (2) - (4) of this subsection do not apply, however the affected person may request a secondary review of income eligibility based on initial documentation provided at the time of the original request for assistance. Such a secondary review must include an analysis of the initial calculation based on the documentation received with the initial request for services and will be performed by an individual other than the person who performed the initial determination. If the secondary review upholds the denial based on income eligibility documents provided at the initial request, the affected person must be notified in writing.

(6) If the affected person is not satisfied with the Subrecipient's determination at a hearing or as concluded based on a secondary income eligibility review, the affected person may request a subsequent review of the decision by the Department if the affected person requests a further review in writing

within 10 calendar days of notification of an adverse decision. If applicable, Subrecipient's should hold funds aside in the amount needed to provide the services requested by the affected person until the Department completes its decision.

(7) Affected persons who allege that the Subrecipient has denied all or part of a service or benefit in a manner that is unjust, violates discrimination laws, or without reasonable basis in law or fact, may request a contested hearing under Tex. Gov't Code, Chapter 2001.

(8) The hearing under subsection (e)(7) of this section shall be conducted by the State Office of Administrative Hearings on behalf of the Department in the locality served by the Subrecipient, for which the procedures are further described in §1.13 of this parttitle (relating to Contested Case Hearing Procedures). ~~(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 (relating to 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, (relating to 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 parttitle (relating to Determination of Alien Status for Program Beneficiaries) 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 subsection (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 of this ~~part~~ title (relating to Termination and Reduction of Funding for CSBG Eligible Entities).